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The Functioning of the WTO: Options for Reform and Enhanced Performance

Policy Options Paper



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The Functioning of the WTO: Options for Reform and Enhanced Performance

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on behalf of the E15 Expert Group on the Functioning of the WTO

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Note

The policy options paper is the result of a collective process involving all members of the E15 Expert Group on the Functioning of the WTO. It draws on the active engagement of these eminent experts in discussions over multiple meetings as well as an overview paper and think pieces commissioned by the E15 Initiative and authored by group members. Manfred Elsig was the author of the report. While a serious attempt has been made on the part of the author to take the perspectives of all group members into account, it has not been possible to do justice to the variety of views. The policy recommendations should therefore not be considered to represent consensus and remain the responsibility of the author. The list of group members and E15 papers are referenced.

The full volume of policy options papers covering all topics examined by the E15 Initiative, jointly published by ICTSD and the World Economic Forum, is complemented with a monograph that consolidates the options into overarching recommendations for the international trade and investment system for the next decade.

The E15 Initiative is managed by Marie Chamay, E15 Senior Manager at ICTSD, in collaboration with Sean Doherty, Head, International Trade & Investment at the World Economic Forum. The E15 Editor is Fabrice Lehmann.

E15 Initiative

Jointly implemented by the International Centre for Trade and Sustainable Development (ICTSD) and the World Economic Forum, the E15 Initiative was established to convene world-class experts and institutions to generate a credible and comprehensive set of policy options for the evolution of the global trade and investment system to 2025. In collaboration with 16 knowledge partners, the E15 Initiative brought together more than 375 leading international experts in over 80 interactive dialogues grouped into 18 themes between 2012-2015. Over 130 overview papers and think pieces were commissioned and published in the process. In a fast-changing international environment in which the ability of the global trade and investment system to respond to new dynamics and emerging challenges is being tested, the E15 Initiative was designed to stimulate a fresh and strategic look at the opportunities to improve the system's effectiveness and advance sustainable development. The second phase of the E15 Initiative in 2016-17 will see direct engagement with policy-makers and other stakeholders to consider the implementation of E15 policy recommendations.

E15 Initiative Themes

- Agriculture and Food Security
- Clean Energy Technologies
- Climate Change
- Competition Policy
- Digital Economy
- Extractive Industries*
- Finance and Development
- Fisheries and Oceans
- Functioning of the WTO
- Global Trade and Investment Architecture*
- Global Value Chains
- Industrial Policy
- Innovation
- Investment Policy
- Regional Trade Agreements
- Regulatory Coherence
- Services
- Subsidies

* Policy options to be released in late 2016

For more information on the E15 Initiative:

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Abstract

The multilateral rules-based trading system has been crucial in helping states to cooperate and gradually open up borders to encourage trade and investment for development. It has contributed to temper unilateral approaches and to integrate emerging economies over time. Yet the WTO is currently at a crossroads and is facing an “adaptability” crisis. The world economy has changed since the organization was created, and new and complex challenges are quickly adding to an already loaded agenda. A key question is whether the WTO is capable of responding to these challenges or whether there is instead a need to revisit the basic foundations on which the multilateral trading system has evolved over the past six decades. The present paper analyses potential avenues for reform to ensure the future success and relevance of the WTO. It offers policy options for consideration in three areas: the negotiation function of the WTO; the role of committees within the organization; and the involvement of the business sector. First, in order to improve the negotiation function, the paper

advocates that a grand bargain be reached to create a package that allows the Doha Round to be concluded, which would be constructed by combining commitments where progress has been made with an explicit acceptance of the move towards using plurilateral approaches within the ambit of the WTO. The latter would be accompanied by a new committee or working group whose mandate would be to work out optimal design features for these plurilateral approaches. Second, recommendations are put forward to increase the role and impact of committee work, with the objective of enabling the system to mature and deliberate on new avenues for rule-making. Third, in order to enhance the involvement of the business sector with the WTO, new platforms for institutionalized interaction are proposed. These include the creation of a Business Forum and Business Advisory Council to establish a formalized dialogue between business and the intergovernmental system. The paper concludes by outlining practical policy steps to implement the proposals in each of the three areas.

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Abbreviations	
BAC	Business Advisory Council
BBF	Bali Business Forum
BF	Business Forum
DG	Director-General
GATT	General Agreement on Tariffs and Trade
ICC	International Chamber of Commerce
MFN	most favoured nation
NAMA	non-agricultural market access
PA	plurilateral agreement
PTA	preferential trade agreement
RTA	regional trade agreement
SPS	sanitary and phytosanitary
TBT	technical barriers to trade
TiSA	Trade in Services Agreement
TPP	Trans-Pacific Partnership
TRIMs	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
WTO	World Trade Organization

Executive Summary

The WTO is at a crossroads. Not only are the multilateral trade negotiations stuck, but overall rule-making has made little progress while alternative trade pacts, not least the mega-regional arrangements, have clearly challenged the position of trade multilateralism. The organization is currently facing what can be called an “adaptability” crisis. The world economy has changed since the WTO was created back in the mid-1990s, and new challenges are quickly piling on top of the old ones. The rise of emerging countries and the relative decline of traditional economic powers, their various negotiating demands and approaches, the proliferation of preferential trade agreements, and the need to deal with complex new issues, such as climate change and food security, are all shaking the foundations on which the WTO was built some twenty years ago.

A key question is whether the WTO is capable of responding to these new and complex issues or whether there is instead a need to revise the basic foundations on which the multilateral trading system has evolved over the last 60-plus years. Should the WTO’s current mandate be expanded? Or is it best to complete the unfinished business of the Doha negotiations before taking up new negotiating initiatives? What should be done to strengthen the multilateral trading system and to ensure the future success of the WTO?

These are some of the multifaceted questions addressed by the E15 Expert Group on the Functioning of the WTO, jointly convened by ICTSD and the World Economic Forum with the support of the World Trade Institute as knowledge partner. The overall mandate of the Expert Group was to identify and propose for consideration a set of policy options to strengthen the negotiating, monitoring, and deliberative functions of the WTO. The present paper, which is the outcome of this expert dialogue process, lays emphasis on the negotiation and deliberation capacities of the multilateral system and also focuses on the relationship between the business sector and the WTO. These are governance challenges that the system needs to address in the years to come.

