



Policy Brief

## Revitalizing Multilateral Governance at the World Trade Organization

**Policy Brief based on the Report of the High-Level Board of Experts on the Future of Global Trade Governance**

### Preface

If international trade is not governed by rules, mere might dictates what is right. The World Trade Organization (WTO) serves as a place where trade policy issues are addressed, disputes arbitrated, legal frameworks derived and enforced. Through these functions, the WTO ensures that the rules of trade policy are inspired by fairness and reciprocity rather than national interest. It is more important than ever to vitalize the global public good that it represents against various threats that have been undermining it.

Therefore, the Global Economic Dynamics project of 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 series of feasible policy recommendations that will increase the effectiveness and salience of the WTO. We hope that this Report provides helpful suggestions in a time marked by increasing trade disputes and protectionism and instead contributes to stronger multilateral institutions and fora.<sup>1</sup>

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personal basis – the views expressed should not be attributed to any of the organizations Expert Board members are affiliated with.

## Introduction

The global trading system has helped many countries to increase economic growth and reduce poverty. Many countries, both developed and developing, have greatly expanded their participation in international trade, benefitting from lower prices, greater variety and higher productivity. The rapid growth in global trade shares of developing economies and the underlying increase in output have been associated with rising average per capita incomes and reductions in rates of poverty.

The global trade regime is a major success story of multilateral cooperation. But success has also brought challenges in its wake. The rapid increase in global output and trade shares of emerging economies, especially China, has given rise to perceptions that this is due in part to commercial practices that distort trade. Competition between governments to stimulate domestic economic activity has led to increasing trade tensions. Unilateral imposition of protectionist measures and retaliatory responses constitutes a systemic threat to the trade regime.

Rising public concern in many countries that trading partners use policies that advantage national firms – policies that seek to induce companies to ‘make it here,’ not ‘in the world’ – prompts calls for revisiting the bargains struck at the time the World Trade Organization (WTO) was created (1995) and China acceded to the organization (2001). Updating the rulebook is also required to bolster the governance framework for cross-border flows of services and digital products associated with the development and use of new technologies such as artificial intelligence, 3D printing, and automation.

WTO members are doing too little to confront and address these challenges. The organization is stalled. The core negotiation, transparency, and conflict resolution functions are increasingly questioned, undermining the credibility of the institution and its ability to support cooperation on trade matters:

- WTO members failed to conclude the first round of multilateral trade negotiations launched under WTO auspices in 2001: the Doha Development Agenda.
- There is increasing recourse to trade-distorting measures by some WTO members.
- Since 2016, deadlock on the negotiation front has been complemented by an inability to ob-

tain the consensus needed for new appointments to the WTO Appellate Body, threatening the dispute settlement function.

- Many WTO members are not living up to their notification commitments, reducing transparency of their trade policies and impeding the effectiveness of many WTO bodies in overseeing implementation of WTO agreements.
- Members have not been willing to discuss a new work program for the organization that spans both outstanding ‘Doha subjects’ such as agricultural support policies and matters not on the Doha agenda that are giving rise to trade tensions.

The trading system is in crisis. Urgent action is needed to revitalize the WTO. Such action must come from its members in a bottom-up process and be based on renewed multilateral dialogue on the deployment and effects of trade-distorting policies in both developed and developing nations. Dialogue is also required to resolve conflicts regarding the operation of the dispute settlement mechanism.

All WTO members stand to gain from concerted efforts to cooperate on trade-related policies and address the underlying source of trade tensions. This applies as much to the US as it does to China, India, other Asian nations, African countries, the EU or any other WTO member:

- Large OECD trading powers such as the EU, Japan and the US need a functioning multilateral trade regime because most of the concerns they have raised regarding foreign trade practices cannot be addressed effectively – or efficiently – on a bilateral basis. Any deal with one country will be eroded by a mix of market forces that drive investment towards other countries. Many trade practices that create negative spill-over effects are not unique to one country.
- Large emerging economies need a functioning multilateral trade system because they do not have bilateral or regional trade agreements with their main trading partners and have not participated in recent efforts to conclude deeper economic integration arrangements. The WTO provides the primary locus where they can join in setting the rules for new areas of policy where they have a substantial stake – such as e-commerce or digital trade and investment.

