



Strengthening the World Trade Organization – Critical Demands for Imperative Success

Identifying Politically Viable Options for Incremental Reform

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Author

Dr Robert Basedow

Contact

Christian Bluth
Project Manager
Global Economic Dynamics
Bertelsmann Stiftung
Telephone +49 5241 81-81329
Mobile +49 1737342656
christian.bluth@bertelsmann-stiftung.de

futuretradegovernance.org
www.bertelsmann-stiftung.de

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

In the light of rising threats to the multilateral trading system, the Bertelsmann Stiftung has called into life a High-Level Board of Experts on the Future of Global Trade Governance. Composed of seasoned trade diplomats and distinguished experts, it is identifying feasible options to reinvigorate the World Trade Organization (WTO). To inform the discussions of the Board, Bertelsmann Stiftung has commissioned additional research. This paper by Dr Robert Basedow is intended to provide an overview of the challenges the WTO currently faces and which options have already be put on the table to address them. It reflects the views of the author which are not necessarily those of the Board.

Further information on the High-Level Board of Experts and its work can be found on futuretradegovernance.org and ged-project.de.

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Identifying politically viable options for an incremental reform

A Kick-Off Paper for Discussion

Robert Basedow
Johann.Basedow@eui.eu
Robert Schuman Centre for Advanced Studies
European University Institute
Florence, Italy

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Acronyms:

CETA	Comprehensive Trade and Economic Agreement
DSB	Dispute Settlement Body
EGA	Environmental Goods Agreement
GATT	General Agreement on Trade and Tariffs
GATS	General Agreement on Trade in Services
GPA	Agreement on Government Procurement
GRP	Good Regulatory Practice
GVC	Global Value Chain
ITA	Information Technology Agreement
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
PA	Plurilateral Agreement
PTA	Preferential Trade Agreement
ISDS	Investor-to-State Dispute Settlement
RIA	Regulatory Impact Assessment
TBT	Technical Barriers to Trade
TiSA	Trade in Services Agreement
TPP	Transpacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
RTA	Regional Trade Agreement
SCC	Supply Chain Council
SPS	Sanitary and Phytosanitary

1. Executive summary

The multilateral trade regime and the World Trade Organization (WTO) are a major success story of global governance. In few other domains have states managed to cooperate as successfully in the last 70 years as in global trade affairs. Since the 1990s, the multilateral trade regime – with the WTO at its centre – nonetheless goes through a crisis. The crisis culminated in 2016 with the collapse of the Doha Round. The crisis puts into question the WTO's ability to effectively and efficiently govern global trade. Stakeholders, moreover, increasingly challenge the legitimacy and accountability of the WTO.

The main purpose of the study is to review E15 work to identify weaknesses in the WTO's institutional setup and related reform proposals. As institutional aspects received comparatively little attention, the study draws also on other academic and policy publications to complement E15 work. The underlying rationale is that the current crisis has various – including institutional – causes. An institutional reform may thus contribute to overcoming the WTO's current problems. The political climate does not allow for wholesale amendments to the WTO Agreement. The study therefore focuses on incremental reform proposals rather than grand and ideal-type solutions. The study focuses on three main challenges and reform areas. The following paragraphs provide a first overview (for more detail see summary table in annexe):

- I. **Enhancing the WTO's legitimacy and accountability:** The WTO arguably suffers from a democratic deficit. In the eyes of its critics, the WTO lacks legitimacy, accountability and transparency. These perceptions undermine the WTO's standing as a policy-making forum. The following proposals may help to address the democratic deficit:
 1. Creation of standing advisory councils for business, trade unions and NGOs;
 2. Public consultations for negotiations and Committee measures;
 3. Greater involvement of national parliaments in WTO affairs;
 4. Review the WTO's strategy on external transparency (including its web presence and documentation).

- II. **Ensuring the WTO's effectiveness and efficiency:** The failure of the Doha Round has kindled doubts over the WTO's effectiveness and efficiency. Critiques question the organisation's ability to serve as negotiating platform, to manage the multilateral trade regime and to resolve trade disputes. Such criticism may be unjust and misdirected in part. Yet, it is clear that the WTO has to adjust to an altered policy-making context. Multilateral trade negotiations are unlikely to happen in the foreseeable future. The WTO's legislative function as a producer of trade law and market access commitments largely falls away. Instead the WTO's executive and judicative function will be at the heart of WTO work. The WTO Secretariat, the Committee system and the Dispute Settlement Body (DSB) will have to fill the void left by the collapse of the Doha Round and adjust the multilateral trade regime to the evolving realities of global trade in order to maintain its effectiveness and efficiency. The following proposals aim at strengthening the organisation in this regard:
 1. Creation of a WTO Executive Committee for better leadership;
 2. Stronger agenda setting powers for the WTO Secretariat;
 3. Enhance the WTO Secretariat's research and data collection capacity;
 4. Adjust the WTO Secretariat and Committee structure;
 5. Get domestic regulators involved in Committee work;
 6. Promote the use of Good Regulatory Practices in the WTO and in WTO members;

7. Establish the WTO as platform for dealing with GVCs for instance through Supply Chain Councils;
8. Integrate transnational private regulatory activity in WTO work;
9. Develop a strategy to anchor the WTO Dispute Settlement Body in a complex trade regime of Preferential Trade Agreements and Plurilateral Agreements.

III. Transform the WTO into a negotiating and knowledge platform for regional and plurilateral agreements: A cause and a symptom of the collapse of the Doha Round is the unseen surge in preferential trade agreements (PTAs) and plurilateral agreements (PAs) during the last decade. States increasingly turn away from cumbersome multilateral negotiations toward regional and plurilateral venues. For the WTO to remain relevant and to safeguard the multilateral trade regime, the WTO must reconceive itself as a knowledge and negotiating platform for PTAs and PAs. It may thereby ensure that these agreements constitute 'building' rather than 'stumbling' blocks for the multilateral trade regime. The following proposals may help the WTO to assume its new role:

1. Create a 'PTA' exchange as a clearinghouse and expert platform;
2. Introduce multilateral impact assessments to ensure the multilateral-friendliness of PAs and major PTAs;
3. Establish a Committee to coordinate, to avoid norm overlap and incoherence across PAs and to develop guidelines on multilateral-friendly PAs;
4. Provide technical assistance for developing and least developing countries to join PAs.

2. Introduction

The multilateral trade regime – with the World Trade Organization (WTO) at its centre – is a remarkable success story of global governance. The GATT/WTO has made an outstanding contribution to poverty reduction, human development, welfare growth and peaceful global cooperation since its creation in 1948. While average tariffs ranged between 20-30% in the 1950s, they have fallen to less than 4% in OECD countries nowadays (Hoekman, 2011). Trade quotas have been sharply reduced or dismantled. The strengthening of the dispute settlement mechanism and new trade disciplines for services, intellectual property rights, investments and alike have made trade relations more predictable for customers, producers and states. Finally, the GATT/WTO regime has evolved from a small club of 23 fairly homogenous developed Western economies in the post-war era into a truly global regime with 164 members. Few other multilateral regimes have a comparable track record.

The WTO and the multilateral trade regime, nonetheless, are in crisis today. Since the foundation of the GATT/WTO, multilateral negotiations have been the core business of the regime. In 2016, the Doha Round, however, collapsed after 15 years without tangible results. The inability of WTO members to forge a consensus on a new grand multilateral deal challenges the *raison d'être* of the WTO. It undermines the WTO's ability to adjust to the evolving realities of global trade. Developing and least developed countries (LDCs), moreover, criticise the WTO and the multilateral trade regime for having failed them. Past promises of a more development-friendly global trade context have arguably not been kept. And also in developed countries, citizens, policy-makers and non-governmental organisations (NGOs) increasingly challenge the benefits of international trade and lament opaque and undemocratic decision-making within the WTO. In short, the WTO and the multilateral trade regime face an existential legitimacy, accountability and functionality crisis.

The causes underlying the crisis of the multilateral trade regime and the WTO are diverse. The crisis is rooted inter alia in structural changes in the global political economy, the evolving substance of international trade policy and negotiations and finally in weaknesses in the institutional setup of the WTO (Hoekman, 2011; Narlikar et al., 2012; Sutherland et al., 2004; Warwick Commission, 2007). Some causes of the crisis are thus of structural nature. They defy short-term political interventions and solutions. Other causes are of political nature. Policy-makers may address these causes through appropriate initiatives and help to reinvigorate the WTO and the multilateral trade regime.

This study reviews E15 work to identify institutional weaknesses of the WTO and related reform proposals. It fills gaps and complements E15 work where useful with other academic and policy publications. An institutional reform of the WTO may constitute a necessary – yet not sufficient – step to lift the multilateral trade regime out of crisis. The study focuses on incremental reform proposals, as the political climate at the global level and at the domestic level in major trading nations does not allow for major amendments to the WTO Agreement.