Background

Over the past six decades, the multilateral trading system has provided an unprecedented level of stability and predictability in the way WTO members conduct their trade operations. It has also provided—particularly since the establishment of the WTO—a credible and solid mechanism to adjudicate trade disputes, one that is guided by law rather than power. Developing countries, most of which steered clear of the system during the GATT years, have for the most part joined the WTO, making the system a truly universally accepted set of values and rules, and not the rather limited “club” that it used to be.

A renewed sense of international cooperation among WTO members is essential for dealing, first and foremost, with the unfinished business of the Doha negotiations. Completing the Doha Round would allow the WTO to focus on some of the most pressing challenges the system now faces: defining a new set of negotiating modalities for the future, strengthening its institutional framework—i.e. the functioning of its various committees, and revisiting the traditional approach to the participation of the private sector.

The paper sketches a number of challenges to multilateralism in general, which impact the way WTO members negotiate and deliberate. It then suggests a number of incremental reforms that could help re-energize the negotiation function of the WTO and increase the potential of committee-related work, in particular in view of agenda-setting and preparation for rule-making. Finally, support of private actors, such as business groups, is important to sustain the system. Concrete ideas on how to institutionalize these relations are outlined.

Policy Options

In order to improve the performance of the negotiation function, the paper advocates an extra effort to create a package that allows the Doha Round to be concluded. This consists of a grand bargain to agree on what it is possible to achieve while allowing, strengthening, and channelling new plurilateral approaches. The latter would be accompanied by a new WTO committee, or working group, whose mandate would be to work out optimal design features for these plurilateral approaches.

In addition, the paper suggests increasing the role and impact of committee work. A set of objectives are listed that might allow the system to further mature and elaborate the “Geneva-way” through consultation, elaboration, debate, and deliberation on new avenues for rule-making. These include better data management, improving committee leadership and overall coordination, using more in-house expertise, improving the quality of exchange to allow for more deliberation, bringing on board more domestic decision-making, and reaching out to the public.

Finally, in order to enhance the involvement of the business sector, new platforms for interaction are advocated that could assist in building a shared understanding of challenges and policy options, allowing for critical feedback and the elaboration of new ideas for regulatory innovation in rule-making. Two institutional proposals stand out. First, the creation of a Business Forum which would meet around the time of the ministerial meetings; and, second, the creation of a Business Advisory Council to establish a formalized interaction between interested businesses and the intergovernmental system.

Next Steps

The majority of proposals outlined in the paper can be implemented in the short to medium term if the WTO members show willingness. None of the policy options would require major institutional changes. What is clear is that the initiative to address governance issues needs to grow from within the organization. In light of this, the paper concludes by describing potential policy steps to implement the proposals in each of the three areas the Expert Group focused on.

1. Background Challenges

The multilateral trading system has been crucial in helping states to cooperate and gradually open up borders to encourage trade with a view to fostering sustainable development. A rules-based system has contributed to temper unilateral approaches and to integrate emerging economies into the global trading system over time. A key aspect of the multilateral system is how it functions and how governance is organized. Needless to say, the legitimacy of the WTO is strongly affected by how well it functions, how it aggregates the different interests, how it allows for deliberation, and how it interacts with outside actors (Elsig 2007).

The E15 Expert Group on the Functioning of the WTO, jointly convened by ICTSD and the World Economic Forum with the support of the World Trade Institute as knowledge partner, focused on how the WTO makes decisions and develops new rules. It follows in the footsteps of past research and policy work, most prominently the analyses and recommendations of the so-called Sutherland Group (WTO 2004) and The Warwick Commission (2007).¹ While many outside experts have lamented the slow progress in negotiations, there has been little “official” debate about this within the system. The Ministerial Conference in 2009 was set up partially to review WTO governance issues; however, only a few countries made formal submissions and those that were presented were largely general in nature and did not lead to much engagement and discussion in the Ministerial gatherings.

The Expert Group chose to lay emphasis on the negotiation and deliberation capacities of the system. It did not address other key aspects such as the dispute settlement system, which seems to work rather well, nor technical assistance, capacity building, outreach activities, or research and statistics. Also, the Group focused on the business sector as a key outside constituency to highlight the limits and the potential of increased interaction. These lessons can be illustrative for other interested stakeholders and their relations with the system, such as civil society organizations. The deliberations of the Expert Group were organized under the following categories.

1. The negotiation function
2. The role of committees
3. The involvement of the business sector

While little progress in new multilateral WTO deals has been made in recent years, some movement has been observed in plurilateral negotiations since the single undertaking principle was questioned from within the system. The Uruguay Round’s single package approach is not working in the Doha Round and new types of negotiation modes have been advocated. The single package approach was *de facto* given up at the Ministerial Conference of 2011. In WT/MIN(11)/11, page 3, Ministers’ agreed text states: “Ministers acknowledge that there are significantly different perspectives on the possible results that Members can achieve in certain areas of the single undertaking. In this context, it is unlikely that all elements of the Doha Development Round could be concluded simultaneously in the near future. (...) In this context, Ministers commit to advance negotiations, where progress can be achieved, including focusing on the elements of the Doha Declaration that allow Members to reach provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking.”

As to the committee work, its effects have been largely overlooked (see for instance Wijkström 2015). This is an area where potential scope for incremental progress exists.

Finally, whereas the business sector has not withdrawn from the WTO system, it has clearly lost its enthusiasm. New ways of involving the business sector could prove instrumental for achieving progress in rule-making in the future.

A number of background challenges impact on how the WTO functions. Six challenges that affect the WTO regime management stand out.

First, until the 1990s, the world trading system was characterized as a club in which trade diplomats met behind closed doors to agree on gradual liberalization. The creation of the WTO led to a deepening of trade concessions and provided WTO members with a highly legalized dispute settlement system to support implementation. As a result of this move towards market integration and legalization, many new actors brought their issues and concerns, sometimes only partially linked to trade, to the WTO. They were encouraged by the fact that the Uruguay Round Agreement gave rise to a number of areas which were not previously considered as directly relevant to trade, such

¹ There are numerous contributions by experts and scholars that focus on issues related to governance (for example Deere-Birkbeck and Monagle 2009, Steger 2009, Elsig and Cottier 2011, Narlikar et al. 2012, Meléndez-Ortiz et al. 2012).

as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) or the Agreement on Trade-Related Investment Measures (TRIMs). Since the late 1990s, the WTO has undergone an adjustment process in reacting to this increasing scale of public attention. Incrementally, the organization has become more transparent and has worked on its inclusiveness (in particular with internal stakeholders). Yet finding the right balance between allowing WTO negotiators some wiggle room and providing a flow of information on the negotiations has proven difficult. Put differently, open and fully inclusive negotiations will make it difficult to negotiate effectively.

