



Fostering More Substantive Deliberation in WTO Bodies

Recommendation from the Report of the High-Level Board of Experts on the Future of Global Trade Governance

The High-Level Board of Experts on the Future of Global Trade Governance

The Bertelsmann Stiftung has called into life a High-Level Board of Experts on the Future of Global Trade Governance. Composed of eminent experts and seasoned trade diplomats, it elaborated a number of recommendations to increase the effectiveness and salience of the WTO. The entirety of these recommendations and underlying analysis of the changing political economy of international production and trade can be found in the Board's report "Revitalizing Multilateral Governance at the WTO", authored by Prof Bernard Hoekman. This briefing is part of a series of six, each of which details one specific recommendation from the report.

The full report can be accessed under https://www.bertelsmann-stiftung.de/fileadmin/files/BSSt/Publikationen/GrauePublikationen/MT_Report_Revitalizing_Multilateral_Governance_at_the_WTO.pdf

Fostering deliberation in WTO bodies

Deadlock in the long-running Doha round of multilateral trade negotiations, rising use of trade-distorting policies by a number of major WTO Members, and the refusal by the United States to approve new appointments to the WTO Appellate Body have eroded the effectiveness of the WTO. This has a significant opportunity cost in terms of higher barriers to trade and increasing uncertainty for firms regarding whether agreed rules of trade game can be enforced and relied upon. As important, a consequence of deadlock in the WTO is that the membership has been unable to launch efforts to update the current rulebook to make the organization fit for purpose for the rapidly growing digital economy.

Some WTO members have called for engagement to consider possible WTO reforms, notably the United States, followed in May 2018 by President Macron of France. Whether and what types of reforms are necessary is an open question that deserves careful deliberation by WTO members.

What follows argues that such engagement should include a bottom-up process of self-reflection in the various WTO bodies.

The WTO is 'member-driven'. In contrast to other international organizations, the WTO Secretariat has no executive authority and little autonomy. Representatives of the 164 WTO members drive the daily work of the organization. These representatives do so through numerous WTO bodies, including Committees charged with overseeing the implementation of specific WTO agreements. While day-to-day activities are undertaken by delegations based in Geneva, Committees and other WTO bodies may also involve officials from capitals. The Secretariat supports the work of all WTO bodies with specific inputs prepared at the request of the Chairperson or WTO members that participate in them, preparing minutes of meetings and circulating documents submitted by WTO member representatives.

The primary purpose of the various WTO bodies is to provide platforms through which the membership monitors the implementation of WTO agreements and can engage with each other on specific concerns a member may have.

Many of the committees operate in two modes – one to deal with normal business and one in so-called special session. The latter are negotiating sessions that center (centered) on subjects (goals) established by the Doha Development Agenda. The Committees are the primary venues in which WTO members discuss the operation of the agreements they oversee. Working groups and working parties are mechanisms to discuss specific matters they have been mandated to consider and explore potential modalities for greater cooperation in different areas.

The potential of the normal business functions of WTO bodies is not being used to its fullest extent. The focus of Committees has been primarily on Doha round negotiating issues – which are deadlocked. There has been too little use of these bodies to reflect on the extent and effects of implementation of existing agreements and new policy issues and tensions that have arisen. Greater discussion of the international spillover effects of new and evolving use of policies is a necessary condition for identifying where the WTO rulebook may need to be updated to promote sustainable economic development. Devoting more attention to the regular work of the Committees could help to revitalize the deliberative function of the WTO.

Four specific areas are particularly salient for self-reflection: enhancing the transparency of policies; addressing the concerns that many developing countries have regarding the implications of WTO rules for economic development; what can be learned from the implementation of preferential trade agreements; and the relevance of WTO activities for constituencies in WTO members.

Do Committees have the information they need? A process of self-reflection at the level of WTO bodies could start with revisiting the information available to Committees. Transparency is essential for reducing uncertainty and is one of the main tasks of the WTO. Focusing on its performance in generating relevant information at the level of Committees and specific WTO agreements is consistent with learning about its performance more generally. Better information is not simply a public good, although that is an important output and a key rationale for the various transparency and surveillance mechanisms included in the WTO. Information is primarily beneficial for countries themselves – a necessary input for understanding national policies. A useful role that WTO bodies can play is providing a venue for members to learn about their own policies as well as those of others and to identify where policies may be having negative international effects and using regular meetings to promote discussion of policies that limit adverse trade effects while attaining underlying regulatory goals.

A first step could be for each Committee to ask themselves what is needed to become more relevant to the constituencies / stakeholders that have a direct interest in the policy areas covered. Is the Committee dealing effectively in helping to attain national objectives in their area? An important element of this self-reflection is to determine what information is needed to fulfill both the mandate/objectives established in the relevant WTO agreements and the concerns of the government officials and agencies in capitals that deal with their issue areas. Are these well-understood? Do Committee members have the information they need? What information is needed?