The study is structured as following. The first section provides a brief introduction for non-expert readers. It discusses the legislative, executive and judicative functions of the WTO; how the current crisis affects these functions; the main causes underlying the current crisis; and how an institutional reform may redress the WTO's performance in all three functions. The following sections then focus in detail on the three key central challenges to the WTO and related reform

proposals. The third section starts with a discussion of reform proposals to address the often-decried democratic deficit of the WTO. The fourth section zeroes in on the functionality challenge. Since the Doha Round has been stalling, the WTO faces criticisms of being inefficient and ineffective in managing the multilateral trade regime. The section discusses proposals to enhance the performance of the WTO as an administrator and adjudicator of an evolving and increasingly complex multilateral trade regime. The fifth section discusses – what may be called – the ‘regime complexity’ challenge. Faced with stalling multilateral trade negotiations, states have increasingly concentrated on concluding Preferential Trade Agreements (PTAs) and Plurilateral Agreements (PAs). PTAs and PAs may weaken but also strengthen the multilateral trade regime. The section discusses how the WTO may remain relevant in world of PTAs and PAs by ensuring that these agreements are ‘building’ blocks for multilateralism. The final section summarises and concludes.

3. Setting the scene – The crisis and WTO functions

The legislative, executive and judicative functions of the WTO

The WTO offers a comprehensive system to develop, to operate, to interpret and to enforce trade rules. It has three key functions (Hoekman, 2011). First, it serves as negotiating forum for members to develop new disciplines and to commit to market access (legislative function). The legislative function continuously adjusted the regime to the evolving world economy. The legislative function has traditionally been the core activity and most visible function of the WTO.

The WTO, moreover, administers the daily operation of the multilateral trade regime (executive function). The WTO Secretariat and the members maintain a system of Committees. The Committees monitor members' trade policies inter alia through the Trade Policy Review Mechanism (TPRM). They also serve as platforms for peer learning, regulatory cooperation and notifications of PTAs or trade-related technical, sanitary or phytosanitary measures. The Committees thus ensure internal transparency and disseminate information about members' compliance with WTO law.

Finally, the WTO's Dispute Settlement Body (DSB) offers a mechanism to resolve in an orderly fashion trade conflicts between members (judicative function). If one or several members consider trade policy measures of another member to violate WTO law and commitments, they can call on a neutral panel to assess compliance and – in case of non-compliance – to authorise retaliatory tariffs. The DSB existed already under the GATT regime. The WTO Agreement (1994), however, significantly strengthened the DSB notably through the creation of an Appellate Body (AB). The DSB has thereby evolved into a standing global trade court, which not only engages in dispute resolution but arguably also in rule-making through the extensive re-interpretation of existing WTO norms.

Manifestations of the crisis in the WTO's functions

The WTO and the multilateral trade regime face a legitimacy and effectiveness crisis. Critiques challenge the WTO's legitimacy and ability to regulate global trade. The crisis manifests itself in all three WTO functions. The WTO's crisis is most visible in its legislative function. The inability of the WTO members to conclude the Doha Round after 15 years of costly negotiations is widely seen as a major defeat of the organisation and its regime.

The crisis also affects the WTO's executive function in manifold ways. As states question the effectiveness and legitimacy of the WTO, they spend fewer resources and put less effort into Committee work. Instead states redirect their trade policy efforts into regional and plurilateral fora and initiatives, which further undermine the standing of the WTO as the central forum and organisation in the multilateral trade regime.

Finally, the crisis affects the DSB in three important regards. As critiques challenge the legitimacy of the WTO, they also challenge the legitimacy and fairness of the DSB to evaluate and judge national trade policy measures. Dispute resolution mechanisms, however, require legitimacy and broad acceptance to be effective in orderly resolving conflicts. Second, the failure of the Doha Round means that primary WTO law does not develop in parallel with the realities of global trade

(Wolf, 2016). In consequence, the DSB increasingly struggles to deal with today's disputes. WTO primary law is increasingly out-dated to resolve disputes. Finally, in light of the collapse of the Doha Round WTO members sign PTAs with dispute resolution mechanisms (Stoler, 2016). The DSBs established under PTAs may in the long run replace the WTO DSB.

Mapping the causes of the current crisis

The causes of the current crisis of the multilateral trade regime are highly diverse. At the risk of oversimplifying, one may nonetheless distinguish three major causes underlying the WTO's crisis: global systemic, structural-substantive, and institutional design causes. The following paragraphs give a non-exhaustive brief overview of the main causes behind the WTO crisis.

Changes in the global political economy: One central cause behind today's crisis of the multilateral trade regime are fundamental changes in the global political economy. The OECD economies lose economic weight, whereas certain developing countries such as China, India and Brazil become ever more important players in the world economy (Elsig, 2016). Small developing and least developed countries are also becoming more assertive as a group in WTO negotiations. The number of 'veto' players thus increases. At the same time, the preferences of WTO members have become more heterogeneous. WTO members for instance disagree over the question of which new policy domains to bring under the scope of WTO rules; which developing and emerging countries should still enjoy special and differentiated treatment; or to what extent least developed countries should benefit from tariff elimination. The changes significantly complicate the conclusion of multilateral negotiations as a single undertaking and by consensus. In consequence, the WTO fails to produce new market access commitments and limits the interest of businesses in WTO work. WTO law, moreover, stagnates and fails to adjust to the evolving realities of global trade (Warwick Commission, 2007). WTO rules are hardly tailored to a world of Global Value Chains (GVCs) and internet-based trade for instance. The inertia in the WTO results in a surge in PTAs and PAs, which risks further undermining multilateralism (Warwick Commission, 2007).

The evolving substance of trade policy: The evolving nature of trade policy also contributes to the problems of the multilateral trade regime. Countries have significantly lowered classic trade barriers through negotiated and unilateral efforts during the last decades. Many countries have reached their 'soft spot' and are unwilling or unable to go further. The greatest potential for further market opening lies in the removal of so-called non-tariff barriers (NTBs) through regulatory cooperation (Hoekman and Kosteki, 2009, p. 52). Differences in regulations and standards across economies impose high – in many cases unnecessary – costs on traders and consumers. The removal of NTBs and regulatory cooperation are intrusive. They interfere with domestic regulatory activities and public policy. Many countries lack the administrative capacities to meaningfully engage in regulatory cooperation. Other countries are unwilling to engage in regulatory cooperation in general and in the WTO in particular. It is indeed problematic for the prospects of multilateralism that regulatory cooperation requires high levels of trust between involved regulators. Trust, however, is more likely to prevail in regional and bilateral rather than multilateral settings.

Weaknesses in the institutional design of the WTO: Last but not least, the crisis reflects weaknesses in the institutional setup and functioning of the WTO. The WTO is often criticised for being ineffective, inefficient and lacking legitimacy. Its institutional weaknesses affect its

negotiating, management and judicative function. Critiques stress that the institutional setup of the WTO for instance failed to provide effective leadership and agenda setting, which resulted in a failure to build a broad consensus and ultimately triggered the collapse of the Doha Round. The limited involvement of non-state actors arguably amplified these dynamics. Institutional weaknesses are also seen to limit the effectiveness of Committee work. Already the Sutherland Report (Sutherland et al., 2004) and the Warwick Commission (2007) cautioned that a stronger WTO Secretariat in terms of research capacity could boost the productivity of the Committees to monitor compliance and to further develop the WTO regime. Also the Committees themselves are seen as having too limited mandates, which hinders them to play a more forward-looking role. They barely pay attention to the role of private regulators in GVCs and have an overly narrow membership. While many Committees deal with regulatory questions, they do not involve regulators. Finally, the institutional weaknesses of the DSB are subject to a long-lasting and an intense policy debate. The failure of the Doha Round and the consequent stagnation of WTO law for instance raises questions over the ability of the DSB to deal modern trade disputes. The rise of PTAs and PAs, moreover, challenges the DSB's standing as central dispute resolution institution. Non-state actors, furthermore, criticise their limited access to proceedings. Businesses thus show limited interest in the DSB whereas non-governmental organisations (NGOs) and citizens criticise its limited legitimacy and accountability.

Implications for reforming the WTO

The brief non-exhaustive assessment of the causes of the WTO's crisis offers some guidance on reinvigorating the multilateral trade regime. Some causes of the crisis – such as the changes in the global political economy – are clearly of structural nature and defy policy intervention. Other causes come under political discretion. Policy-makers can in particular address the institutional weaknesses of the WTO to resolve some of the current problems of the multilateral trade regime. A better functioning organisation should increase the legitimacy and accountability of the WTO. And it should ensure the WTO's continued relevance, effectiveness and efficiency in terms of developing and managing the trade regime as well as adjudicating modern trade policy disputes. As multilateral negotiations are unlikely to succeed in the near future, institutional reforms must in particular strengthen the executive and judicative function of the WTO in order to operate and to adjust the regime to the evolving realities of global trade.

4. The democracy challenge

The Seattle Ministerial Meeting of 1999 was a watershed for the WTO and the multilateral trade regime. NGOs, trade unions and citizens forcefully – and in part even violently – took their discontent with the WTO and multilateral trade regime to the streets. Despite the WTO's global membership and its focus on consensus with all countries having a veto, they criticised the WTO for being undemocratic, opaque, unaccountability and serving the interest of big business rather than citizens (Hoekman, 2011, p. 2). In the aftermath of Seattle, the WTO undertook various steps to address such criticisms. It has started organising regular information sessions for non-stakeholders. It has facilitated and accelerated access to WTO documents. Yet, concerns over the WTO's lacking democratic legitimacy and accountability have increased rather than decreased during the last decade.

