



POLICY BRIEF **IMPROVING KEY FUNCTIONS OF THE WORLD TRADE ORGANIZATION: FOSTERING OPEN PLURILATERALS, REGIME MANAGEMENT, AND DECISION- MAKING**



Task Force 1
TRADE, INVESTMENT AND GROWTH

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موجز السياسة تحسين الوظائف الرئيسية لمنظمة التجارة العالمية: تعزيز التعددية المفتوحة وإدارة النظام وصنع القرار

فريق العمل الأول
التجارة والاستثمار والنمو



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ABSTRACT

As the world is confronted with the challenges of the COVID-19 pandemic, a functioning World Trade Organization (WTO) is more important than ever. The commitments to WTO reform made at the Buenos Aires and Osaka Group of Twenty (G20) summits, however, do not detail concrete paths to reform. In fact, positions of G20 members diverge on key reform areas. The main focus of the reform debate has been on highly politicized issues such as dispute settlement and the role of developing countries in the WTO. In light of the current stalemate concerning these issues, we suggest concrete and promising paths for reform in the negotiation of open plurilateral agreements, regime management, and decision-making procedures. These suggestions can help the G20 improve key functions of the WTO through adoption of these often technical and underappreciated reform options.

في الوقت الذي يواجه فيه العالم تحديات جائحة كورونا، أصبح وجود منظمة تجارة عالمية فاعلة أكثر أهمية من أي وقت مضى. ومع وجود التزامات لإصلاح منظمة التجارة العالمية - كما جرى في مؤتمر بوينس آيرس وأوساكا لمجموعة العشرين - إلا أن هذه الالتزامات تعد عامة ولا توضح مسارات إصلاح ملموسة. هذا وإن مواقف أعضاء مجموعة العشرين في واقع الأمر تختلف تجاه مجالات الإصلاح الرئيسية؛ فلا يزال التركيز الرئيسي في مناقشة الإصلاح حتى الآن منصباً على القضايا المسيّسة للغاية، مثل تسوية النزاعات ودور البلدان النامية في منظمة التجارة العالمية. وفي ظلّ هذا الجمود الحالي الذي يخصّ قضايا إصلاح منظمة التجارة العالمية، نقترح التركيز على عدد من المسارات الملموسة والواعدة للإصلاح في إجراءات مفاوضات الاتفاقيات المفتوحة متعددة الأطراف وإدارة النظام واتخاذ القرار. كما نقدم مقترحات حول الكيفية التي يمكن أن تساعد بها مجموعة العشرين في تحسين الوظائف الرئيسية لمنظمة التجارة العالمية، وذلك من خلال اعتماد خيارات الإصلاح الفنية المهقّشة في كثير من الأحيان.



CHALLENGE

At their Summit in Buenos Aires on November 30 and December 1, 2018, the Group of Twenty (G20) leaders recognized that the “multilateral trading system ... is currently falling short of its objectives” and committed to “support[ing] the necessary reform of the WTO to improve its functioning” and to “review progress at our next Summit” (G20 2018). Despite its vagueness and ambiguity, this important commitment generated strong political impetus to reform the World Trade Organization (WTO). During the Japanese G20 presidency in 2019, WTO reform was part of the discussions in the Trade and Investment Working Group (TIWG), and a trade ministers meeting on June 8 and 9, 2019, recognized the importance of transparency and notification obligations; functioning of WTO committees and bodies; and negotiations on fisheries subsidies, electronic commerce, and digital trade. Furthermore, trade ministers “agree[d] that action is necessary regarding the functioning of the dispute settlement system consistent with the rules as negotiated by the WTO members,” a sentence that was adopted in the leaders’ declaration of the G20 summit in Osaka on June 28 and 29, 2019.

The commitments to WTO reform at the Buenos Aires and Osaka summits, however, remain general and do not describe concrete reform paths. In fact, G20 members have widely divergent positions on key reform areas, such as dispute settlement, developing country status, and roll-back of trade protectionism.¹ Furthermore, it seems unlikely that these thorny issues will be resolved in the short to medium term as they require consensus among major trading powers, including the US, China, the EU, and Japan.

While progress on these reform areas is blocked, it is possible—and indeed important for the functioning of the multilateral trading system—to focus on complementary reform approaches that are easier to implement and can help safeguard the future of the WTO. We therefore suggest a number of concrete paths for WTO reform that can be pursued in the meantime to improve the functioning of the organization. To do so, this policy brief will propose ways to promote the negotiation of open plurilateral agreements, regime management, and decision-making procedures. The potential of these often-technical reform options is largely underappreciated. We make suggestions on how the G20 can help improve key functions of the WTO.

1. See relevant T20 Policy Briefs on various WTO reform dimensions, e.g. Evenett et al. (2018); Kawase et al. (2019); Nakagawa et al. (2019); Draper et al. (2020), and Akman et al. (2020).



