Proposals for WTO Reform: A Synthesis and Assessment*

Bernard Hoekman
World Bank and CEPR

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Abstract: This paper summarizes the major arguments and proposals to reform the modus operandi of the WTO – including decision-making procedures, negotiating modalities, and dispute settlement. Much has already been done to improve internal and external transparency of WTO processes. Some proposals for structural reform ignore incentive constraints and the fact that the WTO is an incomplete contract that must be self-enforcing. Others – such as calls for a "critical mass" approach to negotiations – can already be pursued (and have been). The agenda for international cooperation increasingly revolves around "behind-the-border" regulatory externalities that do not necessarily lend themselves to binding commitments in a trade agreement. This suggests a focus on strengthening notification/surveillance and developing more effective mechanisms for dialogue on regulatory policies that may create negative spillovers.

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Introduction

The Uruguay Round was a landmark for the trading system. Agriculture and textiles and clothing were reintegrated, voluntary export restraints outlawed, rules on protection of intellectual property rights and trade in services added, and the dispute settlement system was strengthened. Because of the Single Undertaking rule, all countries desiring to become a member of the new WTO were obliged to accept all of the disciplines embodied in the WTO and its multilateral agreements, ending the GATT a la carte practice (under the GATT countries were free not to sign on to newly negotiated disciplines, and most developing countries exercised this option).

The creation of the WTO can be seen as one dimension of a gradual process of global liberalization of trade. Across all countries, average tariffs in 1950 were in the 20-30 percent range (WTO, 2007). A variety of nontariff barriers, including quantitative restrictions and exchange controls, augmented the effects of tariffs. Starting in the mid 1980s, however, average levels of protection in both industrialized and developing countries were gradually lowered. As of 2010, the average level of import protection was some 10 percent or less in many developing countries, and the average uniform tariff equivalent of merchandise trade policies in OECD countries had fallen to less than 4 percent (Kee, Nicita and Olarreaga, 2009). Imports of many manufactures are now duty-free.

The policy reforms helped generate a boom in world trade. The value of global trade in goods and services passed the US$15 trillion mark in 2006, up from around US$1 trillion in the late 1970s (measured in current dollars). The global value of the stock of foreign direct investment (FDI) rose more than 6-fold between 1990 and 2008, substantially faster than the growth in trade, which increased 'only' 3.5 times over the same period.

Domestic policy reform was largely driven by autonomous decisions by governments, not least because many of the key reforms that were implemented in the 1980s and 1990s were not subject to GATT rules (e.g., privatization; exchange rates; fiscal and macroeconomic policy; most areas of domestic economic regulation). But the trade regime played an important role in facilitating an exchange in trade policy commitments between countries and establishing a mechanism through which commitments could be enforced.

The WTO has proved to be quite effective in sustaining cooperation between members. Most of what was agreed in the Uruguay Round was implemented. The dispute settlement mechanism has worked: there have been over 350 disputes that have gone beyond consultations, most of which were concluded with the losing party bringing its measures into compliance. The robustness of the regime was put to the test during the 2008 financial crisis and proved to be resilient – there was only limited recourse to the type of protectionist policies that characterized responses to the last global recession in the late 1970s and early 1980s. Some 25 countries acceded to the WTO between 1995 and 2010, and another 20+ are in the process of negotiating accession.

All this suggests the WTO has been (is) a resounding success. But the institution has been subject to widespread criticism by governments, civil society, industry, and academics. A cottage industry sprung up in the late 1990s that argued the WTO lacked "legitimacy" and had a "democratic deficit"; is too democratic as a result of the practice of consensus-based decision-making; is hobbled by "medieval" procedures; allows the largest traders to impose their will; permits even the smallest countries to block the majority from moving forward; has a dispute settlement system that gives too much discretion to unelected judges to write law; and does not give enough scope to judges to interpret agreements and help complete the WTO contract. As is obvious from this very incomplete list many of the criticisms are orthogonal to each other, reflecting the very different objectives and perspectives the heterogeneous set of interest groups and stakeholders in the trade regime.

It is useful to classify arguments for institutional reform of the WTO along three dimensions: (i) the rule-making and decision-making process (the "legislative function"); (ii) the management of day-to-day activities (the "executive function"); and (iii) the enforcement of negotiated commitments and rules of the game (the "judicial function"). Proposals for reform focus on all three functions, but since 2005 increasingly center on the first. Since its creation in 1995, attempts to expand the coverage of the institution have not been very fruitful. Efforts to negotiate rules on competition, investment and transparency in government procurement failed. As of the time of writing, the Doha Round has gone on for 10 years. Many argue that while this is a serious problem in and of itself given the opportunity costs of the lack of movement, it also endangers the trade regime.[1] The fear is that without progress on further liberalization there is an increased danger of backsliding: the WTO is often likened to a "bicycle" that needs to keep moving if it is not to fall over.

This paper reviews proposals for WTO institutional reform as opposed to proposals regarding specific rules for trade policies, criteria for differentiation and special and differential treatment of developing countries, and so forth. Most of the proposals for institutional reform have come from former government and WTO officials, civil society groups and the academic community.[2] A number of suggestions have been taken up in two expert group reports that considered WTO reform priorities—Sutherland et al. (2004) and Warwick Commission (2007). To date, however, the revealed preference of most WTO Members, whether developing or developed, has been to limit reforms to pragmatic, incremental changes in procedures and practices.

The plan of the paper is as follows. Section 1 starts with a summary of some of the key operating principles of the WTO that reform proposals suggest need to be changed. Section 2 briefly reviews the economic literature on the rationale for trade agreements, as a benchmark is needed to understand whether proposals for reform will help achieve the underlying objective of WTO members. Many critics impose their own value judgments regarding what they believe the WTO should pursue, or base arguments for reform on the mention of a particular desirable aim listed in the WTO Preamble (e.g., sustainable development; full employment; etc.).[3] An understanding of the preconditions for cooperation in trade is needed to assess whether and how reform proposals will help make cooperation more effective or efficient. Sections 3-7 then discuss arguments and proposals to reform the WTO. The discussion is organized around the five major functions of the WTO as defined by Art. III WTO: (i) to facilitate the implementation, administration and operation of the Agreement; (ii) to provide a forum for negotiations; (iii) to administer the Dispute Settlement Understanding; (iv) to administer the Trade Policy Review Mechanism; and (v) to cooperate with the IMF and World Bank Group to achieve greater coherence in global economic policy-making. Some proposals span more than one of these functions, but this classification is nonetheless a useful organizing device. Section 8 concludes.

1. Core elements of the WTO's modus operandi

There are a number of core aspects of the WTO that are the focus of many reform proposals. These include the consensus practice; the "single undertaking" in multilateral negotiations; the non-discrimination principle; Member-driven, "collective management" through a Ministerial Conference

[1] As illustrated in the call by Ernesto Zedillo to "save the WTO from Doha" (Zedillo, 2007).

[2] No attempt is made to be comprehensive in surveying the extensive literature on WTO reform. Reform proposals and analysis of the WTO by the academic community primarily spans scholarship in the fields of international relations, public law and economics. These disciplines utilize distinct frameworks and methods, and often tend to build on (refer to) literature from within their specific discipline, with limited interdisciplinary cross-fertilization.

[3] See, for example, Ismail (2009), who argues that in his view development must be the objective of the WTO and calls for a discussion in the WTO to re-assess what the goals of the institution should be.

and various Councils comprising the whole membership; a Secretariat without power of initiative; and a "self-enforcing" dispute settlement system that is limited to maintaining the negotiated balance of concessions, with compliance ultimately a function of (the effectiveness of) the threat of retaliation by the party (parties) winning a case.[4]

Decision-making in the WTO operates by consensus. Voting is technically possible but in practice does not occur.[5] Consensus implies that any motion or decision can be blocked if any member objects. While in principle this ensures that no country can be steamrollered into accepting decisions or agreements it objects to—giving it leverage to seek either concessions to agree to a matter or to refuse to consent to a change in the rules of the game—in practice the largest players carry more weight than do small ones (see e.g., Steinberg, 2002). One way small countries seek to increase their weight in decision-making is through coalitions (Narlikar, 2003; Grynberg, 2006; Odell, 2007).

In negotiations the analogue to consensus is the single undertaking: "nothing is agreed until everything is agreed," i.e., the results of a multilateral round are a package deal. Both are practices, not formal rules. The consensus practice has a long history in the GATT/WTO, whereas the single undertaking is a practice that was central to the Uruguay Round and the creation of the WTO (i.e., the WTO was a package deal, take it all or leave it). It has been applied in the Doha Round as well.[6]

The nondiscrimination principle requires that any concession or commitment be accorded to all members. WTO members may not grant a sub-set of countries with which they have negotiated concessions better treatment than countries that have not offered such concessions. The only exception is if members conclude free trade agreements with each other or negotiate a so-called plurilateral agreement. Under such an agreement, a subset of WTO members can agree to specific disciplines that apply only to signatories, and need not apply the associated benefits to non-signatories. However, a plurilateral agreement can only be appended to the WTO on the basis of consensus (and unanimity if there is recourse to voting—Article X:9 WTO). Thus, the plurilateral option offers a mechanism for groups of WTO Members to agree to rules in a policy area that is not covered by the WTO or goes beyond existing disciplines as long as the Membership as a whole perceives this is not detrimental to their interests.

The management of the WTO is collective. The WTO is headed by a Ministerial Conference of all members that is supposed to meet at least once every two years. Between such meetings the WTO is managed by a General Council at the level of officials. This meets about 12 times a year, with WTO members usually represented by delegations based in Geneva. The General Council turns itself, as needed, into a body to adjudicate trade disputes (the Dispute Settlement Body—DSB) and to review trade policies of the member countries (the Trade Policy Review Body—TPRB). Three subsidiary councils operate under the general guidance of the General Council: the Council for Trade in Goods; the Council for Trade in Services; and the Council for Trade-Related Aspects of Intellectual Property Rights. Separate

[4] See Hoekman and Kostecki (2009) for a detailed discussion of the various WTO agreements and disciplines.