This section discusses proposals, which may increase the legitimacy of the WTO. Legitimacy is understood as “...a socially sanctioned obligation to comply with [...] policies even if these violate the actor's own interests or normative preferences, and even if official sanctions could be avoided at low cost...” (Scharpf, 2003). The section primarily focuses on proposals, which can enhance ‘input’ legitimacy. Input legitimacy is based on process and ensures representativeness and accountability of policy-making (government by the people). ‘Output’ legitimacy, on the other hand, stems from policy results (government for the people). Policy actors draw legitimacy from producing effective and efficient policy outcomes. Proposals to ensure and to enhance output legitimacy form the subject of the then following section.

How to make the WTO more democratic and accountable?

Creating standing Advisory Councils: The insufficient involvement of non-state stakeholders has long been identified as weakness of the WTO. Eckhard (2016) and Elsig (2016) propose in their E15 contributions to create standing advisory councils to enhance the participation of important stakeholders such as businesses, trade unions and NGOs in WTO affairs. Such standing advisory councils may serve a number of purposes. First, they may increase the legitimacy of WTO work and measures as stakeholders get ex ante access to policy-makers. Second, they facilitate the flow of information between regulators and regulatees of the multilateral trade regime. Businesses, trade unions and NGOs often hold important technical expertise and can provide first-hand feedback on multilateral disciplines, PTAs and national policies. Advisory councils may thereby ensure ex post accountability of WTO work and measures and rekindle the interest of businesses and NGOs in the WTO. The business community in particular has been losing interest in the WTO during the last two decades, which is likely to negatively affect WTO work (Hoekman and Kostecki, 2009, p. 642). The creation of standing advisory councils begs a number of practical questions in need of consideration: 1) Should advisory councils be organised around economic sectors, WTO agreements or actor categories? And what are the costs and benefits of different types of formations? 2) How to select members of advisory councils? 2) And how many members should there be to ensure representativeness?

As Eckhard (2016), Elsig (2016) and others (Hoekman and Kostecki, 2009, pp. 642–644; Quick, 2007, pp. 109–112) observe, the WTO indeed stands out as one of the few international organisations and regimes, which has no institutionalised relation with stakeholders- Other international organisations or global policy-making fora such as the OECD (BIAC, TUAC), G20

(B20), ASEAN (ASEAN BAC), World Bank (PSLO) and most UN organisations have standing advisory councils or an accreditation and outreach service to liaise with business, trade unions, NGOs or academia. After initial hesitation the WTO has become more open in the last years (Etsy, 1998; Quick, 2007, pp. 109–110), but it has nonetheless not yet found a transparent, institutionalised way of including stakeholders into its work.

Institutionalising public consultations: In the aftermaths of the Seattle Ministerial, the WTO sought to better involve stakeholders. A core group of NGOs and other non-state actors has emerged, which regularly interacts with the WTO and have thereby de facto become part of the 'WTO machinery'. Elsig (2013) briefly touches in a E15 contribution on the possibility to introduce public consultation mechanisms to reach out beyond the 'usual suspects'. Public consultations may increase WTO legitimacy and accountability in the context of negotiations and Committee work. Consultations may help in particular stakeholders from states with opaque or dysfunctional governance systems to get heard at the global level. What is more, consultations may be helpful to reach out beyond Geneva-based NGOs and give consideration to concerns of 'real outsiders'. Using public consultations is, however, also a challenging task. First, consultations are resource-intensive. WTO members would have to ensure that the WTO Secretariat has sufficient resources to manage public consultations and to analyse the submissions. The European Commission, for instance, received almost 150.000 submissions in response to its public consultation on investor-to-state dispute settlement (ISDS) under the planned Transatlantic Trade and Investment Partnership (TTIP) (European Commission, 2015). Even for major administrations, the analysis of such a high numbers of submissions is a daunting task. Second, public consultations may strengthen the voice of well-resourced actors and further marginalise weak actors in policy-making. Public consultations require a proactive outreach strategy to ensure that small, weak and vulnerable constituencies get heard.

Rethinking the role of national parliaments: While E15 work only in passing considers strengthening the role of national parliaments in the WTO, a number of scholars have discussed this important matter in greater detail (Bellmann and Gerster, 1996; Mann, 2005; Shaffer, 2004; Steger, 2009). Trade policy and WTO work used to focus on classic 'on-the-border' trade barriers such as tariffs and quotas. Trade policy and WTO work have, however, evolved and focus increasingly on the removal of so-called non-tariff-barriers (NTBs) of regulatory and legislative nature through regulatory cooperation. Trade policy and WTO work thereby reach deep into the domestic political space, where parliaments typically play a decisive role. As trade policy and WTO work become more intrusive, interfere with domestic public policy and regulation, parliaments may have to play a more systematic and direct role in WTO negotiations and Committee deliberations.

Parliamentary involvement and oversight of WTO affairs may take various forms. It is for instance conceivable to formalise and to strengthen the role of the 'International Parliamentary Conference on the WTO' in WTO negotiations and Committee work. The Conference is a network of parliamentarians established under the auspices of the Inter-Parliamentary Union in 2001. It meets regularly in Geneva to discuss grand developments in the multilateral trade regime. Bellman and Gerster (1996) moreover propose the creation of a 'WTO Parliament'. They suggest that national parliaments should send delegates to such a transnational body to monitor and to deliberate about WTO affairs.

Proposals for greater parliamentary involvement in WTO affairs may constitute an important building block for increasing the democratic legitimacy, accountability and domestic ownership of WTO measures. There are, however, also downsides to such proposals. First, experiences from the European Union suggest that parliamentary oversight or the creation of a transnational parliamentary body do not automatically increase democratic legitimacy and end democratic disconnects (Menon and Peet, 2010). Democratic legitimacy is a complex phenomenon. Second, greater parliamentary involvement in WTO affairs may de facto weaken the stance of developing and least developed countries. Parliaments of developed countries have considerable financial resources and may draw on extensive technical expertise for instance through parliamentary research services to represent their citizens in WTO affairs. Parliaments of developing and least developed countries lack such resources and may get side-lined in debates. Any efforts to strengthen parliamentary involvement in WTO affairs must make sure that less well-resourced parliaments get financial and technical assistance to meaningfully participate in these initiatives.

How to deal with transparency in the WTO?

Reviewing the WTO's institutional strategy on external transparency: A number of E15 contributions draw attention to the need to assess the WTO's strategy on external transparency (Elsig, 2013, 2016; Mavroidis, 2016; Samans et al., 2016; Wolfe, 2015). The WTO needs to evaluate whether its current transparency rules are satisfactory; or whether, where and how these rules may need adjustment to increase legitimacy and accountability of the WTO.

During the last years, transparency has become a buzzword of global economic governance and trade policy. NGOs, media, citizens and alike have been criticising the WTO for decades for being secretive and opaque. Civil society has recently advanced similar criticisms against the TTIP and TPP projects. The transparency question has developed into a veritable deal-breaker in the public debate. Civil society actors seem to generally assume that more transparency is better for policy-making and negotiations and increases social welfare. Experience and research draw a more nuanced picture (See inter alia Crawford and Sobel, 1982; Grigorescu, 2003; Héritier, 2003; Perry and Amuelson, 1994; Prat, 2005). High degrees of transparency tend to increase legitimacy and accountability. Public scrutiny disciplines policy-makers, contributes to raising the quality of policy outcomes, improves the flow of information in politics and improves public ownership of policy measures. Transparency may, however, also harm society in some situations. It may negatively affect the behaviour of policy agents, frustrate negotiations, hinder agreement and thus ultimately reduce social welfare. If negotiations are fully transparent for instance, parties may feel unable to engage in open and frank discussions about viable options and instead stick to political rhetoric to please domestic constituencies. The content of policy-making and negotiations may, moreover, be sensitive. States and non-state actors may feel uncomfortable to make certain information publically available and thus try to avoid action.

The WTO's strategy on external transparency must reflect these contradictory effects and adjust the level of transparency to the three functions of the organisation to maximise welfare. First, Elsig (2013, 2016) recognises in his E15 contributions the general need for negotiations behind closed doors but cautions that some negotiations may indeed take place in public with parliaments, NGOs and alike observing discussions. Second, Elsig (2013, 2016) stresses that greater transparency would benefit the WTO's executive function. Many WTO Committees deal with standards, regulations and regulatory cooperation. Immediate and easy access to relevant WTO documents,

observation or even participation in discussions of WTO Committees may lead to better outcomes. Finally, Samans et al. (Samans et al., 2016) suggest that there might also be a case for increasing transparency in the WTO's judicative function. DSB panels may benefit in terms of legitimacy and access to information from an interested public. Stakeholders may observe, gain access to some DSB documents and submit positions (see *Amicus Curiae* in ISDS) to the panel. In short, transparency is an important and complex matter. E15 work highlights that the WTO needs to reassess whether, where and how much transparency it wants.

