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### **Systemic Issues for Commonwealth Small States in the Current Functioning of the WTO**

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#### **Abstract**

Small states face significant hurdles in securing the potential benefits of trade to their economies and in protecting themselves against trade practices and rules that harm their interests. This study explores the systemic issues and challenges confronted by Commonwealth small states in the multilateral trading system, and identifies two sets of priorities for these countries. First, the substantive content of trade agreements must account for the particular needs, constraints and vulnerabilities of small states. Second, WTO members need to address the systemic issues facing the WTO in ways that ensure small states can use and benefit from all of the functions the multilateral trading system offers. To help enable Commonwealth small states to participate meaningfully in debates on WTO reform, the paper highlights areas of particular importance and sets forth options and proposals they could consider advancing.

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## Abbreviations and acronyms

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ACP	African, Caribbean and Pacific
ACWL	Advisory Centre on WTO Law
AfT	Aid for Trade
CARICOM	Caribbean Community
CG-18	Consultative Group of 18
CTD	Committee on Trade and Development
DSU	Dispute Settlement Understanding
EIF	Enhanced Integrated Framework
EU	European Union
FTAs	free trade agreements
GATT	General Agreement on Tariffs and Trade
IGOs	intergovernmental organisations
ILO	International Labour Organization
IMF	International Monetary Fund
ITC	International Trade Centre
LDCs	least developed countries
MDGs	Millennium Development Goals
MEAs	multilateral environmental agreements
MFN	most-favoured nation
NAMA	non-agricultural market access
NGOs	non-governmental organisations
OECD	Organisation for Economic Co-operation and Development
OECS	Organisation of Eastern Caribbean States
PTAs	preferential trade agreements
RTAs	regional trade agreements
SDGs	Sustainable Development Goals
SDT	special and differential treatment
SPS	sanitary and phytosanitary
SVEs	small, vulnerable economies group
TPR	trade policy review
TRIPS	trade-related aspects of intellectual property rights
TRTA	trade-related technical assistance
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNEP	UN Environment Programme
US	United States
WHO	World Health Organization
WTO	World Trade Organization

# 1. Introduction

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Recurring standstills in the World Trade Organization (WTO)'s Doha round of negotiations rights spur debate among the WTO's membership and Secretariat, as well as experts and stakeholders, on the future of the organisation.<sup>1</sup> The issues at stake are not new. Amid concerns about the languishing negotiations, WTO members made a collective call at the 2011 WTO ministerial conference for improving and strengthening the functioning of the organisation. To date, however, members are yet to make any decisions or provide guidance regarding a process to advance such efforts.

The year 2015 marks the twentieth anniversary of the WTO, and members will meet at the end of 2015 for next biennial WTO ministerial conference. Members thus have an important opportunity to forge a way forward, not only on the WTO's negotiating agendas, but also on systemic issues and challenges facing the organisation. In so doing, members should ensure that the particular needs and concerns of the WTO's smallest members are not neglected.

The aim of this study is to analyse the systemic issues and challenges that small states confront in the multilateral trading system. It highlights areas of particular importance for small states to enable them to participate meaningfully in discussions of WTO reform, and presents options and proposals that small state governments and stakeholders could consider advancing.

Over recent decades, small states have adopted a suite of trade, industrial and investment reforms in an effort to benefit from the process of globalisation. Although international trade is important to their economies, small states face significant hurdles in securing the potential benefits while protecting themselves against trade practices and rules that harm their interests. These challenges give rise to two sets of priorities for small states with regard to the multilateral trading system.

First, small states have an interest in ensuring that the substantive content of trade agreements accounts for their particular needs, especially the constraints and vulnerabilities linked to their small size and low levels of development. Second, small states have an interest in ensuring that the various systemic issues facing the WTO are addressed in ways that help them use and benefit from all of the functions the multilateral trading system offers.

The chief 'systemic' issues and priorities of small states with respect to the multilateral trading system include:

- Boosting influence on decision-making through greater support for participation in relevant decision-making fora and ensuring inclusive, transparent processes that maximise possibilities for effective engagement.
- Increasing support for building their supply-side capacity needed to benefit from trade opportunities, meet the high costs of implementing trade agreements and build the long-term regulatory, institutional and negotiating capacities needed to manage their international trade relationships.
- Ensuring that resources devoted to trade research, statistics and monitoring produce the data and analysis that respond to their needs while building their local research capacities.
- Fostering mechanisms for independent assessment of the potential and actual impacts of WTO rules on national development priorities.
- Promoting 'development-oriented' coherence between WTO rule-making and the policy advice of international organisations and development agencies (such as in regard to debt and finance) upon which small states are particularly reliant for implementing their development strategies.

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<sup>1</sup> See, for instance, Melendez et al. (2012). For an example of news reports, see [www.theguardian.com/world/2014/aug/01/wto-future-doubt-india-blocks-deal](http://www.theguardian.com/world/2014/aug/01/wto-future-doubt-india-blocks-deal) (28 January 2015). In mid-October 2014, the WTO Director-General began urgent 'crisis' talks among members on how to advance the stalled negotiations. See Jones (2014a).

- Ensuring that interactions between the WTO and other institutions of global economic governance (such as the G-20 and development co-operation agencies) incorporate a specific focus on the needs of small states.
  - Exploring options with regard to the intersections between the WTO and the growing range of preferential trade agreements (PTAs) and regional trade agreements (RTAs), including integration arrangements among small states.
  - Securing greater benefits from the WTO's dispute settlement arrangements so as to help small states enforce their trading rights on the global stage.
3. dispute settlement;
  4. treaty administration, monitoring and assessment;
  5. research and statistics gathering;
  6. Aid for Trade (AfT), capacity-building and technical assistance;
  7. outreach and stakeholder engagement; and
  8. interface with the broader system of global economic governance, including the United Nations (UN) and Bretton Woods institutions, as well as the implications of regional and other preferential trade arrangements, both those in which small states participate and those from which they are excluded.

The paper continues with a brief review of the key debates on the WTO's systemic challenges and institutional reforms to date, noting the extensive range of proposals already on the table (Deere Birkbeck and Monagle 2009). To aid identification of the systemic challenges at hand, the WTO system should be analysed in terms of the range of functions it serves. The core of the paper thus analyses systemic issues in eight functional areas of particular interest to small states, namely:

1. regime management, including agenda setting, policy dialogue and deliberation on strategic and new issues; internal management of the WTO Secretariat; and the functioning of WTO regular committees;
2. negotiation and rule-making, including the principles and process of negotiations, the ways in which small states organise coalitions and the accession process;

Notably, this study does not aim to address the challenges that small states face in organising themselves at the national/regional level to devise and advance their trade policy objectives at the international level (Jones et al. 2010). Neither does it aim to address the substance of the Doha round of WTO negotiations.

Some options presented in this paper relate specifically to actions that the WTO Secretariat could take. Others relate to acts that WTO members could take either in their capacity as WTO members, in their role as donors to small states or as members of other international organisations relevant to trade and small states. Some recommendations also relate to the secretariats of other international organisations and to stakeholders – that is, to the wider system of actors that animate the multilateral trading system.

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## 2. Challenges and constraints facing small states in international trade

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In order to identify the interests of the world's smallest developing countries with regard to debates on WTO systemic issues and institutional reform, it is important first to take stock the set of challenges they face in the international trading system.

In analysing small states, this study adopts the lists of small states identified by the

Commonwealth Secretariat and the World Bank (see box 1 and annex 1).

### 2.1 Small states in international trade

International trade is of particular importance to small states. However, such countries face

### Box 1. Definition of small states

There is no single, broadly-accepted definition of 'small states'. The Commonwealth Secretariat defines small states as 'characterised by their vulnerability in the areas of defence and security, environmental disasters, limited human resources, and lack of economic resources', but sees countries 'lying along a continuum, with a number of larger states sharing some or all of the same characteristics'. The Commonwealth Secretariat nevertheless uses a threshold of 1.5 million people, a yardstick followed by the World Bank in their joint Small States Task Force. The World Bank also acknowledges that 'no definition, whether it be population, geographical size or gross domestic product, is likely to be fully satisfactory. In practice, there is a continuum, with states larger than whatever threshold is chosen sharing some or all of the characteristics of smaller countries.' For instance, within the Commonwealth, Jamaica, Lesotho and Papua New Guinea are considered small states because they share physical and economic characteristics of small states in their regions. Of the 31 Commonwealth small states, 13 have populations of <200,000 and are known as mini-states.

**Source:** Commonwealth Secretariat and World Bank (2000)

well-known structural economic constraints and power asymmetries that circumscribe their room for manoeuvre in international trade negotiations (Jones et al. 2010).<sup>2</sup> The limited economic weight of such states often produces pessimism about their prospects for influencing the multilateral trading system. Nonetheless, given the vulnerability of small countries to asymmetric bilateral trade deals, a rules-based multilateral trading system is widely considered an important albeit imperfect vehicle for efforts to protect and advance their interests.

Some commentators suggest that small states have too little at stake to warrant greater attention to the WTO. However, small states have themselves rightly responded that even if only a small proportion of their trade is conducted under WTO rules, and even where their main trade activities are limited to a few exports, they nonetheless have a strong interest in clear, predictable multilateral rules and in contributing to the negotiation of new rules, particularly those which may be important to them in the future or which may later present implementation challenges.

## 2.2 Trade-related challenges for small states

A wide-ranging literature details the unique set of economic incentives and constraints faced by small states, as well as a series of development challenges and vulnerabilities. These include trade dependence, cost disadvantages

(due to remoteness), vulnerability to policy decisions of major trading partners and underlying development challenges (ranging from weak social institutions to poor economic infrastructure) (see, for instance, Bora et al. 2005).

It is also widely acknowledged that small states face challenges in participating effectively in the WTO system, which in turn impacts their ability to derive potential benefits. The ability of small states to leverage what bargaining power they have at the WTO is thwarted by a range of weaknesses and challenges.

For small states, small economic size presents a fundamental structural constraint on their ability to influence the outcomes of negotiations. Further structural constraints faced by small states in negotiations include power asymmetries, the rules and procedures of trade negotiations and weak capacity to enforce their rights in international markets, as well as prevailing discourses and ideas in trade negotiations that generally favour the interests of larger players. Across international trade negotiations – bilateral, regional and multilateral – such constraints serve to circumscribe the space within which small states have to manoeuvre to advance their collective interests.

Nonetheless, small states are making efforts to work together, most notably through the small, vulnerable economies group (SVEs) in the WTO's Committee on Trade and Development (Special Session) and other negotiating bodies. This approach has yielded some

<sup>2</sup> For scholarly discussions of the various dimensions of power in international trade, see Eagleton-Pierce (2007); Shaffer (2004a); and Steinberg 2002.

important successes, such as the establishment of a work programme on small economies which was renewed at the 2013 Bali WTO Ministerial.<sup>3</sup>

Further, those small states that are LDCs also secured several decisions in Bali on preferential rules of origin for LDCs, operationalization of the waiver concerning preferential treatment to services and service suppliers of LDCs, and duty-free and quota-free market access for LDCs. Along with other developing countries, they also achieved agreement on a monitoring mechanism on special and differential Treatment and renewed commitments to Aid for Trade. (See annex 2 and the discussion on small state coalitions in part 4 below.)

Although the focus of this paper is on systemic issues and weaknesses facing small states at the international level, it is important to acknowledge that national-level challenges within small states also have a significant impact on their engagement with the WTO system. The underlying challenges facing national trade policy-making and institutions set important context and so are introduced briefly below (the specific challenges small states encounter in WTO negotiations are discussed in part 4 of this paper).

### 2.3 National-level participation constraints for small states at the WTO

At the national level, small states face a range of constraints that impede their ability to participate actively in, and benefit from, the WTO system. These include weaknesses in areas such as trade policy formulation, trade negotiations and negotiating techniques; technical capacity to design and implement trade rules and regulations; mechanisms for consulting the private sector and civil society in trade negotiations; and access to information about the impacts of different trade policies and negotiation proposals.

A relatively high proportion of negotiators from small developing countries lack the clearly defined priorities that are a prerequisite for influencing trade negotiations (Jones et al. 2010). Part of the reason is that small states

often find it difficult to gauge the impact of particular changes in trade rules on the local economy. While most small states have access to national trade data, they rarely have more detailed economic impact assessments or the analytical capacity to properly assess the trade-offs between different policy options, or to keep up with changes in trade laws and policies among their trading partners.

In addition, weak processes for input from those who stand to lose or gain from trade negotiations can undermine the identification of national trade interests. In some cases, there is a failure or unwillingness on the part of government to listen or incorporate stakeholder input. Even where stakeholders are active and do play a role in determining trade interests, weak communication among relevant ministries, and between capital and missions, often leads to inadequate oversight of small state negotiators, and also poses the risk that national interests are not reflected in negotiating positions (see Van Grastek 2008). In addition, in many small states, parliaments play no role in holding trade ministries to account. When strategic direction from national capitals, parliaments and stakeholders is missing and accountability mechanisms are weak, the participation of Geneva-based delegates in international trade negotiating processes can become discretionary and *ad hoc*.

Furthermore, small-state negotiators responsible for WTO negotiations often suffer from inadequate attention from governments to negotiating strategies and tactics. Psychological factors and poor leadership can impact the perceptions that negotiators have of their prospects for success in negotiations, and many negotiators face perverse incentives (e.g. the prospects of a career in an international organisation based in Geneva may impact their conduct) where salary and career prospects are uncertain or limited within their national government (Jones et al. 2010).

Finally, political leaders from small states often devote greater attention to bilateral, preferential and regional trade arrangements than to the multilateral arena. In large part, this is due to the fact that most of the trade of small

3 See [www.wto.org/english/tratop\\_e/devel\\_e/dev\\_wkprog\\_smallleco\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/dev_wkprog_smallleco_e.htm) (accessed 28 January 2015) and WT/MIN(13)/DEC.



states occurs under bilateral, preferential arrangements with countries that are also major sources of development finance and investment. Given the added consideration that the cost of representation in Geneva is high, many small states choose not to devote their limited resources to following the WTO system. At the same time, senior political leaders and policy-makers often do not understand the longer-term and systemic importance of WTO rules and negotiations to small states, a problem which is compounded when engagement in the WTO system is low.

Small states can take a range of actions to help themselves in their international trade relations at the WTO and beyond; such as improving how they make trade policy, building national negotiating capacity, strengthening national trade institutions, deepening engagement with stakeholders and narrowing the gaps between negotiators and their capitals. Examples of specific actions required include boosting staff numbers and training; improving access to information and expertise within institutions responsible for trade policy-making and addressing weaknesses in institutional co-ordination within governments and with senior policymakers.

A number of studies offer options and best practices for greater transparency and opportunities for stakeholder participation in trade policymaking and in national negotiating teams, emphasising how this can boost the prospect of development-oriented national trade policies and beneficial outcomes from international negotiations.<sup>4</sup>

Proposals for improving the inclusiveness of trade policy-making at the national level include: 1) enlarging the composition of national consultation fora to include representatives of all groups of stakeholders, i.e. the government ministry responsible for trade, other government ministries and agencies, parliaments, industry, small and medium-sized enterprises, multinational companies, labour, consumers, farmers, non-governmental organisations (NGOs), informal sectors and media; 2) strengthening the mandate of consultative

fora by obliging the ministry responsible for trade to follow the advice offered by them; 3) ensuring the effective functioning of consultative fora by providing adequate human and financial resources to organise and service their meetings and to finance the participation of stakeholders; and 4) undertaking broad capacity-building of stakeholders on trade issues so that they are prepared for informed participation and to make effective use of the improved opportunities for inclusiveness (see Kaukab 2011).

In addition, proposals for bridging the gap between national trade policy-making and the work of delegations to the WTO include: regular briefings by diplomats of national consultative fora and for parliamentarians; periodic visits of representatives of groups of stakeholders to Geneva during important negotiations; inclusion of representatives of all groups of stakeholders in official delegations to the WTO ministerial conferences; and the incorporation of some non-state stakeholders and parliamentarians into the smaller delegations that attend informal meetings during the ministerial conferences (Kaukab 2011).

## 2.4 Purpose and functions of the WTO

Established in 1995, the WTO is the core multilateral institution charged with assisting countries to manage their trade relations. It is a rules-based system where decisions are the outcome of negotiations among members and new trade rules that emerge are ratified by the relevant national political processes. The WTO's annual budget is around SFr200 million and it employs ~700 members of staff.

Although the WTO is the key international organisation dealing with rules between countries on trade, interpretations of its mandate vary widely among its membership, as do views on what the core purpose, priorities and orientation of the organisation should be. In this regard, the views of small states on the underlying purpose of the organisation matter, particularly as their interests may differ from those of

4 See, for instance, Bonzon (2014), Brock and McGee (2004), CUTS International (2009a, 2009b), Gallagher et al. (2005), Jones et al. (2010), Halle and Wolfe (2007), Ostry (2004), Saner (2010) and Sapra (2009). Further case studies of practices at the national level can be found in de Motta Veiga (2007), Sen (2004), and Zeng and Mertha (2007). Alongside this work, there have also been studies that explore other aspects of the 'domestic' governance of trade, such as the transparency of national trade administration and customs regimes (Marconini 2005).

other members. Similarly, with regard to systemic matters at the WTO, small states may have different views on core activities and whether the system's functions are adequate for addressing their interests.

The WTO's many functions can be clustered in several different ways. These functions are served in some instances by the WTO Secretariat, but also by member states through the various WTO committees. Some functions also rely on activities by non-state actors or other international organisations. The range of functions includes:

- serving as a forum for negotiations to reduce or eliminate obstacles to trade (import tariffs, other barriers to trade) and to determine rules governing the conduct of international trade (e.g. antidumping, subsidies, product standards, etc.),
- administering and monitoring the application of the WTO's rules by members,
- reviewing the trade policies of members, as well as ensuring transparency of regional and bilateral trade agreements,
- settling disputes among members regarding the interpretation and application of the agreements,
- building capacity of developing countries to participate and benefit from the multi-lateral trading system (including training and AfT),
- assisting countries in the process of accession,
- conducting economic research and collecting and disseminating trade data in support of the WTO's other main activities,
- explaining to and educating the public about the WTO, its mission and its activities, and
- co-operating with other international organisations and global economic governance more broadly.