Second, the General Agreement on Tariffs and Trade (GATT) system created in 1947 was dominated by the US and embedded within a strong liberal consensus (Ikenberry 2006, Ruggie 1982). During the last successful trade round, the leadership became more broadly shared. On the one hand, the European Union, represented by the European Commission, started to become more assertive in trade negotiations and on the other hand, the QUAD group (which included, in addition to the transatlantic partners, Japan and Canada) served as an important informal platform for agreeing on major issues enabling the round to move forward. Today, we have clearly moved towards a multipolar trade world. In particular, China, Brazil, and India play an important role in the system, acting on their own or as part of coalitions (Narlikar 2011). The impasse of the Doha Round is not so much a result of transatlantic disagreement as a situation in which highly industrialized countries and large developing countries disagree over the type of market access and protection of vulnerable sectors of the economy.

Third, the new preferential trade agreement (PTA) landscape offers a challenge to the organization. Most WTO members have turned their attention towards this negotiation venue, driven largely in many circumstances by exporter discrimination concerns (Dür 2007, Manger 2009, Elsig and Dupont 2012). In addition, strategic, geopolitical, or regional political aspirations affect the choice of partners and the overall ambitions. As a consequence of this evolving domino effect, if countries improve selected market access through small group deals, the appetite for negotiating ambitious multilateral solutions might well decrease. In particular, initiatives, such as the concluded Trans-Pacific Partnership (TPP) Agreement and the ongoing negotiations on a Transatlantic Trade and Investment Partnership (TTIP) show new potential sources of discrimination on the horizon. This new type of mega-regionals will most likely lead to additional efforts among states to remedy potential disadvantages emanating from these agreements. They will play a central role in creating new templates, in affecting the location and development of global value chains, and shaping the content of future PTAs. Whatever the complementarity to the multilateral trading system, potential substitution effects, or emerging discrimination, this “new regionalism” will require a different response from the WTO than the current one.

Fourth, the WTO is faced with the legacy of the Uruguay Round grand bargain (market access for developing countries in agricultural products and textiles vs. services liberalization and intellectual property rights protection for developed countries) described by Sylvia Ostry (2002). For many developing countries, however, this deal was later perceived as asymmetric, because many countries have not yet reaped the benefits that should have resulted from the original bargain. In addition, many low-income developing countries continue to struggle to meet their WTO obligations. This phenomenon has further increased the expectation held by developing countries that the Doha Round will mainly need to deliver on development. These expectations contrast with demands by industrialized countries to significantly improve market access in larger developing countries. Therefore, it is difficult for the WTO to deliver, given the sharp differences in countries’ expectations of the objectives of the round. This unfolding expectation–capacity gap continues to loom large in the current environment of negotiations.

Fifth, we have witnessed important changes in the way goods production and services provisions are organized across borders. The increasing reliance on production networks and outsourcing has led to a growing importance of the existing behind-the-border rules. This creates new challenges in the negotiation process. While in the early days of multilateral trade liberalization, progress in negotiations occurred within a framework of reciprocal lowering of trade barriers, such as tariffs (a form of so-called negative integration), we have now moved towards addressing barriers that exist behind the border. These obstacles range from non-tariff barriers to specific investment clauses, different intellectual property rights regimes, and diverging competition norms (WTO 2011). The unfolding challenge consists in finding the optimal degree of positive integration (in agreeing standards that are acceptable to all parties involved). This type of agreement on regulatory cooperation and coherence has been at the heart of the negotiations in the TPP and TTIP. In addition, new challenges of positive integration are waiting to be resolved pertaining to 21st century trade topics, ranging from technological advances and tradable services to questions related to data protection.

Sixth, we deal with a somewhat unintended consequence of legalization. The enforcement mechanism of the WTO (“the jewel in the crown”) has led to dynamics that additionally impact on trade negotiations. Under the shadow of a strong dispute settlement system, where concessions can actually be enforced, parties are sometimes reluctant to commit to future deals, and this has important distributional consequences as domestic interest groups grow more vigilant (Goldstein and Martin 2000).

2. Three Areas for WTO Reform

In the following we describe the challenges related to the three areas the Expert Group focused on: the negotiation function, the role of committees, and the involvement of the business sector.

2.1. The Negotiation Function of the WTO Remains Comatose

For a long time, it was conventional wisdom that the negotiation function is the most important activity of the WTO within its mandate. Now that we are fourteen years into the Doha Round, this assessment regrettably needs some qualification. The WTO has produced few outcomes in negotiations since the late 1990s when it concluded the Information Technology Agreement, the Basic Telecommunications Agreement, and the Financial Services Agreement, which were mainly characterized by a “critical mass” approach. In addition, a part of the membership negotiated and concluded a plurilateral, club-like agreement on public procurement. These outcomes resulted from Uruguay Round left-overs that were successfully tackled. Most recently, we witnessed the conclusion of an adapted agreement on information technology and some progress on the issue of trade facilitation has been achieved. In fact, the Agreement on Trade Facilitation, which was reached in 2013 and will enter into force once two-thirds of the WTO membership have ratified, has been the only noteworthy multilateral agreement outcome since the creation of the WTO. Most negotiations in the Doha Round, however, have been deadlocked for a number of years.

What has changed? What can be observed is that there is more participation. In particular, the growing importance of some large developing countries in decision-making has diminished the previous significance of the US and the EU in this context. The information asymmetry between different contracting parties has also decreased, expertise is more widely spread among the membership, and the formal small group meetings allow for broader participation reflecting the interests of additional parties. There seems to be greater inclusiveness, yet, not surprisingly, many deals continue to be discussed in informal small group meetings, mostly outside the WTO premises. Small group outcomes are still pivotal for success, but are not sufficient for progress to be made. Before agreement in the core group can be multilateralized in the Geneva process, opportunities need to be provided for input from the membership at large. Judging from the evolving processes, one could argue that the system has incrementally adjusted (without rule