WTO web presence and access to WTO documentation: While not subject of E15 reflection, a first step toward a more transparent WTO would be to facilitate navigation on its website to increase transparency for laymen. Stakeholders – unfamiliar with the WTO system – find it difficult to navigate the website and to find relevant documents. Even though the WTO may de jure provide access to information, it remains de facto inaccessible to stakeholders. The situation risks creating the impression that WTO is secretive and its work inaccessible for non-expert.

Streamlining official WTO documentation: In a similar vein, stakeholders at times complain about the technical language and format of WTO documents. If laymen manage to find documents, they may struggle to understand them. In consequence, laymen have problems to follow WTO work and to understand its impact on them. The situation again propels criticism that the WTO is secretive. While it is clear that many aspects of WTO work are highly technical and thus require complex language and documentation, the WTO may reflect on how to make information more accessible in terms of language and format.

Table 4.1: SWOT analysis of addressing the democracy challenge

<p style="text-align: center;">Strengths</p> <ul style="list-style-type: none"> • Consensus decision-making • All countries have a veto right • Global membership 	<p style="text-align: center;">Opportunities</p> <ul style="list-style-type: none"> • Increased legitimacy • Greater policy ownership • Better flow of information • Increased policy quality
<p style="text-align: center;">Weaknesses</p> <ul style="list-style-type: none"> • Despite intrusive policies, no direct parliamentary involvement • No institutionalised relationship with non-state actors • Growing discontent with limited transparency and access 	<p style="text-align: center;">Threats</p> <ul style="list-style-type: none"> • Growing number of political veto players • De facto overrepresentation of developed countries • Selection bias in choice of non-state actors granted participation in WTO • Overly burdensome consultations • Policy paralysis through too much transparency

5. The functionality challenge

E15 experts identify a number of institutional weaknesses, which negatively affect the WTO’s negotiating, management and judicative function. The weaknesses undermine the effectiveness and efficiency of the WTO. In short, the ‘output’ legitimacy of the WTO is put into question. The following section discusses weaknesses and related reform proposals to enhance the efficiency and effectiveness of the WTO as a negotiating platform, regime manager and dispute settlement forum.

How to ensure effective and fair leadership?

Overcoming the intricacies of WTO decision-making: Policy-makers and academics argue that the member-driven functioning of the WTO in combination with the ‘single undertaking’ and consensus principle hinder effective and efficient policy-making (Cottier and Elsig, 2011; Elsig, 2013). As all WTO members hold a veto and block through a veto the overall negotiating process across all policy domains, progress in WTO negotiations is extremely difficult. Abbott (2013) and Elsig (2013, 2016) thus discuss ideas to reform the WTO’s decision-making rules to facilitate negotiations as well as Committee work. Proposals to streamline decision-making in the WTO have been under discussion for many years (see Hoekman, 2011). Abbott (2013) and Elsig (2013, 2016) both argue that a move from consensus decision-making to qualified majority or weighted voting may improve effectiveness and efficiency of WTO decision-making. They – implicitly or explicitly – caution however that a reform of decision-making may be extremely difficult. As Pascal

Lamy noted, there is consensus on consensus among WTO membership (Hoekman, 2011, p. 9; Lamy, 2009). Despite the well-known problems with decision-making and consensus rules, WTO membership seems unwilling to move away from the status quo. In particular, small developing and least developed countries strongly oppose plans to introduce qualified majority or weighted voting. Hoekman (2011) moreover advances functional arguments for maintaining the consensus principle. Modern trade policy is often of regulatory nature. WTO measures need to be transposed and enforced through domestic regulators. Domestic regulators are typically highly independent agencies. They are unlikely to transpose and to enforce WTO measures, if their concerns are not reflected in these measures. Consensus promotes policy ownership necessary for effective policies. Elsig (2013, 2016) therefore suggests that 1) greater leadership either through designated WTO members or the WTO Secretariat as well as 2) a move away from the 'single undertaking' principle through PAs may constitute more promising step toward effective and efficient policy-making in the WTO than a review of decision-making rules.

Creating an 'executive' Committee: Many factors contributed to the collapse of the Doha Round. A lack in leadership is widely seen as one important factor. Abbott (2013) and Elsig (2013, 2016) propose in their E15 contributions the creation of an executive Committee, which should provide guidance in future negotiations but also in the continuous operation of the WTO.

Abbott (2013) observes in his E15 piece that four groups of countries structure the global political economy: developed/OECD economies; emerging markets; developing economies; and least developed economies. An executive Committee would need to encompass members from all four groups in order to ensure that the different concerns of these groups are reflected. The Committee should meet to freely discuss the broad strategies and future of the WTO, to lead and oversee multilateral and plurilateral negotiating efforts and to give impetus to Committee work. Abbott stresses that further reflection is needed to determine 1) the powers of the Committee, 2) the rules to recruit members; 3) the background of members (ambassadors or policy-makers from capitals), 4) the size of the Committee and 5) the duration of membership.

Elsig (2016) adds in his E15 Policy Options Paper that such an executive Committee should coordinate attempts for a so-called 'early harvest'. The Doha Round failed, as it was impossible to close all negotiating chapters. WTO members were nonetheless able to come to agreement in several domains. Due to the principle of a 'single undertaking' – nothing is agreed, until everything is agreed – these partial agreements could not be realised. They were not transposed into binding commitments. WTO members seek to 'rescue' such partial agreements inter alia through plans for Plurilateral agreements (PAs). An executive Committee could lead and coordinate this task and ensure that 15 years of negotiations were not in vain.

How to enhance the contribution of the Secretariat to WTO work?

The Secretariat as agenda setter: Elsig's Synthesis Report on the Functioning of the WTO (2016) as well as the Sutherland Report (Sutherland et al., 2004) observe that WTO negotiations and Committee work suffer not only from a lack in leadership but also from suboptimal agenda setting. Adding or subtracting agenda items may increase or decrease the prospects for agreement (Hoekman, 2011; Odell, 2000, 2013). It has been argued that the collapse of the Doha Round is inter alia due to ineffective agenda setting. In the WTO, the chairs of Committees and working parties normally set the agenda. Chairs – officials from WTO members – may lack the long-term

and global overlook and technical expertise to ensure effective agenda setting. The E15 Synthesis Report on the Functioning of the WTO thus proposes strengthening the Secretariat as an agenda setter in negotiations and Committee work to ensure greater effectiveness and efficiency. The WTO Secretariat may be better placed to ensure effective and fair agenda setting and thereby facilitate agreement and effective Committee work.

Enhance the Secretariat's research and data collection capacity: Several E15 Synthesis Reports (Elsig, 2016; Samans et al., 2016), the Sutherland Report (Sutherland et al., 2004), the Warwick Commission (2007) and Pascal Lamy (2009) recommend strengthening the Secretariat's research and data collection capacity to promote effective and efficient policy-making. They develop the vision of the WTO as an institution, which provides data on trade policy, trade flows and scientific analysis and advice to members. The underlying rationale is that information and scientific analysis facilitate negotiations, Committee work and dispute resolution. The Secretariat may thereby enhance the effectiveness and efficiency of the WTO's functions. The WTO has been moving in this direction. Its research and data collection capacity is, nonetheless, still limited in comparison to other international organisations such as the OECD, IMF or World Bank. Reflection is needed on how to develop the WTO's research and data collection capacity in view of creating synergies for WTO members rather than duplicating existing capacities in the mentioned organisations. Samans et al. (2016) emphasise in particular that the WTO should intensify its collaboration with the OECD to collect and analysis data on the integration of services and goods trade as part of Global Value Chains.

How to enhance the contribution of WTO Committees to WTO work?