Questions that arise in this connection concern the quality and comprehensiveness of the information provided to (by) the WTO in terms of allowing analysis of whether it is attaining its objectives (listed in the Preamble); helping economic actors navigate the system; or helping citizens to

see inside the system. Is WTO data comprehensive? Of high quality? Tracking emerging issues? Is information a burden or a benefit? Are members willing suppliers of information (statistics, notification) in one area but reluctant in another? Why? Is this a matter of differences in perceived legitimacy of the WTO Secretariat across committees? Does it reflect resource constraints? Why are some committees more successful in generating relevant information than others? Are there any common good practices? Could technology be used more effectively? And of the information that is being provided, for instance, though notifications, could better use be made if its content?

Answers to these questions can help to enhance transparency and enable better information provision, including how to ensure timely and satisfactory notifications by members and inform decisions whether the secretariat should be given a mandate to collect more information itself, working with other international agencies and stakeholders, on matters of relevance to the different WTO bodies. Alternatively, it may be that provision of assistance would help improve the ability of developing country members to collect and provide information. The point is for members to ask themselves in each committee if they have the information they need to do their job and, if not, what can be done to ensure they obtain it.

This process of self-assessment by Committees is not the same as recognizing that Members are not living up to notification obligations and calling on them to do better in abiding by the many notification requirements embodied in the WTO. There is a general recognition that WTO notification obligations are not being fully adhered to by many members. Instead of engaging in negative finger-pointing, we suggest a positive approach – asking WTO members in each Committee what specific types of information are needed. It may well be that many notification requirements in WTO agreements are not deemed to be useful. Conversely, WTO members may miss information that does not have to be notified at present.

The aim here would be to shift the focus from a “business as usual” approach centered on defending long-standing positions to one that focuses on what each WTO body’s activities should be – and based on the answer to this, an assessment of what information is needed to fulfil those tasks. This goes beyond the question whether members are living up to notification obligations

embedded in the WTO agreements. It entails reviewing these and considering if they should be revised or simplified given changes in the organization of global production. Such self-assessment of WTO information provision, on a WTO committee-by-committee basis, could feed into an annual synthesis report (a “Trade Policy Review of the System”) that could be discussed in the General Council as part a broader review of the functioning of the WTO.

Are rules salient for economic development? In addition to self-reflection on how to enhance the effectiveness and relevance of the normal operation of each committee and other WTO bodies, a parallel process of policy dialogue (open, non-committal deliberation) on whether and how the provisions of WTO agreements support sustainable development goals could be launched. The aim would be to identify good policy practices and their relationship with each of the subject areas covered by the agreements overseen by a committee. This should include sharing of national experiences and be supported by analysis by the Secretariat and other international organizations. Such a process could become the basis for incrementally addressing the tensions that surround the invocation of special and differential treatment (SDT) provisions.

SDT has become a flash point for disagreement between WTO members, with many countries arguing that large emerging economies should not invoke SDT provisions. A development-focused policy dialogue in the various WTO bodies could consider factual questions: What kind of SDT could help countries develop world class industries in sectors where they have comparative advantages? What kind of SDT would support better insertion in GVCs? Was SDT a factor in attracting foreign investors? Could there be situations where SDT actually prevents development? What could the WTO and the Secretariat do to assist governments and economic operators address coordination problems and other market failures that impede investment? Are development agencies providing aid for trade that addresses such constraints?

A corollary benefit of such substantive deliberation on development dimensions of WTO agreements is that it may help WTO Members to extend the approach reflected in the 2013 Agreement on Trade Facilitation – the main successful result achieved in the Doha Round negotiation – to other

policy areas. This centers on agreement on what constitutes good policy practice in an area, complemented by credible commitments by higher income members to assist developing countries to implement them. One element of such a development oriented discussion should be to identify the scope for greater differentiation among developing countries.

Learning from preferential trade agreements (PTAs). Another useful focal point for deliberation at the Committee level is the operation and implementation of PTAs in the policy areas covered by each Committee. This would complement the focus of the Committee on Regional Trade Agreements on the legal content (provisions) of the PTAs that have been implemented by WTO members. This Committee does not discuss the experience of how PTAs are implemented or assess the economic effects of different approaches that may be taken in PTAs towards a given policy area. Discussion of implementation experience in the areas covered by the various WTO bodies is best done in the respective bodies as these will bring together officials from capitals responsible for the specific areas covered by each WTO agreement. This has been done in the past on an ad hoc basis – making this a regular agenda item, with preparation of background documentation by the Secretariat would support a more structured and regular process aimed at learning from PTA experiences.

