



Chairperson's Interim Report

Bolstering Global Trade Governance

A Work Program for the WTO presented by the High-Level
Board of Experts on the Future of Global Trade Governance

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For the Bertelsmann Stiftung, bolstering the multilateral trading system is vital in order to enable it to respond to the challenges it currently faces. This paper, prepared by Bernard Hoekman, the chairperson of the High-Level Board of Experts on the Future of Global Trade Governance established by the Bertelsmann Stiftung, presents some of the preliminary ideas that have been discussed in meetings of the Board to date.

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1 Executive Summary

The WTO provides the foundation of the rules-based global trading system that has played a critical role in supporting growth in global GDP during recent decades. Preserving the salience of the WTO is vital in managing the adjustment pressures from globalization and sustaining the cooperation needed to govern trade relations in a world in which the transformation towards a global digital economy and associated servicification of production creates new policy challenges. Efforts to address these challenges are stymied by disagreements between WTO members regarding the priorities for the multilateral trading system. These disagreements reflect differences in views on the extent to which national policies have adverse international effects and the costs and benefits of negotiating additional trade policy rules. The result has been to impede progress on rule-making for both long-standing core policies of concern to many WTO members (e.g., agriculture) as well as new policy areas. Matters have been compounded by dissatisfaction by some Members regarding the functioning of the WTO dispute settlement body and transparency mechanisms.

While preferential trade agreements are important complementary vehicles for countries to pursue deeper cooperation on trade policy matters than has been possible in the WTO, such initiatives depend on the strong foundation of basic rules provided by the WTO. Moreover, they only offer partial solutions – many of the emerging policy areas of concern to business and civil society call for multilateral cooperation. Re-vitalizing such cooperation does not require major changes in the organization. What is needed is willingness to engage in candid, substantive discussion of perceived problems and possible solutions.

The recent Agreement on Trade Facilitation, with its positive approach to addressing development concerns, and the success of Members in incrementally deepening cooperation on some matters under the purview of some WTO agreements – e.g., addressing specific trade concerns arising from proposed new product regulations – show that WTO Members can innovate and agree to common approaches towards trade policies while recognizing differences in social preferences and national circumstances.

A **preliminary conclusion** emerging from the work of the Board to date is that WTO Members should consider launching a work program to develop a common understanding of factors that have enabled **institutional innovation** in some policy areas but not in others. This should reflect on prevailing working practices and seek to identify actions that could be pursued in WTO bodies to better achieve the organization's mandate and goals specified in the Preamble to the WTO. Such a process of reflection should seek to pave the way for the WTO membership to put in place **a credible, incremental approach to address three key challenges** confronting the organization: ensuring that (i) the WTO remains a **locus for multilateral rule-making**; (ii) **development concerns are addressed more effectively**; and (iii) **multilateral agreements are implemented and disputes are resolved expeditiously**.

Specific ideas on the elements of a work program to foster greater institutional learning and self-reflection that have arisen in Board discussions to date include:

- Initiating a process for Members at the level of Committees and other WTO bodies to consider the purpose of the respective entities and whether they have the resources, expertise and information to fulfil their mandates and the objectives listed in the Preamble of the WTO. This would encompass **self-reflection** on increasing mutual transparency but go beyond it – e.g., by considering whether **greater provision of information by other actors**, including international organizations and the private sector, should be sought for the different areas of trade policy covered by WTO agreements.
- Considering whether the issue-specific focus of WTO bodies results in important policy areas being addressed in a too piecemeal fashion and identifying instances where more regular interaction between WTO bodies can **address potential 'silo problems', fill gaps and exploit synergies**.

- More deliberation focused on **identifying good policy practices**, through sharing of national experiences, including with the design and implementation of preferential trade agreements, **supported by analysis** by the Secretariat and other international organizations. This could be pursued through periodic dedicated sessions of the relevant WTO bodies for matters covered by existing agreements and in working groups for matters that are not subject to WTO rules.
 - A corollary benefit of such deliberation on substantive policy matters is that it can help WTO Members to identify where common approaches and potentially rule-making may address matters of common concern and extend the **positive approach to addressing development concerns** that is reflected in the Trade Facilitation Agreement. This is premised on agreement on what constitutes welfare-enhancing policy rules and a determination by countries of the necessary conditions for benefitting from implementing them. Focusing on applying this approach to both existing rules in other areas and potential new policy areas where common rules are considered to be beneficial by the membership offers greater promise of fostering development than traditional special and differential treatment centered on exemptions from some multilateral rules.
- **Establishing mechanisms for Members to engage in candid discussion** of perceived weaknesses and problems in the operation and implementation of WTO agreements. The situation that has arisen concerning the appointment of Appellate Body members is one, important, example illustrating the need for open and frank dialogue on perceived problems and suggested solutions.