[5] See Ehlermann and Ehring (2005) for a discussion of the history of the consensus rule and voting in the GATT/WTO. Art. X WTO specifies that if voting occurs – which is on a one member, one vote basis – unanimity is required for amendments relating to general principles such as nondiscrimination; a three-quarters majority is needed for Interpretations of provisions of the WTO agreements and decisions on waivers; and a two-thirds majority for amendments relating to issues other than general principles. Where not otherwise specified and consensus cannot be reached a simple majority vote is sufficient. No member is bound by an amendment that passes a vote if it alters its rights and obligations. In such instances the Ministerial Conference may decide to request that the member withdraw from the WTO or to grant it a waiver.

[6] As already noted, under the GATT contracting parties were free not to sign on to certain parts of what was negotiated in a trade round.

committees, working parties and sub-committees deal with specific subject areas covered by multilateral agreements.

All councils, committees, and so forth, as well as all negotiating groups are chaired by a WTO member. The only exception is the Trade Negotiations Committee, the body that oversees multilateral trade talks, which is chaired by the Director-General. The DG does not have a defined role in the agreement establishing the WTO. This is left to the Ministerial Conference to determine, which to date it has not done.

The main actors in day-to-day activities of the WTO are the officials that are affiliated with the delegations of members. Geneva in turn is the hub of a large network of officials, agencies and ministries in member countries (Blackhurst, 1998). The member-driven and network nature of the organization puts a considerable strain on the delegations in Geneva and officials in capitals. There are over 5,000 meetings in the WTO every year. This level of activity makes it very difficult if not impossible for citizens of members to keep track of what is happening.

At the time of writing there are 153 members. Few, if any, members participate in all meetings and activities. Committees are open to all members but in practice those that care most about a subject will be most active. WTO practice is for members to organize in informal small groups to develop proposals that may subsequently be put forward to the broader membership, either formally through existing bodies and committees or informally to other members/groups. In WTO speak this process is described as the "concentric circles" approach to agenda-setting.

The secretariat supports the members, providing technical and logistical support when requested by committees or Councils. It has very little formal power of initiative. It is prohibited from identifying potential violations of the WTO by members and may not interpret WTO law or pass judgment on the conformity of a member's policy with WTO rules. These are matters that are the sole prerogative of members. Similarly, dispute settlement panels are staffed by members of WTO delegations or outside experts drawn from a roster that has been pre-approved by the membership. Specific panelists are generally nominated by the Secretariat.

Dispute settlement in the WTO aims at maintaining the balance of negotiated concessions. If a member is found to have violated a commitment, the remedy is *prospective*: the offending member is simply called upon to bring its measures into compliance. How this should be done is left to the WTO member to determine. There is no requirement to compensate for losses imposed while a violation occurred. In cases where a member does not comply with the DSB, a member may be authorized to retaliate in an amount that is equal in effect to the action that was taken by the country that violated a commitment. This introduces a significant asymmetry in that small countries that cannot affect their terms of trade can not exercise much pressure on large countries that do not wish to comply with the DSB.

2. Matching instruments to objectives: What problems do proposed reforms fix?

Economists often stress the importance of the terms of trade in providing a theoretically consistent rationale for the formation of trade agreements. The argument is that countries negotiate away the negative terms-of-trade externalities created by the imposition of trade restrictions in partner countries (Bagwell and Staiger, 2002).[7] A consequence is that agreements will (need to) be among countries that can affect their terms of trade. Small countries will generally have much less power to do so, although if products are differentiated even a small state may be able to affect its terms of trade. As a result of this

[7] As such negative externalities can be created by domestic policies as well, the terms of trade theory also offers guidance regarding what types of policies could be the subject of multilateral negotiations and cooperation.

asymmetry, trade agreements will tend to reflect the concerns of large countries.[8] An implication of the terms-of-trade theory is that there is no prospect for cooperation on new rules or market access deals if the large countries cannot agree on a mutually beneficial (balanced) exchange of policy commitments. No possible reform of process or the institutional structure of the WTO will make a difference. Calls to put in place mechanisms that will force these countries to "do the right thing" are irrelevant: the WTO is a self-enforcing agreement; there is no central or supranational enforcement agency. Cooperation must be in the self-interest of all members.[9]

Assume instead that there is a potential agreement that benefits the large players but that a small country opposes this—it wants to get more out of a deal. Given the consensus practice and the Single Undertaking principle this may block agreement. An obvious solution to this possibility is to shift away from consensus—e.g., shift towards a weighted voting type approach. An empirical question of some importance is how often such "blocking" in fact occurs given that large countries could either go ahead and accept free riding or conclude free trade agreements among themselves. We do not observe much of this: trade agreements tend to be North-South or South-South: there are no agreements between the major players (EU, US, Japan, China, etc.).

Terms of trade theories cannot explain why small country governments negotiate limits on their own use of trade policies. Another strand of the economic literature (e.g., Tumlir, 1985; Maggi and Rodriguez-Clare 1998) provides an alternative rationale: trade agreements may offer a mechanism to governments that want to commit to a set of policies that may not be (politically) feasible to adopt or maintain. This line of theory has trade agreements serving as a lock-in mechanism or anchor for trade and related policy reforms. By committing to certain rules that bind policies, a government can make its reforms more credible: officials can tell interest groups seeking the (re-)imposition of trade policies that doing so will violate its commitments and generate retaliation by trading partners.

A related strand of theory combines elements of both the terms of trade and commitment theories and stresses domestic political economy dynamics (see Ethier 2007). It builds on a long tradition that starts from the premise that governments seek to maximize political support: they will respond to and seek to satisfy the domestic constituencies that they need to stay in power. Taking as given that governments are conservative in the sense that they put greater weight on prospective losses for groups in society than on the expected gains from liberalization, governments have incentives to impose or maintain protection because this raises the incomes of the groups from which they derive political support. If foreign governments could be induced to liberalize, that provides a direct gain for existing exporters. This changes the government's incentives as it affects the balance of political support. A more liberal stance becomes optimal.

Complementary explanations for the formation of trade agreements have been offered in the international relations and political science literature (see WTO, 2007 for a review). These place emphasis on the role of power, on domestic political considerations and the structure of institutions, as well as on "non-economic" objectives such as the avoidance of war. All the more political and political economy driven rationales for trade agreements are conditional on agreements being enforced. This

[8] Of course, governments of small countries still have an interest in being a member of the WTO because exporters will benefit from the tariffs that larger countries negotiate reciprocally with one another and then extend to all members under the MFN rule. They can also benefit from active participation in the operation of the regime by combining forces and acting as brokers—see e.g., Narlikar (2003) and Odell (2005, 2010).

[9] The economic theories of trade agreements are positive in nature—they seek to understand the preconditions for, and drivers of, cooperation. They are not normative models of how the world should be. Much of the literature suggesting reforms of the WTO is in contrast often explicitly normative in nature, frequently disregarding the reality of power relationships and the fact that any trade agreement must be self-enforcing.

leads back to the central insight of the terms of trade theory of trade agreements, where the incentive to enforce agreements is created by the fact that defection generates an incentive to retaliate. In practice, small countries may not confront a retaliation threat because the incentives for trading partners to invest the required resources are too weak, that is, enforcement costs exceed expected benefits. If this is the case, cooperation is conditional on anchoring reforms in domestic institutions. From a "WTO reform" perspective this suggests a focus on increasing compliance incentives, be it through external or internal mechanisms. This might revolve around provision of information, enhancing domestic processes to bolster support for ("ownership" of) making trade policy commitments, reducing the costs of – increasing incentives for – enforcement, etc.

A necessary condition for both negotiations and enforcement of agreements is information. Any negotiation requires the parties to understand the others' positions. A process of learning is required to identify what is negotiable and what is not. Negotiations are multi-level games with a complex process of domestic interactions between interest groups (including lobbying, advocacy, etc.) determining what a country can offer/wants. On the enforcement side of the equation information is needed to determine if countries are implementing commitments or if an action by a partner is a violation. An independent process of monitoring and collective discussion of trade policies can help both identify and diffuse potential disputes. This "transparency function" can be supplied by an independent secretariat, raising a question of the effectiveness and efficiency of the WTO Secretariat in fulfilling this role.

3. Operation of the WTO

As noted above, the modus operandi of the WTO revolves around regular and numerous meetings of WTO members, generally chaired by a member representative, supported by the secretariat. Agenda-setting occurs through a decentralized, bottom-up process ("concentric circles"). Although large players often take the lead, this need not be the case. Small countries often organize themselves into informal groups or more formal coalitions to defend their interests and put forward proposals.

Consensus

Many proposals for reform have focused on the consensus norm. Consensus has been argued to be a major source of inefficiency and deadlock, impeding the ability of the majority to move forward and giving excessive scope for a small minority to block a decision.[10] Conversely, supporters of the consensus norm argue that given 153 members with vast differences in per capita incomes, capacity and economic interests, consensus is a critical mechanism through which to ensure the legitimacy of the organization and the support that is needed in domestic polities of members.[11] Developing countries in particular are strong supporters of the consensus practice as it provides them with some assurance that they will not be confronted with decisions that may be detrimental to their interests (e.g., Ismail, 2009a).

A necessary condition for consensus to have the purported benefits is that there is informed participation. In practice small or poor countries confront serious information and resource constraints that impede effective participation. This can have costs, both in an opportunity forgone sense, and in a direct sense if countries agree (or do not object to) to initiatives that have adverse consequences for

[10] See, for example, Cottier and Takenoshita (2003), Ehlermann and Ehring (2005), Hufbauer (2005), Lawrence (2006), Steger (2009), Steger and Shpilkovskaya (2010).

[11] See Howse and Nicolaidis (2003), Pauwelyn (2005a), Wolfe (2005, 2007, 2009), and Tijmes-Lhl (2009) for analyses and defenses of the consensus norm.

them. While the value of consensus to smaller and poorer members should not be exaggerated,[12] it does provide a significant element of security.