- Developing countries need a functioning multi-lateral trade regime because they have little market or negotiating power vis-à-vis large trading nations or blocs. The rules-based multi-lateral trading system provides the foundation for the efforts of many developing countries to integrate markets on a regional basis. An important example is the African initiative to create a continent-wide integrated regional market for goods and services.
- Citizens of countries concerned with ensuring that trade supports societal goals and sustainable development need a functioning multilateral trade regime that upholds and bolsters the ability of governments to take actions to achieve these objectives.

Many countries have turned to preferential trade agreements (PTAs) to strengthen the governance of their commercial relations. Efforts to negotiate such agreements are prevalent in all parts of the globe. Some PTAs cover policies in areas such as e-commerce, competition policy and digital trade. Some are also used as an instrument to pursue external policy objectives, including in areas such as labour and environmental standards. Participating in trade agreements offers a complementary vehicle for cooperation to countries willing to deepen integration of markets, but this is not a viable alternative for many developing countries and risks fragmenting the rules that apply to global value chains. Nor will such agreements discipline key trade-distorting instruments such as subsidies. PTAs offer only partial solutions to companies seeking less policy uncertainty and fragmentation of regulatory regimes. Moreover, they depend on the strong foundation of basic rules provided by the WTO.

A basic function of the WTO is to provide a platform for countries to agree on rules for trade-related policies that damage trading partners and to support their implementation. The fact that it is not fulfilling this purpose matters for the global economy. Safeguarding the WTO is important for all its members, large and small, but especially for the latter. Only the multilateral trading system offers small countries the opportunity to influence the development of new trade rules.

## What could be done? Six recommendations

Re-vitalizing the WTO as a venue for multilateral cooperation requires a willingness on the part of members to identify and discuss perceived problems and explore potential solutions. The WTO provides extensive flexibility for members' engagement with each other.

WTO members need to utilize this flexibility to address the underlying sources of trade tensions and deadlock, focusing on trade-distorting non-tariff policies in both developed and emerging economies that are not or are only incompletely covered by WTO disciplines. The prospects for doing so will be enhanced by initiatives to improve organizational performance as regards implementation of agreements and dispute settlement.

### 1. Policy dialogue on policies affecting competitiveness

Escalation of the bilateral conflicts that give rise to unilaterally determined trade policies constitutes a serious threat to a rules-based trade regime. Resolving current trade tensions requires the major players to use the WTO for its original purpose: a forum for discussion, negotiation and dispute resolution. It is in the interest of all WTO members to make concerted efforts to revisit the current rulebook and working practices – including the dispute settlement mechanism. The situation that has arisen with new appointments to the Appellate Body is one, urgent, example illustrating the need for open and frank dialogue on perceived problems and suggested solutions. The WTO dispute resolution system plays a vital role in sustaining cooperation between WTO members. Dealing with concerns regarding how that system functions without undermining the dispute settlement process's operation must be a priority for the WTO membership.

The first order of business for the WTO membership is to pursue efforts to defuse current trade conflicts, including the dispute regarding the Appellate Body. Whatever choices are made by WTO members in either launching or responding to trade policy actions, the appropriate path to contest perceived violations of WTO commitments is via the dispute settlement procedures.

Sources of disagreement on issues and policies of systemic import require dialogue. A common understanding of the magnitude and incidence of negative spill-over effects of contested policies is a precondition for cooperation and potential rule-making efforts. Similarly, a process of open deliberation is required to agree on a roadmap for addressing concerns about how the Appellate Body operates.

