



TRADE AND DEVELOPMENT SYMPOSIUM

Perspectives on the Multilateral Trading System

A Collection of Short Essays

The Future of the WTO: Governing Trade for a Fairer, More Sustainable Future

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Introduction

Mounting concern about the future of the WTO provides a long-awaited opportunity for attention to the improving the governance and institutional reform of the multilateral trade system.

This article calls for adapting and strengthening the governance of the WTO to better respond to the imperatives of development and sustainability.¹ After a brief review of the WTO reform discussion to date, it makes the case for why institutional reforms are necessary to advance progress in these two areas. It focuses on addressing shortcomings in four areas: 1) enduring marginalization of many developing countries, most notably the smallest and poorest among them; 2) inadequate mechanisms for integrating sustainable development concerns into decision-making and negotiations; 3) inadequate and underused 'spaces' for policy dialogue within the multilateral trading system; and 4) inadequate political and public engagement.

It then recommends a number of reforms that would strengthen how the institution, its rules, processes and Member States respond to address these four challenges. The paper concludes by proposing a political process for moving discussion forward, noting the importance of processes for discussion both among and within governments, as well as with stakeholders around the world, on the kind of global trading system we need.

Recommendations for improvements to WTO governance or institutional reforms to the organization strangely strike fear in the hearts of many trade analysts. Some reject that reform is necessary, others contend that it is not politically plausible, that the time is not ripe, or that reform proponents should focus first on improving the operation of existing aspects of the WTO. Reform can indeed start by working with what exists, but there is also scope for innovation. Those who reject the need for reform risk taking for granted the credibility and relevance of the very system they mean to defend. For those who suggest waiting, the question they should answer is when the right time to address systemic challenges will arrive.

As the Doha Round languishes, governments can no longer put off the discussion of institutional reform. One area where there is agreement is on the need to reconsider the WTO's negotiation processes. As important debates on how to revive the WTO's negotiation function advance, the emphasis must be on how to balance issues of fairness and efficiency, with a particular focus on inclusiveness, facilitating attention to development goals, and boosting public

transparency and engagement. Further, the focus on the WTO's negotiation function, must not lead to neglect of the case for improvements to other WTO functions.

State of Play on Institutional Reform: A Stunted Discussion

The term 'WTO reform' has become a broad catch phrase. Many different topics and proposals fall under this umbrella, ranging from proposals for reform of the principles and scope of the WTO's agreements to the process of of particular aspects of WTO negotiations. Whereas some analysts call for limiting the scope of the WTO negotiating agenda (i.e., to ensure it does not cover issues such as investment issues), others advocate expanding its scope (i.e., to cover issues of high importance to developing countries, such as movement of labour or the better operationalization of the principle of special and differential treatment).

This article intentionally focuses tightly on the governance and 'institutional' agenda for WTO reform.² In the 15 years since the World Trade Organization (WTO) was established, the issue of institutional reform - whether it is needed, in what form, and via what kind of process - has been an ever-present issue for the organization and its Member States. To date, the discussion of institutional reform has focused mainly on the WTO's negotiation and dispute settlement processes, as well as the appropriate relationship and balance between the two. Other recurring areas of interest include (i) the internal governance and management of the WTO Secretariat, its ideal size and budget, as well as the role of the Director-General and the related selection process; (ii) the intersection of WTO rules and other global norms on issues ranging from human rights and the environment to food safety and labour standards; (iii) the WTO's relationship with civil society, industry, and parliaments; (iv) the appropriate role of the WTO in global economic governance and its relationship to other international organizations and agreements; (v) the relationship between WTO agreements and the growing number of regional and bilateral trade arrangements; (vi) the balance between the WTO's judicial and legislative functions; (vii) monitoring and surveillance of national trade policies; and (viii) capacity building.³

The prominence of each of these areas of debate on governance and institutional reform has fluctuated over time.⁴

Regrettably, proposals on WTO reform too often lack a clear articulation of the goals and challenges that

1 For a full review of the literature on development and WTO reform, and perspectives from a range of developing country scholars and experts on the challenges at hand, see Deere Birkbeck (2011a)

2 It acknowledges, however, that the issues are often entangled: some aspects of negotiations relate directly to the governance of the multilateral trading system (e.g., disciplines for regional trading agreements, principles of special and differential treatment, reform of the dispute settlement system).