PTAs may encompass innovative approaches to attenuate the market-segmenting effects of regulatory policies that other countries might usefully emulate. All WTO Members have a strong interest in understanding what innovative PTAs do and achieve. Documenting alternative approaches used in PTAs would not only improve transparency but, more important, potentially inform a process of learning about what works and what does not and identify options that might eventually be multilateralized through initiatives under the WTO umbrella.

Connecting better to constituencies. A general precondition for the process of self-reflection and policy dialogue proposed here to be feasible is that it is not blocked by the consensus practice. A necessary condition for this is to credibly address concerns that issues tabled for discussion may give rise to eventual negotiations. Fears that this is the ‘end game’ of policy dialogue may induce

some members to take tactical positions to oppose deliberative activities. The rationale for doing so is not compelling given that consensus implies that countries can always refuse to engage in negotiations to establish new rules for a policy area. If a WTO member insists on blocking open-ended discussion, there is nothing that prevents a group of WTO members from pursuing this outside the WTO. This is very much a second-best outcome however, as it is important that the Secretariat can support such deliberations and is able to ensure there is transparency vis-à-vis WTO members that do not participate in them.

The practice of interpreting consensus as an unlimited capacity to exercise veto power has been a factor impeding the effectiveness of the operation of the WTO. There is no easy solution to the problem given the consensus that exists on consensus. This suggests the focus should be on reducing the scope for WTO members to engage in hostage-taking by increasing the costs of such behavior, or, equivalently, reducing the return that can be achieved. The latter can be done through subsets of WTO members pursuing a matter through open plurilateral initiatives where these are feasible. The former can be pursued by doing more to engage with constituencies at the national level that have a strong interest or stake in making progress in each policy area.

A common factor underpinning pro-active and constructive engagement between WTO members in some WTO committees – notably those dealing with product regulation – is that they connect a specific constituency, officials responsible for achieving regulatory objectives, with trade officials who are interested in reducing trade costs. The joint engagement results in greater ‘ownership’ of the work of these Committees. Necessary conditions are that work programs are relevant to what officials are responsible for, and that the activities of the Committee can be justified to parliaments, businesses and citizens as delivering useful results. Determining if and how the various WTO Committees and related bodies connect to specific groups in and outside national government – and how to do so more effectively – may both improve the usefulness of their work and the political support by economic operators and national interest groups for WTO engagement.

A first step is to identify the constituencies that have an interest in the work of a Committee and

reflect on how to better engage them. This includes the relevant regulatory communities at both national and international level whose work impacts on the policy area covered by a WTO agreement. Interacting with these regulatory communities, including regulatory agencies that have indirect impacts on trade costs (trade facilitation objectives), can assist Committees identify how they can help achieve national regulatory objectives more efficiently and effectively.

Changes in the modus operandi of Committees may help increase participation and 'ownership' of activities. One possibility in this regard is to provide more support for Chairpersons of Committees by creating a steering group or bureau of three or four WTO member representatives who are appointed for several years. In existing practice, the chairpersons, except for those of Special sessions, stay only for one year, which causes problems of continuity. The practice of establishing a steering group has been adopted in some of the joint initiatives launched at the 2017 Ministerial in Buenos Aires. This approach is used in other international organizations such as the OECD, where each Committee has a 'bureau' comprising a small group of member country Ambassadors who help guide the implementation of work programs. This helps to ensure continuity, follow-up and engagement. An ancillary benefit of broadening the management of Committees is that it can reduce the use of consensus to prevent a majority from moving forward in engaging in a specific activity. Assuming the steering group or bureau is representative and unified on a proposed course of action, this raises the reputational costs for a member to block initiatives as well as reducing incentives to do so.

Other practical steps can also be considered to facilitate policy dialogue of the type advocated here. Adding items to a standing agenda can be problematic as it implies taking time from other issues. The processes suggested here will also have resource implications raising potential concerns of resource diversion. Such concerns can be addressed by holding informal or thematic sessions alongside regular Committee meetings, with sponsors of an issue put forward for informal dialogue providing additional funding, where needed.

Finally, and importantly, it is vital that policy dialogue in WTO bodies is framed as an open process with a view to consider whether there is a

problem and to learn from experience as opposed to starting from the premise that this reflects a search for rules. The latter may well be a solution, but first it is necessary for there to be a common understanding of an issue and whether and how rules are needed to address it. The process should not be framed as a prelude to negotiations, as this is a key factor why some WTO members have opposed policy dialogue on new matters in the first place. As noted, such concerns are misplaced as consensus ensures that countries can always block the launch of a multilateral negotiation process that spans all WTO members.

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