PROPOSAL

In a time when the world is confronted with the economic, social, and political challenges of the COVID-19 pandemic, a functioning global trading system, with the WTO at its center, is more important than ever to ensure the efficient supply of critical medical devices, coordination of global action, and support for global economic recovery. This policy brief argues that there is a pool of reforms that have the potential to stabilize, if not improve, the systemic function of the WTO. In light of current difficulties on thorny issues such as dispute settlement, developing country status, or prevention and roll-back of trade protectionism, a number of technical or procedural reforms should be pursued to preserve and improve key functions of the WTO, namely negotiation of new rules as well as transparency and monitoring. Furthermore, institutional procedures at the WTO can be improved, including the work of committees and decision-making procedures. The G20 can play a key role in fostering dialogue on these reforms and developing a multi-year road map for WTO reform.

Fostering Open Plurilateral Agreements

The stalemate in the negotiations on the Doha Development Round has led to pessimism for the future prospects of multilateral trade governance in the WTO. The only major multilateral successes since 1995 have been the conclusion of the Trade Facilitation Agreement (TFA) and the agreement on export subsidies in agriculture. However, market access negotiations that constitute the core of multilateral trade negotiations have remained stalled in all main areas: agriculture, non-agricultural market access (NAMA), and trade in services. One of the main causes of this lack of progress is the difficulty in achieving consensus among the 164 WTO members, given the diversity of members and changing economic situations and interests of each member. The result of this inability to agree on multilateral trade rules is that the WTO rule-book is outdated on a number of critical issues such as digital trade, subsidies, new forms of protectionism, and the environment, including climate change and sustainable management of fisheries, forests, or soils.

Plurilateral negotiations among a sub-group of WTO members on issue areas where there is a convergence of interests and a willingness to take steps towards deeper integration is the way to move forward and revive the rule-making function of the WTO. There can be two types of plurilateral agreements: “closed plurilaterals” under Article II.3 of the Marrakesh Agreement and “open plurilaterals” or critical mass agreements (CMAs) (Hoekman 2019).

“Closed plurilateral” trade agreements are envisaged in Article II.3 of the Marrakesh Agreement, establishing the WTO as a part of the Agreement, along with the multilateral trade agreements referred to in Article II.2. The multilateral agreements are binding on all WTO members, whereas plurilateral agreements under Article II.3 are binding only for those members that have accepted them. Article II.3 agreements do not create either obligations or rights for members that have not accepted them. Due to this exclusive nature of closed plurilaterals, their adoption and integration into the WTO rulebook requires consensus from all 164 WTO members. Due to these requirements, it is difficult to envisage the adoption of new plurilateral agreements based on Article II.3. Currently, there exist only two plurilateral agreements based on Article II.3: The Agreement on Civil Aircraft and the Government Procurement Agreement.

“Open plurilateral” agreements evolved early in WTO history. In December 1996, 28 members of the WTO and acceding states and customs territories made a declaration on the margins of the Singapore Ministerial Conference that they would eliminate tariffs on information technology products once participants accounting for 90% of world trade in these products declared their acceptance of the agreement. Pursuant to this declaration, the Information Technology Agreement (ITA) entered into effect on April 1, 1997; at that point, 39 participants (accounting for 92.5% of world trade in these products) had declared their acceptance. The commitments on tariff elimination were incorporated into the tariff schedules of individual members. A distinguishing feature of open plurilateral agreements is that they enter into effect when participants with a share of world trade in the covered products, considered to be the critical mass, have accepted the obligations. Consent by non-signatories is not needed. In 2015, another plurilateral agreement in the information technology area, the Expansion of Trade in Information Technology Products, was successfully negotiated. Critical mass agreements have also been entered into by members on the service dimension of trade, both in basic telecommunications (Fourth Protocol to the GATS 1996) and financial services (Fifth Protocol to the GATS 1997).

The ITA as well as the Expansion Agreement are only about market access, limited to the objective of eliminating tariffs. However, participants also agreed on a set of regulatory guidelines for telecommunications. It has thus been demonstrated that open plurilaterals can be used by WTO members not only for market access but also for agreements on allied matters such as regulatory guidelines, at least in services. The use of open plurilateral agreements is appropriate for market access and regulatory guidelines when majority of the members are in agreement. Open plurilaterals are

not suitable for areas like market access in agriculture, where there is a wide divide among members regarding the way forward.

