



WORLD TRADE  
ORGANIZATION

# The WTO at Twenty

## Challenges and achievements

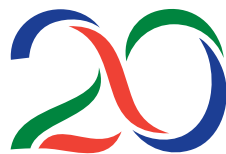


WTO | 20 YEARS



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Challenges and  
achievements



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# Contents

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**Foreword by WTO  
Director-General  
Roberto Azevêdo**

## 1

**Introduction** 06



## 2

**Building a trade  
organization –  
strengthening the institutional  
foundations for global trade  
cooperation** 10

- Establishment of the WTO –  
the building of a permanent  
institution 11
- WTO Secretariat 16
- Negotiations in the WTO 16
- Conclusion 19



## 3

**WTO “widening” –  
more members,  
more participation** 20

- Accessions: building  
a ‘global’ WTO 21
- Empowering developing  
countries 27
- Conclusion 33



## 4

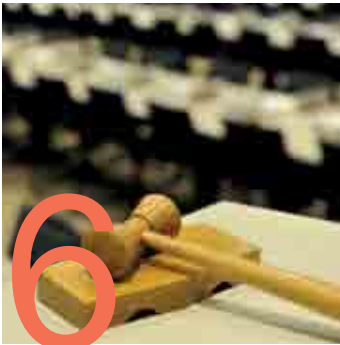
**WTO  
“deepening” –  
reducing barriers  
and expanding rules** 34

- Consolidating and  
expanding tariff commitments 35
- Consolidating and expanding  
the regulatory framework for  
trade in goods 37
- Consolidating and expanding  
the disciplines on trade in  
services 45
- Modernizing and expanding  
the reach of disciplines on  
government procurement 47
- Conclusion 49



**Improving transparency – strengthening monitoring, surveillance and consultation** 50

- Reviewing trade policies to encourage policy dialogue 51
- Monitoring trade policies to understand trends and contain protectionism 53
- Monitoring and documenting RTAs 54
- Increasing transparency through notifications 55
- Conclusion 58



**Dispute settlement – clarifying rules and resolving disputes** 60

- An accessible dispute settlement system 61
- Establishing a rules-based system for resolving disputes 62
- Lessons, issues, and principles from 20 years of WTO case-law 64
- Conclusion 67



**7**

**Strengthening policy coherence – cooperation with other organizations** 68

- Expanding policy coherence: Art III.5 and beyond 69
- Coherence in action 74
- Conclusion 77



**8**

**Strengthening outreach – towards enhanced engagement** 78

- Conclusion 81



**9**

**Conclusion** 82

# Foreword by WTO Director-General Roberto Azevêdo

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When the World Trade Organization was launched 20 years ago it represented more than a reform of the old GATT system. The WTO was seen as the key pillar of a new kind of global economic order – open, inclusive, cooperative – that was taking shape in the wake of the end of the Cold War. Countries that were largely closed to the world economy for almost half a century were turning to open markets and economic integration. Many developing countries, for decades left behind by the more industrialized, were beginning a rapid economic catch up. New transport, communications, and information technologies were weaving economies more tightly together, reshaping international relations in the process. If the GATT was the product of a divided world, the WTO offered the promise of a more unified one.

So far the WTO has lived up to these expectations. Thirty-three new members have joined since 1995, including giants like China and Russia, meaning that almost all of the world's economies are now part of a single trading system. International rules, not power, increasingly govern trade relations, and conflicts are settled, not in trade wars, but in the WTO's dispute settlement system – which serves as a global trade court. Trade barriers continue to fall – to the point where well over half of global trade is now tariff free – and economies are becoming ever more interconnected. While progress in the Doha Development Agenda – the latest in a long line of trade 'rounds' – has proved very difficult, a growing list of new WTO agreements – covering everything from customs reform, to information technology products, to government procurement, to financial and telecommunications services – are opening up new trade opportunities, in new sectors, often in innovative ways. It is estimated that the 2013 WTO Trade Facilitation Agreement alone could have a bigger impact on reducing trade costs than the

elimination of all remaining global tariffs. The July 2015 agreement to expand the scope of the WTO Information Technology Agreement (ITA) promises to eliminate tariffs on high tech products which represent 7 per cent of global trade – more than trade in textiles, apparel, iron and steel combined.

Meanwhile the WTO as an institution provides a key forum for policy dialogue, information sharing, and economic cooperation among its 161 members – making it an increasingly critical pillar of today's system of global governance.

Most importantly, the WTO has helped to underpin an unprecedented period of widening global growth and development. Since 1995, the developing countries' share of global merchandise trade has grown from 27 per cent to over 43 per cent – and their share of global GDP has risen from 41 per cent to over 53 per cent. Emerging economies such as China, India, and Brazil have become indispensable drivers of the global economy, as well as leading voices in the international economic system. There are many reasons why developing countries have achieved economic lift-off, but surely none is more important than their integration into the global economy – a process that has depended, in turn, on today's extraordinarily open, reliable and secure world trading system.

This book is intended first and foremost to be a reminder of these achievements – achievements that are sometimes overlooked amid the day-to-day challenges of managing an increasingly complex and diverse global trading system. Prepared by the WTO secretariat, it provides a detailed and factual look at the WTO's activities and accomplishments over its first twenty years. The WTO's short history is obviously not one of unbroken success – disappointing progress

in the long-running Doha Round is a lingering and high profile reminder. But as the following pages make clear, the WTO's contribution to the world economy in general, and to development in particular, is much broader than the Doha negotiations, even as they remain a key element of our work.

In looking back at the WTO's achievements, the book also serves as a reminder of how hard we had to work to make the system what it is today. Non-multilateral initiatives will naturally continue to blossom, but we must maintain the WTO as a strong and comprehensive foundation of global trade. The WTO was not the first attempt to create a global trading system, nor the first time that policy makers aimed to realize the vision of global peace through shared prosperity. After the Second World War, the international community also saw the building of an open global trading system as essential precursor to building a new post-war international order. But the bold plan to create an International Trade Organization soon fell victim to Cold War rivalries and waning support for internationalism. It was not until the WTO's creation five decades later that the dream of a permanent and global trade organization was realized – making the WTO the first truly international institution of the post-Cold War era.

The WTO is ultimately the result, not the cause, of members' willingness to cooperate on trade. Its creation and subsequent success reflects the growing realization among more and more countries that trade opening can lead to growth and development, that agreed rules strengthen, not weaken, sovereignty, and that advancing our national interests increasingly depends on advancing our collective interests. As today's global economy grows increasingly open, interdependent and multipolar, it is clear that international trade cooperation, and the world trading system, is becoming more, not less, important. But just because the WTO is important does not make it invulnerable. The WTO's first twenty years have been successful because of members' decisions; whether its next twenty years are as successful will be up to the members as well.



**Roberto Azevêdo**  
Director-General

# 1



The headquarters of the WTO in Geneva, Switzerland.



# Introduction

The WTO's first 20 years have certainly not been without challenges. Its Doha Round of trade negotiations has made slow progress as WTO members grapple with the tough and complex issues raised by deepening integration. Its dispute settlement system is dealing with a growing number of trade conflicts – often involving the biggest trade powers and the most contentious policy questions – as the world's economies become more intertwined. As a main locus of global economic coordination, the WTO also finds itself at the centre of growing debates about globalization, development, climate change and many other issues that now transcend national borders – placing the world trading system in the public spotlight as never before. These challenges should not be underestimated. But nor should it be forgotten that they are the result not of the WTO's failings but of its successes. Having created an unprecedentedly open and integrated world trading order – the most far-reaching system of global economic cooperation in history – the WTO now faces the often formidable task of managing it.

To appreciate how far the WTO has advanced it is important to remember where – and why – it began. Today's system was a response to the economic chaos of the 1930s – the escalating protectionism, rival trade blocs and competitive currency devaluations that did so much to fuel the economic insecurity and international tensions that led to the Second World War. The initial post-war plan was to create an International Trade Organization (ITO) – alongside the then recently established International Monetary Fund (IMF) and World Bank – to rebuild an open and prosperous global economy as an essential foundation for world peace. But the United States declined to ratify the ITO charter, and the international community had to make do instead with the much more limited General Agreement on Tariffs and Trade (GATT) for the next five decades. When the WTO was created in 1995, it was not only the realization, in an updated form, of that failed attempt to create a global trade body: it also signalled the biggest reform and expansion of the international trading system since the Second World War.

Consider the system's widening membership. Whereas the GATT started with just 23 members in

1947, the WTO now has 161 – a fifth of whom have joined since its launch. With the accession of giants like China in 2001, Saudi Arabia in 2005 and Russia in 2012, all of the world's major economies are now part of a single economic system – covering 98 per cent of global commerce – for the first time. And while industrialized countries dominated the GATT, developing countries play a key role in managing the WTO, shaping its agenda and negotiating its agreements. That the WTO is successfully integrating a fast-rising developing world – easily the biggest economic transformation in history – into an open global economy represents one of its most significant achievements.

Consider too the system's success in bringing the rule of law to international economic relations. Now when countries clash over anti-dumping duties or aircraft subsidies, they battle it out, not in destructive trade wars, but in the WTO's dispute settlement system, its trade court. The WTO has dealt with five times as many disputes in 20 years – some 500 cases – as the GATT in almost 50 years. Use of the system is increasing fastest among developing countries – a reflection not only of their growing share of world trade, but of the importance they attach to the WTO's rules-based system for their continued trade-driven growth and development. Even members of regional agreements – such as the North American Free Trade Agreement (NAFTA) – often turn to the WTO to resolve their trade differences.

Then there is the system's success in lowering trade barriers. Average applied tariffs have been cut in half over the last twenty years (see Figure 1) – to less than 8 per cent from 15 per cent in 1995; and from almost 40 per cent after the war. The declines have been especially dramatic for certain countries: India's average tariff has fallen from 38.6 per cent to 13.5 per cent in two decades; Morocco's from 33.5 per cent to 12.5 per cent; Indonesia's from 25.6 per cent to 7.1 per cent. Today almost 60 per cent of world trade flows tariff free, while another fifth is subject to tariffs of less than 5 per cent. The accession of 33 new WTO members represented major market access negotiations in themselves, as did the negotiation of the first Information Technology Agreement (ITA) in 1996. The financial services and

telecommunications agreements have opened up key services sectors to international trade. In the same way, the WTO's fast-expanding Government Procurement Agreement (GPA) is opening up public procurement markets – representing 15 per cent or more of countries' GDP – to global suppliers and competition.

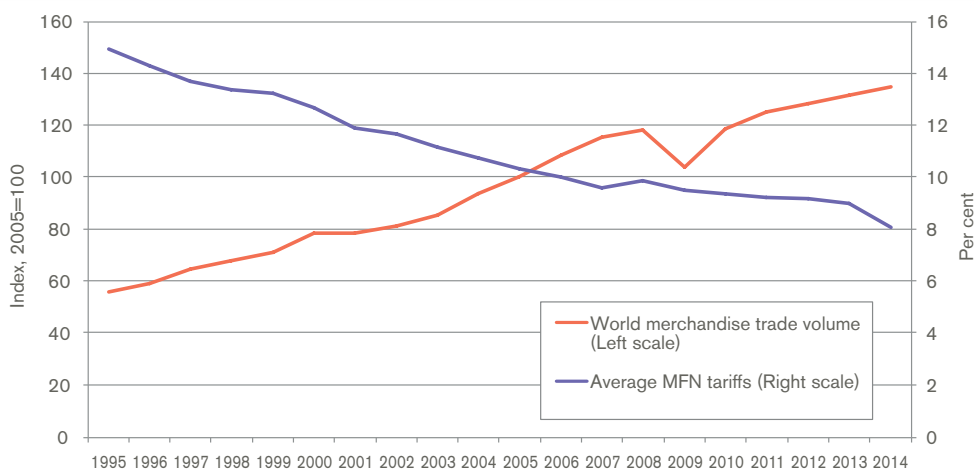
The WTO's most significant advance to-date is the 2013 "Bali Package" of trade reforms. In addition to measures aimed at addressing important agricultural issues and improving trade opportunities for least developed countries, Bali delivered a path-breaking Trade Facilitation Agreement (see Ch. 4) which, in simplifying and speeding up global customs procedures, could see average trade costs fall by over 14 per cent – an impact potentially greater than the elimination of all remaining global tariffs. And less than two years later, in July 2015, 50 plus WTO members have reached agreement on the scope of a second, expanded ITA deal that aims to eliminate tariffs on over 200 technology products – from semi-conductors, to telecommunications satellites, to MRI machines – representing 7 per cent of world trade valued at US\$ 1.3 trillion per annum.