2 Introduction: A Rapidly Changing Context

The global economy is going through seismic shifts. The balance of economic power has changed significantly in the last two decades, fostering tensions in the global governance structure centered around the Bretton Woods institutions (the IMF and the World Bank), the WTO and the UN Security Council. Developing and emerging economies have come to account for almost half of the value of global merchandise trade (47%). Their share of global GDP (measured in current prices) has increased to 40%. Sixteen years after its accession to the WTO in 2001, a landmark achievement for the trading system, China has become the first or second largest trading partner for many economies.

Globalization is impacting on the economic landscape and the terms of international competition. Technological change is driving rapid growth in the digital economy, reflected in shifts to e-commerce, the servicification of manufacturing and rapid increases in cross-border data flows. Global value chains today dominate international production of manufactured products. An increasing share of international exchange comprises flows of intermediate inputs, services and “trade in tasks” that are associated with ever finer specialization of firms and the fragmentation of production of goods and services across numerous countries and locations.

The open, rules-based multilateral trading system has played an important role in providing the supportive environment needed for firms to undertake the investments underlying these changes in trade, which in turn have been a source of rising average aggregate real incomes and reductions in inequality across countries. The WTO does not have free trade as a goal.¹ It is an instrument through which governments agree to rules of the game for trade policy, most importantly upper bounds on permissible tariffs, providing information on applied trade policies, and implementing these on a non-discriminatory basis. While a key motivation for agreeing to multilateral disciplines on trade-related policies is to improve the access of domestic firms to foreign markets, a key source of the

¹ The WTO was created to “rais[e] standards of living, ensuring full employment (and) expanding the production of and trade in goods and services.” To contribute to those objectives it fosters “reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade” (Preamble to the Marrakesh Agreement).

welfare gains generated by WTO membership is better governance of trade. Many of its provisions and processes aim to enhance the transparency of applied trade policies and to ensure there is due process and oversight, thereby reducing uncertainty for traders regarding applied trade policies.

Few people believe that it is still possible that the Doha Development Agenda, the first round of multilateral trade negotiations launched in the WTO era, can be concluded as originally envisaged. Whether it should be remains contested. Divergences in views regarding the purpose of the WTO and the multilateral trade regime appear to have increased. Many developing countries emphasize a need to revisit existing rules and to make special and differential treatment provisions more effective. Most OECD member countries want to see the major emerging economies make deeper and more extensive trade policy commitments in the WTO. Much of the business community has become disenchanted with the difficulty in negotiating new agreements in the WTO and have shifted their attention to preferential trade agreements (PTAs). Some members have raised serious concerns regarding the operation of specific dimensions of the WTO, including the dispute settlement system and the Appellate Body and compliance with notification obligations.

The geographic rebalancing of global output shares and ongoing changes in the composition of production towards services and internet-enabled activities is putting increasing pressure on the multilateral trading system. It is no longer possible to limit the focus to a narrow conception of trade policy. Global trade governance requires consideration of the overlapping aspects of trade, investment, technology and domestic regulation that impact on businesses and workers that participate in global value chains and the consumers of goods and services that effectively are “made in the world.” Ensuring that the WTO will continue to provide a framework of common rules that govern the trading system is critical for managing both the pressures associated with the changes in global GDP shares and the ongoing shifts towards services and the digital economy.

3 Distributional Effects of Trade and Technology

There is growing interest in making trade policy more inclusive, reflecting concerns that the benefits and costs of an open trading system are distributed unequally across households and firms within WTO members as well as across the WTO membership (OECD, 2017). Growth in international trade, cross-border investment and knowledge flows has supported major reductions in global poverty, increasing real incomes of hundreds of millions of people in low-income countries. Households in richer nations have also benefitted greatly, as greater competition drove down prices of goods, fostered innovation and increased the variety and quality of products. These overall gains for the world as a whole were realized at a cost to segments of society in all trading nations. The process of integrating the world economy gives rise to adjustment pressures in all countries, with those working in firms or industries that are not competitive having to accept lower wages or find alternative employment in more dynamic sectors if they have or can acquire the (new) skills that are demanded.