3 For an overview of proposals in these areas see Deere Birkbeck and Monagle (2009).

4 In the lead-up to the election of the WTO's Director-General, for instance, debates about the appropriate powers of the Director-General and the election process resurface. Similarly, debates on the 'Green Room' tend to intensify around the time of WTO ministerial conferences and mini-ministerial meetings.

proposals seek to address or focus too narrowly. Proposals for reforms necessary to speed the process for reaching new WTO deals, for instance, neglect broader questions on how to ensure the multilateral trading system advances the ends for which it was established, which include improving economic welfare in all countries, poverty reduction, sustainable development, stability in global trade relations, and to guard against beggar-thy-neighbour trade policies. Proposals for WTO reforms are frequently advanced on the basis of ill-defined concerns about weak 'efficiency' or 'performance', but it is unclear what their proponents consider the broader normative purpose or benchmarks against which the WTO's performance, efficiency, or credibility should be judged.

Looking ahead, the focus of reform proposals ought to be on whether reforms help foster progress toward a WTO system that better delivers on the goals set out in the preamble to the Marrakesh Agreement.

Proposals on institutional reform and WTO governance should also be motivated by and judged against how they help foster a rules-based multilateral system that addresses the two core tensions at the heart of the deadlock in multilateral negotiations: 1) responding to developing countries' varied needs and bolstering their power in the system; and 2) advancing sustainable development. Not all commentators share the view that these goals should indeed be a core purpose of the system or of reform, and others may prioritize other issues such as human rights, ensuring full employment, or expanding the production of and trade in goods and services). There is, however, a clear political and legal rationale for a focus on sustainable development and developing country needs as a benchmark.

In legal terms, the preamble to the Marrakesh Agreement Establishing the WTO (the WTO Agreement) recognizes the importance of sustainable development, calling on governments to conduct their economic and social objectives in trade relations in a way that allows for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

The WTO's preamble also recognizes that the particular needs of developing countries in the trading system include, inter alia, the objective of greater employment. Several of the WTO agreements detail general principles and objectives that emphasize Members' development and public policy objectives, as well as other national goals such as political security. In 2001, WTO Members reaffirmed normative objectives in the Doha Ministerial Declaration, stating their conviction that the open, multilateral trading

system and sustainable development 'can and must be mutually supportive' (Para 6, Doha Ministerial Declaration) and making development the stated purpose of the Doha Round (while recognizing that the needs of particular countries may vary widely).

Those who argue that the WTO ought not to be a 'development institution' or a sustainable development organization or indeed anything more than a forum for commercial bargaining have already been overtaken by political reality. Issues of sustainable development and the concerns of developing countries already feature prominently across the Doha trade negotiations. Indeed, the fact that trade deals are so difficult to reach is in part because governments cannot escape the real-world need to respond to political demands regarding equity and the social and environmental impacts of trade and trade rules.

Key Challenges Institutional Reform Can and Should Address

While there have been some reforms to the WTO and evolutions in its practices over the past 15 years,⁵ these have not yet adequately addressed enduring systemic challenges to the governance of global trade from the point of view of development and of sustainable development. Moreover, in light of changing economic and political demands and the emergence of a range of new issues and dynamics, they have not proven enough to ensure that the WTO remains fit for purpose. While there are many challenges at hand, due to constraints of space, I focus here on four that warrant discussion from the vantage point of sustainability, equity, legitimacy, and accountability and for the WTO to regain its ailing relevance.

1. Persistent shortfalls in attention to developing country needs

The optimism about the proliferation of developing coalitions in WTO negotiations and the rise of some emerging countries to the centre of WTO decision making should not distract attention from the enduring need for a greater voice for the poorest and smallest countries. The marginalization of such developing countries is a central reason for the inadequate response to development concerns, which in turn foils efforts to make progress on completing negotiations. While greater opportunities to have their voice heard will neither suffice to address power asymmetries nor assure sufficient attention to their needs, it is a necessary prerequisite.