The multilateral trading system cannot take all of the credit for global trade advances, of course. Bilateral, regional and now mega-regional trade agreements – not to mention unilateral liberalization initiatives – have become increasingly prominent features of the trade landscape. But it is important to recognize the extent to which these agreements are constructed – and dependent – on the foundations of the multilateral

system. Much of their basic DNA – principles, rules, procedures – is inherited directly from the GATT/WTO. In some areas, such as trade remedies, they often mirror WTO rules; in other areas, such as services, they build on WTO approaches and commitments; and where regional agreements break new ground, such as competition policy, their rules can be inherently non-discriminatory and open. Even the impact of regional tariff preferences is sometimes exaggerated. Despite the recent proliferation of regional agreements – with 264 notified to the WTO – 84 per cent of world merchandise trade still takes place on a non-discriminatory most-favoured nation (MFN) basis. This is partly because so much of world trade is already subject to zero tariffs, partly because regional agreements tend to avoid tackling the most difficult and protected sectors, such as agriculture, leaving these products to be traded at MFN rates.<sup>1</sup> The irony is that countries can engage so energetically in unilateral, bilateral and regional liberalization today in large measure because the world trading system is already so stable, strong and open. The fact that, like gravity, the system's impact often goes unnoticed makes it no less pervasive.

In order to support this more open and integrated world trading system, the WTO has taken on new responsibilities. One is the growing emphasis on transparency. Under the WTO, there are more rigorous obligations on members to notify the WTO of changes in trade policies, more frequent national trade policy reviews and new and more analytically intensive global trade monitoring reports. The aim of this work is not

Figure 1: Trade growth and tariff reductions, 1995-2014



Source: World Tariff Profiles, WTO databases and staff estimates.

<sup>1</sup> See *World Trade Report (2011)*.

only to keep markets open, but, just as importantly, to share information, improve understanding and encourage dialogue. Another major change is the WTO's increased emphasis on helping developing countries to benefit from trade openness and to make use of the system's rules. Not only has the WTO scaled up its own training and technical assistance activities – such as the new Trade Facilitation Agreement Facility to help developing countries take full advantage of the Trade Facilitation Agreement – but it is working more closely with partners to build trade capacity through vehicles such as the Enhanced Integrated Framework (EIF), the Standards and Trade Development Facility (STDF) and the Aid for Trade Initiative. Then there is the WTO's growing collaboration with other international organizations on other issues – technical standards, health policy, environmental regulations and dispute settlement – both reflecting and reinforcing its central role in global economic governance.

The clearest sign of the WTO's success is the expansion of world trade. Trade volumes have increased two-and-a-half times since the WTO's launch (see Figure 1) – and a staggering 37-fold since the GATT's creation – easily outstripping growth in world output. While almost all countries have seen their trade expand in the last two decades, it is developing countries' trade that has expanded most dramatically. The developing world's share of global merchandise trade has increased from 27 per cent in 1995 to over 43 per cent today – and its share of services trade has grown from around 25 per cent to 35 per cent over the same period. China, to take the most obvious example, is now the world's largest exporter; twenty years ago it ranked 11th. While the new trade giants have captured the lion's share of attention, developing countries of all sizes and regions – from Indonesia and Chile, to Cambodia and Qatar – are following a similar trajectory. The Doha Development Agenda (DDA), the current Round's official name, explicitly identifies development as its objective, but in fact development is a core aim – and a main accomplishment – of much of what the WTO does.

Not only has the WTO been instrumental in opening up and integrating the world economy; just as importantly, it has prevented it from closing down and fracturing in the face of repeated economic and geopolitical shocks. The waves of protectionism – and 1930s-style trade wars – that were predicted after the 1997 Asian financial crisis, the 2001 terrorist attacks on New York, or the 2008 "Great

Recession" never materialized, thanks in no small part to the underlying security and stability of the multilateral trading system. On the contrary, world trade has steadily grown after each crisis.

Why has the system succeeded? The simple answer is that more and more countries have recognized the benefits of open trade, shared rules and multilateral cooperation. In collectively pursuing their national economic interests through trade, countries have progressively constructed a shared international system – the modern WTO – on which their continued growth and development increasingly depends.

Nevertheless, the system has also encountered some significant difficulties. The repeated delays and missed deadlines in the long-running Doha Round are a cause for concern, especially as members increasingly look to bilateral and regional options. But if advancing and updating the WTO is proving challenging, it is precisely because more countries have a stake in the system, more countries want their issues addressed and everyone has more riding on a successful outcome. The debate is about whether the system is moving fast enough – and addressing everyone's concerns – not about whether it should be rolled back or abandoned.

This is why the 2013 "Bali Package" of trade reforms – by far the biggest advance in the Doha Round, since its launch in 2001 – was so important. In addition to further liberalizing world trade, Bali demonstrates that WTO negotiations can deliver results when members find common ground.

The reality is that in an increasingly open, multipolar, and hyperconnected global economy, the WTO is becoming more, not less, important. It provides the framework of rules governing today's open trading system and an essential mechanism for resolving trade conflicts. As the only global trade system, the WTO also provides the only forum where all countries, including the most powerful, can cooperate on the growing number of global trade issues that demand global solutions. Based on the core principle of non-discrimination, the WTO is a force for inclusion and cooperation, not exclusion and marginalization. The following pages explore how multilateralism in trade has worked over the past 20 years – and provide some lessons about how it can work in the future.

# 2



Signing in 1994 of the Marrakesh Agreement establishing the WTO.

# Building a trade organization – strengthening the institutional foundations for global trade cooperation

The WTO was created in 1995 in part to place a newly expanded multilateral trading system – the result of the far-reaching Uruguay Round of trade negotiations – on a more secure and permanent institutional foundation. In certain ways, the new institution did not differ dramatically from the GATT that it replaced. The WTO occupied the same headquarters in Geneva, the size of the Secretariat grew only modestly and the Director-General of the GATT became the Director-General of the WTO. The day-to-day work of the WTO – like the GATT – was carried out by member delegations in Geneva, trade officials in national capitals and the WTO Secretariat itself. More fundamentally, the WTO remained an intergovernmental, "member-driven" organization whose core function was to oversee and administer trade agreements negotiated among sovereign members.

But in other important ways, the WTO marked a decisive turning point. It had been given the same legal and organizational standing as other international organizations, including the IMF and the World Bank. The WTO was also assigned new responsibilities. In addition to administering the existing agreement on trade in goods (agricultural and manufactured), the WTO oversaw new agreements on services and intellectual property, the trade policy review process and the strengthened dispute settlement body. Several reforms accompanied these legal and administrative changes, the most high-profile of which was the requirement for biennial ministerial conferences to guide the work of the new organization. These formal changes to the institution helped to drive important informal changes as well. One of the most striking was members' growing engagement in the day-to-day work of the WTO. A much broader range of Geneva-based delegates now actively participate in meetings, play a prominent role in negotiations, and chair key bodies; capital-based officials routinely attend councils, committees and dispute settlement panels; and trade missions (members and observers) to the WTO's headquarters in Geneva have steadily increased,

from 121 in 1995 to 167 in 2015. These changes are a reflection partly of the WTO's growing scope and partly of members growing stake in the system.

## Establishment of the WTO – the building of a permanent institution

### Institutional foundations

Although the WTO is a relatively new organization, its origins can be traced back to efforts to build a new international order after the Second World War. A main goal of the international community was to construct an open, cooperative, and rules-based world trading system – and to avoid a repeat of the 1930s when escalating protectionism and rival trade blocs contributed to the collapse of world trade and the rise of international tensions. The intention was to create an International Trade Organization (ITO), but as already noted, the plan failed when the United States administration declined to seek Congressional ratification of the ITO charter in 1950. The ITO died – and the GATT was left as the only multilateral instrument governing international trade until the WTO was established a half century later.

In many ways, the early GATT was designed not to be an international organization – not least, to avoid the suspicions of the US Congress that an equivalent ITO had been created without its approval. The result was a small, "provisional" organization with limited autonomy and little power. Initially funded by a loan grant, the Secretariat was comprised of an Executive Secretary and eight staff members, housed in a temporary headquarters (two small villas) in the grounds of the Palais des Nations, the home of the United Nations in Geneva – a far cry from the large bureaucracies that ran the World Bank or the IMF.

Over the next half century, as the multilateral trading system continued to expand, GATT's structure gradually adapted. Contributions from members

replaced the loan grant in maintaining the Secretariat, the number of staff gradually increased (to 82 by 1960, 300 by the 1980s, and 416 by the 1990s), and in 1977 the GATT moved to Centre William Rappard, the current home of the WTO. In many ways, the "provisional" GATT gradually came to function as a de facto international organization. In 1990, towards the end of the Uruguay Round, the idea of establishing a permanent international trade organization to administer the new multilateral trade agreements being negotiated was floated. Although the idea was met with initial scepticism, and in some cases opposition, from a number of GATT members, consensus was finally achieved. On 1 January 1995, the World Trade Organization was established with 128 members and permanent institutional status – making it both the first new international organization of the post-Cold War era and the last international organization of the post-Second World War era.

### Five core functions

The Marrakesh Agreement, the WTO's founding charter, gave the WTO five specific functions – the first time that the organization's core role was clearly defined and explicitly agreed by members. It was to facilitate the implementation, administration and operation of WTO agreements; to provide a forum for negotiations among members concerning their multilateral trade relations, as well as a framework for the implementation of the results of such negotiations; to administer the Dispute Settlement Understanding (DSU), the legal mechanism for settling trade disputes (see Ch. 6); to monitor national trade policies through the Trade Policy Review Mechanism; and, to cooperate, as appropriate, with the IMF and with the World Bank and their affiliated agencies with a view to achieving greater coherence in global economic policy-making. Aside from these core functions agreed upon in Marrakesh, the WTO was also tasked with providing technical assistance and training for developing countries – a function which has become an increasingly important and resource-intensive focus of the WTO's work over the past two decades as new members join and as the WTO's policy remit has expanded (see Ch. 3). Members' growing engagement across all of these core functions – in committee work, dispute panels, policy reviews, technical assistance missions, and negotiating groups – is in many ways greater than the sum of its parts, improving, strengthening, and legitimizing the system on a day-to-day basis.

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***In 1990, towards the end of the Uruguay Round, the idea of establishing a permanent international trade organization to administer the new multilateral trade agreements being negotiated was floated.***

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### Basic principles, binding rules

Like the GATT, the WTO's work is founded on a number of core principles that run throughout its agreements and underpin the operation of the multilateral trading system. One key principle, considered a major pillar of the WTO, is non-discrimination, which takes two forms. The first – most-favoured nation (MFN) treatment – prohibits a member from discriminating between trade partners by offering more favourable treatment to another member or members. The second – national treatment – similarly prohibits discrimination between foreign and national suppliers, requiring that like goods are treated alike. Another principle is progressive liberalization. This calls for the opening up of markets by addressing both tariff and non-tariff barriers in a gradual manner, taking into account the particular circumstances of developing and least developed countries (LDCs). Finally, there is predictability. To ensure a stable and predictable trading environment, WTO members commit themselves to: binding commitments and rules; make trade rules transparent and known to the public; conduct trade policy reviews of each member; regularly report their trade measures to the relevant WTO committee, and promote fair competition as reflected in the provisions of WTO agreements, among others.

Where the WTO is different from the GATT is that its rules – with only a few exceptions – apply to all members. The GATT was also a legally binding system – not a best endeavours undertaking – but a number of its agreements, especially after creation of the Tokyo Round "codes", were optional, and its binding obligations (including tariff bindings) were less than universal. A major goal of the Uruguay Round was not only to expand the system's rules into areas such as services, investment and intellectual property, but to make them universal. Instead of the Tokyo Round's

à la carte approach to signing new rules, all WTO members were now committed to adhere (with a few exceptions) to all of the Uruguay Round's results. The universality of WTO rules was reinforced by the new integrated dispute settlement system that covered the new services and intellectual property agreements, as well as the original goods agreement (GATT).