Three types of proposals have been made. The first is to stick with consensus as a basic practice but to introduce some procedural changes that would require those countries blocking adoption of a measure in instances where the majority is in favor of proceeding to explain why they are doing so. Specifically, the Sutherland (2004) report recommended that a member seeking to block a decision be required to declare in writing that the matter is of vital national interest to it.

A second approach is to shift to a system of weighted voting, or to adopt a "critical mass" approach. The weighted voting approach is generally linked to the creation of an executive board but need not be. The critical mass approach has been described as "a practice where countries refrain from blocking consensus when a critical mass of countries supports a proposed change. This critical mass of countries could be expressed as an overwhelming majority of countries and an overwhelming amount of the trade weight in the world, such as 90 percent of both of these factors" (Jackson, 2001: 74-75).

A third set of proposals revolve around the creation an Executive Board or Committee. There are two flavors to proposals along these lines. One is to emulate the management structure of the IMF or World Bank, in which a Board of 20 to 30 representatives is given decision-making powers.[13] The other is to use a board as an instrument through which to identify compromise positions in negotiations, suggest solutions when WTO councils or committees fail to achieve consensus, engage in strategic thinking and help to set priorities to further the mandate of the organization (Steger, 2009). In this model the membership would still take decisions on the basis of consensus.[14] Most proposals would make permanent membership of the executive body a function of "economic weight," with a subset of members serving on a rotating basis to ensure representativeness. Those on the Board would speak on behalf of groups of countries that they were chosen to represent.

Developing countries object strongly to an IMF or World Bank model, as they believe that the consensus principle maximizes their ability to safeguard their interests. There is also little appetite among most developed countries to move in this direction. Thus, if there will be any move towards an executive committee-type structure it is more likely to be on the lines of what has been proposed by Blackhurst (2001) and Blackhurst and Hartridge (2004) and the 2004 Sutherland report.[15] The latter proposed the establishment of a Consultative Group of no more than 30 members, in which some Members would have permanent membership and others would rotate. The purpose of the group would be to give political guidance to negotiators "when appropriate" and map out possible areas of

[12] Narlikar (2006), for example, argues that the value of the consensus practice to small players is reduced as a result of limited representation, exclusion from the key upstream parts of the concentric circle process (such as Green Room meetings) and intimidation by developed economies (often providers of aid and other forms of assistance). See also Evenett (2005) and Wilkinson (2006). Capacity constraints and the adverse incentive effects of aid dependence are also often mentioned in the literature focusing on the operation of the DSU (e.g., Hoekman and Mavroidis, 2000; Lawrence, 2003; Nordstrom, 2005; Nordstrom and Shaffer, 2008; Bown and Hoekman, 2008).

[13] For example, Matsushita, Schoenbaum, and Mavroidis (2003) call for an executive, decision-making body that reports to the General Council comprising a mix permanent and rotating members. Permanent membership would be determined by criteria such as GDP, population and share of world trade; with supplementary criteria used to ensure low-income and small countries are represented.

[14] Blackhurst (1998) and Schott and Watal (2000) are early proponents of such a mechanism.

[15] Blackhurst and Hartridge (2004) argued that the WTO needs an "efficient-size sub-group of members for the purpose of discussing, debating and negotiating draft decisions that can be put to the entire membership for adoption..." with criteria to ensure that participation be "fully transparent, predictable, equitable and legitimate in the eyes of all WTO members."

agreement/proposals for moving forward on WTO business. Meetings of the group at the senior official level would occur before every Ministerial meeting to prepare the ground/agenda, etc. One rationale offered for the creation of such a group was that it would formalize the ad hoc "mini-Ministerial meetings" that had frequently been called by sub-sets of WTO Members to deal with Doha Round questions. The report argued that formalization of what was in any event emerging on an informal, ad hoc basis would help enhance the effectiveness of a smaller group interaction.[16]

As noted by Pascal Lamy, there is a consensus about consensus among WTO members (Lamy, 2009). The existing provisions for voting are not used, making proposals to shift to different types of voting moot. Wolfe (2007, 2009) makes a compelling case in favor of consensus, noting that it is difficult to envisage a different decision rule that would do a better job in ensuring the "ownership" of what is decided or negotiated in national polities. Shifting to a system of weighted voting or an Executive Board with decision-making powers would most likely result in a resurgence of the types of critiques that characterized the debates on the WTO in the late 1990s and early 2000s.[17]

Internal transparency and the role of Chairs

The "concentric circles" approach to agenda formation and deliberations in the WTO is cumbersome but has the advantage of allowing those who care most about an issue to launch an initiative. But to be effective and acceptable to members the process requires parties to understand what their interests are and what the implications of an initiative would be for them, and extensive communication and transparency. Once a matter has been put on the agenda of a formal group, the role of the chairperson becomes particularly significant in ensuring that different views on an issue are reflected and considered.

The critical importance of internal transparency was crystallized by the Seattle Ministerial meeting,[18] and led to many proposals for procedural improvements to ensure that small group meetings (such as the Green room) are transparent, that consultations be open-ended, and that members are informed about the results of small(er) group meetings on issues that affect the membership as a whole in a timely fashion (e.g., Schott and Watal, 2000; Luke, 2000). Following the Seattle Ministerial meeting the Chairman of the General Council launched a process of consultations on WTO processes. This revealed no strong support for radical reform of the WTO. Members indicated that the system of informal consultations was a fundamental element of the WTO process. A variety of procedural improvements were adopted by the WTO Secretariat in the post-2000 period to enhance internal transparency, many of them along the lines of what had been suggested by observers (Pedersen, 2006).Compared to Seattle, subsequent Ministerial meetings were organized in a way that greatly increased transparency, including through briefings of heads of delegations by Ministers who were appointed to be 'Friends of the Chair' on various negotiating issues.

With very few exceptions WTO bodies are chaired by a WTO member. Chairs play an important role in the WTO given the limited formal role of the secretariat (Odell, 2005; Tallberg, 2008; Ismail, 2009b).[19] It

[16] The Sutherland report also proposed increased high-level participation in Geneva talks by capital-based policy-makers; annual meetings of the WTO Ministerial Conference (as opposed to every 2 years); and a WTO summit of the heads of state of Members every five years.

[17] Wolfe (2007) concludes a detailed analysis of WTO operating practices with the observation that If the WTO is medieval, it is because the world is as well.

[18] See, e.g., Hoekman and Kostecki (2009) and Wilkinson (2006).

[19] Chairs also play an important role in dispute settlement panels. Busch and Pelc (2009) find that panels led by experienced chairs are far less likely to have their rulings reversed by the Appellate Body; the experience of the

has been argued that more empowered secretariat could help ensure that all views are reflected, that the distributional dimensions of proposals are better understood (made more transparent) and that alternative potential compromises are put on the table. Ismail (2009a) argues that the WTO should consider the use of "supranational" chairs drawn from the ranks of the secretariat where a suitable chair is unavailable from among the members. More generally, Odell (2005) notes that there is little in the way of formal terms of reference or a code of conduct for Chairs: all that is required in the relevant WTO document addressing this matter is that "chairpersons should continue the tradition of being impartial and objective, ensuring transparency and inclusiveness in decision making and consultative processes; and aiming to facilitate consensus."

The Secretariat

The role of the WTO secretariat extends beyond merely servicing the membership. As noted by Esty (2007), the secretariat plays a role in agenda setting and structuring the interactions that occur in formal meetings. It also acts as the institutional memory for the trading system—an important role given regular turnover of delegations in Geneva and capitals—and provides much of the documentation/drafting for dispute settlement panels.[20]

The Sutherland report called on members to bolster the role of the secretariat, permitting it to do more in terms of providing intellectual leadership and undertaking policy analysis. Proposals to expand the remit of the secretariat to strengthen its monitoring role, undertake analysis and provide better access to data have been pursued to a greater extent than have suggestions to give the secretariat greater powers of initiative. As noted by Lamy (2009), echoing the Sutherland report, to be more effective in supporting the trading system the secretariat needs stronger research, analysis and dissemination capacity, and must do more to compile and publish data on trade and trade policies. Lamy's vision is one where the WTO becomes more of a source of knowledge and analysis on global trade statistics and policy, thereby becoming more effective in its support for negotiations, monitoring, dispute settlement, technical cooperation and outreach. The WTO membership has been taking steady steps in this direction, as reflected in the launch of an annual analytical report by the Economic Research and Statistics Division on a trade policy topic; closer collaboration with academic institutions in developing countries, including a program of WTO "chairs" (support for academics focusing on training and research in trade); as well as initiatives to expand monitoring (discussed below).

Following the creation of the WTO in 1995, many developing country governments, as well as numerous NGOs based in both poor and rich countries, suffered from a "Uruguay Round hangover" – a perception that the results of the round were unbalanced—see e.g., Finger (2007). Analysis of the outcome of the negotiations suggested that the net benefits for many developing countries in narrow market access terms were limited, and that the costs of implementation of some WTO disciplines could be significant. The result was a push for more effective and more technical assistance. One response was the creation of a special trust fund in which grants for technical assistance would be placed by donors, with the Secretariat reporting to the WTO Committee on Trade and Development on the use of funds. At the time of writing the trust fund had an annual budget of some CHF 25 million, equivalent to some 10

other panelists, by comparison, is inconsequential. The implication they draw is that the WTO would be well served by establishing a pool of permanent chairs.

[20] In part this reflects the fact that panelists fulfill the job on a part-time basis. See Nordstrom (2005) for an analysis of the roles played by the WTO secretariat.

percent of the WTO budget.[21] This has supported an extensive program of technical assistance seminars in developing countries. While a response to demand, this has imposed a significant burden on WTO staff. Greater reliance on third parties and outsourcing would free up the secretariat for other tasks.

Access and participation by civil society

An active debate was initiated towards the end of the 1990s on the legitimacy, governance and coherence of the multilateral trading system. In the first decade of the WTO many NGOs held the view that the WTO did not allow them to express their views and engage with the institution. WTO members countered that the WTO is an inter-governmental organization, and that NGOs should engage on the substance of matters covered by the WTO through the domestic processes that determine national policies and positions. This argument was less than compelling to civil society, given that other organizations such as the OECD, ILO and UN had developed mechanisms through which NGOs could be accredited and express their views on substantive issues. NGOs such as Consumers International proposed that the WTO introduce accreditation of international NGOs to grant them observer status, following the example of other international organizations and release draft agendas of meetings to facilitate national consultation.