The key difference between the two approaches is whether they apply to all WTO members—through the most-favored nation (MFN) principle—or only to signatories. The key benefit of open plurilaterals is that the agreement is extended on an MFN basis to all WTO members, including non-participants. They are open to all WTO members willing to accept the obligations. Open plurilaterals are therefore less difficult to accomplish as they depend on participants' assessment that their share of world trade in the products (whether goods or services) represents a critical mass, enabling them to ignore free-rider benefits for non-participants. Open plurilaterals do not require consensus for incorporation into the WTO Agreement; on completion of the negotiations, members can take the decision to inscribe the provisions of the agreement into their schedules of commitments in the GATT or GATS or append them as a Protocol to the GATS.

The initiation of four so-called Joint Initiatives during the Buenos Aires Ministerial Conference in 2017 shows that groups of members see value in using open plurilaterals to advance rule-making in the WTO. Four proponent groups, representing different compositions of members, initiated talks on new issues such as electronic commerce, investment facilitation for development, domestic services regulation, and micro, small, and medium size enterprises (MSMEs). Talks on e-commerce were launched in January 2019, entailing more than 80 WTO members, and a year later, more than 100 WTO members announced negotiations toward a multilateral framework on investment facilitation for development.

The G20 should encourage the use of open plurilateral negotiations in areas where a large number of members share a common approach but only a handful of members have a different view and stand in the way of consensus. Open plurilateral agreements can help to carry forward multilateral liberalization when lack of consensus in WTO bodies blocks forward movement in multilateral trade negotiations.

In order to make open plurilateral agreements a viable alternative for rule-making at the WTO, it is important for all WTO members to agree on a number of core principles that should guide the negotiation among sub-groups of members:

- First, plurilateral negotiations are open and inclusive to all WTO members, and members can join the agreements at a later stage.
- Second, negotiations are held transparently to ensure that non-participating members and the broader public have sufficient information about the negotiations.
- Third, development-friendliness is important to ensure the effective participation of the less and least developed countries and that the specific needs and challenges of these countries are accounted for in the drafting of the rules.
- Fourth, those members who are not the original members are not discriminated against if they seek membership later.
- Fifth, most importantly, the benefits of the agreement are extended to all WTO members, whether or not individual members are participants.
- Finally, the design of open plurilateral negotiations should not fundamentally conflict with WTO rules. Complete consideration must be given to issues such as consistency with existing rules and MFN treatment. In this regard, the WTO should formulate relevant rules that require the newly initiated open plurilateral negotiations to consider multilateralization as their ultimate goal.

At present, there are no procedural provisions on the initiation and conclusion of open plurilateral negotiations in the WTO; therefore, it is necessary to clarify the conditions for the initiation or conclusion of open plurilateral negotiations while formulating future rules. It is also necessary to assess the economic impact of forthcoming plurilateral negotiations on participants and non-participants in advance and to examine the possibility of acceptance by members.

An important aspect for future open plurilaterals is that chairs of these initiatives can rely on the full support of the WTO Secretariat. The WTO Secretariat as a neutral broker, holder of institutional memory, and source of expertise could play an important role in supporting the chairs of these negotiations. The Secretariat could be asked to write background papers to present the topics at stake and help structure the deliberation process. With engagement from the Secretariat, the Director-General (DG) and all Deputy-Director Generals could also be strongly linked to the proceedings. In particular, for the WTO members not participating in the debates, the DG and his or her deputies could be present as observers in these negotiations. Finally, an informal

platform should be created in which the different chairpersons can exchange views, benefit from each other's experiences, and explore linkages across plurilaterals.

The G20 should initiate a dialogue on the principles, procedural design, role of the secretariat, and selection of topics for open plurilaterals to advance rule-making in the WTO. The proposed learning process, guided by the G20, does not need to start from scratch. A number of G20 countries are members of existing plurilateral agreements and are participating in joint initiatives.

Regime Management: Transparency, Monitoring, and Committee Work

A key function of the WTO is to ensure transparency concerning its members' domestic trade policies. The importance of this function has been put to test during the COVID-19 pandemic that led to the introduction of new trade policies, including export restrictions, in almost all WTO countries. WTO members are required to submit notifications of their trade measures to the relevant WTO subsidiary bodies, councils, and committees to assess the implementation of their obligations under WTO agreements. Yet, not all WTO members regularly comply with the notification obligation, thereby undermining the WTO's role in securing transparency. Many G20 members agree on the importance of improving the transparency of domestic trade policies; therefore, it may be possible to forge a compromise while taking adequate account of the challenges of developing countries. In that context, the way forward regarding notification obligations might entail assessing their enforcement, reviewing them to identify what type of information is really needed, and how they can be adapted to make them more useful to WTO members (Hoekman 2019). Furthermore, with the help of the Secretariat, a central online platform should be developed that increases transparency. An eminent group of independent trade experts and scholars could further advise the WTO on this and assist in creating an additional channel of information from non-governmental sources to gather data.