But in an organization of 161 members – that differ widely in terms of size, trade interests, and levels of development – one size cannot fit all. Although most WTO rules apply to all members, not all members have undertaken the same levels of obligations. In the GATT, for instance, members schedule country-specific commitments for tariffs on goods (agricultural and non-agricultural) as well as in other quantifiable areas such as agricultural subsidies. In the General Agreement on Trade in Services (GATS), there are even more detailed means of scheduling country-specific commitments (including the extent to which members are prepared to offer national treatment in specific services sectors). Then there are the special and differential (S&D) treatment provisions for developing and least-developed countries across the GATT, GATS and TRIPS (Trade Related Intellectual Property) agreements. Finally, there are voluntary agreements – such as the Code of Good Practice for the Preparation, Adoption and Application of Standards (annexed to the Agreement on Technical Barriers to Trade) – as well as limited membership, or "plurilateral", agreements – such as the Government Procurement and Civil Aviation agreements. The "multi-speed" nature of members' commitments and obligations is one reason why WTO agreements are so complex.

### **A member-driven organization with consensus decision making**

The WTO, like the GATT, is run by its member governments. All major decisions are made by the membership as a whole – either by ministers (who meet at least once every two years) or by their ambassadors or delegates (who meet regularly in Geneva) – and are taken by consensus. In this respect, the WTO is unlike some other international organizations, such as the World Bank and the IMF, which delegate certain powers to a board of directors or the organization's head, and which take decisions on the basis of majority or weighted voting. This is a reflection of the contractual, rules-based nature of the WTO. As a matter of principle and practice, members cannot be expected to implement commitments to

which they have not agreed. The consensus rule also prevents the most powerful members from dominating the agenda, keeps everyone negotiating until compromises emerge, and legitimizes outcomes. The WTO's expanding rules – as well as its binding dispute settlement system – are possible only because all members have agreed to them through the consensus principle, the procedural equivalent of the MFN rule. It ensures that the WTO operates on the basis of cooperation, not coercion, and that its rules reflect, rather than override, the interests of national governments. The recent Trade Facilitation Agreement is a striking example of how consensus agreement – and the expanding size of the WTO membership – is no impediment to innovation and reform when members have a common interest in advancing the system.

Reflecting its expanded policy scope and widening membership, the WTO also has a more structured and extensive system of councils and committees within which members can share information, debate issues and take decisions. Topmost is the Ministerial Conference which meets at least once every two years. The requirement for formal, biennial ministerial conferences was an innovation of the WTO, designed to strengthen direction of the system, reinforce links with national governments and encourage high-level political engagement. Ministerial conferences, of which there have been nine since the WTO's inaugural Singapore conference in 1996, bring together trade ministers from all member governments and provide a key forum for discussing and deciding on any matter of concern under any of the WTO agreements. For example, at their last ministerial conference in Bali, ministers agreed on an ambitious package of trade measures aimed at streamlining customs practices, tackling important agricultural issues, and boosting the trade opportunities for least-developed country members (see below), in addition to overseeing the regular work of the WTO. Given their greater visibility and high-level participation, ministerial conferences invariably generate expectations of progress, and have emerged as increasingly important vehicles for clarifying, steering and energizing the work of the WTO – sometimes successfully, as in the case of Bali in 2013, sometimes less successfully, as in the case of Seattle in 1999.

Since ministers meet only once every two years, the General Council acts as the WTO executive body in the interim. The General Council is given

the general oversight of all WTO bodies (see Figure 2 for the list of councils and committees and the structure of the organization). For matters related to the settlement of disputes, the Council convenes as the Dispute Settlement Body (DSB) (see Ch. 6); for Trade Policy Reviews, it convenes as the Trade Policy Review Body (see Ch. 5). All three are in fact the same General Council – although they meet under different terms of reference. Three more councils, each handling a different broad area of trade, report to the General Council – the Council for Trade in Goods; the Council for Trade in Services; and the Council for Trade-Related Intellectual Property Rights – which in turn have a number of subsidiary committees reporting to them (the Goods Council, for example, has 11 committees reporting to it). Six other bodies (called "committees", because their scope is more limited) also report to the General Council, covering issues such as trade and development, the environment, and administrative issues. When the Doha Round was launched in 2001, ministers also established a Trade Negotiations Committee (TNC), under the authority of the General Council, but with the WTO Director-General as chair. The committee, which is also composed of all WTO members, supervises the overall conduct of the current Doha negotiations. The TNC meets roughly every two to three months, but the frequency of meetings depends on whatever members' priorities are at any given time and the state of play in the negotiations. The chairs of these bodies regularly report to the General Council on progress and developments in their respective areas, with the frequency depending on their respective mandates. Apart from overseeing these bodies, the General Council also oversees the appointment of the Director-General and substantive preparations for ministerial conferences.

### **Institutional challenges and opportunities**

Since WTO decisions are made by consensus, without voting, consultative mechanisms play a critical role in helping a diverse membership reach agreement. The WTO – even more than the GATT before it – deals with highly complex and fast evolving trade issues. Balancing the various perspectives, concerns and interests of its 161 members is not always easy. A range of different structures, configurations, and processes – some formal, others informal – have evolved in the WTO to help ensure, on the one hand, that all members'

interests are respected, and on the other hand, that compromise and agreement can be reached.

A common approach in the past was to tackle difficult issues in smaller groups before seeking consensus among the full membership. The Director-General would invite "representative" delegations – individually, in two's and three's, or in groups of 20-30 – usually at the level of heads of delegations, to try to thrash out differences and to find common ground. Similar smaller group consultations were often organized by the chairs of committees negotiating individual subjects. The fact that members voluntarily form their own coalitions – organized around regional affiliations, common negotiating positions, or shared developmental concerns – to increase their bargaining power often simplified these consultations. Group coordinators could ensure both "transparency" and "inclusiveness" by keeping their coalitions informed of negotiating progress and by representing the positions reached within their alliances.

As trade has grown more important to countries' economic interests – and as trade power in the system has become more diffuse – pressure has increased for broader, not narrower, member-driven engagement in the WTO. In this regard, the "bottom up" negotiations that led to the 2013 Trade Facilitation Agreement provide a potentially important model for other WTO negotiations. Easily the most inclusive, transparent, and "member-driven" negotiation in the GATT/WTO's history, all interested WTO delegations were actively engaged in the discussion and design of the agreement throughout the negotiating process, with the chair functioning mainly as a facilitator, there to broker a compromise based on delegations' wishes.

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***Group coordinators could ensure both “transparency” and “inclusiveness” by keeping their coalitions informed of negotiating progress and by representing the positions reached within their alliances.***

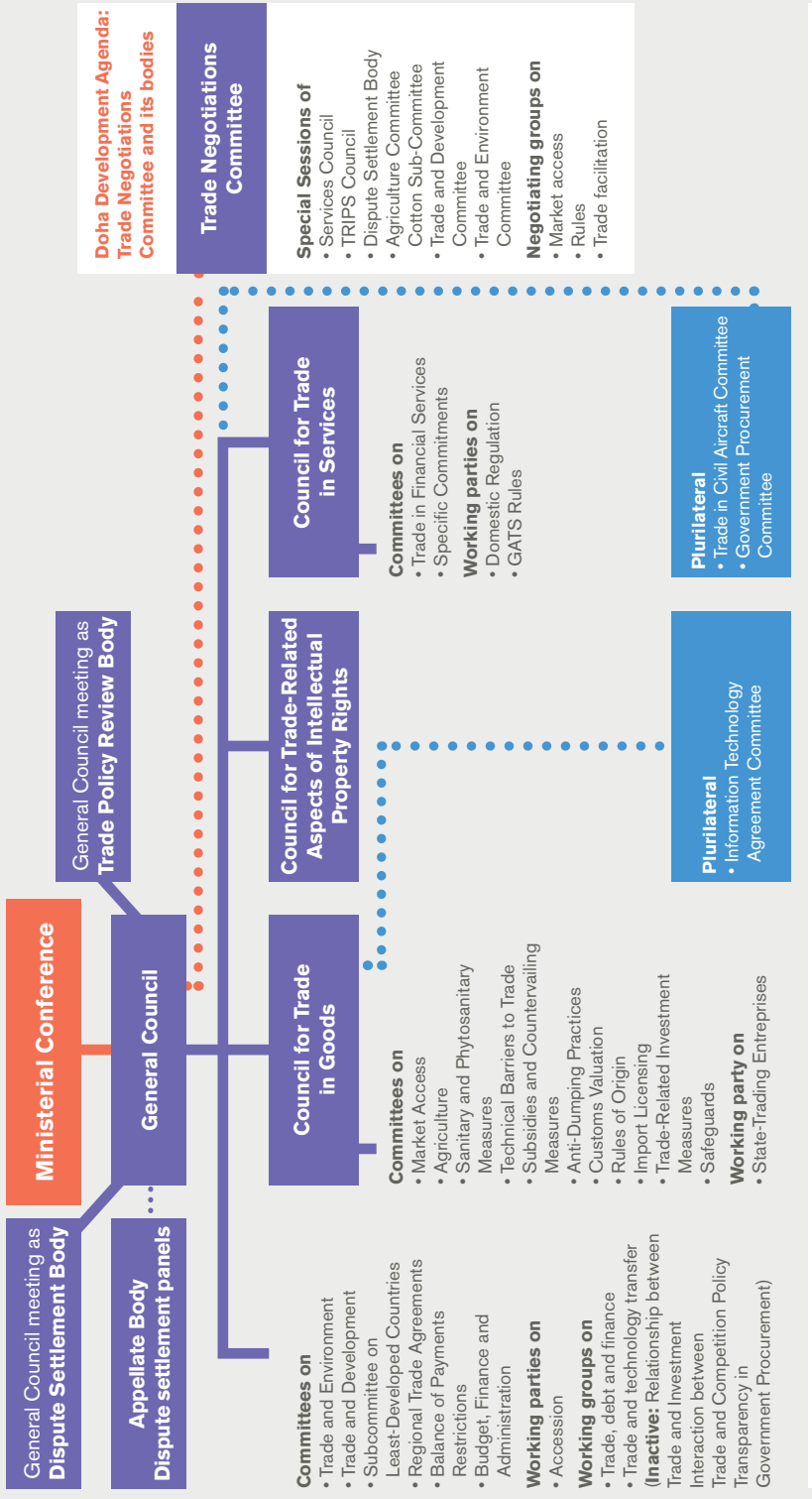
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Figure 2: WTO organization chart

**WTO structure**

All WTO members may participate in all councils, committees, etc., except Appellate Body, Dispute Settlement panels, and plurilateral committees.



**Key**

- Reporting to General Council (or a subsidiary)
- Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members
- Trade Negotiations Committee reports to General Council
- The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

Source: The World Trade Organization, WTO Organization Chart, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org2\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org2_e.htm)

The aim of all these mechanisms is to maximise transparency, dialogue, and inclusiveness – giving members both more ownership of negotiations and a greater stake in their success. Basically, there is no shortcut around the need to find consensus in the WTO. Indeed, it is precisely the global nature of the WTO which allows members to tackle the inherently "global" nature of many of the trade issues they currently face. The success of the trade facilitation negotiation underscores not only how new paradigms can deliver significant results, but how the WTO, regardless of its growing size and diversity, can achieve important and relevant trade reforms.

## WTO Secretariat

### Increasing responsibilities, more representative

As the WTO's membership has expanded – and as its policy scope has widened – the demands on the Secretariat have also increased. Tasked with providing WTO members with independent, expert support on all of the activities that are carried out by the organization, the Secretariat's main role is to supply professional support and advice for the various councils and committees, to provide training and technical assistance for developing countries, to monitor and analyse developments in world trade, to provide information to the public and the media, and to organize the ministerial conferences. The Secretariat also increasingly provides legal assistance in the dispute settlement process, advises governments wishing to become members of the WTO, and compiles and analyses data on members' specific trade measures and on broader world trade flows. As the WTO's policy remit has expanded, the Secretariat has also extended its expertise into new areas such as services, intellectual property, sanitary and phytosanitary measures (SPS), and trade and environment.