## 2.5 WTO debate on systemic issues and institutional reform

Neither the WTO nor the debates about its challenges are static. As the intensity of public debate on globalisation waxes and wanes, and the salience of specific trade challenges shifts, so too has the debate on systemic issues facing the WTO.<sup>5</sup> Since its launch in 1995, the issue of WTO institutional reform – whether it is needed, in what form, and through what kind of process – has been an ever-present issue for the organisation and its growing and diverse membership. There are many enduring issues and also some newer preoccupations (WTO 2007a, b).

Calls from member states<sup>6</sup> and scholars for attention to 'systemic' challenges facing the WTO have been most acute at specific junctures in its relatively short history – most notably following the Seattle, Cancun and Hong Kong WTO ministerial conferences (see, for instance, Action Aid et al. 2000; Baldwin 2006; Bello 2002a; Bhagwati 2001; Blackhurst 2001; Cho 2004; EC Directorate-General for Trade 2003; ETUC 2006; Moore 2003; Narlikar 2004; Narlikar and Wilkinson 2004; Petersmann 2005a, b; Schott 2000; and WWF 1999), and also in the face of the ongoing failure of members to conclude the round of negotiations launched by the 2001 Doha development agenda (see Bluestein 2009; Bohne 2010; Cottier and Elsig 2011; Hoekman 2012; Hufbauer and Schott 2012; Ismail 2009d; Steger 2009b; and Steger and Shpilkovskya 2009). Intense public debate at each of these junctures has spurred debates about the organisation's legitimacy (Bacchus 2004; Elsig 2007a; Ricupero 2001; TWN 1999) and a number of high-level efforts to take up concerns about systemic challenges facing the WTO.

In 2004, former WTO Director-General Dr Supachai Panitchpakdi commissioned a consultative board of experts, led by Peter

5 Compare, for instance, the table of contents of the volume edited by Krueger (1998) to that of Steger (2009a).

6 See, for instance, WTO Doc T/GC/M91, General Council, Minutes of Meeting, 26 January 2005; WT/MIN (03)/ST/58, Ministerial Conference, Fifth Session Cancun, 10–14 September 2003; Honduras - Statement by His Excellency Norman García, Secretary of State, Department of Industry and Commerce; WT/GC/W/477, General Council, Preparatory Process in Geneva and Negotiating Process at Ministerial Conferences, Communication from Australia, Canada, Hong Kong, China, New Zealand, Singapore, Switzerland; WT/MIN(01)/ST/110, Ministerial Conference, Fourth Session, Doha, 9–13 November 2001; Republic of the Fiji Islands, Statement by His Excellency Isikeli Maitoga, Ambassador, Permanent Representative to the WTO; WT/GC/M/57, General Council, Minutes of Meeting, 17 and 19 July 2000.

Sutherland (former Director-General of the General Agreement on Tariffs and Trade [GATT] and the WTO),<sup>7</sup> to present proposals for institutional reform. The Sutherland Report was followed in 2007 by an independent commission supported by Warwick University on the Future of the WTO.<sup>8</sup> Growing awareness of the need for more attention to other 'systemic issues', beyond the challenges facing the WTO's negotiation function, was one of the reasons that WTO members agreed in 2009 to reinstate the practice of holding biennial ministerial conferences (as called for in the WTO's mandate) and to put on the agenda a discussion of ways to strengthen the functioning of the multilateral trading system.<sup>9</sup> Furthermore, in 2012, the WTO Director-General Pascal Lamy commissioned a report from a panel of eminent experts on the future of the global trading system.<sup>10</sup>

A first overarching tension relates to differences between members regarding the purpose and role of the WTO, particularly in the context of debates on the broad architecture of global economic governance (see, for instance, Akyüz 2009 and Peet 2009). At the heart of this debate are different views on the linkages between trade, debt and finance as well as on economic theory and development strategies (see, for instance, Barfield 2001). These tensions animate debates on the appropriate relationship between the WTO and other international economic and social organisations, including UN agencies, as well as global governance processes such as the G-20 (see part 10). (See, for instance, Cohn 2003; Jackson 1999; Siegel 2002; and Vines 1998.)

A second chief concern is the foreboding and widespread view that multilateralism in global trade is in crisis in the face of proliferating RTAs, the recent launch of negotiations for a mega-regional Transatlantic Trade and Investment Partnership and Trans-Pacific Partnership, as well as the launch of plurilateral Trade in Services Agreement negotiations outside the WTO (representing one-third of the WTO's membership and 75 per cent of services trade) (WEF 2014; WTO 2011; Hoekman 2014a, b; Hoekman and Mavroidis 2013, 2014; Jones 2014b, c). The collapse of the Doha development agenda negotiations in 2008 – and the ailing pace of subsequent negotiations – has intensified concerns about systemic problems with the WTO's negotiating function (Cottier 2006, 2009; Lawrence 2006), its ability to address so-called 'new issues',<sup>11</sup> and its relationship with RTAs.<sup>12</sup> (Here, the 'systemic' dimension relates to the difficulties members face in concluding WTO trade deals and the subsequent resort by many members to regional, plurilateral and bilateral fora as a faster way to reach trade agreements.) In addition, there are concerns that the imbalance emerging between the WTO's negotiation or 'legislation' function and its dispute settlement function results in an absence of guidance from the WTO's 'legislative' arm on issues that arise in dispute settlement cases (Steinberg and Goldstein 2009). As such, the Dispute Settlement Understanding (DSU) may overstep its mandate when being asked to reach decisions, particularly where these relate to 'new issues'.

7 See Consultative Board (2004). The initiative was preceded by earlier efforts within the GATT system, such as the Leutwiler Report (Leutwiler et al. 1985). The Sutherland Report spurred two journal special issues where scholars debated the analysis and recommendations of the report. See for instance Pauwelyn (2005) and Wolfe (2005). Two former WTO Directors-General have also published articles or books outlining their reflections (Moore 2003, 2004; Sutherland 2005).

8 See Warwick Commission (2007). The Warwick Commission proposed a number of institutional changes at the WTO, including increasing the size of the WTO Secretariat, expanding the powers of the Director-General, and revising the process for reaching new trade deals.

9 See Deere Birkbeck (2009a) and WTO (2001, 2009a, b). The latter were both communications from WTO member states regarding the Geneva WTO ministerial conference held in 2009. The statements were from Australia, Brazil, Canada, China, Hong Kong China, European Communities, India, Japan, Korea, Malaysia, Mauritius, Mexico, Norway, South Africa, Switzerland, Turkey, US and Uruguay (WTO 2009a, b).

10 See [www.wto.org/english/thewto\\_e/dg\\_e/dft\\_panel\\_e/dft\\_e.htm](http://www.wto.org/english/thewto_e/dg_e/dft_panel_e/dft_e.htm) (accessed 13 February 2013).

11 Some of the old or 'new issues' that some members believe warrant more attention at the WTO range from calls for attention to responsible use of balance of payments provisions when countries face crises; a new approach to agricultural trade that more directly addresses food security, livelihood and sustainability concerns; addressing concentrations of market power; and proposals for a new generation of international commodity agreements to help stabilise commodity markets. See Stoler (2012).

12 For a discussion of this topic, see Baldwin and Low (2009).

A third systemic issue that spurs debate among WTO Members concerns the degree to which the WTO's 159 members – developed, developing and least developed countries (LDCs) – participate in, and benefit from, the system. Although the intensity of concerns and the focus of objections have fluctuated and evolved over time, there are enduring calls for greater representation of the interests of developing countries and for more effective operationalisation of the concept of special and differential treatment throughout the WTO's agreements and work (see, for instance, African Group 2000; CAFOD et al. 2002; Consumers International 2000; Ismail 2008, 2009a; Kaukab et al. 2004; Khor 2006; UK Parliament 2003; Qureshi 2009; Stiglitz and Charlton 2005; and Wilkinson 2006a). A core argument made by development advocates is that an effective and inclusive global trading system is a global public good, both for the purposes of legitimacy and for producing fair outcomes.<sup>13</sup> Furthermore, the credibility of international agreements is undermined when the capacity of developing countries to implement them is weak or absent.

The launch of the 2001 Doha development agenda and the AfT initiative in 2005 were each heavily influenced by political recognition of the need to address the difficulties that developing countries face in deriving benefits from their participation in the international trade system (see Alessandrini 2010; Njinkeu and Cameron 2008; Page 2003; Prowse 2002, 2006; WTO 2006, 2013). The political salience of development concerns was also in clear view in 2009 when WTO Director-General Pascal Lamy called for a transformation of the WTO into an institution that is 'more development-friendly [and] more user-friendly, so that its benefits are felt by all, large and small, rich and poor, strong and weak' (WTO 2009c). Importantly, although a number of common concerns exist, the priorities and emphasis of different regions and sub-sets of developing countries (e.g. small states, LDCs,

African countries and emerging powers), as well as stakeholders within them, can vary widely.<sup>14</sup> Although some of the larger developing countries now have greater power at the heart of WTO decision-making (see Narlikar 2011a, b; Hurrell and Narlikar 2006), small states face enduring challenges in their engagement with the multilateral trading system.<sup>15</sup>

A final set of systemic issues discussed by the WTO membership relate to institutional reforms of the WTO. For small states, a key cross-cutting and systemic priority for institutional reform relates to the inclusiveness and transparency of WTO decision-making across its functions, including but not solely in the area of negotiation. Participation is important for all countries, but it is small and poor countries that have faced the strongest difficulties in this respect. Calls for institutional reform also arise in regard to the WTO's dispute settlement function and the WTO's 'missing middle' – the space for policy debate and deliberation (Evenett 2008). There are also concerns about the functioning of the Secretariat, the work of the WTO's regular committees and administration agreements, the quality and orientation of capacity building and research and the WTO's role in monitoring trade policies (see, for instance, Chaisse and Matsushita 2013). Finally, there is a range of proposals on institutional reforms that could improve the WTO's outreach to non-government stakeholders, which in turn is linked to the WTO's public accountability and its perceived legitimacy (see, for instance, Charnovitz 2000; Esty 1998; and Marceau and Pedersen 1999). Civil society groups, business groups and parliaments have expressed a wide range of concerns about the WTO's transparency and effectiveness, particularly with regard to its negotiating and dispute settlement functions (see, for instance, Oxfam 2000 and Oxfam et al. 2001). As the Doha Round has languished, fears of disengagement from multilateralism by business stakeholders have also arisen.

13 See Puri (2011). For more on global public goods and international trade, see Bach (2007) and Mendoza (2003).

14 Many studies explore the political economy of the global trading system. See, for instance, Helleiner 1992; Khor 2001, 2002; Krueger 1984; Srinivasan 1998; TWN 2001; and World Bank 1993. Among these, a growing number explore the evolution of the roles of developing countries and concerns within the global trading system. See Hudec 1987; Jones 2009; Kim 2010; Michalopolous 2001; Rhagavan 1990, 1997; Tussie 1987; and Wilkinson 2009a.

15 Studies of African participation in trade decision-making offer proposals on strategy for participation at the WTO and its ministerial meetings (SEATINI 2003), lessons from the Cotton Initiative (Anderson and Valenzuela 2007), and analysis of the dynamics of the African, Caribbean and Pacific (ACP)–European Union (EU) negotiations for Economic Partnership Agreements (Faber and Orbie 2009).

Action on institutional reforms and systemic issues has been constrained by differences between and within the membership (and the WTO Secretariat) on the significance of the various challenges, as well as on how best to approach and address these issues, if at all. Although he once lambasted the WTO as a ‘medieval institution’, former WTO director-general later remarked that compared to other international economic organisations, the WTO faces no fundamental challenges in the realm of governance (Lamy 2009). He did, however, agree that the institution faces systemic challenges – such as the languishing of its negotiation function and the challenges posed by the growing number of bilateral, regional and preferential trade arrangements.

Importantly, the record to date shows that some WTO reforms are possible. A number of administrative and informal changes have been made to how the WTO works (see box 2) (see Gallagher 2005; WTO 2007a, b; Deere Birkbeck and Monagle 2009). There have also been several formal decisions taken by the WTO’s general council, trade ministers and the WTO Secretariat. Views differ on whether such changes have been sufficient, as do perspectives on the feasibility, desirability and necessity of further reform. Views also diverge on whether future reforms should be incremental or if a more radical structural overhaul is in order, and the degree to which such processes should be essentially political or technical undertakings.<sup>16</sup> Some commentators argue, for addressing the WTO’s systemic challenges within a ‘Bretton Woods II’-type process that would undertake a systematic and complete reform of the global economic architecture. Others highlight the advantages of a step-by-step approach to targeted reforms (Ismail 2009a), while still others advocate an even more gradual and

incremental process of evolution. For the latter, patience and realistic expectations are required. Debates on political strategies for achieving changes reflect broader debates on how to transform the global economy.

Some critics caution against what they characterise as mere ‘tinkering’ with the existing system, arguing that the real challenges are political (Wilkinson 2006b, 2011). In the spirit of more democratic global governance (Higgott and Erman 2010), some experts call for greater opportunities for political deliberation within WTO decision-making (Howse 2002; Pauwelyn 2005). Other critics emphasise that a dramatically different system for global trade regulation is a prerequisite for achieving greater coherence in tackling challenges of development and sustainability (South Centre 2009). In the spirit of ‘Another World is Possible’, many social movements critical of the economic paradigm underpinning the global trade system call instead for a more bottom-up approach to the transformation of global trade, that builds on the economic solidarity initiatives of civil society movements and strengthened local democracy (Amin 2010; Anderson 2000; Bello 2002b; Dunkley 2000; Rajagopal 2003).

Meanwhile, proposals for reform continue to be generated by governments, scholars, civil society and industry groups. At the 2009 WTO ministerial conference, for instance, member states articulated a number of priorities for strengthening the WTO, including greater fairness and efficiency in the WTO’s accession process; strengthening the WTO’s monitoring process; reinvigorating the functioning of the WTO’s regular committees; and improving the delivery of Aft (WTO 2009c, d). Similarly, at the 2015 ministerial conference, we can expect the call for attention to systemic issues to continue.

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### 3. Regime management challenges

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This section addresses the WTO’s regime/ system management function, as well as several cross-cutting issues related to the WTO’s

regular committees and the internal management of the WTO Secretariat.

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16 For varying perspectives on this issue, see Bello 2002a, b; Ostry 2002; TWN 2001; TWN et al. 2003; Wolfe 2008.

## Box 2. Selected examples of WTO reforms and evolution since 1995

The following are selected examples of WTO reforms undertaken since 1995, as well as some evolutions in the practices and functioning of the multilateral trading system. In each case, many more examples could be listed. The point here is simply to highlight that the multilateral trading system has not been static in the face of demands to adapt and change. There are, however, diverging perspectives on the desirability and impact of some of these changes, and on whether they go far enough or too far.

- *WTO management and internal administration:* the Secretariat has adopted performance-based management tools. The internal organisation of the Secretariat and the structure of its senior management have evolved. Guidelines have been adopted regarding the process for selecting the Director-General.
- *Strategic direction, policy deliberation and problem-solving:* examples of reform-related efforts include the commissioning of the Sutherland Report; the recent decision to regularise the holding of ministerial conferences; the creation of new working groups such as the WTO Working Group on Debt, Trade and Finance at the 2001 Doha ministerial conference, as well as a new WTO working group on technology transfer; and the Director-General's leadership of new initiatives on Aft and on the cotton issue.
- *Negotiation function:* members agreed to the creation of a trade negotiations committee for the Doha Round. The nature of the informal processes of negotiations has also consistently evolved (including how 'green rooms' are conducted, as well as the roles of chairs and facilitators), as has the process for generating draft negotiating texts. WTO members adopted a decision regarding the process of accession for LDCs (2002), and members have made increasing use of a variety of coalitions in the negotiation process.
- *Monitoring, assessment and evaluation function:* WTO members established a new transparency mechanism for monitoring regional trade agreements, an independent assessment of the WTO's technical assistance has been commissioned, and the WTO Secretariat is now monitoring trade policies introduced by governments struggling to cope with financial and economic crisis.
- *Dispute settlement function: amicus* briefs have been received by a number of WTO panels and by the Appellate Body (although these have received varying responses from the relevant WTO adjudicating bodies and from member states); some dispute settlement proceedings have been made open to the public; the good offices of the Director-General have been used in an effort to resolve at least one dispute; and a number of WTO members collaborated to establish an Advisory Centre on WTO Law (ACWL), which provides legal advice to developing countries.
- *International co-operation and co-ordination function:* actions undertaken include an agreement between the World Intellectual Property Organization and WTO Secretariats on the provision of intellectual property-related capacity building; joint publications with some international organisations on particular trade-related issues (e.g., with the World Health Organization (WHO), the International Labour Organization (ILO) and the UN Environment Programme); partnerships with other international organisations in the creation of the International Trade Centre (ITC); collaborations in the hosting of joint seminars and workshops; and the participation of the Director-General in the G-20 leaders' meetings.
- *Outreach function:* the WTO now undertakes an annual WTO public forum, provision is made for an NGO centre at WTO ministerial conferences and NGO briefings take place in Geneva. The WTO's internet site has been enhanced considerably, and decisions regarding document de-restriction have been made. In addition, the General Council adopted guidelines for arrangements on relations with NGOs, the Secretariat has made a series of *ad hoc* informal arrangements for NGO and media participation in some of its events and activities, and the WTO Secretariat collaborates with the Inter-Parliamentary Union for its periodic conferences on the WTO.
- *Capacity building function and Aft:* the Doha Development Agenda Global Trust Fund was established to facilitate member support for capacity-building, and the Integrated Framework was created to facilitate a co-ordinated effort among providers of capacity building and technical assistance. Subsequent reforms were undertaken to transform the Integrated Framework into the Enhanced Integrated Framework, and the Aft Initiative was launched.
- *Research function:* the resources allocated for the WTO's internal research have grown over time. There has also been increasing emphasis on collaborations with external researchers and with developing country research centres. The WTO has also initiated its own annual *World Trade Reports* since 2003 and has launched its own scholarly journal, the *World Trade Review*.