Various initiatives were taken by the WTO in response to NGO pressure for greater openness and access. An annual Public Forum has become one of the platforms for dialogue with NGOs—with participation from around the globe (Piewitt, 2010). Decisions by WTO members to de-restrict many documents more rapidly and to make them accessible to the public through the Internet have done a lot to improve transparency relative to the GATT years. In 2008 a pilot project was implemented granting Geneva-based NGOs permanent access to the WTO premises. Decisions by parties, panels and the Appellate Body in specific disputes have also increased the scope for NGOs to express views in cases (see below). Overall, the criticism of the WTO by NGOs is today much more muted than 10 years ago, reflecting the various steps that have been taken to enhance transparency.

Linkages to national parliaments

A number of commentators and NGOs have argued that the legitimacy of what is negotiated in the WTO would be enhanced if there was more direct and formal involvement of national parliaments in the deliberations of the WTO (Mann, 2004; Steger, 2009). Given that legislatures generally must ratify agreements one rationale for stronger links to parliaments is that it would generate more support for the WTO in national polities. The most far-reaching proposals on this front call for the creation of a "WTO Parliament" with representatives from all Member States (Bellmann and Gerster, 1996). Shaffer (2004) addresses the policy arguments for and against the addition of a parliamentary dimension to the WTO. He argues that one criterion to assess the merits of such an initiative is whether it would increase the voice (enhance participation) of developing countries and thus offset some of the asymmetry in power and capacity that prevails in the WTO.

The suggestion for greater engagement by legislators in the WTO has been opposed by many WTO Members, including developing countries. Their view is that the WTO is an inter-governmental institution and that negotiating trade policy is a matter that falls in the purview of governments, with the role of national legislatures being to provide the mandate for, and approval of, what is negotiated. Here, as in other areas of proposed reform, the approach that has been taken by WTO members has

[21] Esty (2007) argues that a more robust structure of administrative law would help improve the institutional effectiveness of the WTO, and overcome perceptions of a "democratic deficit" and the WTO's reputation for opaque decision-making that is susceptible to special interest manipulation.

been pragmatic. Starting in 2001, international parliamentary conferences on the WTO have been organized by the Inter-Parliamentary Union in cooperation with the European Parliament, both in Geneva and at WTO Ministerial Conferences. A network approach has emerged, with parliamentarians working through bodies such as the Inter-Parliamentary Union to engage on WTO issues.

4. Forum for negotiations

Whereas in the first years of the WTO the focus of institutional reform proposals was mostly on the executive functions of the organization, starting in the mid 2000s concerns increasingly were directed at the efficacy of negotiating procedures and mechanisms.

Agenda-setting and trade negotiating rounds

The trading system historically has developed the rules of the game and defined national commitments through broad "rounds" of negotiations. The premise of this approach is that by spanning many subjects and products, issue linkages can be made that increase the potential gains from trade. An often remarked upon consequence is that rounds can (and do) take a long time—the more issues, the more complex the negotiation. Many have argued that a smaller negotiation set would reduce the length of negotiations and enhance the interest of the private sector in the WTO (e.g., Messerlin, 2010). However, the experience to date has been that WTO members have a revealed preference for broader negotiations.

The key issue here is defining an agenda. This generally emerges from informal interactions among WTO Members (via the concentric circle/coalition approaches) and/or is determined by prior agreements embedded in the results of past negotiations. Thus, the Uruguay Round agreements called for new negotiations to be launched on agriculture and services in the year 2000. One reason for the launch of the Doha Round was a perception by many WTO members that the prospects of success would be enhanced by expanding the agenda to additional issues.

Getting the agenda "right" is obviously critical—there must be something for everyone, in the sense that any agenda must include subjects that important constituencies in each WTO member will support. Establishing the agenda therefore requires extensive consultations within countries and between countries. If the process results in an agenda that does not have broad-based support or includes issues that are (or are seen to be) zero-sum the prospect of success will be greatly reduced.

It can be argued that in the case of the Doha Round the agenda was badly crafted, helping to explain why the round has lasted so long. Thus, developing countries and large parts of the global business community were not convinced that extending the WTO to cover competition, investment and procurement policies would generate meaningful benefits. Having papered over a lack of consensus at the Doha ministerial meeting to include these subjects on the agenda of the new round, Ministers agreed to revisit the question at their next meeting, two years down the road. As a result, the first years of the Doha Round were more about the agenda than substantive negotiations. One lesson from the Doha experience is that the agenda-setting process could benefit from a more formal process of consultation with national stakeholders regarding what matters most to them. At the end of the day trade agreements must be ratified, which implies that they need domestic political support.

Negotiating coin—binding of policies vs. liberalization

Policy commitments are the negotiating coin in the WTO—enforceable promises not to use certain policies or not to exceed a certain level of protection for a product or sector. This may not do much to interest the business community if what is being committed to by a government does not imply an

actual reduction in barriers to trade. But binding has value: it reduces uncertainty regarding the conditions of competition on a market, which is beneficial to investors. An important source of tension between WTO members concerns what a commitment to bind policy is "worth." Many countries may reduce barriers to trade unilaterally in the period between negotiations. How much "credit" should be given for such autonomous reforms in a subsequent negotiation has been a source of contention. The absence of clarity can have perverse effects in that a government may delay beneficial reforms if it thinks that trading partners will simply "bank" its reforms and not recognize them as "concessions" in a future multilateral trade round. Explicit agreement to "count" unilateral liberalization as much as what a country may agree to liberalize at the end of a round would help remove this distortion.

The Single Undertaking

One of the premises of the Single Undertaking rule in multilateral negotiations is that it ensures that all participants will obtain a net benefit from an overall deal. By allowing for issue linkages and requiring a package deal, countries can make tradeoffs across issues and increase the overall gains from cooperation. However, the approach also creates potential "hold-up" problems and can have the effect of inducing negotiators to devote (too) much time to seeking exceptions and exemptions. The failure to conclude the Doha Round has led many to raise questions about the Single Undertaking approach to negotiations and to propose that WTO members shift towards "variable geometry." Proponents argue that a shift back to a club-type approach in considering new disciplines offers the opportunity for a subset of the membership to move forward on an issue, while allowing others to abstain (e.g., Lawrence, 2006; Levy 2006; 2010; Martin and Messerlin 2007; Jones, 2010; Messerlin, 2010). A difference between proposals to relax the single undertaking constraint is whether this should allow for agreements that apply only to signatories or whether the MFN principle should continue to apply.

Variable geometry with MFN: critical mass

The notion of critical mass used in the context of negotiations differs from that discussed earlier. It is equivalent to what Schelling (1978) called a "*k*-group strategy" – seek to identify the minimum number of countries ('*K*") out of a larger set ("*N*") that internalize enough of the total potential gains from cooperation for them to permit free riding by the remaining *N-K* players. The practice has always been a major feature of trade negotiations as a result of the MFN rule: those countries that are asked to make concessions in an area have a clear interest to minimize free riding and will therefore seek to ensure that all the major players are part of a deal. Finger (1974, 1979) showed that such "internalization" – defined as the sum of all imports originating in countries with whom a country exchanges concessions as a percentage of total imports of goods on which concessions are made – was some 90 percent for the US in the Dillon (1960–1) and Kennedy (1964–7) Rounds. A similar ratio was required to conclude the Information Technology Agreement (Hoekman and Kostecki, 2009).

As argued by several ex-WTO officials, Gallagher and Stoler (2009) and Harbinson (2009), among others, an explicit shift towards 'critical mass' negotiations that aim at agreements that are applied on a MFN basis would move the WTO back towards a negotiating modality that has a proven track record of success. The basic question however is to what extent this would entail a change in modus operandi (Wolfe, 2009). Arguably it would not, as effectively it is how the GATT always operated in the pursuit of market access negotiations. In the case of services, a critical mass approach is de facto the modus operandi (Hoekman and Mattoo, 2010). Thus, the approach would only make a difference if applied to the decision-making process at the end of a negotiation or to approve a rule change, i.e., allowing a majority to move forward without the consent of a (small) minority. This was discussed above.

Variable geometry without MFN: plurilateral agreements

The presumption of the critical mass approach to negotiating agreements is that any agreement must be applied on a MFN basis. An alternative is to relax the nondiscrimination constraint and let a subset of countries conclude agreements that they apply only to fellow signatories (Levy, 2010). Such plurilateral agreements are already allowed for in the WTO although there is effectively only one such agreement in effect: the Agreement on Government Procurement (GPA).[22]

Plurilateral agreements are a vehicle for like-minded countries to cooperate in areas not (yet) addressed by the WTO. They allow countries not willing to consider disciplines in a policy area to opt out. Accommodating diversity in interests through greater use of plurilateral agreements was one of the recommendations of the Warwick Commission report. Lawrence (2006) discusses what he calls the club-of-clubs option and argues that this approach can help the WTO address the diverging interests of its members in an efficient way. He suggests a number of criteria, including that: clubs be restricted to subjects that are clearly trade-related, any new agreement is open to all members in the negotiation stage – i.e., participation in the development of rules should not be limited to likely signatories; and that club members be required to use the DSU to settle disputes, with eventual retaliation being restricted to the area covered by the agreement (as is the case under the GPA).

While greater use of plurilateral agreements will result in a multi-tier system with differentiated commitments and some erosion of the MFN principle – as club members would have the right to restrict benefits to other members – there is already significant differentiation in the level of obligations across countries. A constraint in pursuing the plurilateral route is that the incorporation of a plurilateral agreement into the WTO requires unanimity. Thus, for this approach to become feasible a necessary condition is likely to be that this rule be relaxed (Tijmes-Lhl, 2010). Others argue that no such change is needed and that non-members should be comfortable with the terms of any plurilateral agreement that is introduced (Lawrence, 2006). Wolfe (2007) raises a number of objections to the "club-of-clubs" idea, noting that clubs would be "parasitic on limited WTO resources," will invariably include OECD countries that often will already have achieved whatever level of cooperation/discipline is suggested for a new issue; and that many non-OECD countries are not going to have the capacity to participate in negotiations that will set a precedent. Clubs will define the rules of the game in an area that will be difficult to change subsequently if and when initial non-signatories decide to participate (Hoekman, 2005).