Staff members come from more than 80 WTO member countries and are mainly economists, lawyers, statisticians and international trade policy specialists, as well as professionals needed to provide information technology, human resources, language, and administration services. The WTO's recruitment policy is based on the principle of equal opportunity for all, regardless of gender, nationality, race or religion, with the objective of ensuring the broadest possible diversification of the Secretariat. Since 1995, there has

been a 69 per cent increase in the number of members represented in the Secretariat, while staff (excluding linguistic staff) from developing and least-developed countries has increased from 21 per cent in 1995 to 37 per cent in 2014. Overall women outnumber men at the WTO by 330 to 304; among professional staff, 41 per cent are female and 59 per cent male.

### Lean and efficient

Despite the WTO's key role in overseeing the world trade system, its Secretariat remains one of the smallest and leanest among major international institutions. Its budget stood at roughly US\$ 205 million in 2015 – of which personnel expenditures accounted for US\$ 137 million – and the Secretariat has just 634 regular staff members. This makes the WTO much smaller than its Bretton Woods cousins – the IMF has 2,600 staff members and a budget of US\$ 840 million; the World Bank has 4,500 staff members and a budget of roughly US\$ 2 billion – and smaller than other Geneva-based organizations, such as the International Labour Organization (ILO) and the World Intellectual Property Organization (WIPO).

Unusually for an international organization, the WTO's budget is based on a "user pays" principle – the budget contribution from each WTO member is fixed according to that member's share of international trade. The Secretariat's budget increased following the establishment of the WTO, but has been subject to zero growth in recent years in response to the wishes of members. Although the increasing demands made by an expanding membership – for dispute settlement, trade monitoring, technical assistance and capacity building, and public outreach, as well as for technical and analytical work in committees – has so far been met by rebalancing resources within the Secretariat, it is questionable whether rising demands can continue to be met in the future without increasing available resources.

## Negotiations in the WTO

### Process of negotiations in the WTO

At their 2001 ministerial conference in Doha, WTO members recognized the need not only to expand trade liberalization and update the system's rules, but to put the needs of developing and least-developed countries at the heart of a new round of negotiations. The Doha Ministerial Declaration, which launched the newest round of multilateral trade negotiations, states

that members "shall continue to make positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development". The negotiations cover about 20 areas of trade, ranging from agriculture, goods and services, to intellectual property, the environment and dispute settlement. The fundamental aim is to achieve major improvements in the international trading system – and improve the trading prospects of developing countries – through lower trade barriers and revised trade rules. While members conduct the negotiations among themselves, the Secretariat provides assistance in servicing the different consultations, negotiations and discussions.

The Doha Ministerial Declaration lays down, in paragraphs 47 to 52, the principles governing the working of the Trade Negotiations Committee (TNC). These paragraphs, referred to in Table 1,

prescribe the conduct of the negotiations. Like the previous Uruguay Round, the Doha Round is conceived as a "single undertaking" – whereby various issues under negotiations are treated as a single package that all members must adhere to – although the Declaration also makes clear that "agreements reached at an early stage may be implemented on a provisional or a definitive basis".

Given the member-driven nature of the WTO and its bottom-up approach, negotiations are being dealt with through the different negotiating groups established under the TNC. These groups, as well as their mandates and their objectives, are described in Table 2. The negotiating groups are called special sessions, so the agriculture negotiations, for example, are being carried out in the special session of the Committee on Agriculture. Non-agricultural market access (NAMA) is the name given to the committee that deals with non-agricultural goods trade.

Table 1: Principles governing the practices of the TNC

Principle	Mandate
<b>Paragraph 47 A Single Undertaking</b>	"With the exception of the improvements and clarifications of the Dispute Settlement Understanding, the conduct, conclusion and entry into force of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis."
<b>Paragraph 48 Participation</b>	"Negotiations shall be open to: all Members of the WTO and States and separate customs territories currently in the process of accession"... but "decisions on the outcomes of the negotiations shall be taken only by WTO Members."
<b>Paragraph 49 Transparency</b>	"The negotiations shall be conducted in a transparent manner among participants, in order to facilitate the effective participation of all. They shall be conducted with a view to ensuring benefits to all participants and to achieving an overall balance in the outcome of the negotiations."
<b>Paragraph 50 Special and Differential Treatment</b>	"The negotiations and the other aspects of the Work Programme shall take fully into account the principle of special and differential treatment for developing and least developed countries."
<b>Paragraph 51 Sustainable Development</b>	"The Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected."
<b>Paragraph 52 Subjects Not Negotiated</b>	"Those elements of the Work Programme which do not involve negotiations are also accorded high priority. They shall be pursued under the overall supervision of the General Council."

Source: Doha Ministerial Declaration, adopted on 14 November 2001, WT/MIN(01)/DEC/1.

Table 2: Negotiating groups established under the TNC

Negotiating Groups	Mandates	Objective
<b>Special Session of the Committee on Agriculture</b>	Paragraphs 13 & 14 of the Doha Ministerial Declaration	To establish a fair and market-oriented trading system through fundamental reform that encompasses strengthened rules and specific commitments on support (see page 43) and protection, to correct and prevent restrictions and distortions in world agricultural markets.
<b>Special Session of the Council for Trade in Services</b>	Paragraph 15 of the Doha Ministerial Declaration	To promote the economic growth of all trading partners and the development of developing and least developed countries.
<b>Negotiating Group on Non-Agricultural Market Access (NAMA)</b>	Paragraphs 16, 31 (iii) & 50 of the Doha Ministerial Declaration	To reduce or eliminate tariffs, including tariff peaks, high tariffs, tariff escalation and non-tariff barriers.
<b>Special Session of the Council for TRIPS</b>	Paragraphs 17, 18 & 19 of the Doha Ministerial Declaration	To promote both access to existing medicines and research and development into new medicines; to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits.
<b>Negotiating Group on Rules</b>	Paragraphs 28 & 29 of the Doha Ministerial Declaration	To clarify and improve disciplines under Article VI of the GATT 1994 and on Subsidies and Countervailing Measures; and to clarify and improve disciplines and procedures under the existing WTO provisions applying to regional trade agreements.
<b>Special Session of the Dispute Settlement Body</b>	Paragraph 30 of the Doha Ministerial Declaration	To negotiate on improvements and clarifications of the DSU.
<b>Special Session of the Committee on Trade and Environment</b>	Paragraphs 31, 32, 33 & 51 of the Doha Ministerial Declaration	The reduction or elimination of tariff and non-tariff barriers to environmental goods and services; To serve as a forum to identify and debate environmental aspects of the negotiations to help reflect sustainable development goals.
<b>Special Session of the Committee on Trade and Development</b>	Paragraphs 42, 43, 44 & 51 of the Doha Ministerial Declaration	To serve as a forum to identify and debate developmental aspects of the negotiations to help reflect sustainable development goals.
<b>Sub-Committee on Cotton</b>	Decision adopted by the Committee on Agriculture, Special Session on 19 November 2004	To address cotton ambitiously within the agriculture negotiations, and to address trade-distorting policies affecting the cotton sector regarding market access, domestic support, and export competition.

Source: Doha Ministerial Declaration, adopted on 14 November 2001, WT/MIN(01)/DEC/1 and the decision adopted by the Committee on Agriculture, special session on the establishment of the Sub-Committee on Cotton on 19 November 2004, TN/AG/13.

## Post-Bali work programme

The package of trade reforms agreed at the WTO's Bali Ministerial Conference in December 2013 marked an important step forward for the multilateral trading system. Encompassing the Trade Facilitation Agreement, decisions on food security and cotton, and measures regarding least-developed country trade, the "Bali Package" demonstrated

that WTO negotiations – and the DDA in particular – could deliver results. To maintain this momentum, WTO members are reflecting on how to give new impetus to the remaining issues of the DDA, to build on Bali's success, and lay the groundwork for another successful ministerial conference in Nairobi in December 2015 which will again deliver tangible outcomes for WTO members.

Table 3: The Bali Package: decisions adopted by ministers in Bali

<b>Trade facilitation</b>	
Trade Facilitation Agreement*, Bali Ministerial Decision	WT/L/911
November 2014 decision	WT/L/940
<b>Agriculture</b>	
General Services*, Ministerial Decision	WT/L/912
Public Stockholding for Food Security Purposes*, Ministerial Decision	WT/L/913
November 2014 decision	WT/L/939
Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture*, Ministerial Decision	WT/L/914
Export Competition*, Ministerial Declaration	WT/L/915
<b>Cotton</b>	
Ministerial Decision	WT/L/916
<b>Development and least-developed country (LDC) issues</b>	
Preferential Rules of Origin for Least developed countries**, Ministerial Decision	WT/L/917
Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least developed countries**, Ministerial Decision	WT/L/918
Duty-Free and Quota-Free Market Access for Least developed countries**, Ministerial Decision	WT/L/919
Monitoring Mechanism on Special and Differential Treatment**, Ministerial Decision	WT/L/920

\* see Ch. 4 \*\* see Ch. 3

Source: Bali Ministerial Declaration (WT/MIN(13)/DEC) and Statement by the Chairman of the General Council delivered at the special meeting on 27 November 2014 (WT/GC/165).

Some parameters have emerged to help frame the discussion. These included the recognition of the centrality of development in the negotiations, the interconnectedness of the main issues (agriculture, non-agricultural market access, and services), the need to maintain flexibility and political will, and the importance of focusing on doable outcomes. There is also recognition that while key negotiations in the DDA continue to face difficulties, other negotiations have delivered major results – from the landmark Trade Facilitation Agreement, to the LDC services waiver, to the establishment of a transparency mechanism for Regional Trade Agreements (RTAs) – thanks to members' willingness to use innovative approaches. Then there are the WTO's negotiating successes outside the framework of the DDA, including the accession of 33 new members, the financial services and telecoms agreements, the widening and deepening of the GPA, the first ITA, and now the breakthrough on an expansion of the ITA, the WTO's first tariff cutting deal in 18 years. The Doha Round may be making slow progress, but the WTO as a whole has not stood still.

## Conclusion

For almost 50 years, the multilateral trading system functioned without a permanent organization. All that changed in 1995 with the creation of the WTO. With its wider agreements, expanded membership and increased responsibilities, members determined that the multilateral system needed to be based on a stronger institutional foundation. The WTO has not only lived up to these challenges, it has successfully adapted to an external environment that has changed dramatically over the last two decades. Members' growing engagement across its expanding functions – committee work, dispute settlement, trade policy monitoring, technical assistance and capacity building, growing interaction with other international agencies, as well as on-going negotiations – has served to strengthen and improve the organization on a day-to-day basis. As a result, the WTO has emerged as a more important, relevant, and legitimate institution than the GATT ever was.

Welcome | Bienvenue | Bienvenido

Republic



of Seychelles



161<sup>st</sup>  
ème  
er

WTO Member  
Membre de l'OMC  
Miembro de la OMC

# WTO “widening” – more members, more participation

The fact that so many new members have joined the WTO – and that existing members are participating more widely in its work – underlines the growing relevance of the WTO and how powerful its gravitational pull has become. Over the past two decades, 33 economies have acceded to the WTO – ranging from economic giants like China and Russia, to small island states like Vanuatu, Seychelles and Cabo Verde. In terms of shares of world trade, economic weight and sheer population, this represents the biggest – and the most complex – expansion in the multilateral trading system’s history. These new entrants account for a fifth of the WTO’s membership (see Box 1). With the expanding coverage of WTO rules, the global economy has become further integrated, creating new business opportunities on the basis of increased competitiveness and shared values, such as transparency, predictability and the rule of law.

At the same time, participation in the organization’s work and negotiations has expanded significantly, particularly among developing-country members. Whereas industrialized countries, especially the so-called “Quad” group of the United States, the European Union, Japan and Canada, once dominated the GATT, developing countries now play a leading role in the management of the WTO. They are key players in current WTO negotiations and they are active users of the dispute settlement mechanism. This reflects the growing importance that developing-country members attach to being involved in the WTO’s work and the success of WTO programmes designed to encourage wider participation in – and ownership of – the organization. The result is an increasingly diverse, interconnected global trading system whose management is now both more important and more complex.