Such processes require a willingness by the major players to engage with each other. There is no compelling reason for them not to do so, nor are there good reasons why any WTO member should seek to block such engagement. This should be the bread and butter of the WTO – it is a core function. The aim should be to identify a work program to define an

agenda and roadmap to resolve recent trade tensions associated with the use of non-tariff policies, as well as outstanding subjects on the Doha Round agenda of great importance to many WTO members.

Deliberation must be informed by factual assessments of the specific features of policies or situations giving rise to concern, and by analysis of the magnitude and incidence of any negative effects they generate. This is best done through working groups, supported by the secretariat with relevant information and objective analysis. Secretariat support is important as in practice only a small group will engage on most complex issues. Good information is critical to this process. Moreover, greater transparency promoting better understanding of an issue area is a public good.

It is critical that dialogue encompass issues that matter greatly to developing countries. Efforts to block deliberation on non-Doha issues arise not because countries do not see their salience for the WTO but because of a desire to see progress on policies that are priorities for many developing countries – such as tariff escalation in agricultural and natural resources sectors. Balance is vital.

Geopolitical tensions and associated national politics may preclude a consensus on launching the necessary dialogue and eventual negotiations. WTO members should not permit consensus to be a constraint in launching a process of policy dialogue. In many areas, it may be feasible to proceed on a plurilateral, critical mass basis. This may be a stepping stone towards an eventual broadly-supported agreement, but it may also be the best approach for some types of issues – e.g., instances where there are significant differences in social preferences or societal goals.

## 2. Foster substantive deliberation in WTO bodies

The WTO is a 'member-driven' organization. It works through many WTO Committees and other bodies in which all its members participate, subject to their choice. Bolstering the regular work of WTO bodies is one avenue for revitalizing the organisation's deliberative function. These entities provide venues for members to discuss policies relevant to the respective subject areas covered by existing agreements and how these are changing. They provide opportunities for policy dialogue and consideration of options to avoid or limit adverse trade effects of policies that are not, or only partially, covered by current WTO agreements and member commitments.

Self-reflection should include policy dialogue on emerging issues and areas of opportunity and more

generally seek to (re-)establish a common understanding of whether and how WTO bodies can be more useful to the government departments in national capitals that deal with each of the issue areas they cover. One element of such a process is for WTO members to determine what information they need to engage productively with each other in different WTO bodies. Non-compliance with many of the notification requirements included in WTO agreements in a timely or comprehensive manner has become a source of contention. Rather than seeking to enforce compliance with all existing notification requirements, it would be more constructive for WTO Committees to ask themselves what information is needed to fulfil their mandate and most usefully help economic actors and citizens navigate and understand the trading system.

Shifting the focus from a "business as usual" approach centred on defending long-standing positions on mandates and work programs of Committees and other WTO bodies to one that starts with members asking what each entity's activities (tasks) should be and how they can more effectively pursue them may make the 'normal business' activities of WTO bodies more salient to the constituencies with a stake in the subject areas covered by the different WTO agreements.

A greater emphasis on jointly determining (learning about) what constitutes good practice in each of the policy areas covered by a Committee through sharing of national experiences, supported by background papers and analysis from the secretariat, could also form the basis of a more effective approach to dealing with economic development concerns. As each Committee brings together officials responsible for specific trade policies, they offer the opportunity to engage in deeper substantive discussions on what types of policies will foster sustainable development.

A development-focused policy dialogue in the various WTO bodies could consider factual questions: What kind of treatment could help countries develop industries in sectors where they have comparative advantages? A basic focus of such discussion should be on identifying the scope for greater differentiation among developing countries on an issue-by-issue basis.

The Committees are also appropriate venues for discussion of what can be learned from the operation of PTAs in their respective policy areas. PTAs may pursue innovative approaches towards cooperation on trade policies. A regular focus at Committee level on national experiences with different PTAs would not only improve transparency, but more important, support a process of learning about approaches that might

be multilateralized through instruments such as a reference paper that countries could sign on to.

It is vital that policy dialogue 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.