Accession

Some two dozen countries have joined since the WTO was established – the majority of them developing and transition economies. The process of accession to the WTO is a long hard road for most countries, often requiring major policy changes, adoption of new legislation and establishment or strengthening of domestic institutions. This compares to the accession at a stroke of a pen that applied to former colonies when they acceded to GATT upon independence – the result of Art. XXVI:5(c) GATT, a provision that expired with the creation of the WTO. A December 2002 decision by the General Council called for the exercise of restraint by WTO members in seeking concessions and commitments from acceding LDCs. In practice this decision has not appeared to have had much impact—the post-2002 accession process for LDCs has remained arduous. Of the 29 countries in the accession queue at the end of 2009, 16 had been engaged in the process for over a decade.

[22] The only other plurilateral agreement, on civil aircraft, is no longer effective following US objections to what it regarded as excessive launch aid and other support for the development of the Airbus A380 by the EU and the launch of a formal dispute. See Hoekman and Kostecki (2009).

Alternative approaches that have been put forward in the literature would use the WTO accession process more as a vehicle to identify and implement national reforms that reduce trade costs and improve competitiveness. Imposing a one-size-fit-all set of legal obligations through a long and costly accession process entails a potentially serious opportunity cost for governments of small, poor countries (in terms of scarce administrative capacity/personnel and credibility) while not necessarily generating much in the way of benefits for traders—thus resulting in less "ownership" and support of the institution (Jones, 2010).

5. Administering the Dispute Settlement Understanding

The operation of the WTO dispute settlement system is the subject of a huge literature. A review of the DSU launched in 2000 (based on a Uruguay Round Ministerial Decision) became part of the Doha Round agenda, although it is not formally part of the single undertaking. The review generated various proposals to strengthen the DSU through the establishment of a permanent panel body (i.e., a true first instance court); explicit multilateral review of bilateral settlements; additional rights for third parties in disputes; and making the dispute settlement process more transparent, e.g., by making the taking of evidence open to the public (Esty, 2007). What follows briefly summarizes some of the proposals for reform. Most members and observers agree that the system – warts and all – is functioning reasonably well.

Professionalization of the Panel Stage. As mentioned above, panelists are part-timers, nominated by the secretariat from a roster that has been approved by WTO members. Proposals have been made for a permanent body of panelists, on the basis that this would improve the quality and consistency of reports and reduce the discretion of (reliance on) the secretariat in the selection of panelists and drafting of findings.

Standing. Only governments can bring disputes in the WTO. This implies that those directly affected by a violation of a WTO commitment – exporters – cannot go to the WTO directly. They must convince their government to bring the case, and who may decide that it is not in the general interest to do so. This arguably reduces the relevance of the WTO to the trade community. One option to address this potential problem is to give export interests direct access to the WTO. In an analysis of the likely effects of such a change in modus operandi, Levy and Srinivasan (1996) argue that in addition to the obvious point that a government may have good reasons not to pursue a trade case from a national welfare perspective, removing a government's discretion to decide whether to prosecute a case can also make it more difficult to make commitments in the first place.[23]

Third parties. WTO members can participate in disputes as third parties. (By participating as a third party a WTO member reserves its rights in a dispute and can make submissions to the panel). In the DSU review, a number of proposals were made to make it easier for any country to participate in disputes, including in the consultations stage. The DSU limits participation by third parties in consultations to members that have a substantial trade interest (Art. 4.11 DSU). Busch and Reinhardt (2006) argue that

[23] Private parties can participate in dispute settlement to a limited extent through so-called amicus curiae briefs. This was a hotly contested matter in the early WTO years but is an example where the WTO has been responsive. Multiple decisions by the Appellate Body have ruled that such briefs may be considered by panels – as they have the power to seek information and advice, and are free to ignore any brief sent to them. Many WTO Members have opposed consideration by panels of such briefs on the basis that the WTO is government-to-government. Rulings on this matter have been regarded as an example of the adjudicating bodies over-stepping their mandate. However, such briefs have proven to be useful. For example, in the *EC-Sardines* dispute the brief submitted by the UK Consumers Organization was an important piece of evidence that the EU claim that the contested measure was justified on the basis of consumer protection was spurious (Hoekman and Kostecki, 2009).

widening access for third parties may make it more difficult to negotiate a settlement. Thus, the apparent advantages on greater inclusion and 'multilateralization' of disputes may come at the cost of fewer early settlements and more disputes. This matters because early settlements tend to be 'better' not just in the sense of generating compliance at lower cost but also result in greater concessions than if a case is litigated (Busch and Reinhardt, 2001).

*Remedies***.** A government found to be in violation of the WTO is generally told to bring its measures into compliance with the rules. This may not provide enough incentive to the private sector to pursue a dispute given the length of time associated with the process—some 3 years—and the lack of any prospect for compensation for damages incurred. WTO members have been unwilling to go down the compensation track, due to uncertainty regarding the possible repercussions (potential liability). Some countries have also argued that their legal systems prohibit compensation. Historically, developing countries have favored the introduction of rules that would allow for claims for monetary damages to be paid to them in instances where illegal measures are imposed against them by industrialized nations. Not surprisingly, GATT contracting parties always rejected this. 'Money damages, said the developed countries, were simply outside the realm of the possible. In effect, they were saying, GATT was never meant to be taken seriously' (Hudec, 2002).[24]

Enforcement capacity. There are asymmetric incentives for countries to deviate from the WTO, as the ultimate threat that can be made against a member that does not comply with the DSB is retaliation. Small countries cannot credibly threaten this because raising import barriers will have little impact on the target market while being costly in welfare terms. A possible way out of this dilemma is for small trading nations affected by a dispute to form alliances and retaliate as a group whenever one of the members is affected. More generally, one can conceive of the rules being enforced through retaliation by all WTO members, not just affected members. However, under WTO rules only countries with a trade interest may bring a case. Those not affected cannot participate.

Collective retaliation – a standard recommendation by economists for many years – has always been resisted by WTO members on the basis that the objective is not to punish but to maintain a balance of rights and obligations (the reciprocal bargain). A practical problem with collective retaliation is that it implies a direct intrusion in sovereignty– the WTO would be requiring its members to raise tariffs. This explains why proposals along these lines (e.g., Pauwelyn, 2005b) have not gone anywhere.

A number of suggestions have been made in the DSU review and in the literature to address both the asymmetric retaliation capacity constraint and the economic inefficiency/costs of raising tariffs. An innovative proposal to address both problems was suggested by Mexico in 2003: permit WTO members to trade their rights for retaliation in instances where a losing party refuses to implement a ruling. Bagwell, Mavroidis and Staiger (2006) argue this makes sense from the perspective of developing countries as long as the non-complying party can also bid for the rights. However, they stress that their analysis does not imply that introducing the possibility of tradable remedies into the WTO system is necessarily a good idea given the likely political ramifications of a government imposing WTO-sanctioned retaliatory tariffs against other governments with whom it has no unresolved WTO dispute.

A basic problem with retaliation is that it involves raising barriers to trade, which is generally detrimental to the interests of the country that does so. Lawrence (2003) has suggested a shift to trade compensation and proposed adoption of what he terms contingent liberalization commitments. In a trade round WTO members would designate sectors or methods for liberalization in the event they

[24] The DSU review generated a number of proposals by developing countries for retroactive remedies, including payment of legal costs by the losing party. However, such proposals were all limited to situations where a WTO member does not implement a DSB ruling.

should fail to comply with DSB findings. This would make retaliation redundant, thus improving global welfare, and level the playing field by addressing the problem of asymmetric capacity to retaliate.

An alternative is direct compensation. Bronckers and van den Broek (2005) argue in favor of financial payments between governments to address "contract violations," and note that there are examples of this in the trade area, in particular bilateral trade agreements. Thus, FTAs between the US and Australia, Chile, and Singapore, as well as DR-CAFTA provide for fines (monetary compensation) when IPRs are violated. A practical advantage of financial transfers is that they do not need to be applied on a MFN basis. However, a number of arguments have been made suggesting that in practice compensation may not do much to alleviate the "retaliation constraint" and could have the perverse effect of increasing non-compliance with the WTO (Mercurio, 2008). [25]

Resource constraints and costs of dispute settlement. There are obvious asymmetries in capacity and resources between WTO members that affect their ability to use the DSU. Article 27:2 DSU calls for technical assistance to be provided to developing countries by the WTO secretariat. The secretariat's ability to satisfy this mandate is very limited, in part because assistance can only be provided *after* a member has decided to submit a dispute to the WTO. The ability of developing countries to use the DSU was enhanced with the creation of the Advisory Centre on WTO Law (ACWL), one of the few concrete outcomes of the 1999 Seattle ministerial meeting. Many proposals have been made that would complement such efforts to augment access to legal expertise by reducing the need for it. Examples include putting in place a "fast track" mechanism for smaller disputes – what Nordstrom and Shaffer (2007) call a small claims procedure, under which disputes involving only a small value of trade would be dealt with by a standing body of panelists on an expedited time frame with decisions not subject to appeal and remedies that include payment of damages – i.e., binding arbitration. Other possibilities that have been proposed include an ombudsman or 'special prosecutor' (Hoekman and Mavroidis; 2000; Warwick Commission, 2007) that would have the mandate to identify and contest potential WTO violations on behalf of developing countries. Such outsourcing of enforcement could help address both the resource constraints and the incentive problems (fear of cross-issue linkage) that may impede developing country governments from pursuing cases. Although cases brought by the special prosecutor could not be backed by the threat of retaliation (as they are not brought by or on behalf of a government), findings against a WTO member could generate moral pressure to bring measures into conformity.