Source: Deere Birkbeck and Monagle (2009)

### 3.1 Strategic direction and deliberation

The importance of a rules-based, multilateral approach to managing world trade, particularly for small states, is widely accepted. However, at the heart of debates about systemic issues facing the multilateral trading system are enduring tensions about the underlying mandate and strategic direction of the WTO as the core multilateral trade institution for that purpose.

Development advocates contend that the core purpose of the WTO is too often misconstrued as one of opening trade; instead they argue that its purpose is one of promoting development alongside the ‘global public good’ of a rules-based multilateral trading system (Puri 2011). Others insist that the WTO needs to shift away from the traditional mercantilist vision of the GATT to better address goals of sustainable development. The deeply systemic issue about the WTO’s purpose and mandate is perhaps the one least likely to be resolved at a forthcoming WTO ministerial conference. Governments will find it easier to side-step a focused engagement on the issues, although many will assert vocal views on the matter, in large part because this vision sets important context for their positions on other issues.

A cross-cutting issue for the WTO is whether its institutional structure is adequate to perform the task of enabling strategic policy oversight of the trading system (see, for instance, Evenett (2008) and Low (2009a)). There have been numerous proposals for new processes, structures and initiatives to strengthen the WTO’s deliberative function, most notably to provide a space for policy debate, problem solving and thinking about long-term strategic direction and challenges facing the multilateral trading system.<sup>17</sup> Furthermore, there appears to be growing recognition that deliberative spaces within the WTO system are needed to engage

political and policy leaders on questions about the strategic direction of the system and challenges it faces, including new issues (prominent among these are the increasing complexity of non-tariff measures, energy, exchange rates and climate change) (see, for instance, Stoler 2012; WTO 2012; Puri 2011; Bach 2007; Mendoza 2003). Indeed, the current debate at the WTO on how to address ‘new issues’ highlights that such venues will prove increasingly important for keeping the WTO dynamic and relevant. Moreover, it highlights the important questions of who decides which issues warrant attention from the membership, in what form and how to ensure that the WTO’s weakest members have a say?

Suggestions for improving the deliberative/policy dialogue function of the WTO range from reinvigoration of the WTO’s regular committees to more frequent annual ministerial conferences (box 3). To foster more high-level policy engagement of national officials, ministers and even leaders in the management of the WTO system, some have proposed the transformation of some ministerial conferences into policy or strategic summits, such as on a 5-yearly basis.<sup>18</sup> Some analysts propose that the WTO should have a management committee or executive board comprised of member states to guide negotiations and oversee, among other matters, the budget and management of the Secretariat. However, proposals for any kind of formal, smaller group management structure of the WTO negotiations, such as those that existed in the latter years of the GATT in the form of the Consultative Group of 18 (CG-18), quickly encounter political opposition among those fearful of a WTO dominated by a subset of Member States. There is, however, growing interest in the formation of a consultative/advisory/strategic body, with an appropriate representative/rotating membership of key countries and coalitions/groups, which could

17 Specific proposals include bolstering the regularity and purpose of the ministerial conference, boosting the role of ministers and political leaders in the work of the WTO, reviewing the mandate of the Director-General and Secretariat, and reinforcing the role and operations of the General Council (see Deere Birkbeck and Monagle 2009; Deere Birkbeck 2012).

18 The CG-18 group was created in 1975 by the GATT’s contracting parties. It became a permanent body in 1979 and held its last meeting in 1987 as the Uruguay round of negotiations were commencing. The focus of the group was to engage responsible senior officials from capitals in a small but representative group of 18 countries. It met two to four times per year. Its purpose was to be an issue-oriented consultative body rather than address management issues. However, GATT contracting parties that were not members of the group were able to neither attend nor receive documents. The CG-18 did not take any decisions but rather made recommendations to the entire membership (Blackhurst 2001).

### Box 3. Options for small states regarding strategic direction and deliberation

Boosting the deliberative or 'policy dialogue' function of the WTO on trade matters beyond WTO agreements. Options for advancing this proposal include:

- reinvigorating the WTO's regular committees, the General Council and ministerial conferences through redefinition and/or clarification of mandates to incorporate a policy dialogue/strategic direction function;
- transforming some ministerial conferences into high-level summits;
- adding a new senior officials' consultative/advisory/strategic body or policy forum to the WTO's structure; and
- deepening co-operation with other international organisations, such as through building relationships with UNCTAD and the OECD to offer a joint forum for policy dialogue.

focus on strategic issues for the system as a whole and deliberation on emerging challenges. It would not focus on specific issues under negotiation, nor would it have any decision-making capacities. Others contend that the WTO may be best suited to a core role of 'hard-rule'-making – leaving wider policy deliberations to other international agencies, such as the UN Conference on Trade and Development (UNCTAD) and the Organisation for Economic Co-operation and Development (OECD).

Finally, in order to effectively integrate development into international trade disciplines, some analysts also argue that the current institutional apparatus of the WTO needs revision (Lee 2011). Among the proposals on offer, for instance, is to elevate the WTO's Committee on Trade and Development to the higher status of a council (like the councils on goods and services). From a political perspective, this would imply a higher recognition among members of the importance of development matters. Other options could include incorporating a more explicit 'development' post at the senior level of the WTO (such as at the deputy director-general level), where responsibilities could include working to promote the adequate representation of small states and their interests in decision-making.

### 3.2 Regular WTO committees

Alongside the special sessions of the various WTO committees that were established to facilitate the Doha negotiations, the WTO's suite of regular committees continue to be responsible for much of the day-to-day administration of WTO agreements and regular work of the organisation (see annex 3 on the WTO committee structure). Their roles include enabling

information exchange, dialogue, data collection and notification processes (where WTO members inform each other of national developments), which in turn assist countries in their implementation of WTO agreements (Elsig et al. 2013). Notably, the roles of committees vary and sometimes involve several different activities. Some committees are charged with oversight of the notification requirements embedded in WTO agreements (e.g., countries must notify the technical barriers to trade and sanitary and phytosanitary (SPS) committees of their planned regulatory reforms in the area of technical standards and sanitary/phytosanitary standards, respectively). In some cases, these notifications touch on substantively challenging and highly political issues (e.g., subsidies notifications). Other committees are more procedural or focused on internal matters (e.g., budget committee) and some are charged with exploring policy issues and intersections (e.g., Working Group on Trade and the Transfer of Technology), and the appropriate WTO response. In some instances, the regular committees serve as a forum for exchange of views and reflection on emerging issues and on best practices, which can lead to the elaboration of new norms or activities for the WTO (Elsig et al. 2013).

In the wake of the stalled Doha Round, there is new interest in strengthening the role of the WTO's regular committees. For small states, the regime management activities of regular committees, such as monitoring external trade policies and trends (including through notification processes) as well as exchanging views on best practices and emerging topics, are particularly important, because small countries face capacity constraints in conducting such activities themselves. However, the small size of the delegations of most small states means that



#### Box 4. Options for small states regarding regular WTO committees

Options for discussion include:

- Greater support for efforts by small states to be present and engaged in regular committee work, such as through support for non-resident small state missions in Geneva and for the efforts of small state coalitions/groupings to broaden and deepen their participation in regular committee meetings (see the recommendations on representation of small states in Box 6).
- Adopt a policy on observership of WTO regular committees, which includes the possibility for other IGOs, NGOs and private sector actors to provide technical and expert input.
- Improve the process of choosing committee chairs to focus on relevant technical knowledge and facilitation skills, ensuring that chairs receive adequate substantive support and training in meeting management/facilitation where relevant.
- Clarify mandates of regular committees, including whether and how they could be more engaged in deliberative debates and discussions of challenges not already addressed in negotiations (e.g., on new issues such as climate change and trade, exchange rates, food security, global value chains, etc.), or if other mechanisms should be used for such purposes.
- Tailored advice to small states (and LDCs) on key upcoming issues across regular committees that have particular relevance to their national interests, and short briefings by the committee chair or secretariat on the content of relevant background documentation.

For specific proposals on particular committees, see discussion of the TPR and of the RTA Committee in part 6.

they cannot attend, far less substantively participate in, many of the committees. With many committees each week, often side-by-side, even efforts to pool resources through coalitions do not adequately address the challenges that small states face in absorbing extensive background documentation and simply being able to attend the great number of regular committee meetings on top of special sessions and other informal meetings, briefings, trainings, etc. (box 4).

However, there is not always a shared understanding or clarity on the roles of committees.<sup>19</sup> Some committees achieve little progress on their agenda items, returning repeatedly to the same issues or devoting most of their time to debates on the mandate of the committee. In some committees, engagement of the membership is weak. Furthermore, the roles and responsibilities of the chairperson are not always sufficiently understood, in which case it is effectively left to the Secretariat to shepherd the work of the committee. There have been calls for greater engagement of relevant non-stake actors with expertise or experience (whether from NGOs, the private sector or academia) and intergovernmental organisations (IGOs) to inject new energy, evidence and analytical insight into some discussions. Furthermore, some committees lack the mandate to do more

than encourage countries to notify and report, relying on the motivation of individual members to comply with such commitments. Amidst calls for the WTO to better respond to emerging and new issues, there are differences of opinion among the membership on the extent to which regular committees should engage in policy deliberations, particularly where these may have the potential to lead to the elaboration of new norms.

### 3.3 WTO Secretariat and internal management

A further set of proposals on WTO reform address the role, management and resources of the WTO Secretariat – the custodian of the WTO's agreements.

There has been considerable political discussion of the WTO Secretariat's relationship with member states, with a particular focus on the importance of Secretariat neutrality. Developing-country concerns about impartiality on the part of the Secretariat have arisen in regard to many areas of the WTO's work, such as in the trade policy review (TPR) process, the dispute settlement process, the provision of technical assistance and training and in its research agenda. The complaints have

<sup>19</sup> For differing views on this question, see Lang and Scott (2009) and Steinberg (2009).

focused on alleged Secretariat bias in favour of greater trade liberalisation and/or in favour of the interests of the more powerful member states (see Elsig 2007b, 2010). The Secretariat has many roles with potential to impact outcomes and perceptions. For instance, as the skills and knowledge of committee chairs varies widely, the Secretariat's scope for influence – intentional or inadvertently – can be high. Although some chairs steward their committees with minimal backup from the Secretariat, others rely heavily on the Secretariat to prepare their strategy, speaking notes, summaries and to advise them before, during and after committee meetings (in addition to formal summaries prepared afterwards by the Secretariat). One response from developing countries has been to take a close interest in the process for selection of the WTO's leadership (particularly its director-general) (South Centre 2005) and to argue for boosted developing country representation among the WTO's staff.

A range of other management issues, with a similarly political dimension, has arisen with regard to the appropriate structure of the WTO's senior management. There have been questions for instance about the efficacy of having four deputy directors-general. The deputy director-general positions are essentially political appointments made by the director-general, usually of senior former trade diplomats from the WTO's membership with consideration of regional representation. Two concerns that have arisen are the weakening of institutional memory as the incumbents in these positions change on a regular basis and questions about the qualifications of some political appointees for senior management. On the role of the

WTO's senior management, some analysts have also argued for deeper consideration of the potential for the WTO's director-general and/or senior staff to be selectively involved in the chairing of some negotiations (Ismail and Vickers 2011). Although the director-general chairs the Doha Round's Trade Negotiation Committee, representatives of member states chosen by the membership.

Many proposals for strengthening the WTO imply some expansion and intensification of the Secretariat's activities (such as an expanded TPR process), and potentially its staffing and budget. Indeed, since the WTO's inception, some have called for the organisation to have greater resources and staff (Blackhurst 1998; Steger 2009a), emphasising its relatively small size compared to other international organisations. However, member states have been reluctant to boost the Secretariat's substantive role and functions, scope for independent initiative or budget. This does not mean that the Secretariat has been passive. On the contrary, it has taken numerous initiatives (such as the AfT initiative) that have ultimately received the support of the members (see box 2).

The WTO's work in promoting AfT has boosted confidence in selectively expanding the Secretariat's scope. Similarly, despite initial reservations about the perceived lack of formal mandate from member states, most WTO members concur that the Secretariat's efforts to provide regular monitoring on protectionist measures in the context of the financial crisis have been useful. In addition, there has been wide support for its expanded attention to statistics and support for research in developing countries.

#### **Box 5. Options for small states regarding the WTO Secretariat and internal management**

Some options for discussion include:

- greater representation of small state nationals on the WTO staff;
- the introduction of mechanisms to help reduce the risk of undue Secretariat influence on decision-making and negotiations;
- small states could call for reviewing the effectiveness of the WTO's senior management system (e.g., the practice of the political appointment of four deputy directors-general);
- calling on the WTO Secretariat to provide greater depth or broader range of activities or for new approaches and services that respond to particular needs of small states. Calls to increase the Secretariat resources and staffing to fulfil those needs should be made on a specific function-by-function basis; and
- the creation of an advisory/consultative body of senior officials to complement the general council's role in providing oversight and strategic direction for the WTO system and its secretariat (see box 4 regarding regular committees).

Many of the proposals for expanding the WTO's activities with regard to trade and development, and to better service the needs of small states, would require greater numbers of WTO staff and resources.<sup>20</sup> Alternatively, rather than a broad-based call for a bigger Secretariat, the case for more resources – even on development and small states priorities – could be made on a function-by-function basis with

careful consideration of the appropriate strategy for expanding the WTO's role (Deere Birkbeck 2009a). In some instances, some of the activities or services that small states need could be better provided jointly with, or by, other actors within and outside the multilateral system. UNCTAD, NGOs and national universities might be better vehicles for meeting the research needs of small states, for instance.

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## 4. Negotiation challenges at the WTO

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Political theory suggests that small states should favour multilateral over bilateral trade negotiations, as multilateral fora usually offer relatively more formal, transparent negotiating processes and greater potential for collective action among weaker countries, which can boost their ability to mitigate and manage power asymmetries. However, a broad suite of studies has documented the challenges of effective developing country representation in WTO negotiations (Ismail 2008, 2009b, c; Jawara and Kwa 2003; Odell 2010; Panke 2012a, b; Wilkinson 2006a, 2009a, b),<sup>21</sup> particularly for the WTO's smallest and poorest members.<sup>22</sup>

At the same time, the ailing Doha Round has intensified concerns about the efficiency of the negotiating process. At the heart of the challenges facing the WTO's negotiation function and blocking progress in the Doha negotiations are deep political differences on substantive issues. There is no 'procedural panacea' that will magically resolve such substantive differences over complex issues or divergent national interests (see Ismail and Vickers 2011). However, it is also true that the design – the principles, process and roles of various actors – can hinder or facilitate the progress and direction of negotiations. Indeed, process can impact the substance in numerous ways: it can empower or disempower certain actors, and it can prioritise or marginalise attention to particular topics and interests.

Small states have many objectives in WTO negotiations. In some areas these are aligned with those of other developing countries, but they also have distinct goals and priorities. Some of their priorities include crafting rules that preserve their policy flexibility (such as to support domestic industries and retain customs revenue), greater access to key export markets, preservation/managed reduction of preferences and AfT. Importantly, for some small states, 'participating' in the global system is an important objective in its own right. Given that small states are often marginalised in decision-making, sometimes merely being present in the room ensures some degree of recognition of their interests. Furthermore, such participation enables small states to understand the negotiations and outcomes, which helps them to implement rules in their domestic economy in harmony with those agreed internationally, and to be aware of the flexibilities they can use.

On a positive note, small states have projected their voice more assertively, acquired more visibility and drawn more attention to their concerns in WTO negotiations over the past decade, particularly through coalition-building and more specific articulation of their interests and demands. This is reflected in the fact that many draft Doha negotiating texts recognise the need to take account of the diversity in the needs and capabilities of members, specifically through differentiated proposed

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20 Lee (2011) also argues that the WTO ACWL should also be supported by the WTO's regular budget.

21 For analyses that seek to draw lessons from other international organizations, see Alvarez-Jiménez (2009).

22 This also is the case for bilateral and regional processes (such as for free trade agreements with US and economic partnership agreements with the EU) (Erasmus 2009; Bilal and Grynberg 2007).

treatment of various groups of countries, including SVEs (Deere Birkbeck and Jones 2012). (See CUTS International 2009a, b; Gallagher et al. 2005; Halle and Wolfe 2007; Jones et al. 2010; Kaukab 2011; and Saner 2010.)

However, powerful states still generally dominate agenda setting and the conclusion of trade rounds. Too often, poor, small and vulnerable countries are marginalised while the ‘big players’ in global trade negotiations spar. The influence of the WTO’s smallest members on the outcome of negotiations also continues to be impeded by a lack of clarity on the part of many such countries about their negotiating interests, underlying institutional weaknesses, and by several systemic constraining characteristics of WTO.

Four aspects of the design and operation of the WTO’s negotiation function warrant particular attention: 1) the principles underpinning WTO negotiations; 2) the processes of negotiation – informal and formal; 3) the representation and effective participation of small states and their coalitions; and 4) the WTO accession process. The section reviews a sample of proposals in each area and concludes with reform options relevant to empowering small state actors in negotiations.

## 4.1 WTO negotiation principles

Ongoing debates on how to improve the WTO’s negotiation function regularly spur discussion of the principles at the core of the multilateral trading system to date, most notably principles of the single undertaking, most-favoured nation (MFN), national treatment, consensus-based decision-making and special and differential treatment (SDT).

### 4.1.1 *Single undertaking*

In light of the stalemate in the Doha development agenda, the 2011 WTO Ministerial statement proposed that governments pursue ‘different negotiating approaches while respecting the principles of transparency and inclusiveness’. It proposed advancing negotiations in those areas where progress can be achieved such that members might ‘reach provisional or

definitive agreements based on consensus earlier than the full conclusion of the single undertaking’. As members work to apply this proposal, they encounter considerable variation (and confusion) in how members interpret the single undertaking and what it means in practice (Wolfe 2009). Some argue that the notion of a single undertaking (meaning that nothing is agreed until everything is agreed) refers to the final suite of agreements to be adopted, whereas others argue that the single undertaking demands attention to ‘balance’ between the pace of negotiations at every step along the way.