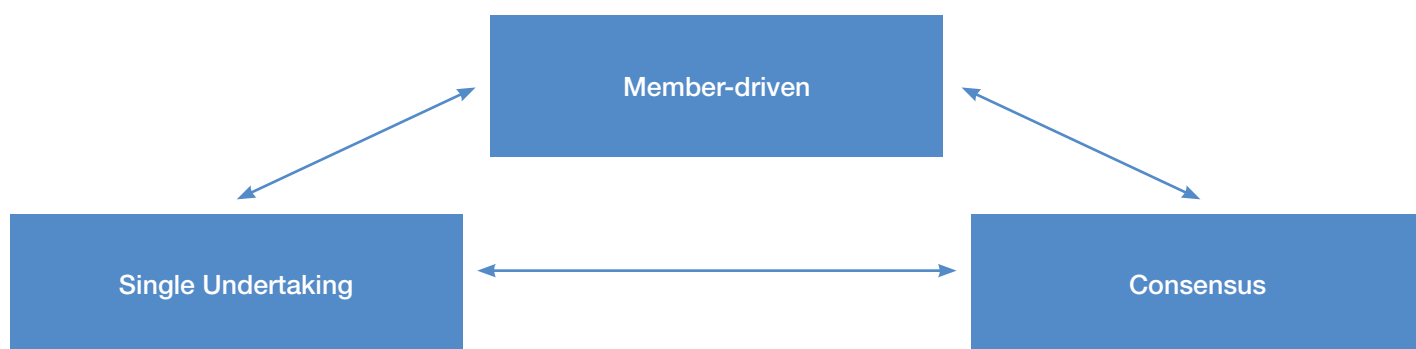
changes) to demands for more participation. Also, there has been less criticism about a lack of inclusiveness than in the past. However, other parameters have impacted negatively on the negotiation function, as described above—i.e. more interests leading to collective action problems, need for positive integration, legalization’s effect on commitments, outside options through PTAs, and disagreement on development objectives.

One view is that the decision-making triangle is incompatible with the new challenges. Elsig and Cottier (2011) picture the WTO system as relying on three pillars: the single undertaking, consensus decision-making, and the member-driven character of the organization (see Figure 1). They argue that this triangle has become unsustainable. Presenting a counterfactual argument, they investigate the effects of loosening one of the three pillars. They briefly develop three different scenarios. In scenario one, the WTO gives up a strict reading of the single undertaking and moves towards a system that allows for more plurilateral approaches. This scenario has somewhat become reality. Of the proposals that have been put forward, the critical mass initiative has received most attention. Other proposals included the possibility to allow for early harvest or moving towards a legislative system where issues would be taken up as they arise, a path that currently seems unlikely. Scenario two would foresee a system in which the consensus principle would be weakened by moving towards qualified majorities in selected negotiation areas. While key decisions could still be taken by consensus, other lower-level (or secondary) decisions could be negotiated under some form of voting. It is important to note that voting is already allowed in the WTO system. It is not used because it is based on a one-state one-vote principle, which the US and other large economies would not embrace, and also because the consensus principle has become the accepted means of decision-making. This “we-don’t-vote-in-this-organization-mantra” blocks discussions on adjusting the voting system. Finally, the third scenario assumes that a big obstacle to tabling concessions rests on sovereignty concerns embodied in the member-driven character of the organization. This reluctance to delegate keeps the autonomy of chairs in the negotiations (who are recruited among the membership) limited.^{2,3} In addition, member dominance keeps the WTO Secretariat (who could potentially play the role of guardian of the multilateral rules) on the sidelines in the negotiation process. The

² In earlier trade rounds, even Secretariat officials were tasked to chair negotiation groups (Elsig 2011).

³ In the GATT era, GATT contracting parties attempted to set up a smaller group composed of capital-based officials to provide guidance in the negotiation process and to limit the number of parties as a means of partial delegation; see consultative Group of 18 (Blackhurst and Hartridge 2005 and Abbott 2013).

Figure 1: The Incompatible Triangle



Source: Adapted from Elsig and Cottier 2011

members see themselves as the guardians. Are there ways to empower some actors to address the problem of lack of incentives for individual members to table concessions and move from value-claiming to value-creating negotiation strategies (see also Odell 2009)? This third scenario also seems highly improbable.

Looking at these scenarios, there is evidence, as mentioned above, that the single-undertaking pillar has been weakened. The “single undertaking” is no longer a negotiating tool. It could be argued that the principle has become a way for those countries least willing to take on new commitments to hold the negotiations hostage. If the GATT negotiating history is to offer any lessons, it is that every negotiating round has always left aside some pending issues, with the goal of addressing them later on in future rounds. Even the Uruguay Round, despite being based on the “single undertaking,” was not an exception to this rule, as it left aside a number of issues in agriculture and trade in services—the famous “built-in agenda”—with the goal of addressing them later in a post-Uruguay Round environment. Thus, the practice and new understanding of the “single undertaking” has made progress in negotiations difficult.

As a result, plurilateral approaches have undergone a revival. Four types are evident: new mega-regionals (in particular TPP and TTIP), which are negotiated under the exception rule for so-called regional trade agreements (RTAs); plurilaterals within the ambit of the WTO excluding most-favoured-nation (MFN) treatment (e.g. public procurement) or providing MFN treatment for non-participants (e.g. information technology agreements); and plurilaterals which are linked to, but still separate from, the WTO system (e.g. Trade in Services Agreement – TiSA). Notwithstanding limited progress tangential to the Doha Round negotiations, there needs to be some form of conclusion of these talks. The negotiation arm can no longer remain comatose.

2.2. The Potential of Committees is not Fully Exploited

In the shadow of the stalled negotiations, important activities occur within numerous WTO committees. While the mandates of the regular or special committees might differ, they all operate towards managing the regime. They do so by exchanging information, collecting data, overseeing notification processes where WTO members inform each other about national developments, and in particular by assisting in implementing the WTO obligations which parties committed to. In addition, these interactions might often lead to an exchange of views on best practices and eventually to the elaboration of new norms. An interesting question is how the work of regular committees has been impacted by the stalled round and to what degree various committees could be used as platforms to rekindle the interest in certain areas of trade regulation. What are the possible ways to strengthen the work of the regular WTO committees, enabling them to break away from a business-as-usual approach?

An important element in all committees is the focus on increasing transparency regarding the trade policy measures implemented by states. While some committees actively oversee conventional notification requirements about planned regulatory reforms (e.g. the Committee on Technical Barriers to Trade (TBT) for technical standards and the Committee on Sanitary and Phytosanitary (SPS) Measures for issues of food safety and animal and plant health), the committees also allow for discussion and reflection. This latter function is important in committees; however, the mandates are not always clear as to the degree to which discussion should lead to more deliberation and eventually to the elaboration of new shared norms. The question arises whether and how regular committees could initiate a discussion on pressing challenges which are not really addressed in the negotiations (e.g. climate change and trade, exchange rates, or high and volatile food prices).