Summing up, many proposals have been made to strengthen the dispute settlement system. A recurring theme in the economic analyses of the relatively weak enforcement mechanisms in the WTO is that this is endogenous: it reflects the incomplete nature of the WTO contract (Horn, Maggi and Staiger, 2010). As a result governments do not want to subject themselves to a process where they may be subject to penalties that they deem inappropriate given the absence of *ex ante* specificity on the rules that will apply. Given that countries will be both complainants and respondents over time, Ethier (2009) argues that this gives governments an incentive to agree to remedies that are limited in scope, i.e., one that does no more than maintain the original negotiated balance of concessions. Stronger enforcement – whether it takes the form of more effective remedies, greater collective action, expansion of standing, etc. – can have the perverse effect of inducing countries to make fewer commitments in the first place,

[25] Limão and Saggi (2008) show that a system of monetary fines that is supported by the threat of tariff retaliation is more efficient than one based on retaliation alone, but note that if the ultimate threat to enforce compensation payments is to raise tariffs, nothing will have been achieved. In order to make a system of monetary compensation "work" without the threat of retaliation, agreement is needed *ex ante* to contribute to a multilateral "escrow account" (in effect, each WTO member would post a bond).

resulting in an outcome that is inferior to one where there is weaker enforcement, in the sense that the expected benefits of cooperation are higher (Lawrence, 2003).

6. Transparency: the trade policy review mechanism, notifications and surveillance

Transparency is a critical input into WTO processes as well as an important output of the organization. Many of the WTO processes and requirements aim at the generation of information—through notification requirements; formal surveillance; the possibility of cross-notification; review of proposed measures in committees; etc. There are over 200 notification requirements embodied in the various WTO agreements and mandated by Ministerial and General Council decisions (Hoekman and Kostecki, 2009). The secretariat is required to provide a listing of notification requirements and members' compliance on an ongoing basis and circulate this semiannually to all members. It is generally recognized that members are not taking notification requirements seriously enough—in many cases notifications are incomplete and often are not made on a timely basis when they occur.

The WTO has important surveillance functions. The membership as a whole periodically reviews the trade regimes of members through the Trade Policy Review Mechanism (TPRM). The reviews are supplemented by an annual report by the Director-General that provides an overview of developments in the international trading environment. In recent years two initiatives have been taken to improve the surveillance function: a December 2006 decision by the General Council to provisionally establish a new transparency mechanism for preferential trade agreements (PTAs) and an initiative under auspices of the TPR to monitor trade policy responses to the financial crisis that had erupted in late 2008. The latter followed on the creation of an internal task force by the Director-General to assess the trade implications of the crisis. The crisis monitoring initiative revealed that the Secretariat could not rely on notifications to the WTO for up-to-date information and that publication of the analysis was important to improve quality and coverage.[26]

The TPR process for WTO members has had less impact than originally envisaged when it was put in place. In a recent analysis, Ghosh (2010) concludes that reviews do not generate peer pressure and are often silent on important matters – as reflected in a limited correlation between disputes initiated against a country and whether these were identified in a TPR report. In part this is explained by Secretariat staffing and resource constraints.

Many economists have long argued that the public good of information is currently underprovided by the WTO and that this reduces its value as a tool to promote better policies in members (see, e.g., Messerlin, 2010; Stoeckel and Fisher, 2008). Large lacunae in information exist on a variety of relevant policies affecting international integration. Even in the area where information is the best — barriers to goods trade — the focus of data collection (and thus analysis) is mostly on statutory MFN tariffs. Data on the types of nontariff policies that are increasingly used by countries—such as subsidies or excessively burdensome product standards—are not collected on a comprehensive and regular basis. Matters are much worse when it comes to information on policies affecting services trade. Steps to remedy these gaps – through strengthening and more effective enforcement of notification requirements, cross-notification, as well as direct collection of data (including from secondary sources) – are a precondition for better policy analysis and monitoring of policies. For the secretariat to do more to compile data on a comprehensive basis, WTO members must give it the mandate and resources to do so, and permit the

[26] The first WTO monitoring report was kept restricted. The lack of public provision of information by the WTO in the early stage of the crisis played a role in inducing other entities to step in, most prominently the Global Trade Alert, a joint venture of think tanks around the world.

results to be made publicly available in a format that lends itself to analysis by third parties (Hoekman and Kostecki, 2009).[27]

For greater transparency of policies and outcomes to have an impact on policy in WTO members it is important that it feeds into and is used in domestic policy formation and assessment processes and is relevant for traders and other stakeholders in each country. Greater involvement of think tanks, policy institutes and private sector associations in both the production and dissemination process of TPRs would increase their impact at the national level. One way of stimulating greater engagement would be for WTO members to commit to establish an entity that would have the mandate to review and report on national trade and related regulatory policies. A good example of a model that has proven to be very effective is the Australian Productivity Commission.

7. Enhancing coherence of global economic policy-making

A precondition for greater coherence in international and national trade-related policymaking is that WTO rules support development, are *seen* to do so by stakeholders, and that WTO rules are complemented by supply-side initiatives to address trade capacity constraints, supported by "aid for trade" (Hoekman, 2002). Clearly the substance of WTO disciplines – which is not the focus of this paper – matters a lot. But the importance of complementary inputs ("flanking measures") illustrates why enhanced coherence of policies is a legitimate concern: the WTO has no financial resources to help poor members improve their trade capacity—this must come from private investment, governments and development organizations.

Significant achievements during the Doha Round were the launch of a multilateral aid for trade initiative and the establishment of the Enhanced Integrated Framework for trade-related technical assistance. Although not formally tied to the negotiations and not legally enforceable, these initiatives signify recognition on the part of the membership that market access and rules were not enough. What the aid for trade initiative did was to engage development agencies (bilateral and multilateral) more in the trade integration agenda and raise the profile of trade issues in the process of determining priorities for investment and policy reform at the national level—an example of the WTO fulfilling its coherence mandate.[28]

The trade facilitation negotiations in the Doha Round illustrate how the WTO can be used by developing countries to make a difference on the ground for traders and producers. A key innovation that was introduced in the trade facilitation talks by developing countries was to link implementation of any agreement to the provision of financial and technical assistance. Another feature of the negotiations was to engage the specialized agencies with expertise in the area – such as the World Customs Organization, the World Bank, UNCTAD, and the IMF – in the process. These agencies, together with the WTO, undertook assessments at country level of the trade facilitation situation, gaps and priorities. The process raised national awareness of the importance of trade facilitation. This awareness raising affected the development (donor) community as well. As a result, the number of projects and level of resources allocated to this area increased significantly relative to the late 1990s and early 2000s.

[27] An alternative is to bolster transparency through institutions that extend beyond the WTO membership. Proposals have been made to create an international public interest body that would act as a forum to explore the technical (economic, scientific) and social impacts of WTO rules and national trade policies. Such a body could also analyze aspects of specific contentious issues or proposed areas for action at the WTO (Hoekman and Mavroidis, 2000). Cottier (2007) proposes the creation of a Consultative Committee comprising a mix of officials and outside experts that would act as a think tank and develop conceptual ideas and proposals on systemic questions.

[28] Winters (2007) argues that coherence starts (and mostly ends) at home in that national governments must define priorities and engage with the various international organizations extant to pursue their objectives.

Independent of what happens with the Doha round, this is a positive outcome that is due in part to the launch of the negotiations and the focal point they provided.

The focus of the WTO is primarily on discriminatory policies, not on the substance of domestic regulation (TRIPS being the major exception). Insofar as the WTO deals with regulatory "behind the border" policies, the aim is to ensure that these are not impediments to market access (are applied on a nondiscriminatory basis; are not more trade-restrictive than necessary). The specifics of regulation are left to the discretion of governments. In practice the "benign neglect" of domestic regulation implies that there are no assurances that liberalization will in fact be beneficial (increase national welfare) as trade negotiations are not concerned with the adequacy of national regulation and enforcement institutions.

Greater effort by WTO members to put in place mechanisms to increase information and dialogue on regulatory impacts and alternative options/good practices is needed to complement the WTO negotiating process. International relations scholars—e.g., Abbott and Snidal (2000), Chayes and Chayes (1995)—have argued that "soft law" mechanisms are needed to sustain cooperation. These can aim at learning about an issue, sharing experiences with regulation and reform, generation of information on what has been done in different countries, what works and why, and what did/does not. An important function of such mechanisms is to bring in sectoral regulators who may not think about trade but are the "owners" of the policies that affect trade opportunities. Learning is critical when it comes to the substance of policy rules—officials and stakeholders need to understand what the implications are of a given proposed rule and how it will impact on the economy. Establishment of fora aimed at fostering a substantive, evidence/analysis-based discussion of the impacts of sector-specific regulatory policies could help build a common understanding of where there are large potential gains from opening markets to greater competition, the preconditions for realizing such gains, and options to address possible negative distributional consequences of policy reforms. This need not be done in or by the WTO. Existing institutions that perform such functions include APEC and the OECD. The challenge is to extend such mechanisms to cover all interested countries, which may be most effectively pursued by building on existing regional instruments (Hoekman and Mattoo, 2010).

8. Conclusion

On the occasion of his reappointment as Director General of the WTO, Pascal Lamy argued that no major surgery or overhaul was needed in terms of the governance of the institution; instead, there was "rather a long to-do list to strengthen the global trading system" (Lamy 2009). Others disagree. Those calling for more structural reforms span a wide spectrum, including ex-WTO officials, negotiators, and a significant cross-section of academics.

The fact that the WTO was seen to be a closed shop in its early days and did a poor job of organizing Ministerial Conferences gave rise to numerous proposals to improve external and internal transparency. Many changes on this front were in fact made, and most observers would recognize that the WTO has responded to the criticisms that were generated in the run-up and aftermath of Seattle. Despite a large number of suggestions to bolster the DSU, most members appear to be satisfied with the status quo in this area. Concerns with the WTO more recently have centered more on the apparent inability to get to yes in the Doha Round. Proposals to address what analysts regard as contributing factors to the failure of efforts to conclude a deal have centered on the Single Undertaking practice and consensus-based decision-making.