In terms of ‘different approaches’, key options under discussion include a move toward more a variable speed of negotiations and/or a variable geometry of rights and obligations through, for instance, plurilateral and critical mass negotiations (where a sub-group of member countries advance with negotiations) and ‘early harvest’ decisions (WEF 2014; WTO 2011; Hoekman 2014a, b; Hoekman and Mavroidis 2013, 2014; Jones 2014b, c). Some proponents suggest that plurilateral approaches need not contradict the single undertaking, arguing agreements could be put on ‘hold’ until other elements of a single undertaking are completed. The issue is not merely theoretical. Many governments are already in the midst of plurilateral negotiations – both on environmental goods and services, and also on services (Hoekman and Mavroidis 2014).

For small states, the proposal for new negotiating approaches offers opportunities (such as early harvests on some issues) as well as important risks. A first risk is that promises of inclusiveness in the context of new approaches will not be achieved in practice. To date, only a few contributions to this debate seriously consider the implications of variable geometry for inclusiveness and development given the WTO’s prior challenges in this respect.<sup>23</sup> A second risk is that plurilateral negotiations will leave out many developing countries, which will then later be pushed to catch up with regulations and laws they did not have a say in negotiating. A third risk is that the pursuit of plurilateral negotiations will mean that small and poor countries will be only engaged on a narrow set of issues (such as discussion of cotton, market

<sup>23</sup> For proposals on the topic of the single undertaking and variable geometry, see Cornford 2004; Draper 2010; Gallagher and Stoler 2009; Lanoszka 2008; Low 2009b; and Patel 2003.

access and SDT), while the broader systemic and regulatory issues that define the multilateral system will be negotiated by larger players. Fourth, critics of departure from the single undertaking argue that the challenge of maintaining the development content of the Doha Round relies on a single undertaking, and on the sequencing of issues defined in the original Doha Ministerial Declaration for ensuring priority attention to development issues. Finally, pragmatists argue that the single undertaking or similar arrangements that ensure the possibility for members to make trade-offs among issue areas and interests will remain a vital part of the politics of concluding trade deals.

For these reasons, many developing countries remain staunchly against any retreat from the single undertaking in the context of the Doha Round (although some are more open to this approach in the post-Doha context) (see part 4.1.5.). Nonetheless, there does appear to be growing acceptance that while the single undertaking remains a core principle, its interpretation and application demands greater clarification.

#### 4.1.2 Consensus

Among international organisations, the WTO is notable for the emphasis placed by its members on consensus-based decision-making. In principle, the consensus-based procedures of WTO decision-making formally empower all participants by giving them potential veto power, which allows even the smaller states to exert more influence on agenda setting and negotiation outcomes. However, critics highlight that the consensus principle generates inefficiencies in the negotiation process, such as by enabling one powerful country or groups of weaker players to hold the progress of negotiations hostage. For small states, for instance, the consensus principle enables them to work together and with groups of other countries to block unwelcome elements of negotiations. This possibility is a double-edged sword as it also enables single, larger countries, to block progress on issues that matter to them. Furthermore, the consensus principle is also something of a mirage in that it can deflect from the power politics pervasive in the WTO's

informal politics (Jawara and Kwa 2003). On many issues, consensus does not imply that all countries agree, but rather that they have too little power to stop other countries moving ahead or have conceded.

Several responses to these challenges have been proposed (see, for instance, Cottier 2006 and 2009; Cottier and Takenoshita 2008; Ehlermann and Ehring 2005; Elsig 2007b, 2009; Elsig and Cottier 2011; MacMillan 2010; and Van Grassek and Sauvé 2006). One option is for countries to vote to resolve particular negotiation issues, using the WTO's current one-member, one-vote rules for voting (which have only been invoked in a very limited number of cases). Alternatively, Narlikar (2011b: 149) suggests that to ensure the entire membership has a meaningful say in decision-making, members should combine a critical mass approach to negotiations, together with a voting system that requires a super-majority. Another proposal is for use of an executive board to resolve negotiation deadlocks. On this issue, however, critics argue that such a delegation of authority by WTO member states would exacerbate complaints of disenfranchisement and perceptions of unfairness by formalising 'the exclusion of the greater part of its membership' (Narlikar 2011b: 149). Others advocate maintaining the consensus-based approach to highly contested aspects of negotiation, but allow voting on more procedural or less significant issues (see Cottier 2009).

While recognising that the consensus principle may result in a slower and more difficult process, which in turn risks both frustration with the system and greater recourse to RTAs, its supporters argue that it remains the more democratic and inclusive approach to multilateralism. Ismail and Vickers (2011) argue, for instance, '[n]ot only does consensus force WTO members to build convergences in their positions and make compromises in the interests of the system as a whole, but it also creates learning opportunities and empowerment for developing and least-developed countries'. Among others, they emphasise that there is less a problem with the 'consensus' principle, rather its application (Consultative Board 2004; Ismail and Vickers 2011),<sup>24</sup> noting that in the past the principle was treated with greater respect. That

24 Instead, they attribute the ongoing difficulties concluding the Doha Round to a combination of factors, including the hangover of previous asymmetries in negotiating outcomes, substantive divergences of interests among key trading partners and the challenges of domestic politics within major players.

is, countries only held out on a consensus after offering a very clear reasons and evidence of national harm. In line with this analysis are proposals that those withholding consensus in WTO negotiations should offer at minimum a verbal or written statement justifying their position. In sum, although the consensus principle remains a common subject of criticism, those close to WTO politics argue that efforts to revise the consensus-based principle would find great difficulty garnering political support.

#### 4.1.3 *Special and differential treatment*

A further systemic issue for small states in the WTO relates to the nature and operationalisation of SDT as a core principle for multilateral rule-making. Principles, norms and ideas can be a powerful source of leverage for small states in trade negotiations. Appealing to the principle of SDT has, for instance, assisted small states to articulate and advance their trade priorities. They place considerable emphasis on negotiations aimed at clarifying and implementing SDT provisions. However, there is considerable dissatisfaction among developing countries with the operationalisation of the SDT principle in existing trade agreements and in the process of trade negotiations (Mitchell and Voon 2009; Stevens 2003a, 2003b).

Whereas some analysts have argued that SDT should focus simply on delaying deadlines for developing countries to implement WTO agreements (Srinivasan 1998, 2002, 2004), most developing countries insist on a more substantive approach (e.g., involving variations in the obligations themselves and elements such as a principle of non-reciprocal obligations for LDCs). Some development advocates call for recasting the SDT principle in the language of 'hard law' and for SDT to be locked into WTO commitments so that they are 'legally enforceable, predictable, and therefore more beneficial...' (Kaushik and Mukiibi 2011). There are also calls to implement the 'right to development' in international law, including through SDT at the WTO (Chimni 2011).

In the current Doha negotiations, there have long been 28 agreement-specific SDT proposals on the table (in Annex C of the draft Cancun text). However, many of the poorest countries remain unconvinced these will provide meaningful benefits. Moreover, these efforts come in the context of scepticism about the potential for

current approaches to SDT to address underlying tensions in today's negotiating environment – where emerging developing countries and developed countries spar over whether claims for SDT and 'policy space' are legitimate, and where poorer developing countries contest some claims for SDT by larger developing countries (see, for instance, Hoekman 2005).

Some development advocates call for a new 'positive' SDT agenda that focuses less on broad categories of countries (e.g., LDC and developing) and more on the specific needs of individual countries. They call for an *à la carte* SDT that would be needs-based and tailor-made for particular countries by topic. For instance, this includes proposals that WTO members could use the emergence of developing country sub-groups (such as SVEs, landlocked developing countries and specific issue-based coalitions) 'to experiment with new, deepened SDT provisions that would restore to beneficiaries an expanded policy toolkit through which to pursue sustainable development goals like food security and the creation of productive industrial capacity' (Meléndez-Ortiz and Biswas 2011). In this vein, qualification for SDT by topic or issue could be set by WTO committees, and then countries could self-designate. However, developing country opponents to such proposals argue that maintaining the broad-based collective identity of developing countries is critical to consolidating the political power needed to achieve outcomes in negotiations and that fragmentation among developing countries on issues such as SDT would diminish that power. It may, however, be possible to have an approach to SDT that combines both approaches – with solidarity among large groups of developing countries on certain key principles of negotiations, and an *à la carte* approach to specific negotiating issues. While there is no accepted norm in international trade negotiations for differentiating countries on the basis of smallness or vulnerability, the needs-based, *à la carte* approach might yield similar results.

#### 4.1.4 *MFN and national treatment*

The principles of MFN and national treatment have long formed cornerstones of WTO negotiations. There is broad consensus on the enduring principle of national treatment (which calls on members to give equal treatment to foreign

and national actors in regard to trade policy, i.e., not to discriminate between domestic and foreign producers). In the context of debate on the future of the Doha Round, however, there has been some interest in the question of whether the MFN principle has outlived its usefulness, particularly in a world where much trade is plurilateral or under preferential terms.

According to the MFN principle embedded in WTO agreements, countries cannot normally discriminate between their trading partners. If countries grant a trade concession to one country (such as a lower customs duty rate for one of their products), they have to do the same for all other WTO members. Notably, MFN is the principle against which preferential trade arrangements occur, such as those under which many small states trade.

Debate on the MFN principle has been spurred by growing interest among some WTO Members in plurilateral negotiations. On the one hand, participants in the current plurilateral negotiations at the WTO on environmental goods intend for the results to be applied on an MFN basis. On the other hand, some WTO members are pursuing a plurilateral agreement on services outside the WTO with the intention that it will be applied on a non-MFN basis (albeit with a view to eventual multilateralisation in the WTO system). Already, the WTO's existing plurilateral Agreement on Government Procurement [the GPA] is applied on a non-MFN basis. The implication of such non-MFN plurilateral agreements is that their benefits extend only to Members that are parties to them and not to all other WTO Members. Even amidst discussion of MFN/non-MFN plurilateral agreements, the wider view appears to be that MFN must remain a core principle of the WTO, and that greater understanding of its historical role and current relevance is needed.

#### 4.1.5 Post-Doha options

Several proposals have been offered to improve the WTO negotiating function post-Doha. There are, for instance, proposals for moving away from all encompassing 'rounds' of negotiations on an ever-increasing number of

subjects to more *à la carte* negotiations. In this spirit, some propose revisiting the mandate of the WTO regular committees so that the WTO can serve as a permanent negotiating forum, whereby negotiations would be prioritised and addressed as new topics arise. There also appears to be greater sympathy for pursuing plurilateral agreements in the post-Doha world (i.e., once the Doha Round is concluded). Proponents increasingly argue that the case for moving ahead with specific plurilateral negotiations should be evaluated by their merits (rather than by quantitative criteria, such as that the countries involved must represent a certain percentage of trade in the sector concerned).<sup>25</sup> To ensure consistency with multilateralism, Rodríguez Mendoza and Wilke (2011) propose the following guidelines for plurilaterals: 1) requiring the WTO ministerial conference or the general council to launch the negotiations (a green light to proceed), thereby implying a collective decision by all WTO members; 2) establishing criteria for the determination of what constitutes a critical mass on a case-by-case basis, taking into account the political and economic position of individual countries; 3) providing for particular 'opt out' options for WTO members in negotiation clauses, which means that acceding members to a plurilateral agreement could accept or reject certain elements later; and 4) applying all agreements on a MFN basis. Further proposals focus on the importance of the process of plurilateral negotiations, insisting that they should be undertaken with the broader WTO membership and framework in mind; as such, all members should be able to observe and have a voice in the negotiations, and principles such as SDT should be incorporated into negotiations.

An alternative proposal is to decide the negotiation process according to the subject matter; whereas negotiations on tariff liberalisation may suit processes that facilitate competitive bargaining, regulatory matters related to 'inside-the-border' measures might be better suited to processes that emphasise dialogue, exchange and institutional support. In the latter case, the regulatory goal may vary – it could be regulatory convergence/harmonisation or to

25 They note, for instance, that this quantitative approach could leave out countries for which 'a particular sector is significant in its economy but the country itself is too small to be relevant at the global level. In addition, when new rules are proposed to be negotiated on issues such as, for instance, climate change, it would be extremely difficult to draw the line between countries that are relevant or not' (Mendoza and Wilke 2011).

the pursuit of better ways to manage and make transparent the differences between heterogeneous regulatory systems. Some argue that negotiations on regulatory matters ought to be designed to focus on guidelines and best practices rather than hard law, and that such dialogue may be better suited to non-WTO fora such as UNCTAD or the OECD. 'New issues' and emerging trends might be better addressed within the WTO but in a deliberative/policy dialogue format, with possible collaboration from other relevant international organisations (see proposals in section 3).

#### 4.2 WTO negotiating processes: formal and informal

Over the past decade, there has been growing critical attention to the rising participation of developing countries and their coalitions in WTO negotiations, as well as to the fairness, transparency and inclusiveness of WTO decision-making processes (Jawara and Kwa 2003; Narlikar 2001, 2002, 2004; Nordström 2002; Rolland 2007, 2010). As the prominence of developing country coalitions and emerging developing countries in international trade negotiations mounts, interest in their strategies and performance is rising as well (see Deere Birkbeck and Harbourd 2011; Kahler and Odell 1989; Narlikar 2003; Narlikar and Odell 2006; Patel 2007; Yu 2008). Scholars and experts have set forth a variety of lessons for developing countries, as well as proposals and strategies for bolstering the impact of their coalitions (see Das 2002; Odell and Ortiz Mena 2005; Odell 2006; Tussie and Glover 1993; Tussie and Lengyel 2002; Wilkinson 2006b). Alongside studies on how to strengthen small states and their coalitions are numerous proposals for better managing the WTO negotiating process – most notably, the scope, complexity and asymmetric power dynamics of negotiations (box 5).<sup>26</sup>

Although the Doha Round is notable for the increasing participation by large developing economies in the inner circle of WTO negotiations, weak and small countries often remain absent; they cannot take for granted the support of other developing countries in advancing their particular interests across the WTO's functions

(Deere Birkbeck and Jones 2012). Small states have worked to address some of these challenges by making greater use of coalitions (see part 4.3). The process of negotiations – formal and informal – has also evolved in ways that address some aspects of exclusion, most notably by widening the representation and participation of coalitions in some of the key informal processes.

However, while such coalitions have altered the 'atmospherics' of trade negotiations, for many of the poorest and weakest countries, the reality remains exclusion from key negotiating processes. Indeed, some critics argue that optimism about the rise of coalitions at the WTO is giving unwarranted legitimacy to a negotiating process that remains fundamentally flawed in terms of opportunities for effective representation and participation by small and weak countries. A brief overview of some of the persistent challenges follows (some of the issues are also further discussed in part 4.3).

First, structural power asymmetries shape negotiations and remain a significant obstacle for the poorest and weakest WTO members, particularly given the realities of their own resource, power and organisational constraints.

Second, negotiators from small developing countries often perceive themselves to be operating under a high level of threat from large states, reducing their expectations of influence (Jones et al. 2010). This includes fears of possible trade and aid reprisals, as well as of intimidation in the negotiating room. Even when coalitions of small and poor WTO members become vocal, effective or develop concrete positions, the major players can use their superior market and political power to make bilateral offers and concessions to individual coalition members on other trade, development or political issues. Such pressures, whether overt or implied, can undermine the cohesion of coalitions, sometimes prompting countries to change position or defect from groups.

Third, despite the important potential of coalitions to mitigate the challenges for small states in participating in WTO decision-making, there are still systemic issues related to the persistence of informal small group meetings and the structure/sequencing of negotiations and modalities. A particular concern for small

<sup>26</sup> The analysis in the remainder of this section draws from Deere Birkbeck and Jones 2012.



### Box 5. Options for small states regarding the WTO negotiating process

Options for consideration include calling for:

#### *Principles*

- Agreement on an approach and specific timeline by which WTO members will finalise proposals for making a broader range of SDT proposals more precise, effective and operational.
- A new approach to SDT that combines existing categories of developing countries with a more issue-specific, needs-based approach.
- Affirmation of the importance of the WTO's MFN principle and consensus principle.
- A post-Doha dialogue among members on the approach to negotiations, including options for variable geometry and alternatives to negotiation rounds.

#### *Process*

- Agreement on a litmus test for proposals to reform the WTO's negotiating processes that focuses on a balance of three competing demands: greater efficiency, inclusiveness and legitimacy (Ismail and Vickers 2011). These three considerations are particularly important as any agreement reached at the WTO must ultimately be ratified and implemented by governments at the national level, where concerns about inclusiveness and legitimacy often emerge.
- Improved transparency of green room meetings and small group consultations. For small states, there should be a fuller briefing on what has occurred in meetings by the WTO Secretariat and by their coalition representatives. There should also be clear guidelines for all negotiating chairs on the composition of the green room and other small-group meetings. Without the imposition of formal procedural rules that might prove counterproductive, well-conceived guidelines could help ensure that where small group meetings are of key interest to particular countries or directly impact poor countries (even if they are not the major trading powers or actors in that area), such countries are invited.
- More careful sequencing and predictability of WTO negotiations by the WTO Secretariat to enable maximum participation by small states. A more predictable negotiation schedule would enable individual countries and their coalitions to prioritise the issues to which they devote in-depth analytical resources and government time. Furthermore, it would facilitate a move beyond broad political statements to concrete positions and fall-back positions on negotiating issues.
- Introduction of a norm of 'time out' in the midst of negotiations, particularly at WTO ministerial conferences, to enable back and forth between coalitions and their representatives.
- Improved transparency of WTO negotiations (e.g., by publishing summary records of all meetings and key points of negotiating drafts on the WTO website without delay). This would enable national stakeholders to approach their own governments for explanations and to offer suggestions (Kaukab 2011).
- Adoption of a code of conduct to provide clearer guidance on the selection and conduct of the chairs of WTO negotiations.