### 3. Open plurilateral initiatives among WTO members

Lack of consensus to discuss issues not covered by extant WTO agreements or included on the agenda of the Doha Round has been a factor impeding use of the WTO as a forum for policy dialogue. A partial solution to this problem is for groups of members to cooperate on an open, plurilateral basis and, where feasible, launch initiatives for specific sectors or policy areas. Open plurilateral initiatives can be a vehicle for countries to consider adoption of common policy principles such as regulatory coherence or to agree to new policy disciplines. Open plurilateralism has two key elements: any WTO member with an interest in participating is permitted to do so and the benefits of agreements are applied on a non-discriminatory basis to all WTO members (insofar as benefits are not conditional on joint action by countries). Open plurilateralism is a complement and alternative to the pursuit of PTA-based cooperation, which has the systemic disadvantage of being discriminatory in nature.

Open plurilateral initiatives may not be feasible for policy areas where free riding is a significant concern. However, they offer an opportunity for countries to cooperate on issue areas where the nature of the problem is to identify what constitutes good practice that will benefit participating countries independent of what non-participants do. Areas where this is likely to be the case include certain types of regulatory cooperation (where the focus is good practice) and 'behind the border' policies that apply equally to national and foreign firms or products.

One area where open plurilateral initiatives could serve a useful function in supporting cooperation is as a means for members of PTAs to multilateralize specific 'behind the border' features of their PTAs – for example, cooperation on competition policy, adoption of good practice for sector-specific regulation, or initiatives aimed at establishing the equivalence of policy

regimes or mutual recognition. More generally, they can help countries exchange information on good practice and become focal points for international regulatory cooperation within specific sectors.

The policy areas that could be the subject of open plurilateral initiatives must be determined by (groups of) WTO members. Four such efforts were launched at the WTO Ministerial Conference in Buenos Aires in December 2017: on e-commerce, micro, small and medium-sized enterprises, investment facilitation and domestic regulation of services. The suggested processes of policy dialogue on matters of systemic import and self-reflection at the level of WTO Committees and other WTO bodies (recommendations 1 and 2 above) will help identify policy areas that may lend themselves to open plurilateral initiatives.

The scope for open plurilateral initiatives where benefits are applied on a non-discriminatory basis is likely to be limited to issues that are either insensitive to free riding concerns or policy areas where a critical mass of WTO members participates. How much scope there is for such cooperation is an open question but may be greater than is often assumed, especially for technical issues where cooperation can reduce trade costs.

Even where no agreement proves possible, the associated deliberations are useful as they will help inform decisions on the set of issues that could be considered within a broader effort to construct a forward-looking agenda on updating rules that will apply to all WTO members. This could be supplemented with a transition-oriented approach that may combine elements of TFA and the telecom reference paper, i.e. a phase-in of obligations linked to some pre-accepted criteria from a list of obligations that combine mandatory and voluntary options.

### 4. Use the Secretariat more effectively

A corollary of the WTO being a 'member-driven' organization is that the secretariat is given very little voice. Member-driven means members are responsible for conducting the WTO (i.e. taking decisions) but this need not translate into a monopoly on the right to voice views and supply relevant information to WTO members. Strengthening the secretariat's ability to provide knowledge and analytical inputs to the members will make it more useful to the constituencies that have a stake in enhancing the performance of WTO bodies.

These constituencies are critical in sustaining political support for the organization. They are mostly located in the capital cities of WTO members. Enhancing the secretariat's capacity to engage substantively on

trade-related policy areas of interest to national constituencies may increase the perceived salience of – and political support for – the organization. There is substantial scope for reallocating available technical assistance funds to bolster engagement with national government agencies and broader constituencies that have an interest in different areas of trade policy.

Committees and other WTO bodies and working groups need information synthesizing current knowledge on a range of trade-related areas, including on policies that are not, or only partially, covered by WTO agreements. Some of the inputs that Committees may identify as being needed as part of the self-reflection process suggested above may be hard for members themselves to provide. Empowering the secretariat to provide more support for the work of WTO bodies will permit the realization of economies of scale and scope, and increase the rate of return on the financial resources provided by WTO members.