It is not at all clear however that suggestions to move away from these norms would be effective. There are strong reasons why these practices have become core WTO operating principles. The fact of the

matter is that the lack of progress in the Doha Round reflects the assessment of major players that what has emerged on the table is not of sufficient interest to them—it is not that a small group of small countries are holding up a deal. Trade agreements are self-enforcing treaties: if the large players do not see it in their interest to deal, no amount of fiddling with alternative institutional arrangements will make a difference. Any outcome, even if endorsed by a majority, will not be implemented if one or more large countries find it unacceptable.

Some of the proposals for institutional reform of the WTO appear to ignore incentive constraints. The WTO is an incomplete contract. One result is that governments have a revealed preference for maintaining tight control over the functioning of the organization. There are good reasons why there seems to be a "consensus on consensus", panelists are not full-time professionals, why dispute settlement is strictly an inter-governmental affair and remedies are not retrospective, why chairs of WTO bodies are drawn from the membership, why the secretariat has limited right of initiative, etc. Proposals to reduce the role and influence of individual members are therefore not likely to have much resonance. Indeed, much of the economic analysis of specific proposals for WTO reform suggests that the effects of moving away from the status quo on the incentives to cooperate may be perverse—reducing the willingness to agree to rules and to make commitments.[29]

Given that there is already significant scope to apply critical mass and analogous approaches that allow differentiation across the membership, these considerations suggest reform efforts would more productively center on mechanisms to assist in the process of "getting to yes". The various proposals to establish a consultative body of some type do not touch on the sovereignty individual WTO members. A consultative entity could play a variety of roles, ranging from helping to define a negotiating agenda to identifying possible compromises and trade-offs. It could also contribute to the needed process of (re-) considering what the role of the WTO should be as the agenda shifts increasingly towards "behind the border" policies.

Information, knowledge and understanding of the effects of trade and regulatory policy are critical inputs into international cooperation. This applies to the agenda-setting, the negotiating and the implementation-cum-monitoring stages of trade agreements. Whereas export interests have an incentive to monitor implementation of agreements by trading partners, a key insight of the economic literature on trade agreements as domestic commitment devices is that there must be domestic enforcement if the country is small (Bown and Hoekman, 2005). Not enough attention has been devoted to this by the WTO – and the literature on WTO reform. More and better data on applied policies, on the countries affected/targeted, and the specific products (tariff lines) involved is a public good. This public good is underprovided by the WTO, a gap that is only partly offset by efforts by other organizations (such as UNCTAD, the ITC, and World Bank) and civil society initiatives such as the Global Trade Alert (see http://www.globaltradealert.org/). The 2008-09 financial crisis revealed the importance of timely data on trade policies, trade finance and trade flows—and the fact that there were important lacunae in all three areas. Generation, compilation and publication of such information arguably should be a core task of the WTO and thus the focus of institutional reform, including clarification/strengthening of notification requirements and more regular monitoring of – and reporting on – compliance.

The negotiation literature stresses that negotiators need to learn about the preferences and interests of other parties, as well as their own, a process that that takes time. Learning is also critical when it comes to the substance of policy rules—it often may not be clear to officials and to stakeholders what the implications are of a given rule and how it will affect their policy options. Analysis of reform should focus

[29] Indeed, some have argued that the increased "legalization" of the WTO relative to the GATT has already had that effect, in part by putting too much of a burden on the DSU. See. e.g., Barfield (2001, 2010) and Evenett (2010).

more on how to bolster the role of the WTO in promoting this "learning dimension." Better understanding and related mobilization of domestic constituencies in favor of specific policies and policy disciplines will also benefit negotiations and enforcement – in part by identifying where the traditional mechanism of negotiating binding, enforceable disciplines is appropriate and where it is not.[30] This is a nontrivial challenge as it requires institutional mechanisms that encourage dialogue and communication, informed by objective analysis and country experiences.

Whether such mechanisms can be created within the WTO is an open question given the culture of negotiation and the mercantilist spirit that often appears to dominate interactions between members.[31] But complementary mechanisms are clearly needed to promote regular dialogue and cooperation on regulatory matters as these are increasingly the source of market segmentation and the focus of concern of firms. One explanation for the proliferation of deeper integration (regional) agreements is that the institutions that are associated with such arrangements focus much more explicitly on this agenda than does the WTO. Even if there are no binding (legally enforceable) rules (as is the case in APEC for example, and many of the provisions of Association Agreements negotiated between the EU and trading partners), the working groups, committees and councils that are operate under the auspices of such initiatives over time help to promote a process of gradual improvement and convergence in regulatory regimes. The challenge looking forward is to determine whether, how and to what extent the WTO can play a role in "multilateralizing" what is happening in regional and other fora and fill the gaps in terms of what is not being (and cannot be) done among subsets of countries.

References

Abbott, K. and D. Snidal. 2000. "Hard and Soft Law in International Governance," *International Organization* 53(3): 421–56.

Auboin, M. 2009. "Restoring trade finance during a period of financial crisis: Stock-taking of recent initiatives," WTO working paper ERSD-16 (December).

Bagwell, K. and R. Staiger. 2002. *The Economics of the World Trading System* (Cambridge: MIT Press).

Bagwell, K., P. Mavroidis, and R. Staiger. 2006. "The Case for Tradable Remedies in WTO Dispute Settlement," in S. Evenett and B. Hoekman (Eds.), *Economic Development and Multilateral Cooperation* (London: Palgrave-McMillan).

Barfield, C. 2001. *Free Trade, Sovereignty and Democracy* (Washington DC: American Enterprise Institute).

Barfield, C. 2010. "Overreach at the WTO," VoXEU, http://voxeu.org/index.php?q=node/5581

Bellmann, C. and R. Gerster. 1996. "Accountability in the World Trade Organization," *Journal of World Trade*, 30(6): 31-74.

Blackhurst, R. 1998. "The Capacity of the WTO to Fulfill Its Mandate," in A. Krueger (Ed.), *The WTO as an International Organization* (Chicago: University of Chicago Press).

Blackhurst, R. 2001. "Reforming WTO Decision Making: Lessons from Singapore and Seattle," in K. Deutsch and B. Speyer (eds.), *The WTO Millennium Round: Freer Trade in the Twenty-First Century*, (London: Routledge).

[30] See, e.g., Hoekman and Vines (2007), Wolfe (2007), Feketekuty (2010) and Hoekman and Mattoo (2010) for elaborations on this theme.

[31] Recent experience suggests the WTO can play an effective role in facilitating exchanges of information. In the 2009-09 crisis it used a WTO Expert Group on Trade Finance to bring together representatives of the financial sector active in trade finance, multilateral banks and export credit agencies. This helped lead to a multilateral initiative under G20 auspices to expand support for trade finance during the crisis (Auboin, 2009).

Blackhurst, R. and D. Hartridge. 2004. “Improving the Capacity of WTO Institutions to Fulfill Their Mandate,” *Journal of International Economic Law* 7(3): 705-16.
Bown, C. and B. Hoekman. 2008. “Developing Countries and Enforcement of Trade Agreements: Why Dispute Settlement Is Not Enough,” *Journal of World Trade* 42(1): 177-203.
Bronckers, M. and N. van den Broek. 2005. “Financial Compensation in the WTO,” *Journal of International Economic Law* 8(1), 101-26.
Busch, M. and E. Reinhardt. 2001. “Bargaining in the shadow of law: early settlements in GATT/WTO disputes,” *Fordham International Law Journal*, 24: 158-72.
Busch, M. and E. Reinhardt. 2006. “Three’s a Crowd: Third Parties and WTO Dispute Settlement,” *World Politics* 58: 446-77.
Busch, M. and K. Pelc. 2009. “Does the WTO Need a Permanent Body of Panelists*?,” Journal of International Economic Law*, 12(3): 579-94.
Chayes, A and A. H. Chayes (1995). *The New Sovereignty: Compliance with International Regulatory Agreements*. Boston: Harvard University Press.
Cottier, T. 2007. “Preparing for Structural Reform in the WTO,” *Journal of International Economic Law,* 10(3): 497-508.
Cottier, T. and S. Takenoshita. 2003. “The Balance of Power in WTO Decision-Making: Towards Weighted Voting in Legislative Response,” *Aussenwirtschaft* 58: 171-96.
Ehlermann, C, and L. Ehring. 2005. "Decision-Making in the World Trade Organization: Is the Consensus Practice of the World Trade Organization Adequate for Making, Revising and Implementing Rules on International Trade?" *Journal of International Economic Law* 8 (1): 51-75.
Esty, D. 2007. “Good Governance at the World Trade Organization: Building a Foundation of Administrative Law,” *Journal of International Economic Law* 10(3), 509–27.
Ethier, W. 2007. “The Theory of Trade Policy and Trade Agreements: A Critique,” *European Journal of Political Economy* 23: 605-23.
Ethier, W. 2009. “Trade Agreements and Dispute Settlement in the WTO System,” in H. Beladi and E.K. Choi (Eds.), *Trade Disputes and the Dispute Settlement Understanding of the WTO: An Interdisciplinary Assessment* (Bingley, UK: Emerald Group Publishing, 349-67).
Evenett, S. 2005. “Can the WTO's System of Governance Rise to the Challenge of Sustainable Development?,”, http://www.ycsg.yale.edu/focus/gta/wto_rise.pdf
Evenett, S. 2010. “A future agenda for EU trade policy as if the real world really mattered,” VoXEU, http://www.voxeu.org/index.php?q=node/5560
Feketekuty, G. 2010. “Needed: A new approach to reduce regulatory barriers to trade,” http://www.voxeu.org/index.php?q=node/5208.
Finger, J. M. 1974, “Tariff Concessions and the Exports of Developing Countries,” *Economic Journal*, 335: 566–75.
Finger, J.M. 1979.”Trade Liberalization: A Public Choice Perspective,” in R. Amacher, G. Haberler, and T. Willett (eds.), *Challenges to a Liberal International Economic Order* (Washington DC: American Enterprise Institute).
Finger, J.M. 2007. “Implementation and imbalance: dealing with the hangover from the Uruguay Round,” *Oxford Review of Economic Policy*, 23(3): 440-60.
Gallagher, P. and A. Stoler. 2009. “Critical Mass as an Alternative Framework for Multilateral Trade Negotiations,” *Global Governance* 15(3): 375-92.
Ghosh, A. 2010. “Developing countries in the WTO Trade Policy Review Mechanism,” *World Trade Review* 9(3): 419-55.
Grynberg, R. (Ed.) 2006. *WTO at the Margins: Small States and the Multilateral Trading System*. Cambridge: Cambridge University Press.