It is important to recognize that the losses are a necessary component of the overall gains – without the readjustment of production and employment associated with trade and investment liberation there will be no gains. Every economics textbook makes clear that trade liberalization generates losers, but that the gains are more than large enough to fully compensate those who are worse off as a result of the change in trade policy. But this will only happen if well-designed social policy is put in place. In practice the losers are rarely fully compensated. Domestic social policies across countries vary in their effectiveness in providing safety nets and assistance to find alternative employment. Most governments have relied on economic growth to generate jobs for those negatively impacted by globalization. Post-2008 such growth has been anemic, helping to generate political opposition to trade agreements and the WTO as readily visible embodiments of globalization. This opposition is mostly observed in high-income countries, but protectionist pressures have been rising in a number of WTO members. This

may be one factor why the growth rate of world trade since 2010 has been substantially lower than was observed in the decades before 2008.²

New technologies are continuing to affect labor markets and organization of production (e.g., machine vision; artificial intelligence; automation of rote tasks; 3D printing and additive manufacturing). Some of these technologies may have major impacts on what have been largely nontradable services jobs (e.g., in domestic transport), others may reduce trade, e.g., by inducing reshoring of production. What is clear is that traditional manufacturing jobs that have been lost will not return. On balance, the net effect of ongoing technical changes may be to generate more “offshoring” as products are digitized and exchanged cross-border as trade in services. This will generally give rise to new employment opportunities as digitally-enabled activities expand, but not all workers will be able to easily transition to new jobs without assistance and support.

4 Social Preferences: Fair Trade as a Key Challenge

Concerns about the effects of globalization are multi-dimensional. Many have little to do with the policy areas covered by the WTO – e.g., opposition against migration, financialization of the economy and bilateral investment treaties that permit foreign investors to contest and potentially obtain compensation for regulatory changes adopted by host governments. But some of the sources of discontent and concern are part and parcel of the WTO regime. Of particular salience are perceived threats to regulatory sovereignty and the capacity to assure social standards and implement domestic health, safety and environmental regulations. These play a prominent role in opposition by civil society groups to deeper trade agreements, but are also a factor underlying perceptions by some businesses that they confront “unfair” competition from firms located in countries deemed to have “lower” standards or economies where capacity weaknesses impede implementation of national regulatory policies and laws. Likewise, many developing countries have concerns that public or private standards may be used to create obstacles to their exports.

The WTO has established a balance in this regard when it comes to traditional trade policy instruments, e.g., permitting action to be taken against dumped or subsidized imports that are injurious to domestic industries and encouraging the use of international product standards to achieve health, safety and related objectives. A challenge looking forward is to establish a similar balance when it comes to domestic regulatory policies that impact on the welfare of citizens, building on the basic presumption that is embedded in the WTO that countries are free to define for themselves the goals of their regulatory regimes but that all WTO members have an interest in ensuring that such regulations are implemented on a non-discriminatory basis and do not unnecessarily impact on trade.

The increasing share of global output that is generated by multinational firms is affecting the effectiveness of state policies governing economic activity. The fact that capital is mobile but consumers and workers are immobile has implications for the ability of states to regulate or tax capital. While workers are hostage to the jurisdiction they are located in, mobile multinational companies can shift operations to the most accommodating location. As a result, corporate tax rates have gone down over time while workers’ marginal tax rates have increased (Egger et al., 2016). This is not only a fairness issue; it implies less money is available for compensation of the losers of globalization.

Thus, criticism of the trade regime is not limited to those who have experienced or fear trade-related job losses. The private sector has become increasingly frustrated with the multilateral trade system as it proved incapable of addressing matters of major interest to many firms – especially services firms. Civil society groups are disappointed with lack of progress in rule-making for policies that have a bearing on environmental and social issues that matter to them. Citizens more generally are concerned that the gains from globalization are distributed in a

² See, e.g., <http://www.globaltradealert.org/reports>.

highly unequal and inequitable manner, reflected in high levels of remuneration of corporate leaders and suspicions that transfer pricing and tax optimization greatly reduces declared profits and thus corporate tax payments.

5 Services and the Digital Economy

Services today account for 70+% of GDP and employment in higher-income countries. Many services are inputs that are embodied in goods – on average, one third of the value of traded goods reflect services inputs. An implication is that the competitiveness of firms depends on the productivity performance of services sectors. This applies equally to high- and lower-income economies. The importance of services will continue to rise as a result of growth in the digital economy and e-commerce. Services are also critical for attaining the sustainable development goals, as many of these goals require improving the performance of services sectors (Fiorini and Hoekman, 2017).