To date, developed countries have too rarely fulfilled their promises to take development considerations into account in multilateral negotiations or to adequately deliver on commitments to provide technical assistance and promote technology transfer. While there has been mounting emphasis of WTO Members and the Secretariat on Aid for Trade since 2005, with many new resources and initiatives underway to help countries take advantage of trade opportunities, these efforts still do too little to empower developing

5 For a summary of these see Deere Birkbeck (2011b).

countries to make effective use of the WTO system. Most developing countries remain disadvantaged in negotiations, in dispute settlement and in monitoring and understanding the impacts of their own trade policies and those of the major powers. Further, there are still no effective mechanisms for holding developed country to account either on their delivery of Aid for Trade commitments.

2. The Sustainability and Equity Blindspot

In the context of economic crisis, efforts to stimulate growth, employment and economic stability must also prioritize international commitments to development and sustainability. While restoring global trade is important, its quality, the distribution of its social benefits and its impacts on environmental sustainability also matter both practically and politically. The challenge for governments is to balance crisis management with sustainable development goals.

The world's sustainability challenges are deep and serious on a number of fronts. In addition to the world's climate, there are crises related to the collapse of fisheries, forest degradation, and water depletion. On all these counts, aspects of global trade rules contribute to or enable unsustainable practices to persist, and could be part of the solution. On the social front, negotiations often stall because Members have competing national policy considerations to address with regard to poverty alleviation, the creation of good quality work, risks to social cohesion from rapid adjustments, and their own ability to manage the economic and social adjustments.

For both practical and political reasons, the multilateral trading system needs to be able to respond to such concerns about its environment and social impacts. However, it lacks mechanisms for gathering, reviewing and responding to data on the relationship between trade rules and flows and environmental and social indicators. It thus lacks vital information and processes to enable concrete actions to ensure the multilateral trading system is part of the solution.

3. Inability to Respond and Adapt Flexibly to Emerging Issues and Trends

The WTO system has not been able to respond assertively to new issues as they emerge in global trade. The current financial crisis illustrates how quickly the interests and priorities of states can shift, highlighting that processes for dialogue and debate within governance systems are especially important at times when global economic performance weakens. Similarly, concerns about climate, energy and food security have emerged as pressing challenges that the WTO must do its part to respond to. The deadlock on negotiations in agriculture, for instance, is driven by fundamental concerns about livelihoods, food security, and the fate of the world's poorest people.

Meanwhile, governments are locked in a negotiation where many are concerned about discussing any

'new issues' for fear that these will become topics of negotiation or otherwise impact the configuration of trade-offs in negotiations. This fact highlights that Member States lack sufficient mechanisms for such policy dialogue and stakeholder engagement in the system and those that exist are under-utilized (such as the Ministerial Conference and the WTO's regular Committees).

4. Weak political and public engagement

Even as the Doha Round has ailed, politicians, officials, commentators, advocates and stakeholders have failed to build public understanding of the importance of multilateral trade rules, respond to public distrust in many countries, and shore up the credibility of the World Trade Organization (WTO) as their guardian.

Many of challenges with the Doha Round have emerged from substantive differences in trade policy objectives and interests. WTO negotiations are protracted precisely because the issues before states are complex, demand intensive processes of learning (about challenges, implications, and possible solutions), and require time-consuming efforts to build political support for potential deals in Geneva and among Members. The mandate and purpose of the multilateral trading system are deeply contested both by WTO Members and its diverse stakeholders. Where economic and political interests diverge sharply, legitimacy demands public engagement not technical and diplomatic solutions to issues that are intensely political.

However, there are still inadequate mechanisms and processes within and across countries for the constructive engagement of stakeholders, whether from unions, NGOs, academia or the business sector, in the multilateral trading system. In particular, there have been inadequate opportunities for open dialogue with a diversity of stakeholders within and across countries about how governments can ensure trade rules respond to public concerns and expectations about economic security, environmental sustainability, and social justice.