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***The 33 new WTO members represent a major share of world trade and output and have dramatically expanded the global coverage of WTO rules.***

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## Accessions: building a “global” WTO

An important goal of the newly created WTO was to make the organization universal in scope and coverage. In the past two decades, the WTO has gone a long way towards achieving these goals. The 33 new WTO members represent a major share of world trade and output and have dramatically expanded the global coverage of WTO rules. As of 2014, new members accounted for roughly a fifth of world trade and world gross domestic product (GDP) and over a quarter of the world’s population. China alone brought in 13 per cent of the world’s GDP, 17 per cent of its trade and 21 per cent of its population.

Already the WTO encompasses 98 per cent of world trade and 96 per cent of world GDP, and within a decade it will likely be universal. An additional 22 countries, including eight least-developed countries (LDCs), are negotiating entry, with their accession negotiations at various stages of maturity. Afghanistan, Kazakhstan and Liberia should conclude their negotiations in 2015. Together they account for 2 per cent of world trade and GDP and 6 per cent of the world’s population. When they eventually join, it will leave just 14 of the world’s 192 countries outside the WTO, and there is every expectation that most of these will also soon seek membership. Several of these economies – Timor-Leste, South Sudan and Somalia – have signalled that beginning negotiations to join the WTO is a priority. Other economies are, more discretely, signalling their intention to seek membership of the WTO as an organization governed by transparency, good governance and the rule of law.

## More complex and longer accession negotiations

Unlike the original 23 members that launched the GATT in 1947, each subsequent member has had to negotiate its entry terms with the existing membership. By and large, these terms have become more comprehensive over time, reflecting not just the expansion of the system’s rules and the more interests in play, but also the increased scrutiny that is now attached to the accession process and organizational rules.

**Box 1: Article XII members (members that have acceded since the WTO's creation)**

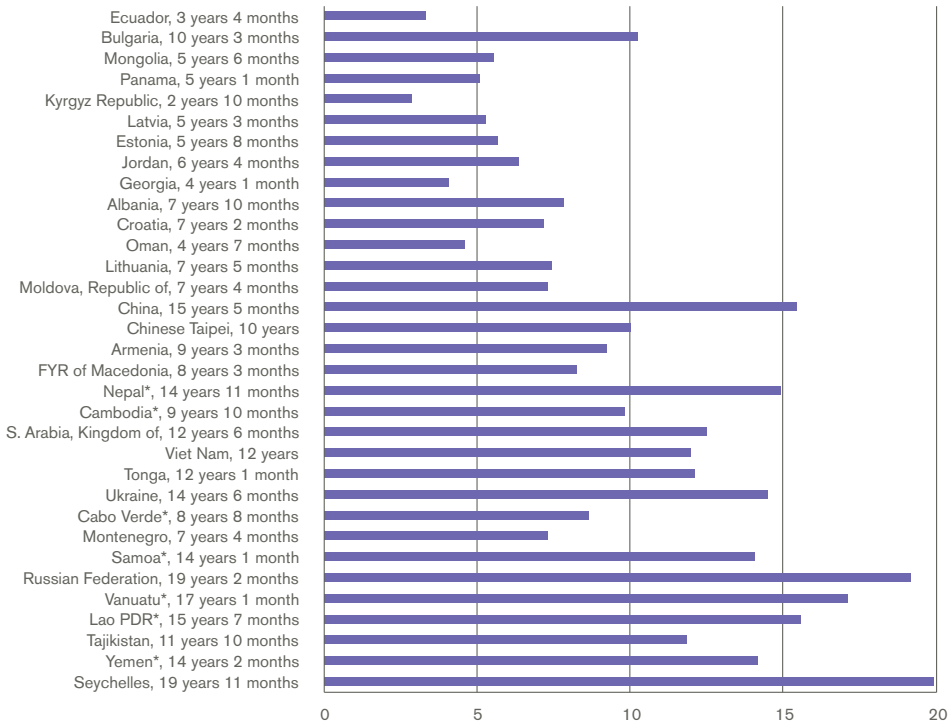
In the immediate post-1995 stage, new WTO members were called "recently acceded members" (RAMs), but they are now referred to as "Article XII" members. From the earliest to the most recent members, they are: Ecuador, Bulgaria (1996); Mongolia, Panama (1997); Kyrgyz Republic (1998); Latvia, Estonia (1999); Jordan, Georgia, Albania, Oman, Croatia (2000); Lithuania, Moldova, China (2001); Chinese Taipei (2002); Armenia, FYR of Macedonia (2003); Nepal, Cambodia (2004); Saudi Arabia (2005); Viet Nam (2007); Tonga (2007); Ukraine, Cabo Verde (2008); Montenegro, Samoa, Russian Federation, Vanuatu (2012); Lao People's Democratic Republic (PDR); Tajikistan (2013); Yemen (2014); and Seychelles (2015).

In the past 20 years, WTO accession negotiations have taken on average nine and a half years, with Seychelles taking the longest, almost 20 years, and the Kyrgyz Republic the shortest, just under three years (see Figure 3). The duration of each accession process varied depending on the negotiating commitment of the acceding economy, the degree to which its trade rules were already WTO-consistent and the mix and complexity of the subject matter of the negotiation, which differed from one accession to another.

**Reforming acceding governments**

Since accession agreements, or "protocols", are international treaty obligations, they have a wide-ranging effect both on the multilateral system and on the national economies that have undertaken them. This means that accession negotiations can prove an important instrument, not only for updating multilateral trade rules, but for helping acceding governments to undertake needed domestic reforms.

Figure 3: Length of time of completed accessions: from application date to membership date



\* Least developed country (LDC). Cabo Verde and Samoa acceded as LDCs, but graduated from LDC status in December 2007 and January 2014, respectively. Source: WTO Secretariat



**Reinforcing WTO rules**

Accession negotiations concluded since 1995 have covered some 45 core areas of WTO rules. Beyond the WTO Agreement, to which all members are bound, acceding countries are also often bound by additional terms and conditions specifically negotiated for their WTO membership. The 33 Article XII members have accepted 1,361 specific commitments.

Figure 4 shows the frequency of the specific commitments that acceding countries have undertaken across the 45 core areas as a result of their accession negotiations, while Figure 5 provides a breakdown of the total number of commitments by core area.

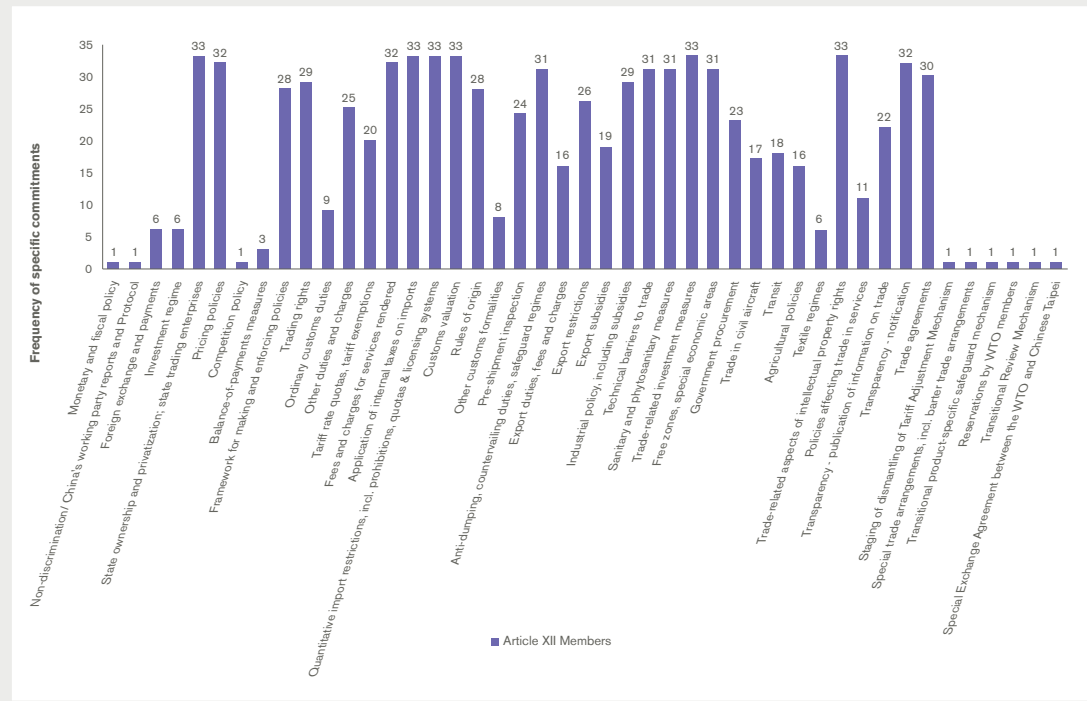
Although the pattern of commitments reconfirms existing WTO rules and disciplines, the results of accession negotiations have, in certain instances, clarified and enhanced existing rules through the acceptance of so-called "WTO-plus" commitments. These are commitments over and

above those laid down in the WTO Agreement for a specific area. An example would be that in two thirds of the completed accessions, Article XII members have committed to regularly notify the WTO of their privatization programmes, something that older members were not obliged to do. Other examples include specific commitments in areas such as intellectual property rights and state-trading enterprises. The latter are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and/or import.

**Triggering and anchoring domestic reforms**

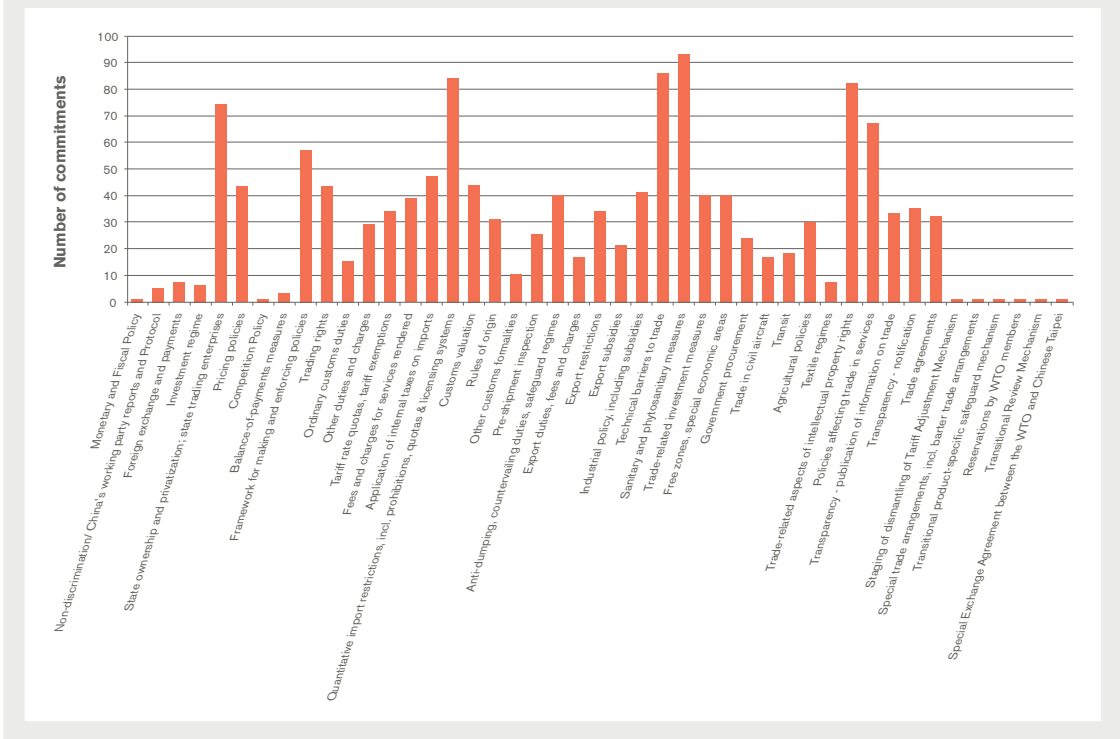
As part of their accession negotiations, acceding governments are asked to assess the conformity of their domestic trade-related legislation and practices with WTO rules. They fill in a comprehensive legislative action plan, which contains a full inventory of enacted WTO-related legislation and provides a roadmap for remaining WTO-related domestic

Figure 4: Frequency of specific commitments by chapters/sections, as contained in accession working party reports and accession protocols



Source: Osakwe, C. (2015), Contributions and lessons from WTO accessions: the present and future of the rules-based multilateral trading system. In: Osakwe, C. and Dadush, U. co.ed. WTO Accessions and Trade Multilateralism: Case Studies and Lessons for the WTO at Twenty. Cambridge University Press

Figure 5: Total number of commitments of Article XII members by chapters/sections, as contained in accession working party reports and accession protocols



Source: Osakwe, C. (2015), Contributions and lessons from WTO accessions: the present and future of the rules-based multilateral trading system. In: Osakwe, C. and Dadush, U. co.ed. WTO Accessions and Trade Multilateralism: Case Studies and Lessons for the WTO at Twenty. Cambridge University Press

legislative work. As part of this process, acceding governments provide the WTO with copies of relevant legislation, laws and regulations in one of the three official WTO languages. For the 33 completed WTO accessions, over 7,000 laws and associated implementing regulations were presented to the WTO and carefully reviewed by the membership.