See box 4 for options regarding regular committees and box 6 for options regarding small state representation at the WTO.

and poor states is that negotiations increasingly divides into two tiers, where small and poor countries are only engaged only in negotiations on a narrow set of issues, such as discussion of cotton, market access and SDT, while the broader systemic and regulatory issues that define the multilateral system are negotiated by larger players.

Small informal groups remain the decision-making fora that most shape the main content of proposed WTO deals. Currently informal meetings include 'green rooms' hosted by the director-general within the WTO headquarters and informal meetings hosted by the various chairs of WTO negotiations, as well as informal

meetings among ministers, senior officials and negotiators held privately by missions outside the WTO and alongside political and high-level gatherings (such as the annual Davos meeting).

It is widely agreed that there is little prospect that the WTO will ever reach agreements with all its members in a room, and as such some small group processes are inevitable. In this regard, two areas for attention are the composition of small groups and transparency of their deliberations. On composition, the WTO director-general has considerable flexibility as to who is invited to small-group meetings, as do other governments and chairs that host such meetings. While flexibility is indeed important

for the negotiation process and smaller numbers can improve efficiency, the risk is that the most powerful countries negotiate in smaller groups resulting in decisions that they are then able to impose on the excluded countries. Whereas closed consultations previously included only a handful of developing countries on an individual basis, there are now greater efforts to engage relevant coalition representatives, at least in the more 'formal' of informals (such as green rooms held within the WTO Secretariat and hosted by the WTO director-general). However, beyond green rooms, many countries and coalitions remain excluded from the myriad other informal negotiation processes or are not able to participate effectively where invited.

On transparency, the benefits to small states of the increased inclusion of their coalitions at key moments of the negotiating process depend also on the internal co-ordination and politics of those coalitions. The benefits of inclusion are eroded, for instance, if members of relevant coalitions are not properly consulted, informed and briefed by their representatives. While many coalitions are making efforts to improve their internal communication strategies and information dissemination (Patel 2007), the transparency and co-ordination within those coalitions in which small states participate remain imperfect. The result is that even if a coalition is included in green rooms, some individual members may still feel inadequately represented.

In regard to the structure and sequencing of negotiations, small states have long complained about their difficulties participating in a proliferating and overlapping suite of WTO meetings, particularly given the complexity of topics at hand. Even in the regular negotiating work of the WTO in Geneva, small states cannot follow all the subjects of the Doha Round simultaneously alongside the organisation's regular work. Concerns have been particularly acute during ministerial conferences where intensive negotiations have occurred. The prominence of concerns about the negotiating process at ministerial conferences has faded somewhat from attention, largely because there has been no 'negotiating' agenda at any ministerial conference since 2005, but is likely to re-emerge

when ministerial conferences are again used as a negotiating venue. A key challenge here will be for members to learn from and build on the experience of past ministerial conferences. However, given the high turnover of delegates across national missions to the WTO, much of the relevant 'institutional memory' erodes over time. The task of retaining the lessons from the past will thus require explicit attention from members, the Secretariat and external experts alike.

Some further aspects of the negotiating process for which reform proposals have been offered include the role of chairs in negotiations and the process of WTO ministerial meetings; the role of the WTO Secretariat in negotiations; and the relationship of ongoing negotiations in special sessions with the regular work of WTO committees.<sup>27</sup> Some analysts, for instance, propose the possibility for greater intervention and leadership on the part of the Secretariat with well-defined parameters (as discussed in Elsig 2007b, 2009). As noted above, there are also concerns about weak information flow between members and with their national capitals and stakeholders on negotiations and issues at stake, and also about the challenges of ensuring engagement of capitals, business and stakeholders to 'breathe life' into the negotiation process.

#### 4.3 Representation and effective participation of small states and their coalitions

As noted above, representation and effective participation in WTO negotiations presents major challenges for small states. Constraints on their participation limit the ability of small states to influence negotiations, and to achieve outcomes that reflect and advance their interests.

Many small developing countries lack a core team of experienced and skilled negotiators that can accumulate and retain knowledge on trade issues. In most small states, very few officials work on trade negotiations and there is often a high turnover of staff. In Geneva, most small states have WTO delegations of only two or three professional staff and receive little by

27 On the appropriate role of the WTO Secretariat, see South Centre 2002, 2003, 2008.

way of substantive input and guidance on national interests from their counterparts in their national capitals. The challenges of improving representation in WTO negotiations have proven particularly high for those small states without permanent missions in Geneva (Nordström 2002; Weekes et al. 2001).

Small states participate in a number of coalitions and groups in the WTO, some of them based on regional identity [the ACP group, the African Group, Caribbean Community (CARICOM) and the Organisation of Eastern Caribbean States (OECS)], while others are based on shared characteristics (the SVE and LDC group). Small states have also participated in broad developing country coalitions such as the G90 and the G-110, and some have joined issue-based coalitions such as the Cotton 4 (see, for instance, Fairtrade Campaign 2010), Friends of Fish and the G-20 in the effort to have their voices heard and interests taken into account. However, although issue-based coalitions can also be an effective vehicle for negotiations, they tend to be under-utilised by small states.

There are several reasons why coalitions are useful for small states (Deere Birkbeck and Jones 2012). First, coalitions can help countries build negotiating positions where their understanding of issues might otherwise be weak. Second, participation in coalitions can expand the representation of countries as their interests can be represented in multiple places. The SVE group, for instance, designates focal point coordinators that follow particular issues and attend issue-specific meetings on their behalf.

In some instances, countries have joined coalitions simply to ensure that their specific interests are heard by that coalition (Deere Birkbeck and Harbour 2011). Third, coalitions can help build convergence among the WTO membership. Fourth, the growing use of coalitions has improved the transparency of the WTO's 'green room' processes as well (as it enables an expanded representation of small states through their coalitions).

To boost the effectiveness of small state engagement in coalitions and the credibility of those coalitions in the eyes of negotiating partners, a number of proposals have already been made, including for improving the internal workings of coalitions (e.g., strengthening internal management, such as on principles for representation of coalition members, mechanisms for internal transparency, institutionalised co-ordination and selection of leadership),<sup>28</sup> boosting negotiating tactics,<sup>29</sup> strengthening accountability and oversight of delegated representatives of the group,<sup>30</sup> and more careful management of lobbyists where they are engaged by small states to assist them in negotiations.<sup>31</sup>

Given their resource constraints, a pressing issue for small and poor WTO members is not just whether to join coalitions, but how to use their participation in coalitions strategically and to ensure that coalitions are tactically successful. Rather than relying only on regional and characteristic-based groupings, countries should give greater consideration to where and how their interests might be served by complementing this engagement with participation in

28 In many cases, greater investment in the working relationships among delegates is needed to ensure smooth intra- and inter-group co-ordination, particularly given the high turnover of delegates for some countries.

29 Within coalitions, countries need to negotiate and compromise to develop a negotiating position that is firm and credible to others, and which builds in scope for compromise should the need arise. As negotiations move beyond the agenda-setting phase to the negotiation phase, coalitions need to devise concrete negotiating positions with a clear set of guidelines for their representatives on 'plan B' and fall-back positions based on an advance consideration of possible scenarios that might emerge. This will also rely on clear instructions to delegates from member state capitals as to what is acceptable to the government.

30 Strengthened accountability requires improved briefings of the representatives delegated by their coalition members in advance of small group meetings, as well as clear accountability guidelines for members selected to represent coalitions in informal meetings. Groups, whether larger or small, need to be specific about how much responsibility they delegate and representatives need then to hold themselves responsible for not just informing but actively consulting coalition members. Accountability guidelines should seek to ensure that representatives carefully listen to all views beforehand, follow the mandate given by the group, faithfully report back on discussions, and consult with interested members in a timely fashion.

31 An often-neglected issue is the reliance of many small states on paid lobbyists and public relations experts to assist them in their negotiations and interactions with trading partners. Such lobbyists 'can be useful where small states do not have permanent or effective diplomatic presence in the target city' (Laurent 2011). Lobbyists can also help small states 'organise professional information and conduct outreach campaigns', but also require careful management to ensure their work properly reflects national interests (Laurent 2011).

### Box 6. Options for improved representation of small states and their coalitions

Options for consideration include calling for the following.

- Agreement that the representation of WTO members should be considered central to the accountability and credibility of the WTO, for which financial provision should be made systematically through the WTO's regular budget. That is, the representation of small states at the WTO should not be left to a country's own financial resources or to the unpredictable generosity of individual WTO members that may provide assistance.
- A commitment from members that small states and their coalitions should be more reliably represented in WTO decision-making, including green rooms and other informal meetings.
- Small states with a demonstrated commitment to achieving an effective presence in Geneva should be able to formally approach the WTO to complement the national financial resources they can afford.
- Establishment of travel funds, as many other international organisations have, to facilitate the participation of technical experts from small and poor countries to participate in relevant committees and meetings.
- Boost the WTO Secretariat's organisational and substantive support to coalitions of small and poor countries (including small states-specific research and analysis, facilitating/enabling co-ordination within coalitions, secretariat briefings and web presence).
- Leadership from the WTO director-general, deputy directors-general, and Secretariat staff to help small states and their coalitions boost the degree and efficiency of their engagement with the organisation.
- Systematic efforts by the WTO Secretariat to facilitate the flow of objective information on the status and process of negotiations, and the implications for small states of various specific proposals under discussion, particularly when negotiations move into a rapid or technical phase. This could include briefings and factual information from the Secretariat and enabling/hosting discussion of analytical and substantive inputs from other actors beyond the WTO.
- Further support from donors and other IGOs for the Commonwealth's Small States Office in Geneva. Opened in 2011, the office rents out office space to small states at subsidised rates and has a trade adviser in the office to provide support to small states delegations. The office currently houses Maldives, Seychelles, Sierra Leone and Solomon Island, among others. It also hosts two regional organisations that serve small states: the OECS, which services small states in the Eastern Caribbean (not all of them members of the Commonwealth), and the Pacific Islands Forum Secretariat, which serves small states in the Pacific region (some of which are not members of the Commonwealth).
- Greater use by the WTO Secretariat of web-casts/video-conferences to increase the participation of those small states that cannot afford to station experts in Geneva.

issue-based coalitions and alliances with key regional powers.

A final matter related to small state coalitions relates to strategic decisions about the scope and membership of the key small state coalition, the SVE Group. Some small state negotiators argue that the SVE Group's decision to expand from a 'small islands developing states' group into a 'small vulnerable economies' group has undermined its effectiveness. There are concerns that the expansion of the coalition to include non-island states made the meaning of 'smallness' in the context of some non-island states difficult to define and defend. While the decision to increase group membership can boost political weight within the context of WTO negotiations, where the membership is too extensive, other WTO members could contest it. Furthermore, there are concerns that the range of competing interests within the group may make concessions from other WTO

members to the group more costly. Conversely, the successes of the SVE Group to date can be attributed at least partly to the flexible definition of the group, which means that the actual composition of SVE group is different in various negotiating areas. As such, it can be argued that enlarging the group while making the composition of the group flexible has been a tactical move that has helped the group acquire recognition as well as special and tailored treatment in different negotiating areas.

#### 4.4 WTO accession process

A further systemic aspect of trade negotiations relates the WTO's accession process. Among the 24 countries in process of accession, small states include The Bahamas, Bhutan, Comoros, Equatorial Guinea, Seychelles, and São Tomé and Príncipe, three of which are LDCs and two of which are Commonwealth members (The

### Box 7. Options for small states regarding the WTO accession process

Options for consideration include calling for:

- Simplified and more transparent accession procedures for the small states that remain in the accession process.
- A multilateral process to facilitate agreement on those bilateral issues that unduly postpone accession and to limit the scope for excessive demands on small states.
- Enhanced institutional mechanisms 'to provide acceding countries with the opportunity to express their views on the process' (WTO 2010: 11).
- Transition periods for acceding small states to be defined early in the negotiation process.
- Greater technical support and capacity-building for small states at all stages of the accession process. Create a multilateral technical assistance programme for each acceding small state to increase the transparency and co-ordination of aid.
- Commitments in technical assistance action plans that ensure the country has the means to implement the various activities foreseen and agreed upon (Imboden 2012).

Bahamas and Seychelles). The challenges faced by developing countries in the WTO accession process have yielded a number of studies and numerous recommendations for reform (Adhikari and Dahal 2003; Charveriat and Kirkbride 2003; Imboden 2012; Charveriat and Kirkbride 2003; Primo Braga and Cattaneo 2009, 2011) (box 7). The complex and time-consuming process of WTO accession is particularly problematic for small states, upon which it can place excessive substantive demands, particularly where they are also LDCs.<sup>32</sup> Several small states, such as Samoa, negotiated their accession for more than a decade. Bhutan's negotiation has lasted that long and is still ongoing. Whereas small states may be able to harness coalitions to advance their interests in broader negotiations, in the process of accession they stand alone.

Concerns about WTO accession relate chiefly to the length, complexity and asymmetries of negotiations and the difficulties accession countries face with implementation of accession agreements. Commitments undertaken by some acceding countries are unrealistically high. They subsequently struggle to comply, which risks exposing them to pressures for further disciplines through bilateral/regional treaties and the

use of the WTO dispute settlement system to enforce accession deals. (This potential, in turn, exacerbates hard feelings among new entrants about the multilateral trade system.)<sup>33</sup> Accession countries also have to accept WTO agreements that others negotiated before their entry into the system. More recent entrants often find themselves worse off than countries that are already members, due to pressures to take on more onerous commitments than incumbent members at similar levels of development. These 'WTO-plus' conditions that form part of most WTO accession deals risk creating a 'two-tier' WTO membership. They also challenge the GATT principle of non-discrimination and add to the obstacles facing WTO negotiations (as some new members already believe they have undertaken 'too much' in their accession deals). Furthermore, Imboden (2012) notes that WTO accession focuses on the demands of incumbent WTO members above those trade reforms most important for the country's development. He also notes that 'bilateral accession negotiations are the most difficult and least predictable part of most accession processes...members can force the acceding country to accept any of their requests or to forego accession' (Imboden 2012).<sup>34</sup>

32 The shortcomings of the accession process were a recurring concern expressed by WTO members and observers at the 2009 Geneva WTO ministerial conference.

33 Importantly, broader geopolitics sometimes complicate the accession process and the potential for its reform. The Russian accession, for instance, is highly political, and the candidacy of Iran and Syria are influenced by political considerations.

34 He further notes that 'Member countries often change their demands during the negotiations and/or introduce requests that are not in line with WTO requirements. This puts the negotiators in very difficult situations. They convince their partners in the government to make an ultimate concession so as to ensure accession, only to have to go back with new requests received from members. Accession thereby becomes a moving target' (Imboden 2012).

While some efforts to improve the accession process have been made (e.g., WTO members adopted guidelines on LDC accessions in 2002 with the aim of expediting their accession process and making it less onerous), the task of promoting greater clarity, simplicity and speed for countries in the accession process remains a work in progress. Demands for improvements in the LDC accession guidelines spurred a decision at the 2011 ministerial conference to agree on benchmarks that could help guide LDC accessions.<sup>35</sup> The decision, adopted in July 2012, addresses five issues: benchmarks on

goods, benchmarks on services, transparency in accession negotiations, SDT and transition periods, and technical assistance. It also provides some concrete guidelines to operationalise the notion of 'restraint' when seeking commitment from acceding LDCs. However, as the implementation of the decision is an ongoing matter, its contribution to greater fairness in accession outcomes remains to be seen. Furthermore, it applies only to LDCs, and thus not to all small states in the accession process or likely to pursue accession.

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## 5. Dispute settlement challenges

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The challenges faced by developing countries in using and benefitting from the WTO dispute settlement system have attracted consistent concern since the creation of the organisation (Bartels 2012; Bohanes and Garza 2012; Bown 2009; Bown and Hoekman 2005; Brewer and Young 1999; Busch and Reinhardt 2003; Chaytor 1998; Ching 1993; Francois et al. 2008; Jackson 2012; Lacarte and Gappah 2000; Nordström and Shaffer 2008; Oteng 1997; Rhagavan 2000; Shaffer 2006; Van Grasstek 2001).<sup>36</sup> In principle, the existence of the WTO's dispute settlement mechanism is a major benefit to small states as it provides an objective judicial mechanism ostensibly divorced from power politics. However, the use of the WTO's dispute settlement system has been dominated by developed countries and a relatively small group of larger developing countries. As of early 2013, Antigua and Barbuda was the only small state to have been a complainant in a WTO dispute (in a case against US (US)), and Trinidad and Tobago was the only small state to have been a respondent (in a case launched by Costa Rica). However, a number of small states have participated as third parties in one or more disputes.<sup>37</sup>

In addition, small states can be affected adversely or positively by disputes between

other WTO members. For instance, a successful WTO complaint brought by several Latin American countries and US forced the EU to abandon its preferential treatment of bananas imported from some countries, such as Saint Lucia, for which bananas are a principal export. A further issue for small states relates to their ability to ensure that larger trading partners adhere to any rulings that do emerge from the DSU process.

The most commonly cited constraints to the use of the DSU by small states are:

- The significant human and financial costs of mounting a case.
- Shortages of legal capacity to pursue and sustain engagement in a case.
- Inadequate resources to invest in the scientific or technical expertise pertinent to advancing a case.
- Limited government and private sector capacity to survey foreign markets to identify violations of WTO rules that harm their interests and potential cases they could beneficially pursue.
- The perception that small states may be unable to effectively enforce a ruling that is in their favour (as Antigua and Barbuda discovered in its recent dispute with US

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<sup>35</sup> See WTO/COMTD/LDC/19.

<sup>36</sup> Only a few studies have examined the issues facing small states in particular (e.g., Nottage 2012 and Bartels 2012).

<sup>37</sup> These countries include Barbados, Dominica, Fiji, Grenada, Guyana, Mauritius, Namibia, St Vincent and the Grenadines, St Kitts and Nevis, Saint Lucia, and Trinidad and Tobago.