Proposals for Institutional Reform

Democratize and Expand Developing Country Participation

There are many areas where efforts to boost the engagement of developing countries and attention to their interests are needed. This section proposes reform in relation to three of the WTO's functions: negotiations, dispute settlement, and capacity building/Aid for Trade.

The concern about how to revive/continue or proceed with the Doha Round and the interest in exploring how to improve the WTO's negotiating function have an important systemic governance dimension - how to have decision-making that is accountable, legitimate, efficient and delivers on the core objectives of the system. At the heart of discussions of the WTO's negotiation function must be to boost the participation and influence of developing country WTO members, particularly the smallest and poorest, and their coalitions in decision-making.

On the one hand, procedural changes are needed to the structure and scope of WTO negotiations. Priorities for reform include:

- a) promoting more effective sequencing and predictability of negotiations to enable individual countries and their coalitions to prioritize the issues to which they devote in-depth analytical resources and government time. This would facilitate the ability of countries to move beyond broad political statements to devise concrete positions and fall-back positions on negotiating issues.
- b) Devising guidelines on the composition of the Green Room and other small group meetings to ensure that where subjects are of key interest to particular countries or directly impact poor countries (even if they are not the major trading powers or actors in that area), such countries are invited. While flexibility is indeed important for the negotiation process and negotiating in smaller numbers can improve efficiency, the result is too often that important decisions are made by large countries negotiating among themselves in smaller groups and on sectoral issues. Guidelines are required to ensure that the system is not divided into two-tiers, where small and poor countries are only engaged on a narrow set of issues, such as discussion of cotton, market access, and S&D, while the broader systemic and regulatory issues that define the multilateral system are negotiated by larger players.
- c) Improving the transparency of green room meetings and small group consultations. While representation and participation in the WTO's informal negotiating processes has widened, members of relevant coalitions are not always properly informed and briefed on what has occurred. For the smallest and poorest countries, there should be a fuller briefing of what has occurred in meetings by the WTO Secretariat and by their coalition representatives.
- d) Ensuring adequate 'time out'. In order that countries and their representatives can actually negotiate, rather than simply be represented, greater provision needs to be made for the possibility of back and forth between coalitions and their representatives. This in turn requires that there is a norm of 'time out' in the heat of negotiations to enable consultations to occur.
- e) Designing clearer rules for access. The asymmetry in negotiating power between existing members and acceding developing countries, most of which are developing countries (LDCs comprise 40% of accession candidates), makes the need for clear rules on the accession process vital, particularly to help shield countries from demands that go beyond their level of development, and current WTO rules.

On the other hand, support must be directed to empowering more effective participation and influence of developing countries. Key priorities include:

- a) greater support to small and poor WTO Members to ensure they have permanent representation

in Geneva. Representation should not be left to a country's own financial resources or to the unpredictable generosity of individual WTO members that may provide assistance. Rather, the representation of WTO Members should be considered as central to the accountability and credibility of the WTO. This can be accomplished either through mandatory contributions by Members to the WTO's core general budget, or through a voluntary, supplementary contribution scheme. In cases where small developing countries have a demonstrated commitment to achieving an effective presence in Geneva, they should be able to formally approach the WTO to complement the national financial resources they can afford to invest.

- b) establishing travel funds, as many other international organizations have, to facilitate the participation of technical experts from small and poor countries to participate in relevant committees and meetings.
- c) boosting the WTO's organizational support to coalitions of small and poor countries. The disposition and actions of the WTO Director General, Deputy Director Generals, and Secretariat staff can all have a major impact on the degree and efficiency of engagement that developing countries and their coalitions have with the organisation. While countries can turn to other sources for analytical and substantive inputs on topics of negotiation or debate, the WTO Secretariat should step up its provision of input that it is uniquely positioned to provide. It could, for instance, provide more systematic objective information on the status and process of negotiations, and the implications for LDCs of various specific proposals under discussion, particularly when negotiations move into a rapid or technical phase.