WTO accession is thus directly linked to a legislation-based process of WTO-consistent domestic reforms. Acceding governments are requested in the negotiations to implement accession-specific obligations, typically before accession or, in some cases, with duly negotiated transition periods. Table 4 provides an overview of the legislation that has been notified to the WTO and enacted as part of the 33 completed WTO accessions. The magnitude of legal and regulatory changes involved in the accession protocols of China and

the Russian Federation is particularly notable and reflects the complexity of their economies.

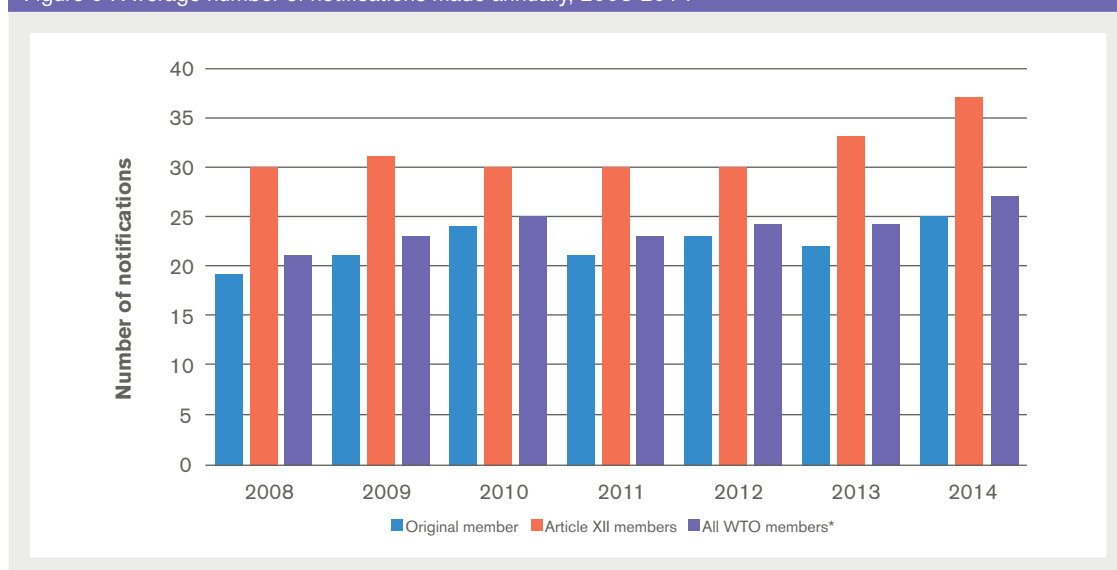
One associated benefit of the accession process is that recently acceded members are well equipped to implement their obligations and to exercise their rights from day one of becoming members. A case in point is the record of Article XII members in notifying the WTO promptly of changes to their trade rules and regulations – as all WTO members are obliged to do – compared with that of original members. Figure 6 shows that between 2008 and 2014, Article XII members had a consistently higher "notification" rate than original members. This positive trend can be attributed to the fact that the accession process requires Article XII members to put in place appropriate mechanisms for submitting notifications upon accession.

Table 4: Accession-related laws and regulations enacted by Article XII members

Article XII member	Legislative/ regulatory changes	Article XII member	Legislative/ regulatory changes
Ecuador	70	FYR of Macedonia	133
Bulgaria	26	Nepal	47
Mongolia	33	Cambodia	85
Panama	50	Saudi Arabia	205
Kyrgyz Republic	155	Viet Nam	139
Latvia	77	Tonga	84
Estonia	126	Ukraine	449
Jordan	55	Cabo Verde	84
Georgia	106	Montenegro	133
Albania	107	Samoa	111
Oman	90	Russian Federation	1,166
Croatia	135	Vanuatu	170
Lithuania	137	Lao PDR	170
Moldova	174	Tajikistan	141
China	2,300	Yemen	69
Chinese Taipei	167	Seychelles	250
Armenia	112		

Source: Osakwe, C. (2015), Contributions and lessons from WTO accessions: the present and future of the rules-based multilateral trading system. In: Osakwe, C. and Dadush, U. co.ed. WTO Accessions and Trade Multilateralism: Case Studies and Lessons for the WTO at Twenty. Cambridge University Press

Figure 6 : Average number of notifications made annually, 2008-2014



\* This includes original members and Article XII members.

Source: Beslać, P (2015), Strengthening transparency in the multilateral trading system: the contribution of the WTO accession process. In: Osakwe, C. and Dadush, U. co.ed. WTO Accessions and Trade Multilateralism: Case Studies and Lessons for the WTO at Twenty. Cambridge University Press

## Lowering barriers and increasing trade opportunities

The accession of new members, especially large economies like China, has significantly lowered trade barriers and expanded trade opportunities over the past 20 years. Acceding governments have set tariff ceilings, known as "bound rates" in WTO parlance

(see page 35), for virtually all their agricultural and non-agricultural goods, thus significantly improving the certainty and predictability of their trade regimes. In contrast, existing members have, on average, "bound" only 74 per cent of their product tariffs. As shown in Table 5, the average final bound rate of Article XII members for all products is 13.8 per

Table 5: Market access results from 33 Article XII accessions

	Goods: final bound rates				Services
	Binding coverage	All products	Agricultural products	Non-agricultural products	Number of services sub-sectors
Original members	74%	45.5%	65.4%	34.0%	55
Article XII members	99.9%	13.8%	20.1%	12.9%	103
1 Ecuador	100	21.7	25.7	21.2	66
2 Bulgaria	100	24.5	35.6	23.0	80
3 Mongolia	100	17.5	18.9	17.3	37
4 Panama	100	23.4	27.6	22.7	70
5 Kyrgyz Republic	100	7.5	12.8	6.7	136
6 Latvia	100	12.7	34.6	9.4	121
7 Estonia	100	8.6	17.5	7.3	103
8 Jordan	100	16.3	23.6	15.2	110
9 Georgia	100	7.4	13.0	6.5	125
10 Albania	100	7.0	9.5	6.6	108
11 Oman	100	13.7	27.6	11.6	97
12 Croatia	100	6.1	10.4	5.5	127
13 Lithuania	100	9.3	15.2	8.4	110
14 Moldova	100	7.0	14.0	5.9	147
15 China	100	10.0	15.7	9.2	93
16 Chinese Taipei	100	6.3	16.9	4.7	119
17 Armenia	100	8.5	14.7	7.6	106
18 FYR Macedonia	100	7.1	12.9	6.3	116
19 Nepal*	99.4	26.0	41.4	23.7	77
20 Cambodia*	100	19.1	28.0	17.7	94
21 Saudi Arabia	100	11.1	15.4	10.5	120
22 Viet Nam	100	11.4	18.5	10.4	105
23 Tonga	100	17.6	19.2	17.3	90
24 Ukraine	100	5.8	11.0	5.0	137
25 Cabo Verde*	100	15.8	19.3	15.2	103
26 Montenegro	100	5.1	10.8	4.3	132
27 Samoa*	100	21.1	25.8	20.4	80
28 Russian Federation	100	7.8	10.8	7.3	122
29 Vanuatu*	100	39.7	43.6	39.1	69
30 Lao PDR *	100	18.8	19.3	18.7	79
31 Tajikistan	100	8.0	10.4	7.6	111
32 Yemen*	100	21.1	24.9	20.5	78
33 Seychelles	100	9.5	16.9	8.3	97

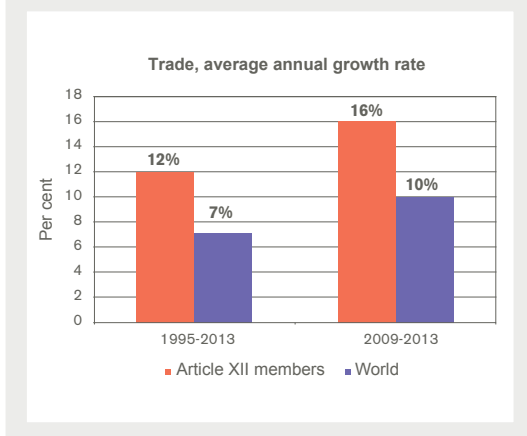
Source: Osakwe, C. (2015), Contributions and lessons from WTO accessions: the present and future of the rules-based multilateral trading system. In: Osakwe, C. and Dadush, U. co.ed. WTO Accessions and Trade Multilateralism: Case Studies and Lessons for the WTO at Twenty. Cambridge University Press

\* Least-Developed Countries

cent, significantly below the corresponding 45.5 per cent of original members. Table 5 also indicates that Article XII members have made significant specific commitments in services sectors and sub-sectors, including in financial and business services.

With their overall more liberal commitments, Article XII members have consistently registered substantially stronger trade growth than original members. Figure 7 shows that from 1995 to 2013 the average annual trade growth rate of Article XII members was 12.4 per cent, almost double the original members' 7.4 per cent. It also shows that after the 2008 financial crisis, Article XII members recovered faster than original members.

Figure 7: Trade performance of Article XII members



Source: Based on data from the Director-General's 2014 Annual Report on WTO Accessions (WT/ACC/23)

### "Cost of entry" versus "cost of exclusion"

The fact that the WTO continues to expand, and is getting ever closer to the goal of universal membership, is testament to the organization's growing importance as a platform for coordinating international trade policy and securing international trade relations. In a kind of "network effect", the importance of the WTO – whether in terms of market access, policy coordination, shared rules or dispute settlement – increases as more countries join. The key question for those economies still outside the WTO is no longer "what is the cost of joining?" but rather "what is the cost of exclusion?"

### Empowering developing countries

Expanding the WTO's membership is one side of creating a truly global trading system. Ensuring that all countries benefit from membership is the other. The idea that many developing – and especially least-developed – countries cannot take full advantage of the trade opportunities opened up by trade negotiations, because they lack the technical expertise or export capacity, may seem like conventional wisdom today. But it represents a big change in the institution's thinking since the Uruguay Round. Beyond modest training and technical assistance programmes, the old GATT devoted relatively little attention and few resources to assisting developing countries to strengthen their technical expertise, participate in the day-to-day work of the organization and strengthen their trade institutions, legal systems and productive capacities.

This changed with the creation of the WTO and the growing acknowledgement that many members faced significant technical and resource challenges in implementing the ambitious results of the Uruguay Round. The organization's training and technical assistance expanded rapidly and it began to leverage this work with other agencies, thanks to new coordinating bodies like the Enhanced Integrated Framework (EIF), a six-agency programme chaired by the WTO that aims to integrate LDCs into the global economy by providing them with trade-related assistance.

With the Doha Round, the WTO's technical assistance and capacity-building efforts accelerated. Technical assistance commitments were built directly into almost all aspects of the negotiating mandate. Apart from the EIF, which is being further strengthened (see Ch. 7), the Standards and Trade Development Facility (STDF), a partnership of various international organizations, was created to help developing countries build their capacity to implement international

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sanitary and phytosanitary (SPS) standards (see below and Ch. 7). In 2005 the Aid-for-Trade Initiative was launched with the ambitious goal of mobilizing all relevant international agencies and donors to scale up their trade-related technical assistance and capacity building programmes and financial resources (see below). More recently, the WTO's Trade Facilitation Agreement broke new ground by explicitly tying members' implementing of the agreement to the provision of technical and financial assistance.