Knowledge and analysis is particularly needed for ‘new’ policy areas and to support subsets of WTO members that have decided to pursue open plurilateral initiatives on specific policy areas or sectors. More cooperation with other international organizations dealing with different aspects of trade policy and related regulation, as well as increasing engagement with international business organizations, sectoral regulatory communities and representative NGOs, can help to leverage what the secretariat can do in generating and synthesizing available information and knowledge.

Many citizens of WTO member states are concerned about the distributional effects of trade integration. While improving equity of outcomes and helping workers and firms that incur adjustment costs are matters for national policy, more can and should be done to both monitor and assess the economic effects of implementation of WTO agreements. Academic research tends to focus on trade impacts of WTO accession or the consequences of changes in specific national trade policies. What is missing is objective analysis of the effects of the rules-based trading system more broadly, including regular ex post monitoring and careful examination of the implementation of WTO agreements. This is a knowledge product that could be provided by the secretariat and that would help strengthen communications and outreach efforts (see recommendation 6 below).

## 5. Review organizational performance

The WTO is unique among international organizations in not having an independent evaluation office or an internal review mechanism that assesses its operation. At present there is too little focus on the functioning

and performance of WTO bodies. As part of its oversight function, the WTO General Council conducts a year-end review of WTO activities, based on the annual reports of its subsidiary bodies, but the latter simply summarize meetings and topics discussed. There is little substantive discussion in the General Council on the operating modalities of subsidiary bodies.

Periodic assessments of institutional performance can foster learning about what works well and what does not. Formal review mechanisms can act as a mirror for members, presenting them with facts they may not be fully aware of, as well as provide useful information for constructive engagement in considering what might be done to improve performance.

Assessing the performance of the WTO as an organization and identifying areas where more regular interaction between WTO bodies can fill gaps or exploit synergies can make the organization more responsive and effective. Review of the regular work of the Committees can help identify differences in performance and the reasons for this, as well as inform assessments whether successful practices might be emulated in other areas. Consideration could be given to developing and reporting indicators of participation by members and engagement with stakeholders. The WTO annual report includes some measures of participation – such as the number of specific trade concerns raised in Committees and participation in dispute settlement – but more specific metrics of performance could help identify opportunities for improvement.

Collecting information that helps to apprise business and other national constituencies how governments are engaging and using the WTO would complement annual reporting by subsidiary bodies and the proposed regular review of the latter’s operation to inform an annual discussion in the General Council as part of its broader appraisal of the functioning of the trading system.

## 6. Outreach strategies

Building on the previous suggestions, consideration should be given to re-thinking how the WTO community – national political leaders (Ministers), WTO senior management, national trade officials, business representatives, trade scholars – presents and discusses the purpose and performance of the multilateral trading system. Too often, public outreach and advocacy is framed in terms of the additional exports and jobs that will be generated by a new agreement. Sometimes this is based on economic models that may be easy targets for groups that oppose international trade cooperation and further integration of product markets.

WTO objectives range far beyond trade policy disciplines. The preamble of the WTO Agreement mentions improvement of living standards, preservation of natural resources, and attainment of sustainable development, among other goals. Communication strategies should be based on what the WTO does (has done) to attain these common objectives – and where it has failed to do so. Given that a key function is to provide a platform for its members to establish rules and enforce them, greater attention should be given to the role played by the organization in reducing uncertainty for firms and providing a mutually agreed governance framework that helps governments pursue welfare-enhancing policies. This extends far beyond the narrow interest of exporters – it benefits all citizens. Systemic stability and transparency about what governments do both in terms of national policies and of engagement in the WTO matters for citizens as well as firms.