### Box 8. Options for small states regarding dispute settlement

Options that small states could consider advancing to boost the responsiveness of the DSU to their needs and address their challenges of participation include calling for:

- greater support and training for small states on the use of mediation and alternative processes for resolving disputes;
- analysis and dialogue on the case for creating a 'small claims' procedure within the WTO;
- analysis and dialogue on the possibility of compensation as a remedy (Mercurio 2009);
- boosted financial contributions to the ACWL to increase its ability to respond to the needs for assistance of small states and to reduce its membership fees for small states;
- greater support for building legal capacity for WTO disputes within small states, including financial support for acquiring scientific or technical expertise where relevant;
- increase legal capacity of small states and their familiarity with the DSU process by boosting training and information for small states on the arrangements and potential benefits of participating more frequently as third parties in disputes;
- boost awareness of what proceedings involve through continued efforts to open the public aspects of WTO dispute proceedings, such as through web-casting; and
- boost capacity of countries to monitor and analyse where violations of WTO commitments that harm their economic interests, including the capacity of industries and small and medium-sized businesses.

over internet gambling). That is, even if small states are able to mount and win a case, they often perceive themselves to have few prospects for effectively using retaliation or cross-retaliation to enforce decisions. Although several WTO decisions have authorised developing countries to cross-retaliate (such as by reducing their commitment to protecting intellectual property rights held by nationals of the offending country), representatives of small states note the deterrent effects of potential threats to development assistance and fears of informal political or trade retaliation. Perceptions aside, there is some debate on the degree to which small states have the capacity to retaliate, with some analysts arguing for greater optimism in lieu of overly negative perceptions (see Nottage 2012).

- The perceived threat that small states will face informal bilateral pressures to resolve cases through mutual settlement (many WTO disputes are resolved through mutual settlement rather than rulings) and to concede to unfair settlement terms.

An additional explanation for the limited use of the dispute settlement system by many of the smaller developing countries is that the trade preferences of greatest importance to them are often provided under preferential trading arrangements, rather than WTO rules. As such, trade disputes are not likely to be brought to

the WTO's dispute settlement mechanism, but rather addressed (or set aside) through bilateral agreements (Nottage 2012).

Some analyses of the DSU emphasise that for small states, greater use could be made of the DSU's arbitration provisions, as well as other provisions that enable the WTO director-general to use his or her 'good offices' to assist countries to settle disputes. Nottage (2012) notes that this procedure was used to reach a conclusion of the long-standing bananas disputes. Finally, for countries with limited resources, proposals for the establishment of a 'small claims procedure' within the DSU system may be of interest (Nordstrom and Shaffer 2008) (box 8).

At present, much of the WTO Secretariat's assistance to small states focuses on explaining the DSU system and related training. Although small states are eligible to join initiatives such as the ACWL to assist them with WTO litigation, only two small states have joined the centre. While LDCs receive the ACWL's services free, other developing countries are expected to become members and/or pay for services provided, which in the case of smaller countries may dissuade them. Moreover, there is little assistance to help countries address pre- or post-litigation constraints or the associated perceptions and fears with regard to political pressure.

Upon the creation of the WTO, the 1994 ministerial conference called for a review of the dispute settlement rules in 1997, a deadline which, although later extended, lapsed with no

agreement. At the 2001 Doha ministerial conference, WTO members agreed to improve and clarify the DSU. The subsequent negotiations take place in special sessions of the Dispute Settlement Body. Although these negotiations have not yielded concrete outcomes, they have generated proposals from WTO members on a number of issues, some of which address particular issues of concern to small states, such as proposals on enhancing third-party rights; enhancing compensation as a remedy;

strengthening notification requirements for mutually-agreed solutions; strengthening SDT for developing countries at various stages of the proceedings; and modified procedures for retaliation, including collective retaliation or enhanced surveillance of retaliation.<sup>38</sup> The review has also taken up the issue of external transparency – what kind of access the public might have to panel proceedings or their input into the procedure by means of *amicus curiae* briefs – and how to deal with dormant cases.<sup>39</sup>

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## 6. Treaty administration, monitoring and assessment challenges

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A core role of the WTO is to administer international treaties. This task includes providing a mechanisms through which members can: 1) notify other members of the status of their implementation of various commitments in the agreements and changes in trade rules and measures; 2) conduct discussion on emerging issues and challenges related to treaties; 3) make information about trade rules and policies publicly available in a systematic manner; and 4) conduct reviews where these are called for within treaties. In the WTO system, these functions are served by the day-to-day activities of the WTO Secretariat, members themselves (in the form of self-reporting through the WTO's notification mechanisms) monitoring through the trade policy review (TPR) mechanism, and through discussions in the WTO's regular committees.

The monitoring of trade policies is a key component of treaty administration and of the management of the WTO system. The 2008–9 global economic crisis spurred renewed interest in a strengthened role for the WTO in monitoring

trade policies and imbalances to help avert protectionist pressures (Lamy 2007; Mavroidis 1991–1992; Wolfe 2010). At the 2011 WTO ministerial conference, a number of WTO members specifically emphasised the importance of monitoring trade commitments and improving the TPR process. Even before the crisis, however, there were concerns about the effectiveness of the multilateral trading system's mechanisms for promoting transparency of trade policies and measures (Collins-Williams and Wolfe 2010).

From an institutional perspective, the WTO's transparency norm (in terms of governments disclosing information to the public and each other) is considered a key tool for enhancing 'the effectiveness of the WTO agreements' (Collins-Williams and Wolfe 2010). However, only a few studies analyse the WTO's monitoring function from a development perspective (e.g., Ghosh 2008; Qureshi 1990). For the smallest and poorest WTO members, monitoring mechanisms have an important role in addressing their limited resources and capacity for surveillance.<sup>40</sup> Small states, for instance,

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38 Other proposals that have been tabled relate to: accelerated procedures for certain disputes; improved panel selection procedures; increased control by members on the panel and appellate body reports; clarification of the treatment of *amicus curiae* briefs; introducing an interim review and 'remand' (referring a case back to a panel) at the appeals stage if a factual issue arises that had not been examined by the panel; and clarifying and improving the sequence of procedures at the implementation stage (such as when a member believes that another has failed to comply fully with the final rulings).

39 Other suggestions of improvements include a procedural suggestion by Meléndez-Ortiz and Biswas (2011) that WTO members could adopt all panel proceedings by default, unless vetoed by a party to the dispute.

40 Ghosh (2008) observes that this capacity may grow as countries trade more, particularly if the emphasis of capacity building shifts from not only self-evaluations but also monitoring foreign trade barriers.



### Box 9. Options for small states regarding monitoring and assessment

Options for consideration include calling for:

#### *Monitoring*

- Increasing representation of small states as formal discussants for the TPRs of other countries and to pose questions relevant to their economies in TPR meetings.
- Boosting the political profile and usefulness of TPRs to national trade policy-making processes and dialogue through, for instance:
  - greater emphasis on high-level representation by member states at TPRs;
  - increased media coverage of reviews; and
  - using the TPR process to foster input from and dialogue with researchers and stakeholders at the national level on the direction and impacts of trade reforms (Deere Birkbeck 2009b).
- Including in the TPRs analysis of processes of national trade policy-making (Ostry 2002, 2004).
- Including in the TPRs a review of developed country implementation of their development commitments to developing countries, both in terms of trade rules and provision of trade-related capacity-building.
- Linking the TPR process more closely to the assessment of adjustment costs arising from the implementation of WTO rules and thus to their capacity building needs and appropriate legal obligations for provision of assistance by other members (see Luke and Bernal 2011).
- Improving co-ordination between the various WTO divisions in the production of TPR reports to boost quality of analysis, and also with the World Bank, IMF, UN agencies such as UNCTAD, regional development banks and national research institutions to increase analysis of the intersection of trade with other relevant policies in the TPRs.
- Introducing TPR 'follow-up' documents to show responses to concerns raised in TPR meetings (also see Ghosh 2008, 2010).
- Beyond the WTO, supporting greater engagement and initiatives by non-state actors in monitoring to boost the timeliness of trade-related information in the face of slow institutional- and self-reporting.

#### *Assessment*

- Adding an assessment or evaluation function to the WTO system to review the effects of actual and proposed trade rules against objectives such as sustainable development and employment, and to identify national trade-related hurdles that impede their realisation. Such a function could take place under the auspices of the WTO Committee on Trade and Development, the general council or the ministerial conference. Given political fears about the potential for links to dispute settlement proceedings, such a function should be separate to the peer review/transparency function of the TPR but could feed into it. To ensure independence and impartiality, it could be implemented for member states by a network of independent research institutions or think tanks.
- Defining an ombudsperson function within the WTO's institutional structure, that could receive complaints from stakeholders within WTO members and initiate independent investigations of alleged negative impacts of WTO agreements (Pena 2011).

need advance warning of changes in the trade policies or barriers of major trading partners, and analyses of the impact of those changes, as well as information that helps them resist pressures to 'over-comply' with their commitments and to promote compliance by rich countries with their obligations (Ghosh 2010).

The WTO has several different monitoring processes and transparency provisions within its agreements, and their number has grown since the WTO was established. These include notification requirements embedded in some WTO agreements (such as for subsidies); institutionalised surveillance mechanisms such as

the TPR mechanism (which has been operating since 1989 and periodically reviews the trade policies of all WTO members); and the monitoring activities of the WTO's regular committees (box 9).

In recent years, further mechanisms have been created, most notably to monitor regional trade agreements and food safety standards. There are also improved mechanisms for monitoring AfT, such as the global reviews of AfT and the expansion of the scope of TPR, enabling some countries to self-nominate for monitoring also of AfT flows. There have also been improvements to reporting mechanisms

called for by developing countries.<sup>41</sup> At the insistence of developing countries, for instance, the CTD rather than the Committee on RTAs is the forum for reviewing RTAs among developing countries.

The Bali Ministerial Conference in December 2013 established a mechanism to review and analyse the implementation of special and differential treatment provisions.<sup>42</sup> In regard to SPS measures, developing countries secured provisions calling on developed countries to advise how new standards they adopt would offer special and differential treatment to developing countries. For instance, notifying members are expected to mention how their SPS measures would affect others. However, in the case of RTAs there has been strong opposition to assessments of their impact on the WTO system. Notably, beyond the WTO, there are a growing number of monitoring efforts to provide information on trade measures, flows and policies, including work by UNCTAD and online databases of protection measures by independent stakeholder initiatives.<sup>43</sup>

As noted by Elsig et al. (2013), there are several proposals to widen the TPR's mandate (e.g., Chaisse and Matsushita 2013; Abu-Ghazaleh 2013), engage more stakeholders in the TPR process (Hoekman 2012), take a greater stance on the performance of countries (e.g., Keesing 1998; Zahrnt 2009) or to promote wide discussion of the reports within countries (Zahrnt 2009). A number of options have also been put forward to boost the participation of developing countries and the substantive benefits of the process for them (Laird and Valdés 2012).

On the procedural front, participation in TPR meetings is dominated by a handful of WTO members. The TPR process is more actively used by developed than developing countries (such as through submission of advance questions to countries), meaning that the direction of peer pressure flows more against the latter. At present, the smallest countries participate only minimally in discussions of the performance of

other WTO members and, even when their own country is discussed, many governments do not participate at a high level. In many cases, small states are reviewed as part of a broader economic community, such as the OECS. At present, the TPR process does not facilitate inputs or allow participation from non-state actors. Further, TPR reviews are too infrequent (every 4 years for developing countries, and less frequently for least developed countries) to serve as a dynamic tool for policy dialogue.

On the substantive front, the TPR process does not currently aim to make an assessment of the impacts of WTO agreements on development. Critics argue that the TPR's focus on compliance with WTO does too little to help countries explore how they can better take advantage of the multilateral trading system, identify what additional support they need, or reinforce development-oriented national trade policy-making. At present, TPR reports often do not describe or analyse the most contentious trade policies of members, nor do they include detailed analysis of key provisions of RTAs to which the country belongs or their implications. There are many proposals for harnessing the TPR as a tool for integrating development and other dimensions into trade policy-making (ranging from environment to labour, gender and human rights considerations). These recommendations also have a procedural element as they include a call for stronger roles for other international organisations, experts and stakeholders in the TPR process (Deere Birkbeck 2009b).

From a political perspective, the call for more timely, compliance-oriented information and impact analysis from the TPR will face several hurdles. First, the WTO Secretariat faces constraints on its mandate to investigate and evaluate the policies of its members. Second, developing countries fear that greater transparency and more analytical reports could target their policies more than those of the rich. They have also resisted proposals to increase peer pressure and institutionalise follow-up to the TPR for fear this may work against them, as

41 See [www.wto.org/english/tratop\\_e/devel\\_e/dev\\_special\\_differential\\_provisions\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm) (accessed 28 January 2015). For text of the Ministerial Decision, see WT/MIN(13)/45.

42 Other procedural innovations include earlier submissions of factual presentations in the case of RTA monitoring and longer comment periods for SPS notifications.

43 See, for instance, the work of the Global Subsidies Initiative (monitoring subsidies by WTO members) at [www.globalsubsidies.org](http://www.globalsubsidies.org), and of the Global Trade Alert (monitoring protectionism) at [www.globaltradealert.org](http://www.globaltradealert.org) accessed November 2014).

they may be less able to use transparency mechanisms to coax changes on the part of developed countries. Larger developing countries, some of which already use their own resources for external monitoring, may prefer to maintain the status quo. Regrettably, poorer countries remain largely disengaged from the TPR process and these related debates.

In addition to debate on strengthening the WTO's monitoring function, several proposals also exist for incorporating greater assessment and evaluation of the impacts of existing and proposed WTO Agreements into the WTO's governance arrangements, either through the TPR as noted above or through a new mechanism at the WTO. In addition, there are proposals for an ombudsperson function in the WTO, such as one that could receive complaints from stakeholders about development impacts as one way to boost WTO transparency and accountability (Pena 2011).<sup>44</sup>

The push for *ex ante* and *ex poste* assessments of the impacts of trade liberalisation and rules is not new. It has already spurred numerous efforts to devise methodologies and pilot studies. There are, for instance, assessments of trade impacts on development, sustainable development, the environment, gender, poverty, human rights and labour (see, for instance, 3D

and FORUM-ASIA 2004; Dommen 2009). Several international organisations are already engaged in this area. The UN Environment Programme (UNEP), for instance, has conducted assessments of the environmental impacts of trade agreements on particular sectors. Furthermore, some national governments have studied the impacts of particular rules, such as intellectual property rules on national public health priorities. Among WTO members, the EU carries out sustainability impact assessments on trade negotiations; Canada has performed environmental assessments of the WTO negotiation; and US has conducted an environmental review of the Doha Development Agenda negotiations. There have also been calls for a more coherent approach that links assessments of the impacts of WTO agreements on developing countries to studies of impacts of International Monetary Fund (IMF) and World Bank conditionalities on developing countries (Chimni 2011). A question for small states to consider is whether incorporating a new function within the WTO that could take up a range of these kinds of assessments, independently or with others, would help in terms of gathering evidence and persuading other WTO members of the challenges they face and opportunities they require in the global trading system.

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## 7. Research and statistics challenges

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Several analysts of the global trading system highlight the need for adequate research at the country level, regarding their trade interests and practical, detailed, negotiation-relevant analysis of their specific interests on particular subjects of WTO negotiations (Francois 2001; Tussie 2009; Tussie and Lengyel 2002). Small states also express a need for studies that assess

impacts, develop policy options and propose negotiating positions through processes that are clearly linked to broader national processes of devising their development strategies (box 10).

For small states, shortfalls in information flows and analytical capacity are particularly significant problems. Although most small states have access to some national trade data, they

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<sup>44</sup> Pena (2011) recommends a first phase of activity in which the WTO ombudsperson would have limited functions and would produce only non-mandatory, technically based opinions on the issues the office has been asked to investigate. Requests for such action could be made by civil society groups from any member country or international NGOs, so long as their own governance arrangements were transparent, and complaints could relate to any inadequacies of the multilateral trading system that could impact sustainable development and transparency. To elaborate the proposal, and build member state support, he proposes a gradual approach through broad worldwide multi-stakeholder consultations. Based on the feedback received, the WTO director-general would prepare a concrete proposal for the consideration and eventual approval of the WTO general council. If, after an independent external appraisal the ombudsperson function has demonstrated its value and effectiveness, he proposes that the WTO general council could agree to further improve its modalities of operation and possibly extend its functions as well.

### Box 10. Options for small states regarding research and statistics

Options for consideration include calling for:

#### Content

- Greater support for country-level research on the relationship between trade policies and rules, and their broader national development strategies and circumstances.
- Greater support for practical, detailed negotiation-relevant analysis of their specific interests on particular subjects of WTO negotiations.
- Greater information and analysis on RTAs.
- Greater support for data-gathering and trade statistics within developing countries.
- Greater analysis of impacts and potential impacts of trade rules and policies on small states.

#### Process

- Greater role for developing country governments and researchers in setting the WTO research agenda and their ownership of the research process.
- Greater resources and support for building long-term institutional research and analytical capacity within universities, research institutes and NGOs in small states.
- Stronger relationships between the WTO and small state government officials and researchers to enable them to use the data bases and knowledge within the secretariat.
- Greater investment in research and policy analysis on trade and development relevant to small states, conducted by organisations such as UNCTAD, the ITC, and the Commonwealth Secretariat, as well as think-tanks, research centres and NGOs.

rarely have the analytical capacity to properly assess economic impacts of potential changes in trade rules or the trade-offs of different trade policy options. They also lack the data and human resource capacity to monitor changes in trade laws and policies among their trading partners, and analyse their impacts. Even where small states have relevant information and impact assessments, they face challenges in translating these into concrete negotiating positions.

Small states vary in their links to international networks of expertise, whether in the NGO, IGO or academic community. In some cases, small states rely on their negotiating partners for information on their negotiating options and potential impacts, including through the provision of consultants to assist them. Short-term interventions such as studies by external consultants or international organisations may sometimes be useful, but these do not address the broader need to support the development of analytical capacity within countries among researchers and analysts who are more familiar with the local economy. Further, the work of external consultants is not always tailored to the needs of the small states, and is sometimes biased towards the interests of donors.