While the focus of the regular committees is on compliance, a question is what would be needed to use existing institutional venues to go beyond this role and offer a more deliberative function?

Some of the literature suggests increasing the potential impact of committees (Wijkstrom 2015). Lang and Scott (2009) emphasize the creation of shared knowledge that could lead to the elaboration of new shared norms. One committee that has received attention is the RTA Committee. Given the importance of the growing numbers of PTAs, the WTO membership has given new tasks to this committee. Overall, however, the question remains how to improve the overall impact of committees.⁴

2.3. The Lack of Institutionalized Exchange of Information with the Private Sector

During the past decade, the willingness of private sector actors to invest time and resources in multilateral trade negotiations seems to have been eroded. This increasing ambivalence towards multilateral trade reforms is due to a combination of complacency (i.e. taking the free flow of goods and services for granted), discontentment with the slow pace of WTO discussions in general and the standstill of the Doha Round in particular, and a growing feeling that the WTO does not effectively respond to today's business concerns, such as the operations of global supply chains. As a result, private actors have been actively pushing national policy-makers to explore venues other than the WTO to fulfil their trade policy needs. Especially notable in this regard is the shift in lobbying efforts from multilateral trade deals to bilateral agreements, as the latter take much less time to negotiate and are usually shaped in such a way that they include more of the issues regarded important by the business community.

If the WTO wants to reverse this trend of private actors partly turning their back on multilateralism, it seems vital for the organization to engage much more than it does at present with large and small businesses in both developed and developing countries. This is important for several reasons. For one, private actors' involvement and support could play a crucial role in re-energizing the Doha Round. Second, the more active involvement of private actors could make the WTO more effective and strengthen its legitimacy. After all, by taking on board the input of businesses, the WTO would involve one of the groups that is most influenced by decisions on global trade rules. Third, it can help to promote an understanding of the core principles of the WTO if private actors have the feeling that their interests and concerns are taken into account. Fourth, it would enable the WTO to tap the expertise and knowledge of private actors. By engaging more with private actors, the WTO has the opportunity to enrich the nature and the quality of the information it receives at all stages of its decision-making and in all its functions.

The best way to ensure more active involvement of private actors with the WTO is to set up a system which enables the WTO and the private sector to interact much more systematically and in a more structured manner than is currently the case. The WTO and its members have acknowledged in the past that the participation of private actors is perfectly in line with the intergovernmental character of the organization (WTO 2004). However, the current engagement is essentially based on a series of *ad hoc* mechanisms and practices. In 1996, for instance, the General Council adopted guidelines which were aimed at, among other things, enhancing transparency and developing communication with private actors and other non-state actors. What is more, over the years, the WTO has organized an increasing number of outreach events in which it engages with private actors, such as briefings for non-state actors on WTO council and committee meetings, plenary sessions of ministerial conferences, and symposia on specific issues, which private actors and other non-state actors can attend, and the annual public forum, which the WTO has been hosting since 2001 (between 2001 and 2005 it was called the public symposium). The WTO also runs training programmes in different parts of the world to train the private sector on specific WTO-related issues. Despite the WTO's efforts to engage with private actors, the multilateral trading system still lacks, in the words of Deere-Birkbeck (2012, 123), "adequate routine mechanisms and processes for the constructive engagement of stakeholders, whether from unions, nongovernmental organizations, academia, or the business sector, in ways that feed into decision-making processes to ensure trade rules respond to public concerns and expectations."

⁴ Most contributions focus on the Trade Policy Review Committee and suggest a widening of its mandate (e.g. Chaisse and Matsushita 2013, see also Abu-Ghazaleh 2013), on bringing in more stakeholders (Hoekman 2012), on being tougher on the WTO members (e.g. Keesing 1998, Zahrnt 2009) or on discussing the reports in the countries concerned (Zahrnt 2009).

3. Policy Options to Improve the Functioning of the WTO

3.1. Improving the Performance of the Negotiation Function

It is clear that for the WTO to matter in the years to come it needs to produce tangible results through negotiations. At the same time, the non-conclusion of the Doha Round presents a big challenge because it reminds those inside and outside the system that the WTO cannot deliver. Therefore two proposals are put forward. One is to finish the round and seek—if possible—another more sustainable grand bargain. The other suggestion is to actively provide more guidance for plurilateral approaches (beyond the PTAs and mega-regionals).

3.1.1. Seeking a final grand bargain

The new deal could be constructed by combining specific commitments where progress has been made over time with an explicit acceptance of the move towards using plurilateral approaches within the ambit of the WTO (and therefore putting an end to the single undertaking approach once and for all). One side of the bargain would therefore be composed of major elements of the Doha agenda based on existing results where near universal support exists in areas such as agriculture, non-agricultural market access (NAMA), rules, and trade facilitation. At present, of all the Doha issues, an agreement on NAMA—i.e. on the market access negotiations on goods—is the one that holds the promise of moving the negotiations towards a final deal. The situation that WTO members face today is not unlike the one faced by GATT members in the early rounds, namely the need to reach an acceptable level of tariff cuts among the key trading partners, including China and the other emerging economies. Thus, strange as it may seem, tariff cuts may help to alleviate the paralysis in the other areas of the negotiations and the finalization of a global pact, just as they have traditionally done. It may seem ironic that a protectionist device that most analysts have written off as insignificant and outmoded could continue to play such an important role in today's negotiations. However, the reason may lie not in the intrinsic value of tariff protection, but rather in the visibility that it would give to a negotiating package. In politics, reality almost always takes a back seat to perception, and in developed countries the perception that some countries are “free riding” in the negotiations has taken a strong hold.

This first side of the bargain would be conditional on a second side—authorization of future negotiations of a specified list of plurilateral agreements (PAs) (Odell 2013). Article II.3 of the WTO Agreement authorizes such agreements that bind only the states that sign them.⁵ Designers of the package could select particular PAs in part to generate the interest of disaffected constituencies. For instance, they could include pacts to liberalize services trade in general, PAs on particular services such as telecommunications beyond basic services, and zero for zero tariff deals in particular sectors of goods trade.