The stylized fact here is that barriers to trade in services are often higher than barriers against trade in goods, in part because they span a broader set of policies – including policies targeting inward foreign direct investment and cross-border movement of services suppliers (Borchert et al. 2014). In the case of e-commerce and internet-enabled transactions, WTO members have periodically committed not to impose customs duties on electronic transmissions, but a variety of regulatory, nontariff measures impact on the efficiency and growth potential of the digital economy, either by affecting the operation of network infrastructure or the data that flows through the network. Such policies are the subject matter of e-commerce chapters in several recent PTAs. As the world economy becomes ever more interconnected as a result of the “Internet of things”, e-commerce and the associated increase in cross-border service flows, policies that limit or raise the cost of digital trade and data flows will become ever more important. From a global efficiency perspective what is needed are rules of the game that apply more generally.

An important feature of the Internet of Things, 3D printing and related technologies that is underemphasized is that the shift to the digital economy will make it very difficult to verify the origin of a product, thus weakening an important dimension of the framework that underpins PTAs, namely rules of origin. Moreover, the extensive platform created by technology results in the possibility of providing several services (existing and new) that will blur the contours of regulatory framework applying to the different services that may be provided using the same technology platform. This has significant implications for the design and efficacy of domestic regulatory frameworks, and calls for greater cooperation amongst regulators from different countries.

Regulation to protect privacy and policies regarding ownership of data directly impact on trade through the internet. These are issues of serious concern to many citizens. The traditional concern about safety of imported products – which has been compounded by the increasing use by businesses of complex international value chains that make it more difficult for national regulators to do their job without cooperating across borders – is now complemented by worries about the regulation of intangible products, their production processes and the way they are traded (transmitted) through the global information and telecommunications network. From the perspective of firms using digital technologies there is a cost associated with regulatory heterogeneity. From the perspective of consumers, citizens and regulators, what matters is attainment of regulatory goals. There are potential solutions, but they require international cooperation that to date has not been the focus of sufficient deliberation (Hoekman and Sabel, 2017).

6 Two Positive Developments

It is important to recognize positive trends in the trading system, both within the WTO and more broadly in terms of trade cooperation between subsets of WTO members. One relates to new approaches to address economic development concerns; another is the continued pursuit of regional integration and related initiatives to support cross-border trade and investment.

Economic development and special and differential treatment

There is an inherent tension between the national welfare benefits that accrue from making binding (enforceable) trade policy commitments and the associated constraints on the ability of governments to assist domestic industries by restricting imports of goods and services or supporting exports of domestically produced goods. However, a loss in policy space is the price that WTO members pay for other countries to undertake commitments to lower their trade barriers and to comply with the procedural disciplines that have been negotiated over time. If countries could freely (re-)impose trade barriers or increase their support to domestic exporters there would be no value to WTO membership. The disciplines that constrain the use of trade policy are particularly important for small countries that do not have the power to constrain large economies that seek to shift the terms of trade in their favor by restricting imports or subsidizing exports. The loss in policy space for large trading powers is a critical dimension of the value added generated by the WTO.

Fundamental differences in views exist regarding the salience of traditional forms of special and differential treatment for developing countries in today's global economy. These are augmented by different perceptions as to whether developing economies that have been growing rapidly – notably China and India, but also other countries – should be able to invoke special and differential treatment provisions that involve exemptions from certain WTO rules. Proponents argue that (more) space to use trade policies is critical for their economic growth and industrialization, while opponents take the view that this will do little to achieve development objectives. The divide is long-standing. The associated debates have taken on the semblance of a Kabuki play. Unfortunately the opportunity cost of the deadlock is significant: it impedes a more constructive discussion on what trade policy-related rules will promote economic development in a world of global value chain-based production and e-commerce/digital trade. The associated changes in the structure of international production have made restrictive trade policies a much less effective instrument to assist domestic firms to grow. The challenge to governments is to identify other, more effective, domestic instruments.