Progress towards the kinds of research and policy output that small states need will rely on improvements in the WTO's capacity to gather, make available and analyse trade data and statistics. This in turn will demand support for countries to gather and report data, and also to rethink the methodologies for some aspects of data collection. A key practical challenge for negotiations is, for instance, how to determine and attribute the origins of products where they combine components from many countries and to determine where along the production chain value is added. The WTO Secretariat, which, together with the OECD, has launched a new database measuring trade in value added, is now taking up part of this task.<sup>45</sup> The WTO has also launched the Integrated Trade Intelligence Portal (I-TIP), to build transparency on non-tariff measures.<sup>46</sup>

What is the appropriate role and scale of the WTO Secretariat's research function in addressing the research and statistical needs of small states, and how best to build research capacity beyond the WTO Secretariat? While there appears to be at least implicit support from many members with the WTO Secretariat's growing body of research, small states need to be sure that this research addresses their concerns

45 [http://stats.oecd.org/Index.aspx?DataSetCode=TIVA\\_OECD\\_WTO](http://stats.oecd.org/Index.aspx?DataSetCode=TIVA_OECD_WTO) (accessed 28 January 2015).

46 [www.wto.org/english/res\\_e/statis\\_e/itip\\_e.htm](http://www.wto.org/english/res_e/statis_e/itip_e.htm) (accessed 28 January 2015).

and that they have a say in setting the research agenda. At the same time, the focus should not be on building a large research capacity within the Secretariat, but on member support for boosting research and analytical capacity within universities, research institutes and NGOs within small states and their regional institutions. The WTO Secretariat is already involved in some such efforts. Some larger developing countries, such as Brazil, have supported and now benefit from considerable national research capacity. Furthermore, in Africa, there are

several sub-regional or regional think tanks or research centres that focus their research on trade issues relevant to their regions. UNCTAD is actively involved in providing trade-related research to developing countries, as are other UN agencies, regional economic commissions and international organisations such as the Commonwealth Secretariat. As many such organisations have a more focused mandate on development than the WTO Secretariat, there is a strong case for building their capacity on trade-related research for small states.

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## 8. Aid for trade, capacity-building and technical assistance challenges

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For small states, capacity building is a critical systemic issue as it has a fundamental bearing on their participation in the WTO. The ability of such countries to benefit from the WTO system depends upon support for greater supply-side capacity, and also for building the institutional and regulatory framework needed to implement and benefit from international rules. Progress in these areas is linked to their broader needs for development co-operation and their ability to secure adequate support from bilateral and multilateral donors. Small states are also heavily reliant on external assistance to support their day-to-day engagement in the WTO system.

The WTO is involved in several initiatives to provide trade-related capacity building to developing countries (box 11). Most prominent among these is the WTO's AfT initiative (see WTO 2006). AfT includes assistance to countries for building productive capacity and economic infrastructure, trade-related adjustment and to support action on trade policy and regulations (WTO 2013). For developing countries, the inclusion of AfT discussions in multilateral trade talks and creation of a mechanism for monitoring AfT flows have been important achievements alongside the Doha Development

Agenda. Since 2004, the WTO Secretariat estimates that some US\$200 billion has been mobilised for AfT.<sup>47</sup>

In addition, the WTO is engaged in some of the capacity building conducted by the ITC and UNCTAD – although its roles and relationships with each institution vary. The WTO hosts the Enhanced Integrated Framework (EIF), which is the main mechanism through which LDCs, many of which are small states, access AfT.<sup>48</sup> Similarly, the WTO participates in the Standards and Trade Development Facility, a joint initiative of the Food and Agriculture Organization, the WTO, the World Bank, WHO, the World Organization for Animal Health and others, which is relevant to AfT in that it works to support developing countries to build capacity to implement SPS standards. The Facility acts as both a co-ordinating and financing mechanism, and monitors aid flows at an operational, issue-specific level.<sup>49</sup> Finally, the WTO has its own technical assistance and training activities and programmes, which are considered core elements of the development dimension of the multilateral trading system, as confirmed by ministers at Doha in 2001. Within the WTO Secretariat, trade-related technical assistance (TRTA) is co-ordinated by the

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47 [www.wto.org/english/news\\_e/sppl\\_e/sppl262\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl262_e.htm) (accessed 28 January 2015).

48 [www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/enhance\\_if\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/enhance_if_e.htm) (accessed 28 January 2015).

49 [www.standardsfacility.org](http://www.standardsfacility.org) (accessed 28 January 2015).

### **Box 11. Options for small states regarding AfT, capacity-building and technical assistance**

Options for consideration include calling for:

#### ***Aid for Trade***

- Greater attention to the specific needs of small states.
- Greater transparency and clarity in terms of how countries can best access available AfT resources.
- Boosting the role of South–South co-operation in AfT.
- Increasing the accountability of donors for the overall level and quality of AfT.
- Establishing stronger links between AfT and national development and poverty reduction strategies.
- More careful definition of the appropriate role of the Bretton Woods Institutions, regional development banks and other international organisations in AfT.
- Greater critical assessment of the effectiveness of the EIF and the niche and comparative advantages of UNCTAD, the ITC and the development banks in the provision of trade-related capacity building and AfT.
- Granting beneficiaries a fuller role in the planning and management of the AfT programmes (Laurent 2011).
- Making greater use of regional economic communities in distribution of AfT (Luke and Bernal 2011), including through support of regional AfT facilities. The use of regional facilities would give regional integration efforts momentum, and if appropriately designed, could provide national stakeholders with more transparent and responsive vehicles to access to financial support. Regional AfT facilities could be complemented by the establishment of national AfT 'basket funds' as a vehicle for managing, co-ordinating and reporting on bilateral and other support received for national trade capacity-building initiatives.
- Improving processes and mechanisms for monitoring the effectiveness of AfT and of the flows of assistance to ensure that developed countries comply with their commitments to provide resources and that credible information is available to all WTO members.
- Greater donor support in the areas of 'trade-related adjustment' and 'policy and regulatory reform'. In the latter area, this includes support for policy and nationally relevant research, negotiating capacity, legal capacity to engage in the WTO DSU process and for monitoring of trade policies and laws in other member states (including for violations of WTO commitments).

#### ***WTO Secretariat training and technical assistance***

- More specific, dedicated training technical assistance for small states' needs and specificities, particularly with regard to negotiations and implementation of WTO commitments.
- Focusing the WTO's assistance on factual understanding of agreements and the status of negotiations, accompanied by greater emphasis from the Secretariat on facilitating the access of small states to independent analysis with regard to their interests and opportunities in the trading system.
- More regular external assessment of the collective impact of WTO assistance on small states.
- Support for small state delegations for representation in Geneva through the WTO's regular budget (see box 6).
- More systematic 'back-up' support by the WTO Secretariat for small state engagement in WTO negotiations and decision-making (see options presented in boxes 4 and 6), including in the accession process (see box 7).

#### ***Advisory Centre on WTO Law***

- A change in the ACWL's policies to reduce the membership fees for small states or provide, upon certain criteria, its dispute settlement-related services free of charge as is the case for LDCs.

#### ***Cross-cutting options***

- Creation of an independent mechanism for capacity-building that would enable recipients to select their preferred providers of assistance from the 'marketplace' of potential donors.
- Greater donor support for multilateral capacity building initiatives, such as the EIF or the programs of UNCTAD, in preference to their bilateral programs (Deere et al. 2007).
- Greater donor support for national stakeholder fora and consultations on trade policy, and consultations in negotiations.
- Greater support for the representation of developing countries in Geneva (see box 6) and for travel of national negotiators and experts to relevant negotiations.

### Box 11. Options for small states regarding AfT, capacity-building and technical assistance (continued)

- Greater support for coalitions, such as through support for the ACP Secretariat and offices of the Commonwealth Secretariat in Geneva.
- Boost the proportion of technical assistance channelled through independent third parties that have no direct stake in the outcome of trade negotiations, such as the Commonwealth Secretariat, UNCTAD and regional development banks.
- Promote a greater role for local, non-governmental actors with a durable presence in developing countries – such as civil society groups, research centres and industry groups – as independent providers and recipients of capacity-building.
- Greater focus on support that is long term and predictable, and provide governments with a high degree of autonomy to hire and retain experts of their choosing on a long-term basis (this would help countries avoid the creation of disruptive incentives and strengthen accountability).

**Note:** the options presented in this box pertain primarily to systemic and governance issues related to capacity-building for small states, not the specific topics for which they should receive support.

Institute for Training and Technical Cooperation,<sup>50</sup> based on the technical assistance and training plans. The Committee on Trade and Development<sup>51</sup> is the regular body overseeing all TRTA activities. Although there has been one external review (CUTS et al. 2006), these activities attract relatively little external attention, but are nonetheless significant, as they tend to focus on policy and regulatory issues and also on training on the rules and interpretation/implementation of WTO rules and on negotiation issues.

In addition to calls for ensuring that AfT flows are indeed ‘additional’ to existing development assistance, there are many critical assessments of the content and flows of ‘AfT’, and a number of proposals to enhance its effectiveness (CUTS et al. 2006; Deere 2005; DFID 2001; Higgins and Prowse 2010; OECD 2001; Prowse 2002, 2006; UNECA 2009; Urpelainen 2009; WTO and OECD 2009). While few analysts refute the importance of AfT (Njinkeu and Cameron 2008), critical development advocates insist that

the provision of such assistance must not be a *quid pro quo* to reward developing countries for agreeing to include new issues in trade negotiations or for accepting bad trade deals (Tandon 2004). They also caution that engagement in the AfT discussion should not so absorb the WTO delegations of small states that it diverts their limited resources from WTO negotiations. Further concerns are that overall AfT flows fall well below political commitments and that among the categories of AfT, inadequate resources have flowed toward trade-related adjustment and trade policy and regulations.<sup>52</sup>

Several challenges related to the governance of AfT and technical assistance are relevant to small states. At the national level, most small states struggle to co-ordinate the diversity of individual providers of trade-related assistance to their countries. Governments widely need assistance in devising how best to use available resources to their advantage – for instance, helping them to better assess their needs, formulate effective projects, negotiate

50 [www.wto.org/english/tratop\\_e/devel\\_e/teccop\\_e/ittc\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/teccop_e/ittc_e.htm) (accessed 28 January 2015).

51 [www.wto.org/english/tratop\\_e/devel\\_e/d3ctte\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/d3ctte_e.htm) (accessed 28 January 2015).

52 See report of the fourth global Aid for Trade Review, available at: [www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/4th\\_AFT\\_Summary\\_Report\\_side\\_events\\_E\\_v4.pdf](http://www.wto.org/english/tratop_e/devel_e/a4t_e/4th_AFT_Summary_Report_side_events_E_v4.pdf) (accessed 28 January 2015). There is evidence that support for trade facilitation has contributed to lowering the cost of trading and enhancing the competitiveness of many LDCs, SVEs and sub-Saharan African countries. However, the contribution of AfT to improving the productive capacity and structural transformation needed to benefit from the international trading system is less clear. For countries where exports are highly concentrated around a few preference-dependent product lines, any loss of favourable treatment from, for instance, preference erosion due to multilateral or regional trade liberalisation, can have disastrous consequences. Although AfT is a potential route to address this issue; until now relatively few AfT resources have been used to help countries with such trade-related adjustments. Many countries also still lack adequate support for strategic engagement in negotiations and dispute settlement and for responding to the proliferation of non-tariff barriers in export markets.

with donors, utilise resources productively, ensure regional co-ordination and co-ordinate among ministries and with stakeholders.

In terms of governance at the international level, there is no single point of access, identified process or criteria for beneficiaries to follow in order to tap into the AfT commitments of bilateral and multilateral donors. Relatively little attention is given by donors to regional integration efforts that are the basis for the engagement by many small states in the multilateral system. There have also been specific reform proposals (and some action taken) on the activities and governance of several of the main donor collaboratives, such as the EIF, the Agency for International Trade Information and Cooperation, the ITC and the Joint Integrated Technical Assistance Program (the latter program was closed in 2009). Numerous proposals have also emerged through the periodic Global and Regional Reviews of Aid for Trade.

Some of the governance debates on AfT of particular relevance to small states relate to concerns about inadequate monitoring and evaluation, South–South sharing of experiences, engagement of stakeholders, support for regional institutions, and links between trade-related assistance and broader development cooperation activities. A further recurrent concern has been that donors too often put greater emphasis on their administrative requirements

than the needs and ownership of the receiving countries (Imboden 2012), resulting in assistance that is sometimes unnecessary, untimely or relatively marginal to the core areas in which countries need support. Imboden argues persuasively that ‘[m]isunderstood efficiency criteria and excessive reliance on indicators encourage consultants to put their emphasis on production of documents and events rather than on the content of assistance...’ Finally, many training and technical assistance initiatives have been criticised for poor design and delivery of projects and for bias towards supporting the commercial interests of donor countries. The quality and independence of such advice is a vital consideration, particularly when provided bilaterally as substantive tensions can arise between donors and recipients where assistance relates to the implementation of contentious WTO norms.

Beyond AfT, small states have a range of outstanding needs for more effective, development-oriented legal and regulatory training and advice, as well as technical training on trade negotiations and the implementation of trade agreements. As noted above, only a very small portion of assistance each year is allocated to support ‘trade policy and regulation’, which aims to improve the ability of developing countries to formulate trade policy, participate in negotiations and implement trade rules.

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## 9. Outreach and stakeholder engagement challenges

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A final aspect of the ‘regime’ management function of the WTO relates to its outreach and engagement of other international organisations and of stakeholders, ranging from parliamentarians and NGOs to the private sector and academia.<sup>53</sup>

Unlike most other international organisations, the WTO membership has not extended observership of its committees to all relevant international organisations. This means that committees regularly discuss some issues without the opportunity for other relevant

international regimes or organisations to input or share information, or better understand the WTO’s rules and dynamics. Similarly, the WTO’s regular committees and negotiating processes are not open to stakeholder or expert observation, except where such organisations or individuals are part of national delegations. Stakeholders must thus rely on conventional lobbying techniques to influence governments; briefing papers, press statements and informal meetings to provide factual input or advice; and second-hand journalist, WTO or delegate

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53 On the engagement of parliaments, see Hilf (2003) and Shaffer (2004b).



### Box 12. Options for small states regarding outreach and stakeholder engagement

Options for consideration include calling for:

- Opening WTO regular committees to observation by relevant IGOs.
- Opening WTO regular committees to stakeholder observation where discussion is on technical issues or experiences where external experts are well poised to offer input and advice.
- Deeper consideration by the WTO membership of routine mechanisms and processes for constructive engagement of stakeholders, whether from parliaments, unions, nongovernmental organisations, academia or the business sector in the WTO's regular committees, and related initiatives and work. This discussion would be greatly facilitated by taking a function-by-function approach, rather than focusing only on the WTO's negotiation function, for instance.

reports in order to garner information on the substance and nuances of discussions that occur.

The WTO differs from many other international organisations in that it lacks a process for accreditation of non-government actors, whether civil society or private sector, to observe and/or input into its regular activities.<sup>54</sup> As the Doha round of negotiations languishes, attention increasingly turns to the need for more effective measures to ensure the engagement of capitals, business and stakeholders in the WTO negotiation process, as well as in the WTO system more broadly (box 12). Although lobbying by industry and NGOs is widespread in WTO affairs (Elsig et al. 2013), the system still lacks adequate routine mechanisms and processes for constructive engagement of stakeholders, whether from parliaments, unions, NGOs, academia or the business sector, in ways that feed into decision-making processes to ensure trade rules respond to public concerns and expectations.

However, stakeholders can seek *ad hoc* accreditation for WTO ministerial conferences. The Secretariat provides various spaces and opportunities for stakeholders to host events and distribute materials alongside the formal ministerial proceedings, and to observe the opening and closing ceremonies of the conference (but not to present comments). Furthermore, several measures have been taken to increase opportunities for public participation in non-negotiating aspects of the organisation's work, such as through opening some aspects of the dispute settlement process and the hosting of an annual WTO public forum in Geneva. The WTO Secretariat also makes efforts to engage a diversity of stakeholders in a variety of its regular activities, such as through invitations to serve as speakers in conferences, expert meetings, and trainings (also see box 2 above). Moreover, at the discretion of national governments, some stakeholder organisations may participate in their WTO delegations.

## 10. Global economic governance challenges

### 10.1 Trade in the context of development strategy and institutions

Co-ordination between the WTO and other actors in the international system in pursuit of

sustainable development goals is a core systemic challenge relevant to small states (box 13).

Small states have long emphasised the need for stronger alignment of the WTO with development goals.<sup>55</sup> Like many other developing countries, a core systemic issue for them

54 For early analyses of the WTO's engagement with civil society, see Esty 1998; Charnovitz 2000; Halle 2007; and Lacarte 2004.

55 Together, these concerns have spurred efforts to enshrine the principles of SDT and of 'policy space' into the governance arrangements that impact global trade, whether at the bilateral, regional or multilateral level (RIS 2007; Rodrik 2001).