Several of the recommendations made above will generate information and data points that can feed into more effective and outreach strategies. What is missing is rich knowledge (evidence) on the ‘system at work’; how the procedural rules intended to reduce uncertainty for traders do so; how this affects actual investment decisions by specific firms; what the WTO system does to help members address trade concerns raised by firms; what it does to give consumers access to better products and greater choice; etc. Such an exercise can leverage the review and self-assessments advocated above to highlight what is not working well and to do more to point out areas where WTO members could do more to support the organization’s operation.

The resurgence in unilateral trade policy by the United States and its refusal to agree to new appointments to the Appellate Body have increased awareness of the potential consequences of greater use of trade-distorting measures. But this has not translated into a concerted defence of the rules-based trading system by the business community. It has become a platitude that world trade is organized in international supply chains and production networks, but the implications of this are imperfectly understood by workers, voters and politicians. Documenting at the firm/supply chain level how much local suppliers matter and how much employment is dependent on participation in production networks can help counteract calls for protectionism. Many policymakers and citizens do not understand the interdependence that is part and parcel of supply chain-based production and how much the associated web of contracts and investments is premised on a functioning system of rules and low and predictable trade costs. This is an area where business leaders can and should do more to provide such information to their workers and other stakeholders.

Greater engagement by businesses may be encouraged by actions to promote more participation in the WTO’s activities, including the normal working of the Committees and other WTO bodies. This already happens to a small extent in some Committees. Such interactions will help delegations to better understand how WTO agreements affect businesses, where there are concerns. Conversely, they may offer an opportunity for representatives on Committees to convey their perceptions or requests for information to the business community. Initiatives on these lines can put business to work in helping the WTO stay relevant for the global trade community collectively.

### Leadership

The success of the multilateral trade regime in the post-Second World War period was attributable in large part to US leadership and the fact that the organization was dominated by broadly like-minded countries. Today, the US continues to participate actively in normal WTO work, but it is casting itself in a different role than in the past, calling for the WTO membership to pursue a reform agenda. It laid out its view of key elements of such an agenda at the 11th WTO Ministerial Conference in Buenos Aires, stressing a need to focus on compliance with WTO obligations, for greater differentiation among developing countries, and action to ensure that litigation is not used as an alternative to negotiation. In May 2018 President Macron of France called for the largest trading powers to launch talks on WTO reform, to agree on what is wrong with the current system and to develop a roadmap for new rules that address the distorting effects of subsidies and industrial development policies and measures to attain non-economic objectives.

Policy dialogue, analysis and self-reflection are critical inputs into any WTO reform effort. A necessary condition is willingness to do so. A coordinated effort by large trade powers to invest more of their soft power to support initiatives on subjects that dialogue reveals are priorities for many WTO members can change the dynamics. Prospects for a successful WTO reform scenario to materialize will very much depend on whether China is willing to discuss possible approaches to addressing concerns regarding distortions to competition in its markets and levelling the playing field for foreign companies.

Due in part to the rise of global value chains and the growth of emerging economies, many more countries are today participating in international trade. This creates opportunities for groups of WTO members to take on a greater role. Different possibilities may exist to constitute a critical mass large enough to provide leadership. For instance, three of the four largest trading

powers – China, the EU and Japan – account for more than one-third of world trade in goods and services and more than half of the WTO budget. Jointly they can do much to respond to the challenges confronting the organization and revitalize the WTO. But leadership cannot come from large trading powers alone. Safeguarding the WTO is particularly important for smaller countries, not least because only the multilateral trading system offers them the opportunity to influence the development of new trade rules.

Economies pursuing deep integration of markets are best placed to play a complementary role. Examples include the eleven members of the Comprehensive and Progressive Agreement on Trans-Pacific Partnership, the Pacific Alliance countries, the East Asian countries in the Regional Comprehensive Economic Partnership, and, more broadly, the WTO 'Friends of the Multilateral System' group of smaller economies. Taken together with the EU, these countries collectively account for over 75 percent of world trade. They constitute a critical mass that is more than adequate to sustain multilateral cooperation and drive the trading system forward.

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