Importantly, more effective participation will also rely on more strategic use of coalitions by developing countries. This includes improved internal management coalitions to ensure their effective leadership, transparency, accountability and to make use of effective negotiating strategies and tactics.

In the area of dispute settlement, the use by developing countries of the WTO's dispute settlement system remains uneven. One option for addressing the legal capacity gap that small developing and least-developed countries face is for developed countries to provide greater financial contributions to the Advisory Centre on WTO Law to expand its ability to respond to developing country requests for assistance. This could include by subsidising ACWL's support to small developing countries, as well as to least developed countries. In addition, there is a need to find ways to help small and poor countries make greater use of mediation and alternative processes for resolving disputes; creating a 'small claims' procedure; and advancing the possibility of compensation as a remedy for countries that have limited political prospects for using either retaliation or cross-retaliation as a way for securing compliance with WTO decisions (due to the deterrent effect of potential trade threats). There

is also a need for support to weaker countries and their domestic industries to identify and monitor instances how and where their trading interests are compromised by changes in trade policy of trading partners that violate WTO obligations.

In the area of Aid for Trade and capacity building, key governance reforms should include:

- Greater efforts to ensure ease of access to available funds and transparency on their use. Commitments to shift support from bilateral trade-capacity building to multilateral initiatives would offer greater prospects of assistance delinked from mercantilist priorities of donors.
- Greater support to regional trade institutions and arrangements as vehicles for channeling Aid for Trade.
- Third-party monitoring and evaluation of donor performance should be boosted (e.g., through annual independent evaluations and/ or peer-reviews of trade-related capacity building from the recipient's perspective).
- Greater support for establishing durable capacity in developing countries and regions.

In all these areas, improved governance of Aid for Trade and capacity building will depend on developing country leadership to push for a greater role in the management of aid, to better articulate their needs, and to extract greater value from existing resources.

Assess and Respond to Social and Environmental Impacts

The WTO's Members should:

- ▣ establish mechanisms for assessing the impacts of WTO rules. Governments should agree to use existing sustainable development principles and benchmarks as yardsticks against which to measure how the system is delivering on the goals the international community has set for itself (such as the UN Millennium Development Goals and targets set at the World Summit on Sustainable Development).
- ▣ open up the work of some of their non-negotiation, Committee-based work to experts and interested parties to facilitate informed debate about trends and trade policy options.
- * A new assessment or evaluation function could be established under one of the Committees or the General Council. The work of impact assessment could be conducted by engaging non-state actors through independent monitoring initiatives involving companies, NGOs, academics and foundations. This may also offer the possibility of swifter and more critical analyses.

- Expand the scope of the WTO's Trade Policy Review process could be expanded to serve as a tool to help governments integrate sustainable development considerations into trade decision-making (see discussion on monitoring below).
- Make greater use of the 'good offices' of the Director General to 'problem-solve' specific trade-policy tensions that arise. In addition, the creation of an Ombudsman Office to which third parties could submit specific sustainable development concerns for the attention of member states could be considered.

Broaden Trade Surveillance, Monitoring and Transparency

The recent financial crisis has spurred interest in greater surveillance by the WTO Secretariat of protectionist measures by Member States. There is certainly a case for reinforcing and improving the WTO's existing institutional mechanism for monitoring how WTO members honour existing commitments. However, to help the WTO trade policy review (TPR) process to better serve as a tool to help governments integrate development considerations into trade decision-making, the TPR process could include an assessment of how countries could better take advantage of the MTS and to identify national trade-related hurdles that impede the realization of development objectives. The Trade Policy Review process could also serve a stronger role as a catalyst for governments to organize appropriate capacity building.

Specific reforms should include: making the trade policy review process open to the public; involving multi-stakeholder processes at the national level in the development of the national trade policy review reports; inviting recognized international experts as commentators in the trade policy review meetings in Geneva; inviting commentaries from other interested national and international parties (for example, other IGOs [inter-governmental organizations], industry groups, NGOs, academics, etc.); and integrating a new component into the trade policy review process that evaluates the fulfillment by developed countries of their capacity building commitments to LDCs.