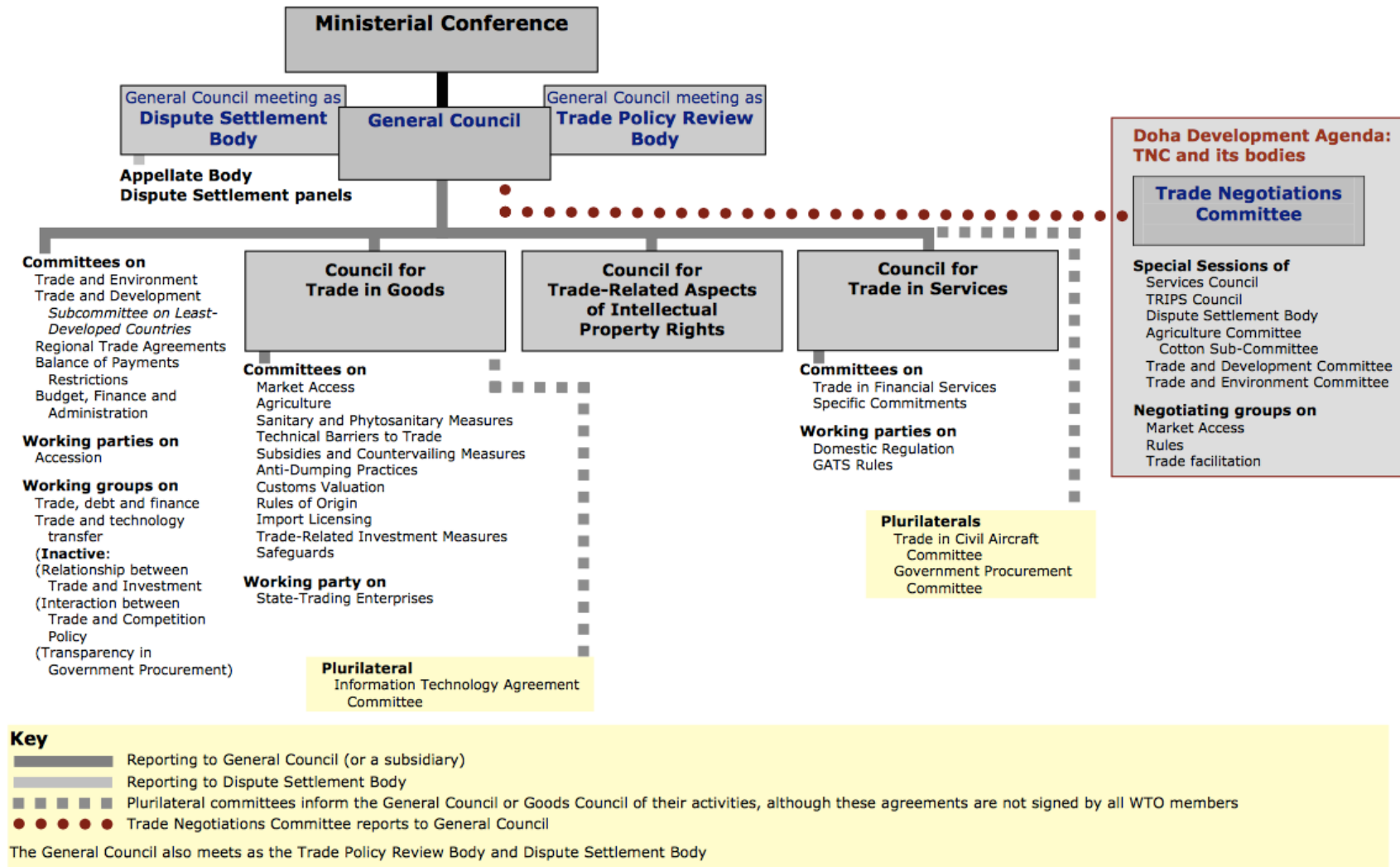
Reviewing the Secretariat and Committee structure: The structure of the Secretariat and the Committee system may be ill-adjusted and out-dated limiting the effectiveness and efficiency of Committee work. The Committees operate the multilateral trade regime (executive function). They oversee notifications, elaborate norms, conduct trade policy reviews and accession processes (Wijkström, 2015). As the multilateral negotiations are paralysed and the focus of trade policy shifts away from bargaining over market access toward regulatory cooperation, the Committees are bound to acquire ever-greater importance for the multilateral trade regime. Several E15 contributions explicitly or implicitly propose reviewing the Secretariat and the WTO's Committee system (see figure 5.1) (Elsig, 2016; Samans et al., 2016; Stephenson, 2016, p. 15; Vickers, 2014, p. 15; Wijkström, 2015).

Elsig (2016) and Wijkström (2015) suggest in their E15 contributions that it might be necessary to rethink the existing Committee system in order to tap on its full potential. As Samans (2016) and Stephenson (2016) note, the review may lead to the creation of new Committees – for instance for eCommerce or Global Value Chains – and the disposal of nowadays less relevant Committees. Wijkström (2015) proposes to extend the work focus of the TBT and SPS Committee to new domains including private regulation and standards. A review might ensure that the limited resources of WTO members and the Secretariat are optimally used. What is more, it might be helpful to rethink the structure of the WTO Secretariat in view of catering to Committee work. As Committees become more important, it is key to ensure that the Secretariat supports to the fullest extent possible Committee work through data, analysis and agenda setting.

Strengthen the brainstorming capacity of Committees: As multilateral trade rounds are unlikely to succeed in the foreseeable future, the Committees will need to play a more creative and conceptual part in developing the multilateral trade future. The contributions of Elsig (2016), Wijkström (2015), Samans et al. (2016) and others (See Hoekman, 2011; Sutherland et al., 2004; Warwick Commission, 2007) propose to reconceive the WTO's Committees as creative brainstorming platforms rather than management entities. They suggest giving Committees the freedom and resources to be forward-looking. Committees may for instance start organising workshops and commission research.

Getting domestic regulators to lead regulatory cooperation: Wijkström (2015) and Elsig (2016) observe in their E15 contributions that most WTO members send trade policy officials to WTO Committees. It might, however, be important to open up participation in WTO work to other parts of national administrations such as lead ministries, parliaments or regulators. Two considerations inform this recommendation. First, many Committees – such as the TBT and SPS Committee – engage in regulatory cooperation and norm development. They seek to disseminate information about domestic regulation and regulatory systems, to promote regulatory convergence and to elaborate international norms. The technicality of the task may require expert participation to ensure that WTO measures are of high quality in terms of effectiveness and efficiency. Second, regulators are typically highly independent agencies. Their mandates require them to pursue specific social objectives such as public health, environmental or labour protection, transport safety and alike. Economic and trade considerations, which dominate deliberations in WTO Committees, are typically not part of their mandate (Basedow and Kauffmann, 2016). Regulators are unlikely to transpose and to enforce WTO decisions and measures, if they do not see their mandates and concerns reflected. Trade policy-makers need to ensure that regulators take ownership and lead regulatory cooperation in the WTO Committee work. An insufficient involvement of regulators is likely to fall short of expectations.

Figure 5.1 Organogram of WTO



Source: WTO (2017).

How to ensure that WTO measures are effective and efficient?

Promote Good Regulatory Practices: Mavroidis (2016), Arvíus and Jachia (2015), Malyshev and Kauffmann (2015) and Wolfe (2015) share the view that the WTO and WTO members may intensify their use of Good Regulatory Practices (GRP). GRP promote high quality regulation. High quality regulation is by definition trade-friendly as it minimises unnecessary social and economic costs including trade costs. In the absence of multilateral trade rounds and new market access commitments, the widespread systemic use of GRP in the WTO and in WTO members may prevent regulatory trade barriers and partly fill the void left by the collapse of the Doha Round. GRP encompass three public management tools: regulatory impact assessments (RIA), ex post evaluations, and stakeholder consultations (OECD, 2012). Regulators use RIA to ex ante assess the likely effects of planned measures – and alternatives – on society. Ex post evaluation scrutinise whether existing measures serve their purpose and impose minimal costs on society. Stakeholder consultation are often part of RIA and ex post evaluations. They seek to increase the legitimacy of regulation and to mainstream concerns of stakeholders in the norm elaboration and evaluation process (see section 4). GRP may – if rightly designed – enable the WTO and WTO members to weigh and balance social, economic and trade benefits and costs in the development and implementation of norms.

The WTO – as an institution – may step up its use of GRP. The WTO’s TBT and SPS Committees already use stakeholder consultations to identify trade effects of national regulation. WTO members shall notify the Committees of new measures in order to give other WTO members possibility to consult domestically and to eventually raise objections against unnecessarily trade-restricting measures (Basedow and Kauffmann, 2016, p. 10; Wijkström, 2015). The Committees may extend their focus from regulation to standards. They may, moreover, start periodically reviewing notified regulations and standards in view assessing their trade impact (Wijkström, 2015). The WTO may, moreover, institutionalise ex ante assessments and ex post evaluations to analyse the likely and actual effects of multilateral and plurilateral trade agreements. So far only major WTO members undertake such studies. WTO assessments may help to locate zones of agreement and strike more equitable deals. Experience from the European Union context, however, suggest that transnational assessments may rekindle redistributive conflicts and may also hinder agreement.

As Mavroidis (2016) and Wolfe (2015) propose, the WTO may seek to promote, harmonise and benchmark the use of GRP among its members. While GRP are standard in OECD countries, non-OECD countries do not systemically use GRP (OECD, 2015). When promoting GRP, the WTO should focus on three key aspects (Basedow and Kauffmann, 2016): 1) The WTO should recommend the use of RIA and the mainstreaming of trade considerations in RIA guidelines. Most importantly, the WTO should encourage its members to systematically use international regulation and standards where possible. 2) The WTO should encourage the use of ex post evaluations. Trade impacts of regulation are often unintended and unexpected and therefore only show after implementation. 3) The WTO should encourage members to use stakeholder consultations, which are open to all affected parties including foreign traders.

Strengthen the GVC focus of the WTO: One of the most important developments of the last decades in global trade has been the rise of GVCs. WTO rules are out-dated and underperform when it comes to facilitating GVC trade. The E15 Synthesis Report on Global Value Chains (GVCs)

by Stephenson (2016) suggests that the WTO needs to afford greater attention to the specific policy challenges tied to GVCs to remain relevant. The main hurdles to GVC trade are regulatory frictions. Stephenson (2016) and Hoekman (2015) propose several measures to facilitate regulatory cooperation in view of facilitating GVC trade. The WTO could start collecting GVC-related data to better understand relevant trade barriers. It might create a platform or 'clearinghouse' to facilitate information sharing and contact among stakeholders involved in supply chains. It might hold an annual GVC conference and setup so-called Supply Chain Councils (SCC). SCCs would bring together businesses, regulators, trade policy-makers and other stakeholders to regularly discuss GVC-related issues. The WTO – as a platform for SCCs – could make an important contribution to the multilateral trade regime, businesses and development.