### Box 13. Options for small states regarding global economic governance

Options for consideration include calling for:

- Clarifying the role of the WTO *vis-à-vis* other international institutions and its relationship to them on specific issues and activities that collectively impact on the ability of Small states to pursue their economic and social policies.
- Advocating for interactions among the WTO, the UN, international financial institutions and regional development banks to focus on development priorities.
- Ensuring possibility for observership of WTO processes by all relevant international organisations.
- A more holistic and coherent approach by the WTO, UN and international financial institutions, as well as emerging global economic fora such as the G20 – and their respective member states – to global economic integration from a development perspective (e.g., in trade, financial, environmental and technology governance systems).
- Greater voice and participation of small states across international organisations, particularly with regard to their co-ordination and collaboration.
- Greater deference to the UN as the most representative forum for global economic decision-making (Puri 2011). This could include bolstering the role of the UN and UNCTAD in efforts to achieve more effective, coherent and development-enhancing co-ordination of global economic policy, and as the repository of development-focused knowledge and experience. A further proposal is for a UN global economic co-ordination council as a more democratic alternative to the G20 process. It would be established at a level equivalent to the UN Security Council, to be charged with independent international analysis, supported intellectually through contributions and participation from all the relevant global institutions and members of the UN Secretariat and the WTO (Stiglitz 2010).
- A mechanism for ensuring greater representation of the interests of small states in the G-20 process.
- Greater attention to improving arrangements for South–South regional integration and trade co-operation (Bernal et al. 2004), in particular by strengthening UNCTAD's role in promoting South–South trade through its Global System of Trade Preferences among Developing Countries.
- Boosted member state engagement in WTO's Committee on Development as well as its working groups on trade, debt and finance, and technology transfer, to promote a more integrated approach to trade policy-making and other macroeconomic and sustainable development strategies.
- Improved co-ordination among international organisations on their respective monitoring activities to boost accountability across regimes to international commitments.

Coherence will also require actions at the national level, including, for instance:

- Stronger coherence of positions taken by governments in different trade-related international fora are a vital step for making trade more supportive of sustainable development; this also requires that governments use consultative mechanisms that engage all relevant ministries and civil society (Meléndez-Ortiz and Biswas 2011).
- Work for 'institutional subsidiarity', meaning that 'issues should be discussed wherever relevant, but with specific decisions to be negotiated in the institution most appropriate to do so.' (Meléndez-Ortiz and Biswas 2011). Efforts to boost the coherence of trade and other regimes around sustainable development goals may rely on progress at different levels, whether at the national level (e.g., natural resource management), or through international action (e.g., on carbon pricing or on liberalisation of trade in environmental goods and services).

*vis-à-vis* the WTO system concerns the complex relationship between trade policy and broader development strategy. This in turn is closely linked to wider debates about appropriate national economic policies in the global economy, and differences in views about appropriate economic strategies and paradigms with regard to policies on investment, trade, industrial policy and government spending. For small states, the core government priority is to address pressing national economic and social development challenges; trade policy is seen as one

component of a bigger policy package including monetary and fiscal policies and financial deregulation. Together, these policies can condition trade dynamics and play a much more important role than trade in shaping the economic forces that affect their societies. Notably, and to an even greater extent than many other developing countries, most small states rely heavily on development assistance for most aspects of their government activity and for the implementation of their development strategies. They depend on donors and an array of international

institutions to finance a large part of their government budgets as well as for debt relief.

Given their distinct position in the global economy, small states thus have a particularly high interest in greater coherence between the many global institutions and policies charged with managing intersecting macroeconomic issues (i.e., on trade, finance, debt and development) (Akyüz 2004, 2009; Hoekman 2001; Khor 2001; Mattoo and Subramanian 2009; Rhagavan 2000; Rodrik 2001; Peet 2009; South Centre 2009; UN 2009a, b). The impact of the global financial crisis on trade has spurred new emphasis on the importance of global co-operation to ensure predictable financing for developing country exports, whether through commercial banks, bilateral export credit and risk management facilities or multilateral organisations (de Paiva Abreu 2009). In regard to the WTO, small states have clear reasons for working to ensure that the WTO's role and position in global economic governance promotes their interests. This includes attention to the WTO's relationships with the following global actors and processes:

- Other agencies within the multilateral trading system, such as UNCTAD and the ITC.
- The broader UN system, the Millennium Development Goals (MDGs), and the forthcoming Sustainable Development Goals (SDGs).<sup>56</sup>
- The Bretton Woods Institutions and development banks active at the intersection of trade, debt and finance.<sup>57</sup>
- The G20 process.
- Bilateral, regional and plurilateral trade agreements and integration arrangements (see section 10.2 and box 14).

Alongside calls for more coherent global economic governance are calls for better placing the WTO in the context of the suite of international arrangements and commitments to address social issues, human rights, culture and environmental challenges, including those with

major economic implications such as systems for managing climate change (Stilwell 2009). However, there are many challenges to constructive, coherent interaction and co-ordination among the multiplicity of other institutions and rules affecting trade and sustainable development.<sup>58</sup> Many proposals have been advanced, some of which remain relevant even after several decades. Notably, the WTO Secretariat has made increasing efforts to collaborate at the technical level with other international organisations, particularly with regard to monitoring AfT and protectionist measures (with the OECD), and with UNEP, the WHO and the ILO on specific studies on the intersection of trade rules and environment, health and employment (see, for instance, WTO and ILO 2009; WTO and UNEP 2009; WTO and WHO 2002).

## 10.2 Beyond the WTO: regional trade agreements, preferential trade agreements and bilateral agreements

Most small states are involved in a number of other international trade arrangements beyond the WTO, including RTAs, bilateral free trade agreements (FTAs), PTAs or regional economic integration arrangements. As of early 2013, over 500 RTAs had been notified to the WTO. Notably, many small states conduct the majority of trade through RTAs or PTAs. Moreover, the number of regional and plurilateral agreements is expanding. Recent examples include the negotiations for a Trans-Pacific Partnership Agreement and for a Transatlantic Trade and Investment Partnership between the EU and USA, as well as negotiations among countries such as Korea, China and Japan. Amidst concerns about the implications of such agreements for the WTO system, and despite the impatience of the major players with the ailing multilateral negotiations, the WTO remains the preferred venue of major players for negotiations, particularly on rules and regulatory

56 For more on the kinds of work conducted by UN agencies on trade-related matters, see UN 2009b; UNCTAD 2000, 2010a, b; UNDP 2003, 2005, 2009. For ongoing work on the SDGs, see Keane and Melamed (2014).

57 For views on this matter, see Aboin 2007; Bello 2000; Hoekman 2001; and Mattoo and Subramanian 2009.

58 See Meléndez-Ortiz and Biswas (2011). Stilwell (2009), among other analysts, highlights the importance of mutual observership among secretariats of international regimes at their respective negotiations as a prerequisite for co-ordination.

### Box 14. Options for small states regarding RTAs and PTAs

Options for consideration include calling for:

- Guidelines on RTAs/PTAs that include mechanisms for greater transparency of RTA and PTA negotiation processes; seek agreement on deference to multilateral principles (such as SDT) in such agreements; and reform of the rules of origin requirements in RTAs and PTAs.
- Greater analysis by the Committee on RTAs and WTO Secretariat through mechanisms to better capture and analyse the content and implications of RTAs in addition to existing mechanisms that gather and promote information flow about them.
- Extended AFT to support the functioning and effectiveness of Small State Regional Integration Efforts and institutions, through boosted provision of Aft through regional economic communities as one way to boost their effectiveness. This would help support a system of 'open regionalism' – that is, strong regional institutions respectful of a rules-based global order (O'Campo 2011).

matters where multilateral negotiations would enable broader coverage across the world (box 13). In the meantime, the proliferation of RTAs and PTAs and other regional integration arrangements continues and rightly spurs growing attention to the question of their implications for the multilateral trading system. Are such agreements building blocks or stumbling blocks for multilateralism? Do they create or divert trade? (See, for instance, Bhagwati 2008; Low et al. 1999; and Taniguchi 2007.)

For small states, the focus of major trading partners on regional and bilateral FTAs (considered by many powerful states as more efficient processes for liberalisation) has a number of implications. First, compared to a multilateral setting, where coalition-building can bolster their individual power, small states are usually at a greater disadvantage in smaller group setting because their individual and collective negotiating power is weaker. For small states, the asymmetries of FTA negotiations with more powerful countries (such as those in the EU) are cited as examples of the unfairness of global trade arrangements and the pressures they face to sign trade deals that may undermine their ability to promote development (Heidrich and Tussie 2009).<sup>59</sup> Many countries submit to deals that they acknowledge are unfair, conceding on strategic grounds that the economic costs may be offset by the benefits of stronger political relations with particular trading partners and boosted development and military assistance. Negotiations between the EU-ACP countries to conclude economic partnership agreements continue to spur considerable controversy due

to concerns about the relationship between such preferential arrangements and WTO rules, and also due to concerns about the asymmetric strength of the countries involved and the push by the EU for agreements that go beyond market access to include regulatory measures (Bilal and Grynberg 2007; Erasmus 2009; Faber and Orbie 2009). Furthermore, preferential market access programmes (such as the US General System of Preferences and the African Growth and African Opportunity Act) also attract criticism on matters such as their complex rules of origin (which in practice diminish the level of market access actually achieved).

Second, the engagement of small states in RTAs and PTAs, and the fact that much of their trade occurs under their rules (rather than WTO rules) also raises a systemic challenge in regard to dispute settlement because it means they are less able to turn to the WTO's DSU to resolve disputes where they arise and enforce their rights. In that regard, small states have much less security and predictability with respect to trade rules than other players in the trading system.

Beyond North–South FTAs, many developing countries express support for greater regional integration as a complement or alternative to multilateral co-operation (Drabek 2010; Schiff and Winters 2003). There are a growing number of bilateral trade agreements as well as regional co-operative arrangements (such as the Association of South-East Asian Nations) and economic unions among developing countries with varying degrees of institutionalisation. The South African Customs

<sup>59</sup> For instance, while developing countries successfully negotiated concession in the Doha Declaration on TRIPS and Public Health, many have found that bilateral FTAs undermine their ability to use such flexibilities (Abbott 2004).

Union, which is among the oldest of agreements among developing countries, and Mercosur in Latin America have been joined by integration agreements in the context of the West African Economic and Monetary Union, the Common Market for Eastern and Southern Africa, and the South Asian Association for Regional Cooperation. Many small states are also part of regional integration initiatives, including the OECS and CARICOM, or regional co-operation initiatives such as the Pacific Islands Forum.

As the number of RTAs has grown, the WTO's members have expanded attention to them, but the progress has been slow. In 2006, for instance, members reached an agreement to create a transparency mechanism for RTAs, which sets out requirements for WTO members that are signatories to RTAs to notify the Committee on Regional Trade Agreements of information regarding the signing and implementation of

agreements, including information on the agreements' scope, rules of origin requirements and tariff concessions. It also requires that countries submit import data for each other as well as for the rest of the world. In addition, members requested that the WTO Secretariat prepare 'factual presentations on each agreement' and host formal meetings to discuss these. A further initiative is the WTO Secretariat's launch of I-TIP, an online database that provides information on RTAs and PTAs.<sup>60</sup> However, while these efforts have generated some increased transparency, this has not been complemented by greater analysis or understanding of the agreements among most members, particularly of their compatibility with WTO Agreements. Indeed, although most members understand the importance of better managing the intersection of RTAs and the WTO, there has not been consensus among them on the need to empower WTO processes with critical scrutiny or potential censure of such agreements.

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## 11. Conclusion: Advancing a WTO Reform Agenda

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In 2015, the forthcoming WTO ministerial conference and the twentieth anniversary of the WTO are opportunities that small states can seize to boost the responsiveness of the WTO to their needs. Building on options and recommendations set out in this paper and elsewhere, the lead up to the 2015 Ministerial is a time for ministers from small states to clearly articulate their priorities on systemic issues and to work together with other groups both developed and developing, to advance these. At the ministerial conference and beyond, they should call for members to embark on political processes that would enable progress on institutional improvements and strengthening of the WTO to benefit the system as a whole, with a special emphasis on the particular needs of small states.

Many WTO members already concur on the need for processes – formal and informal – to discuss proposals for reform and strengthening

of the WTO, as well as the post-Doha agenda for the organisation (WTO 2009b).<sup>61</sup> Although some reform advocates prefer to postpone such discussions for fear of distracting political attention from the Doha Round, others recommend that a systematic process of intergovernmental reflection can and should be delinked from the substantive agenda and day-to-day processes of the WTO. Members could, for instance, create a standing body to review the functioning of the multilateral trading system, in effect institutionalising the process of thinking about the WTO's future (Meléndez-Ortiz and Biswas 2011).<sup>62</sup> Alternatively, discussion of reforms could be advanced through a new Senior Officials body at the WTO (a revamped CG-18), ministerial conferences, a leaders summit or through the WTO General Council. Informal dialogue among members is also a viable concurrent approach that small states could pursue.

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60 [www.wto.org/english/res\\_e/statis\\_e/itip\\_e.htm](http://www.wto.org/english/res_e/statis_e/itip_e.htm) (accessed January 28 2015).

61 See, for instance, Dadush (2009), Deere Birkbeck (2009a), Draper (2010), WEF (2010).

62 Some analysts focus on the roles that trade delegates could play in such reflection, while others emphasize the importance of leadership from political leaders and trade ministers. Still others promote a process that engages academics and/or stakeholders, either in a formal advisory capacity to the WTO members or that takes place completely outside the framework of the WTO.

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## Annex 1. Commonwealth small states

The Commonwealth defines small states as sovereign states with a population size of 1.5 million people or fewer. Larger member countries – Botswana, Jamaica, Lesotho, Namibia and Papua New Guinea – are designated as small

states, because they share many of the characteristics of small states. Of the 53 member countries of the Commonwealth, 31 are small states.

<b>Africa</b>	Belize
Botswana	Dominica
Lesotho	Grenada
Mauritius	Guyana
Namibia	Jamaica
Seychelles	St Kitts and Nevis
Swaziland	Saint Lucia
	St Vincent and The Grenadines
	Trinidad and Tobago
<b>Asia</b>	<b>The Pacific</b>
Brunei Darussalam	Fiji
Maldives	Kiribati
	Nauru
<b>Europe</b>	Papua New Guinea
Cyprus	Samoa
Malta	Solomon Islands
<b>The Caribbean</b>	Tonga
Antigua and Barbuda	Tuvalu
The Bahamas	Vanuatu
Barbados	

## Annex 2. WTO work programme on small economies

Small economies face specific challenges in their participation in world trade, for example lack of economies of scale or limited natural resources. The Doha Declaration mandates the General Council to examine these problems and to make recommendations as to what trade-related measures could improve the integration of small economies into the multilateral trading system. However, this is to be achieved without creating a separate category of WTO members.

On 1 March 2002, the General Council agreed that:

- the question of small economies would be a standing agenda item of the General Council;

- the Committee on Trade and Development (CTD) would hold dedicated sessions on this question and report regularly to the General Council; and
- in the light of the outcome of this work, relevant subsidiary bodies will be asked by the General Council to frame responses to the trade-related issues identified in the CTD.

In November 2005, prior to the sixth ministerial meeting in Hong Kong, the CTD Dedicated Session on Small Economies adopted its report to the General Council. This report was issued as document WT/COMTD/SE/4.



The ministerial declaration adopted in Hong Kong contains several references to small economies and in paragraph 41 instructs the CTD in dedicated session to continue its work and monitor progress of the proposals by small economies in the WTO's negotiating groups and other bodies.

Other references in the declaration concern paragraph 26 of the annex on agriculture, in which ministers take note of a concrete proposal made by small economies and paragraph 21 of the declaration concerning non-agricultural market access (NAMA), in which ministers instruct the NAMA negotiating group to establish ways to provide flexibilities for small, vulnerable economies without creating a sub-category

of WTO members. Finally, in paragraph 8 of annex C on services, ministers agreed that '[d]ue consideration shall be given to proposals on trade-related concerns of small economies'.

The Hong Kong Ministerial Declaration also includes paragraph 41 on small economies.

On 29 September 2006, the CTD in dedicated session adopted a report to the General Council on measures to assist small economies in meeting their obligations under the agreements on SPS measures, technical barriers to trade and trade-related aspects of intellectual property rights (TRIPS) (document WT/COMTD/SE/5). At its 10 October 2006 meeting, the General Council took note of the report and agreed to the recommendations made therein.

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## Annex 3. WTO councils, committees and working groups<sup>63</sup>

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The daily work of the WTO falls within the province of the General Council. This body is composed of representatives of all members, albeit under different terms – it also meets as the Dispute Settlement Body and the Trade Policy Review Body, and carries out the diverse functions and tasks assigned to it under the Marrakesh Agreement and the Dispute Settlement Understanding (for the Dispute Settlement Body).

At the level below the General Council, and operating under its guidance, there are three more councils, each responsible for a general area of trade: the Council for Trade in Goods, the Council for Trade in Services and the Council for Trade for Trade-Related Aspects of Intellectual Property Rights. These councils perform the tasks the General Council and their associated agreements entrusted them with. Each body is entitled to establish its own rules of procedure, subject solely to the approval of the General Council.

Further down the institutional chain, are the subsidiary bodies that each of the aforementioned councils has the right to establish. In

their turn, the subsidiary bodies are entitled to formulate their own rules of procedure, subject to the direct approval of their higher-in-rank councils.

### *Committees*

- Committee on Trade and Environment
- Committee on Trade and Development (Subcommittee on Least- Developed Countries)
- Committee on Regional Trade Agreements
- Committee on Balance of Payments Restrictions
- Committee on Budget, Finance and Administration
- Committee on Market Access
- Committee on Agriculture
- Committee on Sanitary and Phytosanitary Measures
- Committee on Technical Barriers to Trade
- Committee on Subsidies and Countervailing Measures
- Committee on Anti-Dumping Practices
- Committee on Customs Valuation
- Committee on Rules of Origin

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<sup>63</sup> Extracted from Elsig et al. (2013). This text has been extracted with the kind permission of Manfred Elsig, author, and ICTSD, the publisher, of the work.

- Committee on Import Licensing
- Committee on Trade-Related Investment Measures
- Committee on Safeguards
- Committee on Trade in Financial Services
- Committee on Specific Commitments
- Information Technology Agreement Committee
- Trade in Civil Aircraft Committee
- Government Procurement Committee
- Working Group on the Relationship between Trade and Investment
- Working Group on the Interaction between Trade and Competition Policy
- Working Group on Transparency in Government Procurement
- Working Parties on Accession
- Working Party on Preshipment Inspection
- Working Group on Trade, Debt and Finance
- Working Group on Trade and the Transfer of Technology

### *Working groups*

In addition to councils and committees, the work of the WTO also takes place in temporary subsidiary bodies named working groups.