3.1.2. Designing optimal plurilaterals to save the negotiation function

Related to the above, the creation of a committee or a working group on the institutional development of PAs is suggested; it would be tasked with elaborating suggestions on how to move forward with different types of plurilateral approaches. Given the proximity to PTAs, the work could also be carried out by the Committee on RTAs. If a special committee is established it would have to consult closely with RTA Committee, but the mandate could be much more ambitious. This committee would be tasked with elaborating rules for the different types of PAs, namely:

- PAs that extend benefits to all WTO members on an MFN basis (that is, unconditional plurilaterals);
- PAs that extend benefits only to signatories (that is, conditional non-MFN plurilaterals); and
- Rules for sectoral agreements (not yet linked to the WTO—e.g. TiSA).

Beyond the procedural rules, the committee should work towards finding the appropriate approach and set-up for specific market access demands. This re-examination should also pay particular attention to the potential impacts on those that choose not to participate (Vickers 2013). The committee should be chaired by the Director-General (DG) and should be able to take decisions by supermajority vote. It could also be useful to explore whether the committee could be formed under the Trade Negotiations Committee, which is already chaired by the DG.

⁵ Art. X.9 of the Agreement on Establishment of the World Trade Organization, which requires consensus for plurilaterals, might need to be revisited.

3.2. Strengthening the Role and Impact of Committee Work

As outlined above, the WTO membership should seek to increase the potential impact of the work carried out collectively by committees (Elsig 2013b). The following objectives in particular might allow the system to further mature and elaborate the “Geneva-way” through consultation, elaboration, debate, and deliberation on new avenues for rule-making.

3.2.1. More systematic data management

One of the challenges is how to organize, present, and disseminate the wealth of available information. The WTO, as the leading multilateral trade institution, should prioritize and optimize processes of information management and explore the specific usefulness that an information portal has for potential users. The WTO should serve as a key information hub on regulatory matters based on its existing experience as a venue where notifications are collected and trade policy reviews conducted. The information compiled needs to be used for specific benchmarking exercises following agreed indicators. Existing attempts, such as monitoring potentially protectionist measures during economic and financial crises, are a step in the right direction, but need to be more systematic in particular with regard to increasing the impact for the users. There is a demand for more surveillance of new trade-policy relevant developments in WTO members’ constituencies. In order to do this, more resources should be devoted to data compilation, statistics, and data management.

3.2.2. Improving leadership and coordination

Generally, the WTO suffers from a lack of leadership in the sense that too little attention to committee work and too much rotation affect group cohesiveness. One way to address this is to devote more resources and allocate more time to chairs of committees. Currently, many committee chairs are selected for a one-year term. This is not long enough to create an optimal working environment for achieving the goals outlined above. Chairs should be elected for a three-year period and receive additional support from Secretariat officials.⁶ Secretariat officials could be organized in a new division for committee-related work or the existing support could be further consolidated. In addition, an official standing body of chairs should be created to ensure that the information exchange among chairs, and with the WTO DG, which currently follows an informal approach, is further improved.

3.2.3. Making more use of in-house expertise

What is striking about the WTO compared to other international economic organizations, such as the International Monetary Fund and the World Bank, is how little use is made of the in-house expertise. WTO officials could do more than occasionally write non-papers to summarize the issues at stake. The chairs should be allowed a mandate to create *ad hoc* working groups that are chaired by Secretariat officials or jointly with member representatives. More systematically involving (and empowering) WTO staffers is important as they are the guardians of the multilateral system and have the required expertise.

3.2.4. Improving the quality of exchange and creating more room for deliberation

A precondition for moving towards high-quality deliberation is the availability of sufficient relevant information. If the circle of experts is too small, there is a danger that crucial information will be lacking. It is important to invite key experts to internal meetings to share their experience and expertise during the deliberations. For instance, in the case of the RTA Committee, it is necessary for chief negotiators of these PTAs to visit Geneva regularly to share their experience and discuss how they deal with issues such as WTO compatibility of PTA obligations, and to allow for input and feedback from other WTO members. The SPS Committee, for example, could intensify its relations with standardization bodies beyond existing exchanges and seek more interactions with health experts. Initiatives for cross-institutional cooperation with other international organizations should be encouraged. For deliberation to occur, good quality information is required. Another necessary condition is the creation of an environment for informal gatherings (alongside more formal meetings) to build trust and understanding between participating actors. The chairs of the groups have a pivotal role in depoliticizing discussions and buffering against existing hierarchies. If necessary, chairs can initiate the creation of *ad hoc* brainstorming or drafting groups, propose walks in the woods, and demand assistance and advice from outside experts and mediators in order to allow for deliberative processes to occur.

3.2.5. Locking in domestic decision-makers

There needs to be greater involvement and buy-in of domestic decision-makers. Committees need to devise a strategy on how to engage with capital-based officials and members of parliament. Their selective participation in some of the committees should be further increased. In the case of the trade policy reviews, the results of these reports should be discussed more prominently in the countries concerned. It helps that parliamentarians have started taking a greater interest in these reviews. Different ministries (for example, finance, tax, or environment) and members of parliament should be further encouraged to participate in some way in the deliberations when reports are discussed. Trade ministers should be more involved in certain committee activities either as facilitators or as friends of the committee.

⁶ While this raises some practical problems with the lengths of diplomats’ stay in Geneva, more continuity is needed to enable chairs to play a role beyond structuring the debate.

3.2.6. Building bridges to the public

The public's support is important for the legitimacy of the system. There are various ways to engage with the public. While informal exchanges behind closed doors are important to allow for deliberation and to build trust, targeted initiatives to engage with the wider public are needed. These could range from providing live coverage of certain events that are managed by a committee, to allowing for a public debate when meetings take place outside Geneva and to inviting online feedback on ongoing work. Written submissions to the committees by accredited business and non-governmental actors should also be encouraged. These briefs should be disseminated among WTO members.

3.3. Enhancing the Involvement of the Business Sector

Although the WTO is an intergovernmental organization and decisions are taken exclusively by member governments acting collectively, the business community has an important stake in the organization's performance. It is mainly businesses, not governments, which engage in international trade, and they are bound to be affected by WTO operations. In practice, business and government interact in the WTO in many different ways, sometimes advancing the negotiating agenda and at other times ensuring that governments abide by their multilateral commitments. The support of the business sector is key to the success of the system. While many informal and formal channels of interaction exist in domestic political settings, at the WTO there is a need for more engagement. This interaction should be designed as an open, two-way process to assist in building a shared understanding of challenges and policy options, allowing for critical feedback and the elaboration of new ideas for regulatory innovation in rule-making. Two institutional proposals stand out (Eckhardt 2013). These are developed below.