A different, more constructive approach was developed in the 2013 Agreement on Trade Facilitation. This Agreement embodies a positive approach to addressing development concerns. One element of this is a common understanding of what constitutes welfare-enhancing multilateral policy rules. Another element is that developing countries themselves determine when to implement different provisions and can make implementation conditional on having put in place the institutional infrastructure to benefit from doing so – for which they can request assistance. If such assistance is not provided, the relevant provisions do not enter into force. Focusing on emulating this type of positive approach to addressing development concerns offers greater promise of fostering development than traditional special and differential treatment centered on exemptions from common rules. A necessary condition is that Members engage in a discussion how the WTO and the structure of its agreements can better enable trade policy that supports development. This will require both more open and constructive engagement on the substantive dimensions of policy to identify what types of rules would improve trade governance in a way that promotes development prospects, and credible commitments to provide technical and financial assistance where needed to bolster domestic capacities to implement agreements.

Plurilateral cooperation

Trade liberalization and new trade rules have increasingly been negotiated in the context of PTAs. The number of active PTAs today exceeds 300. The PTAs are not only focused on issues on which the WTO was unable to make progress. Many PTAs reflect deeper integration objectives and address matters that were not part of the Doha round, which was crafted in the 1990s as a way to finish the trade policy agenda of the 1980s reflected in the Uruguay Round. Some PTAs are partly inspired by a desire to demonstrate the ability of the countries involved to establish new rules for policy areas that are resisted by many WTO members. Examples include rules governing access for foreign investment, trade in services, data flows and the digital economy, and dimensions of domestic regulation (e.g., competition policy; public procurement; regulatory cooperation).

The recourse to PTAs has been widespread and spans both developed and developing countries. Notable examples include the Comprehensive and Progressive Transpacific Partnership agreement, ongoing negotiations on a Regional Comprehensive Economic Partnership among Asian economies, including China and India,³ and the decision by leaders to work towards a Continental Free Trade Area in Africa. There is an associated threat of fragmentation of the Bretton Woods multilateral regime, but at the same time the various trade initiatives, as well as major ventures such as China's Belt and Road initiative and the establishment of the Asian Infrastructure Investment Bank reflect a strong interest to continue to pursue international cooperation.

While some PTAs have been able to address subjects that have been the source of disagreement in WTO negotiations and that are important for sustainable development, several recent efforts to negotiate PTAs that go beyond the WTO status quo have also shown that their negotiation, ratification and implementation can be very difficult. The questioning and re-opening of extant PTAs by the Trump Administration and the worries of many citizens in number of WTO members that deeper trade cooperation may undermine regulatory standards illustrate that PTAs are not a panacea.

Although the Doha round could not be concluded, the WTO has delivered agreements in areas where research suggests there will be large payoffs for traders and consumers. The two biggest achievements in this regard are the expansion of the Information Technology Agreement (concluded in 2015) and the 2013 Agreement on Trade Facilitation. Both have the potential to increase global trade substantially by reducing transactions costs and improving access to key technologies that underpin the digital economy.⁴

Agreements among subsets of WTO members are common. Indeed, plurilateral initiatives are a basic feature of the WTO *modus operandi*. Abstracting from informal discussion fora and working groups, there are two main alternative mechanisms for groups of WTO members to collaborate on an issue of common interest: conclusion of a Plurilateral Agreement under Article II.3 WTO, and so-called critical mass agreements.⁵ The latter are most prevalent. They often comprise so-called “zero-for-zero” agreements in which a group of countries agree to eliminate tariffs for a specific set of products and inscribe these commitments into their WTO schedules. Such deals have also been concluded for services – examples are agreements on basic telecommunications and on financial services. In a critical mass agreement negotiated disciplines apply to only to countries that decide to sign them, but benefits are extended on a most-favored nation basis to all WTO members, whether or not they join.

7 Looking Forward

The inability to get to “yes” in the Doha round and the extensive participation by WTO members in PTAs does not imply the WTO has become less relevant. Multilateral negotiations are just one dimension of the WTO's functions. The WTO provides a vital role in fostering transparency of trade, monitoring the trade policies of members and the implementation of multilateral rules and agreements, providing a venue and support services for regular interactions at technical level between members, and offering a platform to settle disputes between members. On most of these dimensions PTAs cannot compete. Indeed, the WTO provides the basic building blocks for PTAs, which invariably refer to WTO provisions. Weak institutionalization of PTAs means they often rely on WTO notifications and transparency mechanisms, and may utilize WTO procedures to resolve disputes that are covered by WTO provisions.

³ There is significant overlap in the membership of some PTA initiatives. For example, seven of the members of the Comprehensive and Progressive Transpacific Partnership are also participating in the Regional Comprehensive Economic Partnership negotiations.