Harbinson, S. 2009. "The Doha Round: 'Death-Defying Agenda' or 'Don't Do it Again'?," ECIPE Working Paper, Brussels.
Hoekman, B. 2002. "Strengthening the Global Trade Architecture for Development: The Post-Doha Agenda," *World Trade Review*, 1(1): 23-46.
Hoekman, B. 2005. "Operationalizing the Concept of Policy Space in the WTO: Beyond Special and Differential Treatment," *Journal of International Economic Law* 8(2), 405-24.
Hoekman, B. and M. Kostecki. 2009. *The Political Economy of the World Trading System.* Third Edition. Oxford: Oxford University Press.
Hoekman, B. and A. Mattoo. 2010. "Services Trade Liberalization and Regulatory Reform: Re-invigorating International Cooperation," CEPR Discussion Paper 8181.
Hoekman, B. and P. Mavroidis, 2000, 'WTO Dispute Settlement, Transparency and Surveillance', *The World Economy*, 23: 527–42.
Hoekman, B. and D. Vines. 2007. "Multilateral Trade Cooperation: What Next?" *Oxford Review of Economic Policy*, 23(3): 311-34.
Horn, H., G. Maggi and R. Staiger. 2010. "Trade Agreements as Endogenously Incomplete Contracts," *American Economic Review,* 100(1), 394-419.
Howse, R. and K. Nicolaidis, 2003. "Enhancing WTO Legitimacy: Constitutionalization or Global Subsidiarity?," *Governance* 16(1): 73-94.
Hudec, R. 2002. 'The Adequacy of WTO Dispute Settlement Remedies for Developing Country Complainants' in B. Hoekman, A. Mattoo and P. English (eds.), *Development, Trade and the WTO: A Handbook.* (Washington DC: The World Bank).
Hufbauer, G. 2005. "Inconsistency Between Diagnosis and Treatment," *Journal of International Economic Law*, 8(2): 291-97.
Ismail, F. 2009a. "Reforming the World Trade Organization," *World Economics,* 10(4): 109-46.
Ismail, F. 2009b. "The role of the chair in the WTO negotiations from the Potsdam collapse in June 2007 to July 2008," *Journal of World Trade*, 43(6): 1145-71.
Jackson, J.H. 2001. "The WTO "Constitution" and Proposed Reforms: Seven "Mantras" Revisited," *Journal of International Economic Law* 4(1):67-78.
Jones, K. 2010, *The Doha Blues: Institutional Crisis and Reform in the WTO*, Oxford University Press.
Kee. H.L., A. Nicita and M. Olarreaga, 2009. "Estimating Trade Restrictiveness Indices," *Economic Journal,* 119(534): 172-99.
Lamy, P. 2009. "Strengthening the WTO as the global trade body," statement by the Director General on his reappointment. Available at: http://www.wto.org/english/news_e/news09_e/tnc_chair_report_29apr09_e.htm.
Lawrence, R. 2003. *Crimes and Punishment: Retaliation under the WTO* (Washington DC: Institute for International Economics).
Lawrence, R. 2006. "Rulemaking Amidst Growing Diversity: A 'club of clubs' approach to WTO reform and new issue selection," *Journal of International Economic Law*, 9(4): 823-35.
Levy, P. 2006. "Do We Need an Undertaker for the Single Undertaking? Angles of Variable Geometry,"" in S. Evenett and B. Hoekman (Eds.) *Economic Development and Multilateral Trade Cooperation*, London: Palgrave Macmillan.
Levy, P. 2010. "Alternatives to consensus at the WTO," http://www.voxeu.org/index.php?q=node/5209
Levy, P. and T.N. Srinivasan, 1996, 'Regionalism and the (Dis)advantage of Dispute Settlement Access', *American Economic Review*, 86(2): 93–98.
Limão, N. and K. Saggi. 2008. "Tariff retaliation versus financial compensation in the enforcement of international trade agreements," *Journal of International Economics*, 76(1):48-60.
Luke, D. 2000, "African Countries and the Seattle Ministerial Meeting: A Personal Reflection,", *Journal of World Trade,* 34: 39-46.

Maggi, G. and A. Rodriguez-Clare. 1998. "The Value of Trade Agreements in the Presence of Political Pressures," *Journal of Political Economy* 106(3): 574-601.
Mann, E. 2004. "A Parliamentary Dimension to the WTO—More Than Just a Vision?," *Journal of International Economic Law*, 7(3): 659-65.
Martin, W. and P. Messerlin. 2007. "Why Is It So Difficult? Trade Liberalization Under the Doha Agenda," *Oxford Review of Economic Policy,* 23(3): 347-66.
Matsushita, M. T. Schoenbaum, and P. Mavroidis. 2003. *The World Trade Organization: Law, Practice and Policy* (Oxford: Oxford University Press).
Mercurio, B. 2008. "Why compensation cannot replace trade retaliation in the WTO Dispute Settlement Understanding," *World Trade Review I8(2):* 315-38.
Messerlin, P. 2010. "The Doha Round," GEM Policy Brief (Paris: Sciences-Po). http://gem.sciences-po.fr/content/publications/pdf/Messerlin_DohaRound102010.pdf
Narlikar, A. 2003. *International Trade and Developing Countries: Coalitions in the GATT and WTO*. London: Routledge.
Narlikar, A. 2006. "Fairness in International Trade Negotiations: Developing Countries in the GATT and WTO," *The World Economy*, 29: 1005-25.
Nordstrom, H. 2005. "The World Trade Organization Secretariat in a Changing World,"" *Journal of World Trade* 38 (5): 819-53.
Nordstrom, H. and G. Shaffer. 2008. "Access to Justice in the WTO: The Case for a Small Claims Procedure," *World Trade Review,* 7(4): 587-640.
Odell, J. 2005. "Chairing a WTO Negotiation," *Journal of International Economic Law*, 8(2): 425-48.
Odell, J. 2007. "Growing Power Meets Frustration in the Doha Round's First Four Years," in L. Crump and S. J. Maswood. (eds.), *Developing Countries and Global Trade Negotiations.* London: Routledge.
Odell, J. 2010. **"**Negotiating from Weakness in International Trade Relations," *Journal of World Trade* 44(3): 545–66.
Pauwelyn, J. 2005a, "The Transformation of World Trade," *Michigan Law Review*, 104(1): 1-70.
Pauwelyn, J. 2005b. "Enforcement and countermeasures in the WTO: rules are rules—towards a more collective approach," *American Journal of International Law* 94: 335-47.
Pedersen, P. 2006. "The WTO decision-making process and internal transparency," *World Trade Review* 5(1): 103-31.
Piewitt, M. 2010. "Participatory Governance in the WTO: How Inclusive Is Global Civil Society?," *Journal of World Trade* 44(2): 467–88.
Schelling, T. 1978. *Micromotives and Macrobehavior* (New York: W.W. Norton).
Schott, J. and J. Watal, 2000, 'Decision-making in the WTO', International Economic Policy Brief 00-2 (Washington DC: Institute for International Economics).
Shaffer, G. 2004. "Parliamentary Oversight of WTO Rule-Making: The Political, Normative, and Practical Contexts," *Journal of International Economic Law*, 7(3): 629-54.
Steger, D. 2009. "The Future of the WTO: The Case for Institutional Reform, *Journal of International Economic Law* 12(4), 803–33.
Steger, D. and N. Shpilkovskaya. 2010. "Internal Management of the WTO: Room for Improvement," in D. Steger (Ed.) *Redesigning the World Trade Organization for the Twenty-First Century*. (Wilfred Laurier University Press).
Steinberg, R. (2002), "In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO," *International Organization*, 56(2): 339-74.
Stoeckel, A. and H. Fisher. 2008. *Policy Transparency: Why Does it Work? Who Does it Best?,* Australia: Center for International Economics.
Sutherland, P. and others. 2004. "The Future of the WTO: Addressing Institutional Challenges in the New Millennium," Report by the Consultative Board to the Director-General. Geneva: WTO.

Tallberg, J. 2008. “The Power of the Chair: Formal Leadership in International Cooperation,” Stockholm University, mimeo.
Tijmes-Lhl, J. 2009. “Consensus and majority voting in the WTO,” *World Trade Review,* 8: 417-37.
Tumlir, J. 1985. *Protectionism: Trade Policy in Democratic Societies*. Washington, DC: American Enterprise Institute.
Warwick Commission. 2007. *The Multilateral Trade Regime: Which Way Forward?* Coventry: University of Warwick.
Wilkinson, R. 2006. *The WTO: Crisis and the Governance of Global Trade* (London: Routledge).
Winters, L.A. 2007. "Coherence and the WTO," *Oxford Review of Economic Policy* 23: 461-80.
Wolfe, R. 2005. “Decision-Making and Transparency in the “Medieval” WTO: Does the Sutherland Report Have the Right Prescription?,” *Journal of International Economic Law* 8(3): 631-45.
Wolfe, R. 2007. “Can the Trading System Be Governed? Institutional Implications of the WTO’s Suspended Animation,” Centre for International Governance Innovation Working Paper 30 (Waterloo, Ontario).
Wolfe, R. 2009. “The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor,” *Journal of International Economic Law* 12(4), 835–58.
WTO. 2007. *World Trade Report 2007: Six Decades of Multilateral Trade Cooperation.* Geneva: WTO.
Zedillo, Ernesto. 2007. “Surviving the Doha Round,” in B. Hoekman and M. Olarreaga (eds.), *Impacts and Implications of Global Trade Reform on Poverty* (Washington DC: Brookings Institution).