Realising the potential of transnational private regulation: Regulatory trade barriers do not only stem from public regulation. Private regulation and standards play a crucial role notably in GVC trade. Mavroidis (2016), Arvíus and Jachia (2015), Thorstensen, Weissinger and Xinhua (2015) and Wijkström (2015) alike recommend that the WTO assess how to tap on the potential of private measures to promote trade and regulatory coherence. So far the WTO's efforts to promote regulatory coherence only focus on public regulation and regulators. The WTO may need to intensify cooperation with private regulators to promote regulatory coherence and to facilitate trade. Wijkström (2015) therefore proposes to extend the focus of the TBT and SPS Committees to relevant private measures.

How to ensure the effectiveness of the Dispute Settlement Body?

Dealing with the stagnation of primary WTO law: Wolf (2016) notes in his E15 contribution that the legal basis for the DSB to resolve trade conflicts is increasingly out-dated and risks becoming irrelevant for modern disputes. The DSB is widely considered as a major success story. The collapse of the Doha Round, however, implies that WTO law may not develop at the same speed as the economic realities of global trade. Wolf emphasises in his piece that the DSB may delay and limit the negative consequence of the failure of the Doha Round by exhausting its interpretative leeway for existing WTO norms. Trade conflicts relating to eCommerce for instance may get resolved on the basis of GATS norms. Wolf cautions, however, that generic norms may not be sufficiently specific for dealing with the particularities of the economic phenomenon and allow for fair rulings. What is more, it is unclear whether DSB panels have enough legitimacy to engage in far-ranging interpretative exercises. In short, the DSB will have to carefully balance the need to remain relevant through the application of existing primary law to new types of conflict; and eventual criticisms of overstepping its mandate and interpretative leeway. An open discussion among WTO members about the role of the DSB in rule-making may be needed.

Strengthening the role of non-state actors to enhance transparency: Some E15 experts have mentioned the possibility to strengthen the role of non-state actors in the WTO in general and in the DSB in particular (Eckhardt, 2016; Elsig, 2016; Hoekman and Mavroidis, 2000; Samans et al., 2016). The Warwick Commission (2007) prominently argued in favour of strengthening the role of non-state actors in DSB proceedings to enhance transparency, legitimacy and effectiveness. In line with such recommendations, so-called 'amicus curiae' letters were gradually allowed in DSB proceedings (Hoekman, 2011, p. 15). 'Amicus curiae' submissions enable private parties to submit their views, share their expertise and information with a DSB panel and states. 'Amicus curiae' submissions enhance transparency and the flow of information between policy-makers, panellists

and stakeholders. They are seen to strengthen the interests of developing and least developed countries and to give non-economic social and environmental considerations greater weight in the DSB proceedings (Hoekman and Mavroidis, 2000, pp. 529–530). Further thought might be given to the question of how to strengthen access of non-state actors to the DSB.

Anchoring the DSB in a complex global trade regime: Stoler (2016) and Vickers (2014) draw attention to an important challenge to the WTO DSB in his E15 contribution. In the coming years, PTAs and PAs are likely to be the main instrument of countries to pursue their trade policy objectives and thus to further develop international trade law. The multiplication of dispute settlement bodies under PAs and PTAs risks geographically fragmenting international trade law and creating inconsistent interpretations of norms. These developments might impose considerable costs on the world economy. It is crucial to ensure that the WTO DSB will continue to be the key instance for the interpretation of international trade law in an increasingly complex trade regime. Stoler (2016) formulates several proposals to ensure that the WTO DSB may continue to play a central role. WTO members should design PTAs in view of maintaining a central position for the WTO DSB. Even though PTAs normally provide for their own DSB, they should allow parties to choose their preferred legal venue. In other words, if a trade conflict between parties primarily relates to WTO norms, the claimant party should be allowed to call on the WTO DSB. PTAs should also make it a legal obligation on their DSBs to consider WTO jurisprudence in order to maintain legal coherence. While Stoler (2016) does not discuss the standing of the WTO DSB under PAs in his piece, it follows from his reasoning that the WTO DSB should be the instance to resolve trade dispute arising under these agreements. The advantage would be, moreover, that the WTO DSB could develop international trade law on the basis of more up-to-date sources. PAs are likely to cover new salient trade issues such as eCommerce and alike. The DSB might thereby build up a jurisprudence regarding new salient trade policy issues and uphold the importance of WTO law.

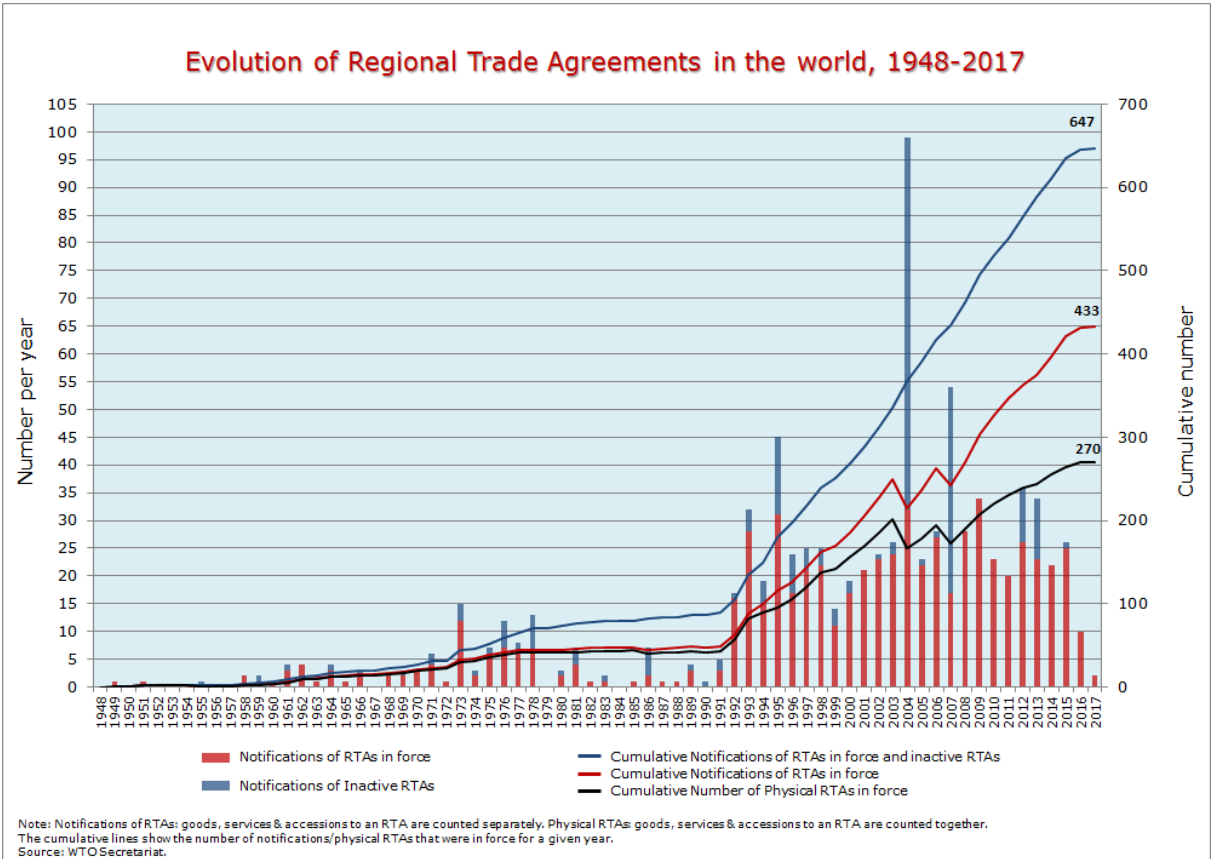
Figure 5.1: SWOT analysis of addressing the functionality challenge

<p style="text-align: center;">Strengths</p> <ul style="list-style-type: none"> • Member-driven agenda setting • Policy-ownership of negotiated and Committee outputs due to consensus rule • Fairly good track record in Committee work • Effective and well-accepted dispute settlement capacity 	<p style="text-align: center;">Opportunities</p> <ul style="list-style-type: none"> • Secretariat as neutral and research-led leader of WTO work • Transforming Committees into creative and forward-looking entities to develop multilateral trade regime • Enhance global and domestic governance through Good Regulatory Practices • Increasing efficiency of regulatory cooperation through incorporations of private initiatives • Increase fairness in access and use of dispute settlement leading to better global compliance with WTO law • Allowing dispute settlement mechanism to play a role under PTAs and PAs maintains its role as central interpreting authority of WTO law
<p style="text-align: center;">Weaknesses</p> <ul style="list-style-type: none"> • Ineffective and little forward-thinking agenda setting in negotiations and Committee work • Lack in forward-looking leadership • Difficult decision-making due to consensus • Limited stakeholder involvement and interest • No monitoring of effectiveness of outputs • Increasingly out-dated primary law basis for dispute settlement • Asymmetry in access and effectiveness of dispute settlement 	<p style="text-align: center;">Threats</p> <ul style="list-style-type: none"> • Erode support of states for WTO due to Secretariat leadership • Use of Good Regulatory Practices at WTO level might hinder agreement and action • Limited legitimacy of transnational private regulation may reflect badly on WTO • More effective dispute settlement might weaken state support for mechanism