3.3.1. The creation of a Business Forum

The first idea would be to organize a formal Business Forum (BF) at the same time as (or perhaps starting a few days earlier than) the ministerial meetings, where business leaders could meet to share and learn from one another, and interact with heads of state as well as government and high governmental officials. The prime purpose would be to present concrete suggestions to decision-makers. More specifically, like the B20 (an event organized during the G20 meetings), the BF would put forward recommendations and would engage in issuing relevant commitments from the business leaders and business organizations to deal with current issues. Ideally, it would function as a reality check for governments, since they need business sector support for their negotiations as well as for the ratification of the results agreed. It could be possible to build on a first experience in Bali, where a pilot test for a Business Forum was organized (Box 1).

Box 1: The Bali Business Forum

At the Ninth WTO Ministerial Conference that took place in Bali, Indonesia, from 3 to 7 December 2013, the International Chamber of Commerce (ICC), the Evian Group@IMD, and the International Centre for Trade and Sustainable Development (ICTSD) decided to jointly organize a day-long event to focus on issues of particular interest to business representatives from WTO member countries. This event—the Bali Business Forum (BBF)—which was the first of its kind, took place on 5 December 2013.

The BBF provided an open forum where the business community could examine the most critical issues in the international trade agenda and interact with ministers and other high-level officials to contribute towards a constructive outcome in Bali. The agenda of the BBF included issues such as: (i) the quantitative benefits of a Doha deal (or costs of a Doha non-deal); (ii) the impact of mega-regional agreements (e.g. TPP and TTIP) on the WTO; (iii) the complementary nature of trade in services, trade facilitation, and global value chains; and (iv) the role of the private sector in the WTO.

An accompanying high-level luncheon focused on the topical issues at the intersection of the WTO and digital economy; and a business/ministerial roundtable wrapped up the ambitious day-long agenda in a high-level setting. Throughout the panel discussions, representatives of the private sector and government officials, including CEOs and key ministers engaged in an open dialogue on the above-mentioned topics.

The ICC, the Evian Group@IMD, and ICTSD acted as the core co-conveners of the BBF, in partnership with the Inter-American Development Bank and the International Trade Centre. The BBF also had the support of relevant business organizations and associations, such as the Washington-based National Foreign Trade Council (NFTC), the Coalition of Services Industries (CSI), the European Services Forum (ESF), and the Federation of Industries of São Paulo (FIESP).

Through engagement and dialogue between business executives and policy-makers from all over the world the BBF helped to facilitate a better understanding of the possibilities of enhanced multilateral cooperation, and on the need for a dynamic WTO.

3.3.2. The creation of a Business Advisory Council

A more far-reaching (and perhaps more controversial) proposal is to establish a WTO Business Advisory Council (BAC).⁷ The BAC could promote the interests of the business community by advising and engaging with the WTO Secretariat and WTO members on a broad range of issues. Ideally the BAC and the BF would be complementary—that is, organizing the BF could be one of the key activities of the BAC. Other activities the BAC could undertake would be to:

- Actively follow the regular committee work;
- Identify priority areas for consideration by WTO and its members;
- Advise on setting the agenda for the ministerial meetings;
- Provide policy recommendations to the WTO and its members;
- Provide the WTO and its members with timely information on WTO policies and their implications for business and industry; and
- Respond when the various WTO forums request information about business-related issues or to provide the business perspective on specific areas of cooperation.

⁷ If such an Advisory Council were to be set-up, a similar body could be envisaged channelling the different voices of civil society groups.

4. Priorities and Policy Steps

The majority of proposals outlined in this paper can be implemented in the short to medium term if the WTO members show willingness. None of the policy options would require major institutional changes. What is clear is that the initiative needs to grow from within the organization. It could be that different informal coalitions are formed that start a consultation process to gather support among the membership for addressing governance issues. Ideas emanating from such discussions should be then discussed at the level of ministers in order to receive a mandate to develop concrete proposals.

Let us consider the measures in order of their urgency and describe potential policy steps to be taken.

4.1. Negotiations

First, the negotiation arm has to be re-energized. There needs to be a strong new coalition (the Friends of the Doha Agenda) which substitutes for missing leadership in the negotiations. At this stage conclusion is more important than ambition, and similar to the development at the end of the Uruguay Round, extraordinary circumstances need out-of-the-box solutions. The DG should receive a special mandate to propose the contents (not just the contours) of the Doha package deal. A built-in agenda for a limited number of unresolved issues (analogous to the Uruguay Round) should be created to allow some form of flexibility for states (but opt-outs need to be limited) and future multilateral and plurilateral negotiation approaches for issue areas (that are excluded from the round) should therefore be defined. The package would consist of agreed commitments on selected areas and a detailed agenda of topics as well as the necessary process to be followed through alternative variable geometry approaches. This should also be done under the responsibility of the DG in consultation with the chairs of the key negotiation groups.

Second, and related to the grand bargain, a special committee is to be created that focuses on how best to design plurilateral approaches, both those following MFN logic and those that restrict MFN. Such a group should be composed jointly of Geneva-based and capital-based officials and one of the Deputy DGs should chair the committee. It should be limited to 20–25 participants reflecting the broad WTO membership, both in terms of regional representation and level of development. This committee should meet regularly, every second meeting being held in one of the main WTO member's capitals, and a small group of Secretariat officials should be asked to support the work.

For both initiatives to materialize, WTO members will need to show willingness and courage—without delegating some

tasks to both chairs of the negotiations and the DG progress is not possible.

4.2. Committee Work

Two things need to be done in order to improve further the functioning of committees. First, a review should be conducted by the WTO Secretariat under the supervision of the DG to make a factual assessment of the inner workings of the committees. Then, a group of independent academics should be appointed to carry out a survey of WTO members to collect systematically the views and opinions of those participating in various committee activities. Both types of information can provide the basis for an assessment of how well the different committees function and what can be done to improve the situation. The DG should then prepare a report for the attention of the WTO members for additional input.

Second, in light of the proposals outlined above, the DG would hold informal consultations with all the committee chairs before elaborating an action plan on how to move forward to increase the capacity of the committees. The findings would be presented to the entire WTO membership and discussed before the official start of a ministerial meeting to foster understanding and support from capital-based officials.

In the pilot phase, a group of independent experts would be invited to the meetings of some selected committees to support the chairs in the implementation of the proposals. After (a test period of) 12 months, another review conducted by a group of external experts involved in the committee work would be planned to take stock of the progress made and the possible wider application to more committees.