All of this underscores how the WTO's core mission has expanded. WTO technical assistance has become instrumental in helping developing countries, including the most vulnerable among them, to participate more effectively in the multilateral trading system and take full advantage of the opportunities it provides. Experience shows that technical assistance must be rigorously framed and monitored yet at the same time be flexible enough to respond to the changing needs of beneficiaries and the evolving priorities of the organization. Experience has also demonstrated the importance of coherence among technical assistance products, of enhancing the follow-up of activities and the assessment of long-term outcomes, and of securing adequate and timely funding and effective coordination among technical assistance stakeholders.

### **WTO's growing focus on technical assistance**

The evolution of technical assistance and capacity building as a core WTO function has similarly been guided by the desire to strengthen the Secretariat's activities in areas where it has a comparative advantage. Over the last two decades, at the demand of members, the WTO has become a much more important provider of technical assistance to governments. Technological change in telecommunications and computing has at the same time revolutionized the way WTO delivers technical assistance and training. Taken together, these changes have resulted in stronger support to developing countries, with the WTO having organized around 4,500 technical assistance and training activities and trained more than 46,000 government officials since the launching of the Doha Round.

Technical assistance has largely focused on LDCs to help them put trade issues at the centre of their national development strategies and to integrate themselves into the multilateral trading system.

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## ***Over the last two decades, at the demand of members, the WTO has become a much more important provider of technical assistance to governments.***

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LDCs receive targeted and tailor-made technical assistance to address their particular needs. Face-to-face and e-learning courses, reference centres (see below) and internship programmes are some examples of technical assistance activities that have helped LDCs and other capacity-constrained members strengthen their trade-related knowledge base, negotiation capacity and national trade policy formulation. Reflecting the importance attached to them, LDCs have been associated with over 43 per cent of all technical assistance activities.

### **More funding and more accountability**

The increased focus on technical assistance raised the need for more predictable funding. In 2002 the Doha Development Agenda Global Trust Fund (DDAGTF) was established to receive extra-budgetary contributions from WTO members to finance technical assistance plans. This striving for more predictable funding has gone hand-in-hand with greater efforts to assess the effectiveness of technical assistance programmes, particularly in view of the growing global emphasis on transparency, accountability and stricter budgetary discipline. Those considerations led to the adoption by the WTO of a results-based management (RBM) approach, integrating strategy, resources, processes and measurements to ensure that assistance and training met the goals laid down for them. RBM has become an indispensable management tool in the whole technical assistance cycle, from planning through to implementation and evaluation of results.

Efforts to ensure the coherence of the different technical assistance products and programmes, and exploit their synergies, have also been crucial in improving their effectiveness. The fulcrum of those efforts has been the Progressive Learning Strategy (PLS), which introduced in 2012 a sequencing approach built on the understanding that training is a progressive process and that the level of knowledge to be attained in a particular subject

should reflect the needs of different learners. The application of the PLS has made it possible to improve results in line with RBM, and permitted beneficiaries to meet more effectively the challenges of a more interdependent trade environment.

### **Harnessing e-learning and partnerships**

The spread of relatively low-cost IT-based technologies has helped place distance learning at the core of the WTO's technical assistance efforts. E-learning has proved an extremely versatile instrument, making it possible to deliver technical assistance to an expanding number of government officials, with more than 4,500 officials successfully completing an e-learning course in 2014. Today, approximately half of all those who benefit from WTO technical assistance are trained through e-learning and efforts continue to enhance and expand the programme as a cost-effective tool to meet the technical assistance needs of a large and growing number of beneficiaries. The availability of these IT tools has likewise allowed the development of a network of "virtual WTO outposts" around the globe – the WTO reference centres. These centres, which are established within a government department, an academic institution or a business organization, such as a chamber of commerce, facilitate participation in WTO online training and serve as information points. Making the most of technical assistance resources has also involved the development of partnerships with other international organizations and agencies involved in the delivery of technical assistance at different levels (see page 73).

### **Helping non-resident members to participate**

When the WTO was launched, a quarter of its 128 members had no trade mission in Geneva, making it virtually impossible for them to monitor, let alone participate in, the organization's expanding web of committees, councils and negotiating groups. So the WTO launched "Geneva Week" in 1999 to bring capital-based officials from non-resident members to WTO headquarters and provide them with a series of interactive and intensive briefings. The event, which became biannual after the launch of the Doha Round, also provides non-resident delegations with an opportunity to interact with the WTO Secretariat and other delegations. Since its inception, Geneva Week has been instrumental in ensuring inclusiveness, increasing transparency and building capacity, as well as

addressing other challenges that non-resident countries face.

### **CTD – facilitating dialogue on trade and development**

The Committee on Trade and Development (CTD) remains the central forum to discuss all issues related to trade and development, a forum in which developing countries can flag their interests and needs and raise their concerns. Once every two years, the CTD reviews the participation of developing countries in the multilateral trading system.

Special and differential treatment (S&D) for developing countries is a defining feature of the multilateral trading system, and in WTO agreements there is an assortment of legal provisions crafted in recognition of these members' special development needs. These provisions generally give developing countries and LDCs greater flexibility in the implementation of WTO agreements and decisions. Periodic review and discussion on these S&D provisions and their implementation is a regular feature of WTO work, especially in the CTD. Recognizing the concerns raised by developing countries with regards to the effectiveness and implementation of these provisions, trade ministers included a special work programme in the Doha Round to review all S&D provisions with a view to making them more precise, effective and operational.

But developing countries had long been demanding a dedicated forum to review and monitor implementation of S&D provisions and where necessary propose improvements. This was achieved at the WTO ministerial meeting in Bali with the setting up, within the CTD, of a special monitoring mechanism that will periodically analyse, review and discuss S&D provisions and their implementation. The mechanism is further testimony to the WTO's sensitivity in responding to developing country concerns.

Transparency is a cardinal pillar of the WTO architecture. Within the CTD there are two transparency mechanisms, one to monitor aspects of regional trade agreements (RTAs) and the other to monitor preferential trade arrangements (PTAs). Under PTAs, the beneficiaries, mainly poorer developing countries, do not have to offer concessions in return for the tariff and other trade advantages they receive. The transparency mechanism for RTAs reviews all

regional trade agreements – which are, as the name implies, pacts between regional trading blocs – notified to the WTO under the so-called enabling clause. This clause in the WTO Agreement allows developed countries to give more favourable trade treatment to goods from developing countries than to goods from other developed countries. In 2010 the CTD decided to set up a similar mechanism for PTAs. The establishment of the two mechanisms and their implementation under the CTD has greatly contributed to members' better understanding of certain types of preferential agreements and arrangements that favour developing countries.

### **Focusing on least-developed countries**

No group faces bigger challenges to participating effectively in and benefitting from the multilateral trading system than LDCs. The LDC group in the WTO has evolved considerably, particularly over the last 15 years, partly as a result of the support it has received from the Secretariat in its day-to-day coordination. This has resulted in greater awareness and involvement on the part of LDCs, as manifested by the large number of proposals submitted by the LDCs in the DDA negotiations. The deliberations in the CTD sub-committee on LDCs have also contributed in advancing the systemic issues of interest to LDCs in the WTO. A broad-based LDC work programme, originally adopted in 2002 and later revised in July 2013, is examining questions such as greater market access opportunities for LDC products and the need for enhanced technical assistance and capacity building. This programme is also monitoring the progress of LDC accessions to the WTO.

The WTO as a whole has taken a number of significant decisions to help LDCs integrate into the multilateral trading system and better benefit from the market access openings in global trade. These include guidelines for facilitating the accession of LDCs that make entry terms more flexible and parameters to help LDCs accede at a pace and in a manner consistent with their development, trade and

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***Over the 2000-13 period, the share of LDCs in world goods trade more than doubled from 0.48 per cent to 1.17 per cent.***

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financial needs. Another example is the extension of the transition period for LDCs under the Trade-related Aspects of Intellectual Property Rights (TRIPS) Agreement, which gives them until 2021 to implement its conditions. The extension recognizes the special needs of LDCs and allows them time to create a viable technological base of their own and better integrate into the global economy before joining.

But perhaps the most notable move, from the perspective of ensuring greater market access for LDCs, was the decision taken at the 2005 Hong Kong Ministerial Conference and further strengthened eight years later at the Bali Ministerial Conference to provide duty-free and quota-free (DFQF) market access to LDC products. At present nearly all developed country members of the WTO provide close to full DFQF market access to products originating from LDCs. In addition, key developing country trading partners of LDCs have come forward with schemes providing substantial degrees of DFQF access to LDC products. And while simplifying the accompanying "rules of origin" – laws, regulations and administrative procedures which determine a product's country of origin – has always been a challenge, progress was made at Bali with the adoption of a set of multilateral guidelines that should help make it easier for LDC exports to qualify for preferential market access. Also at Bali, the WTO initiated a process aimed at speedily and effectively implementing a previously agreed LDC services waiver, which allows members to grant preferential treatment to services and services suppliers of LDCs.

All these efforts have resulted in concrete gains for the LDCs. LDC exports of goods and services have seen steady growth since the establishment of the WTO. Over the 2000-13 period, the share of LDCs in world goods trade more than doubled from 0.48 per cent to 1.17 per cent. The share of LDC exports in world commercial services trade also improved from 0.42 per cent to 0.68 per cent. The direction of LDC exports over the last decade attests to the increased level of trade between developing countries, so-called South-South trade, with developing countries accounting for more than 50 per cent of LDC merchandise exports in 2013.

Finally, in the ongoing Doha negotiations it is clear that there is a broad understanding among members that LDCs should not be required to reduce their



"bound" duties for agricultural and non-agricultural products, and they will also not be expected to undertake any new commitments in services negotiations. This flexibility will allow the LDCs the necessary time and policy space to integrate their economies better into the multilateral trading system.

### Challenges of being small and landlocked

The WTO has also made an important contribution in helping members that face specific challenges in participating in and benefitting from world trade, either because their economies are very small or because they are particularly vulnerable to economic uncertainties and environmental shocks. In 2001 members adopted a specific work programme to promote the fuller integration of small, vulnerable economies into the multilateral trading system. A number of decisions have been taken, including allowing these economies to continue subsidizing – for a limited duration – some of their key domestic industries. The CTD has been working on issues relating to non-tariff and other regulatory measures which small economies face when trying to export or participate in global value chains. These small economy countries are active within the WTO, as evidenced by the number of proposals they have tabled in the Doha Round.

Other WTO members that need special multilateral efforts to help them overcome their geographical disadvantages and increase their participation in the multilateral trading system are the landlocked developing countries. The WTO has a long history of involvement here. Work started with the implementation of the Almaty Programme of Action for Landlocked Developing Countries (LLDCs), adopted at an international ministerial conference in the Kazakh city in 2003. The conference urged the easing of customs procedures and the implementation of preferences for LLDC commodity exports, among other recommendations. WTO involvement has continued in the current Vienna Programme of Action for the decade 2014-24. The latter identifies a number of priority areas for action, in particular, implementation of the Trade Facilitation Agreement.

### Standards and Trade Development Facility

The Standards and Trade Development Facility (STDF), created in September 2002, is a global partnership of five international agencies – the Food and Agriculture Organization of the United

Nations (FAO), the World Organisation for Animal Health (OIE), the World Bank, the World Health Organization (WHO) and the WTO. It supports developing countries in implementing international food safety, animal and plant health standards, guidelines and recommendations that help them gain and maintain market access. In doing so, the partnership contributes to broader development goals of sustainable, economic growth, poverty reduction and food security. Improved food safety and reduction of pest and disease burdens have a key role to play in raising agricultural production, reducing the prevalence of food-borne diseases, increasing food availability and in protecting the environment.

The STDF acts as a coordinating and financing mechanism. As part of its coordination role, the STDF aims to increase awareness, identify and disseminate good practice in SPS-related technical cooperation and strengthen collaboration among the founding partners of the STDF, donors, selected developing country experts and a range of other organizations involved in SPS capacity building. In the longer term, the STDF aims to enhance effectiveness in the design and implementation of SPS projects and initiatives. To this end, the STDF also undertakes collaborative work on a range of thematic topics. Recently it completed research work on trade facilitation in the context of the WTO SPS Agreement. This work will provide timely input towards the inclusion of SPS-related components in broader trade facilitation programmes in an effort to reduce SPS trade costs and strengthen SPS border management.