⁴ Research suggests that potential trade expansion effects of the trade facilitation agreement may exceed US\$ 1 trillion (see WTO 2015). Over time, the Information Technology Agreement has been estimated to have a similarly large positive effect on trade in information technology products – see Anderson and Mohs (2011) and Henn and Gnutzmann-Mkrtchyan (2015).

⁵ Plurilateral agreements differ from critical mass agreements in that they may be applied on a discriminatory basis – that is, benefits need not be extended to non-signatories. There are currently two such agreements incorporated into the WTO: the Agreement on Civil Aircraft and the Agreement on Government Procurement. Because such agreements may be applied so as to limit benefits to signatories, the WTO requires that inclusion of such agreements into the WTO –and thus giving signatories access to the services of the Secretariat and the dispute settlement mechanisms – be conditional on approval of the membership as a whole (including such agreements can be done “exclusively by consensus”).

More generally, the trading system is commonly recognized as a critical instrument to help achieve the Sustainable Development Goals – it is only through the WTO that agreements can be concluded to address policy distortions in world agricultural markets that reduce access to food in developing countries, to discipline the use of fisheries subsidies, remove barriers to trade in environmental goods, or to support integration of small-scale enterprises into value chains through global trade facilitation. The immediate challenge confronting the WTO membership is to ensure that the institution retains its role as the global forum for multilateral cooperation on trade-related policies.

8 Deliberations on the Substance of (Potential) Rules and Functioning of WTO Bodies

A preliminary conclusion emerging from the work of the Board to date is that WTO Members should consider launching a work program to develop a common understanding of factors that have enabled institutional innovation in some policy areas but not in others. This should reflect on prevailing working practices and seek to identify actions that could be pursued in WTO bodies to better achieve the organization's mandate and goals specified in the Preamble to the WTO. Such a process of reflection should seek to pave the way for the WTO membership to put in place a credible, incremental approach to address three key challenges confronting the organization: ensuring that (1) the WTO remains a locus for multilateral rule-making; (ii) development concerns are addressed more effectively; and (iii) multilateral agreements are implemented and disputes are resolved expeditiously.

Our presumption is that launching a work program that reflects on the institutional performance of the WTO, on all dimensions as opposed to negotiations, may help, over time, to mobilize greater political support for compromises and to forge consensus. It may also assist in developing a basis for overcoming differences in views on specific dimensions of the WTO's *modus operandi* – such as with respect to addressing development concerns or the functioning of the DSU. Muddling through is associated with significant risk of the system becoming less relevant.

The core operating features of the WTO have withstood the test of time. For example, consensus is the rule in the WTO for good reasons. The WTO is founded on the principle that all members are equals in rights and obligations. Theoretically, decisions could be adopted by voting, but this would deprive WTO decisions from effectiveness and legitimacy. Consensus ensures that all WTO members have an equal opportunity to make their points and can withhold support until they see their interests and concerns accommodated. While building consensus often is difficult, decisions are regarded as legitimate and mostly respected.

The problem is not that in practice consensus can be used to stop a majority from moving forward to adopt new rules on a matter; it is that consensus can be (and is) used to preclude discussion and deliberation, such that even exploratory discussions on matters of interest to some members may be blocked by any member. This is dysfunctional. The effect is for proponents of new ideas to move discussions out of the WTO and potentially to encourage the negotiation of PTAs, fragmenting the trading system. The practice of using consensus to block substantive deliberation – even when a large number of like-minded countries support doing so – is inimical to the collegial spirit that should prevail in international cooperation. Torres (2017) argues this is one example of a situation that should be the subject of a candid discussion by the membership. Procedural solutions to this problem have been proposed in the past – e.g., Sutherland (2004). What has been lacking is an explicit discussion among members on the matter.

Reconsidering the appropriate use of consensus is one example where a reflection on WTO working practices may help address a source of friction that affects the ability of the WTO to deliver on its mandate. Establishing mechanisms for Members to engage in candid deliberation on perceived weaknesses and problems in the operation and implementation of WTO agreements is needed more generally. The situation that has arisen concerning the appointment of Appellate Body members is one, important and urgent, example illustrating the need for open and frank dialogue on perceived problems and proposed solutions. The WTO dispute resolution system is a

unique feature of the trading system that plays a vital role in sustaining cooperation between WTO members. Discussing concerns of some Members regarding how the system functions without undermining the operation of the dispute settlement process must be a priority for the membership as a whole.