6. The regime complexity challenge

The slow death of the Doha Round has shifted the focus of international trade policy-making from multilateral to bilateral, regional and plurilateral negotiations. Likeminded WTO members are increasingly using single-issue PAs to extend the WTO regime to new salient trade policy issues. Examples of such PAs are the Information Technology Agreement (ITA), the Agreement on Government Procurement (GPA), the currently negotiated Trade in Services Agreement (TiSA) and the recently failed initiative for an Environmental Goods Agreement (EGA). The WTO has, moreover, documented a tenfold increase in the number of notified PTAs since the early 1990s (see figure 6.1). The surge in the number of PTAs rekindles the old debate on the negative and positive effects of PTAs on the multilateral trade regime and the WTO (Baldwin, 2006; Bhagwati, 1987; Heydon, 2014; Krugman, 1991; Panagariya, 1999; Viner, 1950). The challenges related to the growing complexity of the multilateral trade regime, however, are different than what many scholars predicted in past decades. Rather trade diversion, legal complexity and incoherence may emerge as the main problem for countries and traders.

Figure 6.1: Evolution of Regional Trade Agreements in the World, 1948-2017



Source: WTO (2017).

How to make PTAs multilateral-friendly?

PTA exchange: Suominen (2014), Estevadeordal et al. (2013) and Stoler (2016) discuss in their E15 contributions the idea of a 'PTA exchange'¹. They propose that the WTO become a clearinghouse for all PTA-related questions. The WTO should collect information and provide analysis of how PTAs affect countries. The WTO should become a platform for peer learning and policy advise on PTAs. The underlying rationale is that PTAs may undermine but also strengthen the multilateral trade regime and the WTO. A PTA exchange would enable the WTO to promote multilateral-friendly PTAs and thereby to limit the negative fallout of the current wave of trade regionalism. Other international organisations are moving quickly in order to host such a PTA exchange. The great expertise and central position of the WTO in the multilateral trade regime predestine the WTO, however, to host such a platform. The international community should entrust the WTO with this task in order to tap on policy-making and knowledge synergies. PTAs might thereby at least partly fill the void left by the collapse of the Doha Round.

Multilateral Impact Assessments: Lawrence (2013) proposes in his E15 piece to use a future 'PTA exchange' as a platform to draft and to discuss so-called multilateral impact assessments. Like RIAs for domestic regulatory measures, such multilateral impact assessment would identify and weigh the costs and benefits of PTAs in particular with regard to their likely impacts on the multilateral trade regime and WTO. These impact assessments might thereby ensure that PTAs are 'building' rather than 'stumbling' blocks and partly replace multilateral negotiations.

How to ensure that Plurilaterals strengthen the multilateral trade regime?

A committee and guidelines for multilateral-friendly PAs: The declaration of the WTO Ministerial Meeting of December 2012 called for the exploration of new approaches to trade negotiations. In line with prior recommendations of the Warwick Commission, the statement was broadly seen as a call for single-issue plurilateral initiatives. The collapse of the Doha Round in 2016 gave further impetus to these developments. The growing interest and dynamism in this field, however, warrants caution. PAs – while always second-best options compared to multi-issue multilateral deals – may indeed increase global welfare. But if ill-designed, they may also harm the world economy and undermine global welfare (Heydon, 2014, pp. 1047–1050; Hoekman, 2012, p. 759).

The E15 Synthesis Report on the Functioning of the WTO (Elsig, 2016) recommends the creation of a new WTO committee or working group to monitor and to develop guidelines on multilateral-friendly PAs. The guidelines should specify under what circumstances PA initiatives within the multilateral trade regime are permissible. The Sutherland Report (Sutherland et al., 2004) for instance stipulates that PA initiatives must not bring trade issues into the WTO regime, which face strong opposition from a broad majority of WTO members. The E15 Synthesis Report (Elsig, 2016), moreover, suggests that the future PA guidelines should oblige parties to design PAs in view of a future multilateralisation of commitments. In other words, the hurdles for interested WTO members – and notably developing and least developed countries – should be kept low. Trade disputes arising under a PA should be subject to the jurisdiction of the WTO DSB. Negotiations and the operation of PAs through special Committees should be transparent and open to non-members. This list is far from exhaustive. Yet as the Sutherland Report states PAs

¹ The authors refer to it as 'RTA exchange'. RTA stands for regional trade agreement and is here used interchangeably with the abbreviation PTA.

must be legitimate, transparent and inclusive in order to strengthen rather than to undermine the multilateral trade regime (Sutherland et al., 2004).

PA coordination: E15 deliberations have not focused on questions of coordination across PA initiatives. There is, however, a manifest risk that mushrooming PA initiatives may create norm overlap, duplication and incoherence. PAs typically focus on a single trade issue or sector with varying membership. PAs covering adjacent domains are likely to interact and to create an overlapping complex web of legal obligations and rights. A PA dealing with eCommerce for instance is likely to interact with PAs covering other types of services or high-tech goods. Legal complexity and incoherence is likely to harm traders, countries and the world economy. The above-discussed PA Committee or Executive Committee (section 4) could assume the responsibility to coordinate PA initiatives.

Toward 'critical mass' or preferential PAs: As Vickers (2014) observes, the rise of PAs triggers the question when these agreements may apply on a MFN or preferential basis. The WTO should develop an evidence-based strategy to on this question. Two types of PAs exist within the multilateral trade regime (Hoekman, 2012, p. 759). First, so-called 'critical mass' PAs apply on a MFN basis. Critical mass PAs bring together the key economies in a domain. These economies commit among each other to additional market access. These commitments are extended through the MFN clause to non-signatories. Second, recent PA initiatives such as TiSA seem to aim for preferential liberalisation. The signatory countries only grant enhanced market access to other signatory parties. Non-signatory countries cannot benefit from enhanced market access. The preferential application of a PA aims at creating incentives for non-signatories to join in.

Assistance to developing countries: Several E15 contributions (Estevadeordal et al., 2013; Suominen, 2014; Vickers, 2014) as well as the Sutherland Report (Sutherland et al., 2004) emphasise that developing and least developed countries may need assistance from the WTO to take part in and to benefit from the rise of PAs and PTAs. So far mostly developed and emerging economies initiate and take part in current PA initiatives. In consequence, PA initiatives reflect interest and capabilities of advanced economies. The market access commitments and regulatory provisions in PAs may, however, be challenging for developing and least developed countries to implement. The surge in PAs may thereby cement a two-track multilateral trade regime, which hinders development and growth of the poorest WTO members. Technical assistance to developing and least developed countries wishing to join a PA is therefore crucial and should form part of the WTO's future activities.

Table 6.1: SWOT analysis of addressing the regime complexity challenge

<p style="text-align: center;">Strengths</p> <ul style="list-style-type: none"> • WTO regime can legally accommodate PTAs and PAs and thereby keep door open for multilateralisation • PTAs and PAs may prepare economies for future multilateral efforts 	<p style="text-align: center;">Opportunities</p> <ul style="list-style-type: none"> • WTO can ensure through expertise and assistance that PTAs are multilateral-friendly, comply with WTO law and promote growth and development • WTO can ensure that PAs strengthen rather than weaken multilateralism through developing trade law • WTO can help developing countries to take part in PA initiatives
<p style="text-align: center;">Weaknesses</p> <ul style="list-style-type: none"> • PTAs de facto undermine the WTO’s legislative, executive and judicative function and intensify crisis • PAs weaken multilateralism and produce less equitable and fair outcomes 	<p style="text-align: center;">Threats</p> <ul style="list-style-type: none"> • PTAs and PAs may side-line developing countries and limit their prospects to develop through trade • The WTO may promote its own demise by adopting a welcoming stance toward PTAs and PAs may

7. Conclusion

The WTO and the multilateral trade regime are a major success story of global governance. In few other policy domains have states cooperated as successfully and created as effective and efficient global institutions as in international trade policy. In part it is due to the WTO's outstanding performance and success that observers see the multilateral trade regime in crisis today.