In this context, monitoring should be strengthened by creating small independent expert groups that support the WTO Secretariat in analyzing trade policies within the context of the Trade Policy Review Mechanism. Presentations should be made in the capitals of the reviewed countries and information technology tools must be explored to make these processes more inclusive.

Another challenge is to make the work of WTO Committees more active and efficient. In light of existing entry points for reform, several WTO members have submitted ideas for improving the organization's Committee work.² An analysis of the submitted proposals reveals that improving the work of WTO bodies does not seem to entail divergent perspectives, which is advantageous for WTO reform. While many good regulatory ideas have been developed in the context of WTO Committee work, these have not been sufficiently disseminated.

A promising first step might be to conduct an internal or external WTO-wide review of the performance of the different bodies in the organization (Hoekman 2019). The way forward should entail the strengthening of deliberations within the various committees and increasing their impact. There are multiple ways to improve the work of WTO Committees: leadership and coordination should be improved, whereby the WTO Secretariat devotes more resources to the Committee chairs and allocates more time by extending their term to a three-year-period; an official standing body of chairs should be established to improve the information exchange among chairs and with the WTO's DG; the committee chairs should have the mandate to create ad hoc working groups that are chaired by the Secretariat and ensure better use of WTO in-house expertise; deliberations in the WTO Committees should be improved by inviting experts to share their insights and providing more space for informal exchanges; the links to domestic decision-makers and trade-related policies should also be increased, preferably through an information portal; and there should be an improved exchange with the public, such as live coverage of meetings or invitations to post online comments on ongoing work (Elsig 2016). These approaches are promising; furthermore, they do not necessarily demand substantial funding. These options also illustrate how the use of IT can contribute to making the WTO more effective and equitable.

2. For example, in October 2019, 18 WTO members, including G20 members such as the EU and Australia, endorsed a joint proposal for procedural guidelines, which includes recommendations for preparing meetings as well as procedures for discussions and informal resolutions by chairpersons (WTO doc. WT/GC/W/777/Rev.1).

Decision-making

While consensus remains the most important decision-making approach in the WTO on substantive commitments, for house-keeping matters and the selection of individuals to carry out key tasks within the organization, members should explore and experiment with alternative mechanisms. The WTO treaties foresee this possibility by outlining broad rules for voting based on the one-member-one-vote principle and by suggesting two types of super-majority rule (2/3 and 3/4 majorities). However, in practice, the instrument of voting has not been used.

Looking ahead, a working group within the WTO should be created to map out which core decisions need consensus and which decisions could be guided by the idea of a supermajority (e.g., comprising 80% of the votes present and a majority of the countries from each geographical region). Examples of decisions that might need a supermajority would include budget negotiations or day-to-day activities in relation to regime management and enforcement. The selection of the DG and members of the Appellate Body could also require a supermajority. We have seen that building consensus without an alternative, in case consensus fails, can lead to vacancies of important positions within the WTO. It may also hinder the selection of individuals with the necessary skills but who lack the support of one important WTO member for purely political or strategic reasons.

Way Forward for the G20

Given that building consensus for certain WTO reform issues is currently difficult, we focus on areas where reforms are possible and can improve or stabilize global trade governance. Since the first meeting of the G20 at the leaders' level in Washington in November 2008, trade has been an integral part of the G20's agenda. In light of the current crisis of the WTO and the important role of G20 members in the organization's reform, we argue that the G20 should assume a more proactive role in the future of the WTO and the reform of the global trading system. There are several ways in which the G20 can support reform discussions at the WTO. It is necessary to leverage the strengths of the G20 as an informal forum for cooperation between the various heads of state and governments; however, this should not weaken the WTO as the central forum for discussing reforms to the multilateral trade system.

In this context, the G20 should focus on promoting dialogue on the functioning of the WTO, including the role of open plurilaterals, regime management, and decision-making. There is a need to improve communication between key actors and build mutual trust. Provided that we look beyond the thorny issues usually in the lime light, particularly dispute settlements, exchange and trust-building among G20 members can facilitate progress on WTO reform. Several promising approaches toward consensus-building for the organizations' reform exist, and these can help strengthen the WTO and safeguard its future role in global economic governance.

Moreover, the G20 should engage key trading system stakeholders, including relevant international organizations, in a dialogue on the deficiencies and benefits of an effective, legitimate, and inclusive WTO system. The G20 presidency should reach out to the G20 engagement groups (e.g. Business20, Labour20, Think20, Civil20) and seek their inputs on WTO reform options. In this regard, an eminent trade expert group that reports to the G20 on an annual basis on the WTO reform process can be established.

Disclaimer

This policy brief was developed and written by the authors and has undergone a peer review process. The views and opinions expressed in this policy brief are those of the authors and do not necessarily reflect the official policy or position of the authors' organizations or the T20 Secretariat.



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