Another example of a possible area for reflection that may enhance the effectiveness of the WTO in attaining its goals is to consider the potential 'silo problems' created by the issue-specific focus of most WTO bodies. This results in different dimensions of a problem being considered in piecemeal fashion by different working groups, committees and Councils. Considering whether the issue-specific focus of WTO bodies results in important policy areas being addressed in a too piecemeal fashion and identifying areas where more regular interaction between WTO bodies can fill gaps and exploit synergies can help ensure the WTO is responsive and remains relevant in a world economy that increasingly is characterized by production processes that span many sectors and are affected by many different policy instruments.

Policies affecting E-commerce and digital economy provide another instance where a cross-cutting approach to rule-making will be needed. This spans the different GATT and GATS bodies as well as TRIPS, but only a subset of the regulatory policies that matter are covered by the WTO. A Working Party with a work program to consider the different dimensions of policy and their impacts/salience for potential rule-making has been proposed by a group of WTO members. This is a pragmatic proposal that deserves consideration.

Greater deliberation focused on identifying good policy practices, through sharing of national experiences, including experience with the design and implementation of preferential trade agreements, supported by analysis by the Secretariat and other international organizations, could be pursued through periodic dedicated sessions of the relevant WTO bodies for matters covered by existing agreements and in working groups for matters that are not subject to WTO rules. A corollary benefit of deliberation on substantive policy matters with a focus on implications for multilateral rules and potential rule-making is that it can help WTO Members to emulate the positive approach to promote development that is reflected in the Trade Facilitation Agreement in other issue areas. As noted above, a necessary condition for addressing development concerns is agreement on what constitutes good practice in a given policy area.

In pursuing such cross-cutting deliberations consideration should be given to deepening cooperation with other international organizations dealing with different aspects of trade policy, as well as increasing engagement with regulators, the international business community and civil society. Doing so would enhance transparency and ensure that issues of pressing concern to stakeholders are tabled and discussed. Given the continued growth of global value chains and rapid technological change, regulators need to work with the private sector to better understand present and future operational conditions and obtain the data needed to better ensure that regulatory mandates are achieved. Engaging more with regulatory communities in an effort to consider how trade-related cooperation can help achieve national regulatory objectives more efficiently and effectively will help ensure that the WTO retains its relevance, given that the trade agenda today and in the future will intersect more with "behind-the-border" domestic regulatory policies (Hoekman and Sabel, 2017).

There is also substantial scope for cross-Committee learning on working practices narrowly defined. The Committees on Technical Barriers to Trade and Sanitary and Phytosanitary measures have been characterized as technical expert-driven catalysts for multilateral dialogue, providing a forum for the development of guidance of good practices and peer review of proposed policy measures (Wijkström, 2015) that resulted in finding solutions for problems of great concern to business community. An important dimension of what the WTO does in the area of product regulation is compiling information on new measures. WTO Members are required to notify the WTO of new measures that are not based on international standards. Over 45,000 measures have been notified since 1995.

The notification record of these committees swamps that of other WTO bodies. While this is in part a function of the types of policy measures concerned, it seems reasonable to determine whether some of the procedures used by these committees to generate notifications are transferable. One such procedure is a mechanism that can

used by governments to raise concerns they have regarding proposed or applied product standards of another WTO member. This “specific trade concern” procedure gave rise to over 800 issues being raised between 1995 and 2015. This process is widely regarded as being a useful mechanism to address the concerns raised – about 40% of concerns relating to sanitary and phytosanitary measures reportedly were resolved (Karttunen, 2016).

The regular work of these committees dealing with product standards, including notifications and the opportunity to raise specific concerns, can be emulated in other policy areas covered by the WTO. An example is domestic regulations that impact on the ability of firms to supply – and consumers to buy – products that are use “the cloud” (data localization requirements, etc.) The relevant WTO bodies have not ignored issues of domestic regulation, but the focus has been on potential disciplines on such regulation, not on mapping out and learning about the operation and effects of policies that WTO Members are pursuing. A recent joint venture with the World Bank to maintain and update a database on policies that restrict trade in services is a good first step but needs to be expanded to cover additional policies that may affect services trade.