Boost Public and Political Engagement and Spaces for Dialogue

Deliberations on WTO reform and strengthening multilateralism call for political engagement and leadership to clarify the strategic vision, direction and mandate of the WTO; its role in global economic governance, and the values the multilateral trading system should protect and support. The task of improved global trade governance can not be left to

trade negotiators and diplomats in Geneva.⁶ Effective governance demands attention to processes that foster dialogue, accountability and transparency. Such processes matter most when tensions are highest and demands high-level political commitment from trade ministers and from the all parts of national governments active in discussions on national strategies for engaging in the global economy. Similarly, the institutional reform agenda is not a technical, legalistic, or bureaucratic matter that can be ‘solved’ without a thorough consideration of the political demands and concerns driving divergent perspectives and expectations about the end goal(s) of the WTO.

The WTO reform agenda should include:

- to ensure regular agenda-setting, policy dialogue and problem-solving on critical global policy issues as they arise, whether through existing mechanisms such as the WTO’s regular Committees, the GC or new mechanisms.
- making more strategic use of the WTO Ministerial Conference. The Ministerial Conference is the only formal forum the WTO system currently has for ministerial-level policy discussion and agenda-setting that engages all members.⁷ A discussion of WTO reform among the full WTO membership is vital to reinforcing the importance of a multilateral approach to global trade, to reviewing the mandate and performance of the WTO system, and to protecting the institutionality and existing agreements of the WTO system.
- Engaging more stakeholders in the trade policymaking process at the WTO and in national processes. At the WTO, there are opportunities for greater stakeholder engagement across the WTO’s negotiation, research, capacity-building, and monitoring activities. At the national level, there is a need to continue efforts to improve internal coordination of national trade policy making processes to incorporate sustainable development considerations, and to engage a broader range of domestic political actors - beyond trade technocrats - such as parliamentarians the private sector, trade unions, and civil society. Governments should also commit to including relevant stakeholders in their delegations to WTO negotiations and to more active dialogue among parliamentarians from across the WTO’s membership, including through the Inter-Parliamentary Union.
- Increasing support for independent research and analytical capacity in developing countries at the national and/or regional level in universities, think-tanks, and research centres, as well as in

the regional/national headquarters of various UN agencies, to feed into national trade policymaking processes.⁸

A Process Forward-thinking on the Multilateral Trading System and Institutional Reform

Concern about the status of the Doha Round yields a critical opportunity for dialogue on the systemic challenges facing the WTO, how to strengthen multilateralism in trade, and how to ensure that the multilateral trade system better delivers on its commitments to sustainable development and the needs of developing countries.

The fact that there is now an active discussion on the ‘Future of the WTO’ implies that at least some commentators, WTO members and members of the WTO Secretariat are ready to engage in the serious deliberative task of policy dialogue and agenda-setting on the future of the system. This openness also represents a critical opportunity to take up issues of institutional reform, including and beyond the WTO negotiation function.

To advance such deliberations, ministerial-level engagement and debate is vital as are process for engaging stakeholders and experts.

To this end, Ministers should use this 8th Ministerial Conference to push institutional reform issue higher up the multilateral trade system’s official agenda. They should establish a Standing Task Force of trade ministers to improve and strengthen the international trade regime. They should empower and task the Secretariat to partner with external institutions to establish a working group of WTO members and/or experts to propose WTO reforms, that would involve opportunities for input from and dialogue with a diversity of stakeholders.

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6 Several scholars have already called for bringing more politics into WTO negotiations and decision-making as a desirable outcome and in favour of finding more spaces for political contestation to occur.

7 It provides an opportunity for ministers to fulfill their board responsibilities to set the WTO’s strategic direction, provide budgetary oversight, approve work programs, and supply political leadership

8 Some initial steps in this direction are already being taken by the WTO Secretariat, albeit amid calls to still boost the WTO’s own research capacity.)

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