4.3. The Business Sector

In order to pursue the initiative to find common platforms of exchange between the ministers, the negotiators, and the business sector, large conferences should be organized both in Geneva and in universities worldwide where WTO chairs have been created. The purpose of the conferences would be to collect additional information on the exact needs of business actors for increased interaction and to share insights on existing practices. Government representatives could discuss potential best practices from their own perspectives. The conferences should also help business leaders to agree on the appropriate representation by business groups. The ICC and the World Economic Forum could jointly chair this process. Selection should take into account the type of business sector, the size of the companies (providing a strong representation of sectors characterized by small and medium-sized enterprises), as well as regional characteristics.

Following these bottom-up “caucuses,” the next step would be for the business sector to put forward a roster of representatives from which it could appoint up to 30 participants for the Business Advisory Council. The participants would serve on the council for a term of three years (non-renewable). Members of the BAC would be invited by the chairs of negotiation groups for informal gatherings and exchanges and would be encouraged to interact regularly with WTO ambassadors. There would also be two formal meetings a year at which the DG and the chairs of the committees represent the WTO membership. The chairs would informally share the content of the discussions with all members of the respective committee.

This proposal might only be feasible if the WTO membership also explores the possibility of a Civil Society Advisory Council that would have a similar function to that of the BAC.

Once the BAC is up and running, it could be tasked to organize the Business Forum to be held alongside the ministerial meetings.

In summary, the above institutionalized relations between the business sector and the WTO will only bear fruit if at the same time progress is made in negotiations and in the committee work.

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Annex 1: Summary Table of Main Policy Options

Policy Option	Timescale	Current Status and Gap	How to Get There
Improving the performance of the negotiation function			
1. Break the stalemate with a new grand bargain including major elements of the Doha Round and authorization for a defined set of non-MFN plurilaterals	Short term	<ul style="list-style-type: none"> – Greater inclusiveness less information asymmetry – Mismatch in expectations from the Doha Round – Most negotiations under the Doha Round have been deadlocked for a number of years – The notion of single undertaking is questioned – Enhanced focus on plurilateral approaches (e.g. TiSA, ITA II, EGA) 	<ul style="list-style-type: none"> – Build a coalition of “friends of the Doha Round” – DG could receive a mandate to propose bridging solutions to close the Doha Round – Create a built-in agenda and define approaches for issues currently excluded from the Round
2. Create a committee or working group focusing on plurilaterals to monitor and guide, particularly when not MFN	Short term		<ul style="list-style-type: none"> – Establish a special committee made of 20-25 Geneva-based and capital-based officials chaired by one Deputy DG meeting both in Geneva and capitals focusing on how best to design plurilateral approaches (both inclusive and exclusive ones)
Strengthening the role and impact of committee work			
3. Strengthen the role of the Secretariat by: <ul style="list-style-type: none"> – Enhancing data management – Making more use of in-house expertise 	Short term	<ul style="list-style-type: none"> – Dominance of WTO members keeps the Secretariat on the sidelines of negotiations – Unmet demand for surveillance of new development in trade policy (e.g. monitoring of protectionist measures) – Limited use of in-house expertise 	<ul style="list-style-type: none"> – Enhance resources devoted to data compilation, statistics, and data management – Develop information portals/creation of information hubs on regulatory matters – Chairs should be allowed to create <i>ad hoc</i> working groups chaired by Secretariat with members.
4. Improve leadership and coordination	Short term	<ul style="list-style-type: none"> – Limited attention paid to committee work – High rotation of chairs (one-year term) – Informal coordination among different committee chairs 	<ul style="list-style-type: none"> – Initiate a review by the Secretariat under the supervision of the DG providing a factual assessment of the inner workings of the committees – Initiate an independent survey collecting the views of members about the functioning of the committees
5. Beyond compliance, improve the quality of exchange in committee work and create more space for deliberations	Medium term	<ul style="list-style-type: none"> – Current focus of committees remains on compliance with limited space to initiate a discussion on new challenges (e.g. climate change, exchange rate, food price volatility) – Limited use of external expertise (e.g. other IGOs) – Limited space for informal/depoliticized debate 	<ul style="list-style-type: none"> – Based on those reviews and a report by the DG, initiate informal consultations with all the committee chairs and elaborate an action plan to be approved by members

Policy Option	Timescale	Current Status and Gap	How to Get There
6. Improve the buy-in of domestic decision-makers	Short term	<ul style="list-style-type: none"> – Limited involvement of capital-based officials, non-trade ministries, or members of parliaments (MPs) 	<ul style="list-style-type: none"> – Discuss trade policy review reports more broadly with domestic constituencies (e.g. different ministers, MPs).
7. Build bridges with the public	Short term	<ul style="list-style-type: none"> – Limited opportunities for targeted discussions with the wider public outside of Geneva 	<ul style="list-style-type: none"> – Provide live coverage of certain WTO events – Allow for public debate when meetings take place outside Geneva – Invite online feedback on ongoing work – Allow written submission to certain committees by business/NGOs
Enhancing the involvement of the business sector			
8. Create a “Business Forum” at the margin of WTO ministerial meetings	Short term	<ul style="list-style-type: none"> – Willingness of private sector to invest time and resources in multilateral negotiations has partly shifted to regional negotiations – Current interaction though informal/formal processes at the domestic level and in an <i>ad hoc</i> manner at the WTO but no institutionalised mechanism for routine interaction at the WTO 	<ul style="list-style-type: none"> – Replicate and perpetuate first experience of the Bali Business Forum organised in 2013 by ICC, the Evian Group and ICTSD
9. Create a Business Advisory Council to channel interaction between the private sector and the multilateral trading system	Medium term		<ul style="list-style-type: none"> – Convene a series of large conferences in Geneva and in universities where WTO chairs have been created, to collect information about business needs and discuss best practices (these could be chaired by the World Economic Forum or ICC) – Business to propose a roster of representatives from which to appoint 30 participants elected for three years – Establish similar process for a Civil Society Advisory Council

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* The experts all participated in their personal capacity. The views and recommendations expressed in the policy options paper are not attributable to any institution with which members of the E15 Expert Group are associated.



International Centre for Trade and Sustainable Development

The International Centre for Trade and Sustainable Development (ICTSD) is an independent think-and-do-tank, engaged in the provision of information, research and analysis, and policy and multistakeholder dialogue, as a not-for-profit organisation based in Geneva, Switzerland.

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