9 Transparency and Provision of Information

One area where enhanced institutional learning could help improve the effectiveness of the WTO concerns its information provision function (Wolfe, 2017). Transparency is essential for reducing uncertainty in many dimensions and is one of the main tasks of the WTO. Focusing on its performance in generating relevant information 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 first and foremost 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 using regular meetings to promote discussion of the potential negative international effects of specific policies and options for limiting adverse trade effects while attaining underlying regulatory goals.

Questions that arise in this connection concern the quality and comprehensiveness of the information provided to (by) the WTO in terms of allowing analysis 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? Worries about compliance with WTO rules and generating potential disputes? If the latter, what constrains emulation of the approaches discussed above that have been adopted by the committees dealing with product standards to raise and discuss specific trade concerns? 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. The point is for members to ask themselves in each committee if they have the information they need to do their job.

A corollary of such an initiative 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 and goals should be – and based on the answer to this, an assessment of what information is needed to fulfil those tasks. This spans but goes beyond the question whether members are living up to notification obligations embedded in the WTO agreements, as it entails reviewing these and considering if they should be revised or simplified in light of changes in economic structures and activities that have occurred in the two decades that have passed since the WTO entered into force. Such a bottom-up 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”) for discussion in the General Council.

A specific area where greater transparency and information can support learning is to focus more on the operation and effects of PTAs. Insofar as PTAs give rise to innovative approaches to attenuate the market-segmenting effects of differences in regulatory policies, they can help all countries identify approaches that can usefully be emulated. All WTO Members have a strong interest in understanding what PTAs do and achieve, including their implementation, utilization and enforcement. Documenting and analyzing the approaches used in PTAs to reduce the costs of regulatory heterogeneity would not only improve transparency per se, but can also inform a process of learning about what works and what does not and perhaps identify specific features of cooperation in PTAs that might be multilateralized or pursued through a critical mass agreement.

Members of the Board have also discussed the possibility of establishing an independent evaluation function that would have the mandate to self-initiate assessments of specific areas and WTO activities that are of importance for the organization and its stakeholders. External evaluation is used in many organizations as an efficient way of facilitating learning. Putting in place an external evaluation function would complement internal learning mechanisms by helping identify weaknesses that may not emerge through internal reflections or that some WTO members prefer to ignore. Great care would be required in designing an independent external evaluation office to ensure that it is accountable and its work is performed by experienced and knowledgeable individuals who have an excellent understanding of the goals and operations of the WTO. Most Board members view the creation of internal reflection processes along the lines described above as something that can be achieved in the short-term, whereas an independent evaluation office would only be conceivable in the long-term.

10 Greater Plurilateral Engagement under WTO Auspices

The prospects for progress in establishing new multilateral rules under WTO auspices in the next two years is very limited. However, this does not preclude pursuit by groups of WTO Members to explore the potential benefits of cooperating in different areas of trade policy, whether to expand on the provisions of extant agreements or to discuss common rules and approaches to issue areas that are not covered by the WTO. Nor does it imply WTO members cannot – and should not – explore whether there is scope to consider the pursuit of critical mass agreements. As long as the benefits of such agreements apply equally to non-signatories they can be inscribed in the schedules of signatories (Hoekman and Mavroidis, 2017). Insofar as they are feasible to agree, critical mass initiatives arguably are preferable to decisions by groups of countries to pursue more PTAs given that the provisions of latter generally will be applied on a discriminatory basis. That said, in the near term the priority should be on launching a work program on institutional learning and self-reflection along the lines advocated above with a view to establishing common understandings where common approaches and potentially multilateral rules are in the common interest.

11 Concluding remarks

A common element of the foregoing ideas is a willingness to support greater reflection on the performance of the organization and to focus more on the substantive dimensions of national policies and their effects, both in terms of achieving underlying policy objectives and the extent to which they impact on trade. Questions can be raised whether institutional learning is feasible in the WTO. It is sometimes argued there is a “cultural” problem in the WTO – delegations anticipate any issue for discussion may give rise to eventual negotiations and take tactical positions opposing discussions in fora that are supposed to be purely deliberative. Another question is whether delegations will be willing (able) to engage on the substance of a given matter. There clearly is an absence of trust at the moment but there is no reason to assume that this cannot be overcome. What is needed at this point in time are efforts to re-establish an environment that supports constructive engagement on matters that do not involve negotiations on subjects where differences are deeply entrenched. A process centered on institutional learning – as opposed to one that centers on negotiations, the standard fare of most WTO interactions – may serve as a mechanism that generates greater trust. This will require careful design, a matter that is beyond the scope of this interim report but that will be considered in the final Report by the Board.

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