The crisis of the WTO has many causes. Institutional weaknesses are one important factor. This study discussed the weaknesses and related reform proposals. An institutional reform may make an important contribution to reinvigorating and preparing the WTO and the multilateral trade regime for future challenges. This study focused on three key areas:

1. **Improve legitimacy and accountability:** Despite various efforts, the WTO still faces broad criticism of lacking legitimacy and accountability. Involving national parliaments, institutionalising relations with non-state actors and introducing public consultation mechanisms may help to address these criticisms. The WTO moreover needs to reconsider its strategy on external transparency and information sharing.
2. **Strengthen the WTO's executive and judicative function:** The core business of the WTO is currently evolving. Its main task used to be multilateral trade negotiations. Due to changes in the global political economy and nature of trade policy, multilateral trade rounds are unlikely to happen or to succeed in the foreseeable future. Hence, the WTO's executive and judicative function are bound to become more important. Committee work and dispute settlement will have to ensure open world markets and adjust WTO law to the evolving realities of global trade. The study proposed to strengthen the Secretariat's role and to modernise the Committee system to ensure that the daily operation of the regime produces desired outcomes. It, moreover, stressed that WTO member need to reflect on how to maintain the DSB as a central dispute resolution forum in a complex trade regime.
3. **Transform into negotiating and knowledge platform for PTAs and PAs:** The locus of trade policy-making has shifted from multilateral to regional and plurilateral trade negotiations. The WTO should redefine its institutional role and mission accordingly. Rather than a host for multilateral trade negotiations, it should see itself as a knowledge and negotiating platform for regional and plurilateral agreements. By developing basic principles, providing expertise and offering a well-respected dispute settlement mechanism, the WTO can continue to promote the ideal of multilateralism, support development and growth and preserve a transparent level playing field for all.

8. Annex: Summary tables of reform proposals

Overall challenge	Concrete problem	Reform proposal	Opportunities & threats	Relevant E15 paper
<i>Increasing the WTO's legitimacy and accountability</i>	Insufficient participation and support for WTO work from non-state actors such as businesses, NGOs and alike.	Create standing advisory councils	<ul style="list-style-type: none"> + Greater inclusiveness + Stronger policy ownership + Better flow of information + Increased policy quality - Risk of even more veto players - Risk of overrepresentation of major economies 	<ul style="list-style-type: none"> • Elsig, 2016 • Eckhard, 2016
	Current non-state actors following WTO work have over time become part of the WTO machinery and do not represent real outsiders anymore.	Introduce public consultation process	<ul style="list-style-type: none"> + Greater inclusiveness + Stronger policy ownership + Better flow of information + Increased policy quality - Burdensome on administration - Difficult outreach to weak constituencies 	<ul style="list-style-type: none"> • Elsig, 2016
	Modern trade policy reaches deep into the domestic public policy space and thereby erodes traditional parliamentary control.	Strengthen parliamentary involvement	<ul style="list-style-type: none"> + Greater legitimacy + Greater accountability + Better flow of information + Increased policy quality - Risk of even more veto players 	<ul style="list-style-type: none"> • n/a

			- Risk of overrepresentation of major economies	
	The growing intrusiveness of modern trade policy fuels ever stronger demands for external transparency.	Review of external transparency strategy (including WTO web presence and documentation)	+ Greater legitimacy + Greater accountability + Better flow of information - Risk of overly adversarial negotiating behaviour - Risk of non-cooperation due to sensitive information	<ul style="list-style-type: none"> • Elsig, 2013, 2016 • Mavroidis, 2016 • Samans et al., 2016 • Wolfe, 2015

Overall challenge	Concrete problem	Reform proposal	Opportunities & threats	Relevant E15 paper
<i>Ensuring the effectiveness and efficiency of WTO work</i>	Insufficient leadership has arguably contributed to the collapse of the Doha Round and paralysed the WTO's negotiating function.	Create executive Committee for leadership	+ Leadership enhances effectiveness and efficiency + Opportunity to optimise 'early harvest' - Risk of undermining legitimacy of WTO work	<ul style="list-style-type: none"> • Abbott, 2013 • Elsig, 2013, 2016
	Consensus decision-making in combination with the Single Undertaking and member-driven functioning of the WTO is often seen as a key cause behind the collapse of the Doha Round.	Review decision-making rules to overcome negotiating deadlocks	+ Opportunity to increase efficiency and effectiveness of WTO negotiations through qualified or weighted voting - Risk of undermining legitimacy of WTO - Risk of undermining domestic policy ownership	<ul style="list-style-type: none"> • Abbott, 2013 • Elsig, 2013, 2016 •
	Member-driven policy-making has shown increasingly cumbersome in a WTO of global and very heterogeneous membership.	Strengthen Secretariat as agenda setter	+ Opportunity to increase effectiveness and efficiency of negotiations and committee work through better agendas	<ul style="list-style-type: none"> • Elsig, 2013, 2016 • Odell, 2013 •

	Negotiations and Committee work at times suffer from a lack of data and analysis translating into stalemate.	Enhance Secretariat's research and data collection capacity	+ Opportunity to support successful negotiations and committee work through data and analysis - Risk of duplicating research capacity of other IOs	<ul style="list-style-type: none"> • Elsig, 2016 • Samans et al., 2016
	The WTO's Committee system and Secretariat have been established in the 1990s and may need to be updated to fully deliver.	Review the Secretariat and Committee structure	+ Enhance capacity of Secretariat to support committees + Better use of WTO resources	<ul style="list-style-type: none"> • Elsig, 2016 • Samans et al., 2016 • Stephenson, 2016 • Vickers, 2014 • Wijkström, 2015
	The WTO's negotiating function is in coma translating into a stagnation of the WTO's institutional and legal order.	Strengthen brainstorming capacity of WTO Committees to engage in forward-looking deliberations.	+ Opportunity to fill void on institutional development left by collapse of Doha Round	<ul style="list-style-type: none"> • Elsig, 2016 • Wijkström, 2015 • Samans et al., 2016
	Modern trade barriers are of regulatory nature and can only get addressed by domestic regulators.	Strengthen involvement of domestic regulators in Committee work	+ Greater technical expertise + Increased policy ownership	<ul style="list-style-type: none"> • Wijkström, 2015 • Elsig, 2016
	Many regulator trade barriers stem from lacking awareness and information on trade effects of regulation.	Strengthen the use of Good Regulatory Practices to promote regulatory coherence	+ Increase quality of WTO measures + Increase quality of national measures - Risk of overly burdensome on WTO - Risk of lacking capacity among developing and least developed countries	<ul style="list-style-type: none"> • Mavroidis, 2016 • Arvius and Jachia, 2015 • Malyshev and Kauffmann, 2015 • Wolfe, 2015 •
	A growing share of trade takes place as part of GVCs, which poses distinct challenges than classic trade flows.	Strengthen the GVC focus of WTO work to	+ Supply Chain Councils increase business support for WTO + Better flow of information	<ul style="list-style-type: none"> • Stephenson, 2016

	The WTO ignores the growing importance of private regulation and standards for trade.	Realising the potential of private transnational regulation	+ Tab on the potential of private initiatives to facilitate trade	<ul style="list-style-type: none"> • Mavroidis, 2016 • Arvius and Jachia, 2015 • Thorstensen et al., 2015 • Wijkström, 2015
	The collapse of the Doha Round translates into stagnating primary law.	Finding the right balance for the DSB to interpret existing WTO law in light of new policy challenges	+ Keep DSB relevant + Maintain coherent trade law - Risk of overstepping mandate - Risk of undermining legitimacy of DSB	<ul style="list-style-type: none"> • Wolf, 2016 •
	The rise of PTAs and PAs risks side-lining the WTO DSB in the long-run promoting a fragmentation of the regime and trade law.	Anchor the WTO DSB in a complex trade regime	+ Keep DSB relevant + Maintain coherent trade law	<ul style="list-style-type: none"> • Stoler, 2016 • Vickers, 2014

Overall challenge	Concrete problem	Reform proposal	Opportunities & threats	Relevant E15 paper
<i>Ensuring the effectiveness and efficiency of WTO work</i>	The rising number of PTAs risks becoming stumbling rather than building blocks for the multilateral trade regime.	Create a PTA exchange	+ Concentrating knowledge on PTAs in one institution + Provide data on PTA effects + Ensure multilateral friendliness of PTAs	<ul style="list-style-type: none"> • Suominen, 2013 • Estevadeordal et al., 2013 • Stoler, 2016
	The rising number of PTAs risks becoming stumbling rather than building blocks for the multilateral trade regime.	Introduce multilateral impact assessment	+ Ensure creation of welfare-enhancing PTAs & PAs	<ul style="list-style-type: none"> • Lawrence, 2013
	The rising number of PTAs risks becoming stumbling rather than building blocks for the multilateral trade regime.	Create a committee and guidelines to coordinate PA initiatives and ensure a multilateral-friendly PA design	+ Increase legitimacy of PAs + Greater transparency to maximise trade through PAs + Ensure multilateral-friendliness of PAs including	<ul style="list-style-type: none"> • Elsig, 2016 • Vickers, 2014

			on question of 'critical mass' or preferential PAs	
	The rise of PTAs and PAs might de facto side-line developing and least developed countries and thereby create a two-tier trade regime.	Assistance to developing and least developed countries wishing to join PAs or PTAs	+ Ensure that PAs deliver also for developing countries + Avoid fragmentation of trade regime	<ul style="list-style-type: none"> • Estevadeordal et al., 2013 • Suominen, 2014 • Vickers, 2014

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Address | Contact

Bertelsmann Stiftung
Carl-Bertelsmann-Straße 256
33311 Gütersloh
Telefon +49 5241 81-0

Dr Christian Bluth
Project Manager
Telefon +49 5241 81-81329
christian.bluth@bertelsmann-stiftung.de

www.bertelsmann-stiftung.de