As a financing mechanism, the STDF provides support and funding for the development and implementation of projects that promote compliance with international standards and SPS requirements. Applications are particularly encouraged from LDCs. A total of 66 project preparation grants (PPGs), which help beneficiaries articulate their SPS needs and develop technically sound and sustainable project proposals, and 72 project grants have been approved and funded by the STDF since its inception. To date, the STDF has devoted 58 per cent of its project and PPG resources to LDCs and other low-income countries. The STDF particularly supports projects that address SPS constraints through regional approaches and that are collaborative, replicable and innovative in scope.

A project implemented in Thailand and Viet Nam, for instance, adopted a "value chain" approach, looking at market opportunities and constraints for horticultural products, and produced e-learning training tools in local languages. A project in Bangladesh is helping small-scale shrimp producers to improve compliance with international SPS requirements by strengthening good aquaculture practices and establishing cluster management to accomplish responsible and sustainable farming. A regional project in Africa is supporting five cocoa-producing countries to produce good quality cocoa that complies with the relevant international regulations on pesticide residues and other harmful substances. In Costa Rica, a STDF project developed a framework for a nationwide traceability and monitoring system to register and track the movement of cattle throughout the country.

### **Trade Facilitation Agreement Facility**

One of the most important – and novel – features of the new Trade Facilitation Agreement is the way it links developing and least-developed members' requirement to implement the Agreement with their capacity to do so. The Agreement also states that assistance and support should be made available to help members achieve that capacity. To help meet these objectives, the Director-General launched a new Trade Facilitation Agreement Facility (TFAF) in 2014 – the first time that the WTO has spearheaded such a facility. Its mandate is to assist members to find the necessary implementation support from multilateral and regional agencies, bilateral donors, and other stakeholders by helping to match needs to sources of assistance. The Facility will also complement other agencies' support efforts with its own activities and resources. It will serve as a repository for training materials, case studies and best practices on implementation – to leverage the valuable experience accumulated by developing countries and their development partners in past efforts – and it will provide training programmes and support materials to assist members to fully understand the Agreement. In circumstances where no other sources of funding are available, the Facility will also offer two types of grants: the first is a project preparation grant (in an amount up to US\$ 30,000) to assist in circumstances where a member has identified a potential donor but lacks the resources to develop a project for that donor's consideration. The second is a project implementation grant (in an amount up to US\$ 200,000) for "soft infrastructure" projects, such as modernization of customs laws

through consulting services, in-country workshops, or training of officials on the implementation of Trade Facilitation Agreement provisions.

### **Aid for Trade**

Trade rules and greater market access are a necessary but not sufficient condition for developing countries, and the LDCs, to participate and benefit from international trade. The Aid for Trade initiative was launched to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to benefit from WTO agreements and expand their trade. It covers technical assistance and infrastructure development, as well as productive capacity development to assist countries in investing in industries and sectors that can help diversify their exports. It also offers so-called provision of adjustment assistance in meeting the adjustment costs associated with trade liberalization and the loss of government revenue from import tariffs.

The WTO plays a catalytic and advocacy role in the Aid-for-Trade (AfT) process by ensuring that the many agencies responsible for development understand the trade needs of WTO members and observers and deliver solutions. It provides a platform for discussion between all Aid-for-Trade stakeholders to ensure coherence of trade-related development assistance mechanisms and their effective implementation.

Since the launch of the initiative, the global volumes of Aid for Trade have improved significantly and there are innumerable success stories of how it has enhanced production and trade and led to higher incomes. The success of the initiative can be seen, *inter alia*, in the resource mobilization figures. Despite fiscal pressures in donor countries, AfT flows have increased steadily since 2005. According to the Organisation for Economic Cooperation and Development (OECD), AfT commitments reached US\$ 55.4 billion in 2013, an increase of US\$ 22.2 billion or 119% over average expenditure in the period 2006-08. This in turn resulted in higher disbursements, which totalled US\$ 41.6 billion in 2013 – an increase of US\$ 18 billion or 94% over the same three year period of 2006-08.

The success of the initiative is also borne out by case stories submitted in connection with monitoring and evaluation exercises. Among them was a project

to improve Belize's main transport corridor. It is estimated that the project will bring savings to road users of US\$ 53 million over the next 20 years. Another case story reported on a project to increase the competitiveness of Cambodian rice production that resulted in a doubling of national rice exports in three years. Regional Aid-for-Trade initiatives improved the movement of cargo along the Northern Transport Corridor linking Kenya to Uganda and other landlocked developing countries in the region by shortening transit times at borders with a consequent increase of trade volumes. Transit times at the border were reduced from three days to three hours; dwell time – the time between goods arriving at and then leaving a port – at Mombasa was reduced from 19 to 13 days, and transit time along the Mombasa–Nairobi–Kampala section of the route dropped from 15 to five days.

Despite the success of the Aid-for-Trade initiative, challenges remain. Aid-for-Trade flows to LDCs, for example, have fluctuated. After declining in 2011 and 2012, flows to LDCs recovered in 2013. One challenge is therefore how to ensure that Aid for Trade goes to those most needing it. Another continuing challenge is how to engage the private sector and support the ability of developing country firms – and in particular small and medium-sized enterprises (SMEs) – to connect to value chains, both regionally and globally, and drive inclusive economic growth. In this context, the challenge is to use Aid for Trade to catalyse other financing flows.

## Conclusion

The rapidly expanding role of developing countries – including many LDCs – in world trade over the past two decades has been both a cause and an effect of their growing participation in the WTO. Their share in global merchandise trade increased from 27 per cent in 1995 to over 43 per cent in 2014. In the same period their share of commercial services trade rose from 25 per cent to 35 per cent. Negotiations under the DDA are focused on further improving market access conditions – especially for developing countries – and making trade rules fairer and more equitable. The biggest advance in the Round so far, the 2013 "Bali Package" of trade reforms, already delivered important gains for developing countries. It included decisions to enhance the transparency of preferential rules of origin so that LDCs can benefit more from them, to improve the implementation of duty free, quota free market access

for LDCs, and to operationalize the waiver allowing members to grant preferential market access to LDC services and service suppliers. The package also included the landmark Trade Facilitation Agreement which will dramatically lower trade costs for all WTO members, but especially for developing and least-developed country members. Likewise, the July 2015 agreement to expand the scope of the Information Technology Agreement also promises to deliver major trade benefits to many developing countries. There is also an increasingly focused effort to help developing countries improve their supply-side capacity and trade-related infrastructure through targeted technical assistance and Aid for Trade. Although a lot needs to be accomplished, both on the multilateral and the domestic level, to better integrate these countries in the multilateral trading system, it is clear that the system has been critical to their rapid export-led growth and economic development in recent years.

# 4



NINTH MINISTERIAL CONFERENCE

DECEMBER 2013

BALI - INDONESIA

MINISTERIAL CONFERENCE



DIRECTOR-GENERAL



CHAIRMAN

Director-General Roberto Azevêdo and Conference Chairman Gita Wirjawan at the conclusion of the Bali Ministerial Conference in December 2013.

# WTO “deepening” – reducing barriers and expanding rules

The new WTO promised to usher in a more open and integrated global economy. The Uruguay Round – the most ambitious multilateral trade negotiation in history – had resulted in global tariff reductions of 40 per cent, the liberalization of new sectors such as agriculture, textiles and services, and firm commitments to undertake future sectoral negotiations under the newly created WTO. In the Marrakesh Declaration, which ended the Round and launched the WTO, trade ministers expressed their hope that “the trade liberalization and strengthened rules achieved in the Uruguay Round would lead to a progressively more open world trading environment... for the benefit and welfare of peoples”.

Since then, the WTO has successfully overseen the implementation, administration and operation of the far-reaching Uruguay Round agreements. It has also furthered the objectives of the Round’s built-in agenda by providing a forum for the negotiation of new trade agreements. While the negotiations under the Doha Round have not come to a close yet, a number of sectoral and single issue negotiations have been successfully concluded in areas ranging from services, to information technology products, to trade facilitation, while the plurilateral Government Procurement Agreement continues to expand and attract new members. This chapter focuses on the various achievements of the WTO in opening trade through tariff cuts and new disciplines.

## Consolidating and expanding tariff commitments

Global tariffs have continued to decline for both developed and developing countries, reaching as low as 8 per cent on average in 2014 for applied rates (see below). But for a number of agricultural and manufactured products, they still represent an important component of trade costs. While tariff reduction or elimination certainly stimulates trade and improves market access, binding also contributes towards integrating world economies by providing predictability. When members of the WTO negotiate tariff cuts, what they negotiate upon are the

levels at which they agree to cap the customs duties imposed on goods imported from other WTO members. These caps, the so-called “bound” duties, are specified in each member’s schedule of concessions (see Box 2). Even if for some members there is a gap between the (higher) level of tariffs they have committed to levy and the (lower) duty that is actually applied, the existence of tariff bindings ensures predictability and transparency. This is because all stakeholders involved in trade, including the private sector and all economic operators, have access to the schedules and know exactly the maximum level of customs duty that can be charged by any member on a given product.

### Box 2: WTO schedules of concessions are “living” documents

Schedules of concessions are legally binding documents where WTO members spell out their tariff-reduction commitments for the products included, as well as other types of concessions. The schedules result from multilateral rounds of negotiations, so the current WTO schedules are those of the Uruguay Round. However, the schedules are living documents that change over time, as a result, for instance, of rectification of the information contained or renegotiations of tariff concessions, as well as unilateral liberalization. The schedules need to be constantly updated to reflect changes in the international classification of goods, due to evolving trade patterns and technological progress. The Uruguay Round schedules were negotiated on the basis of the 1996 product classification (see below), which is very different from today’s trade patterns. The WTO Secretariat assists members, particularly developing countries and LDCs, in updating their schedules. By the end of 2014, more than half of WTO members had changed their schedules into the 2007 product classification, produced according to the World Customs Union’s Harmonized System (HS), and work has already started to adapt these again to the latest version – the 2012 classification (HS 2012).

## First Information Technology Agreement

The Information Technology Agreement (ITA) was the first and most significant tariff liberalization arrangement negotiated in the WTO. It was concluded on 13 December 1996 at the first WTO ministerial conference, held in Singapore. The Ministerial Declaration on Trade in Information Technology Products was initially signed by 29 members, but participation quickly increased to 42 by the time the agreement was implemented in mid-1997. Following the recent accession of Seychelles, the ITA has 52 participants (counting the EU as one), whose share in world trade in IT products is approximately 97 per cent. Under the ITA, customs duties on a variety of IT products are eliminated. The tariff concessions are included in the WTO schedule of concessions of each ITA participant, so all WTO members, even those not party to the agreement, can benefit from the trade opportunities generated by tariff liberalization in the IT sector, thanks to the most-favoured-nation (MFN) principle.

The ITA eliminated import duties on a large number of high technology products, including computers, telecommunication equipment, semi-conductors, scientific instruments, etc. Trade in IT products was estimated at US\$ 1.6 trillion in 2013, almost three times as much as when the agreement was signed, accounting for approximately 9 per cent of global merchandise exports. The agreement has significantly contributed to reducing the price of IT products for both consumers and importers, and lowered the cost of inputs for producers and exporters of highly sophisticated technological products. Because products covered by the agreement and their intermediate inputs can move across borders without paying duties, the IT industry has the opportunity to specialize and take advantage of large economies of scale.

Unlike other traditional sectors (such as cars or other manufactured goods), IT products are light in weight and high in value, making long-distance

transportation less expensive and geographical expansion easier. This is one of the reasons why global value chains – where the different stages of a production process are located across different countries – have proliferated in this sector, leading to improved productivity and industry efficiency. Between 30 per cent and 60 per cent of IT products are comprised of imported inputs or are used as inputs by others. Global sourcing has become a common practice in the IT sector, which has also led to a high level of technology adaptation.

Tariff liberalization under the ITA has particularly benefitted WTO members, including developing countries, engaged in global production networks, by making available more affordable, high-quality products and by establishing new IT-enabled industries and services. This has been the case, for instance, for Malaysia, which has attracted foreign investments in the IT sector as a result of its participation in the ITA.

## A second, expanded Information Technology Agreement

Conscious of the major technological advances since the conclusion of the initial ITA in 1996, a number of WTO members decided in May 2012 to launch sectoral negotiations aimed at eliminating tariffs on a new generation of information technology products that were becoming increasingly critical to world trade and economic growth. After 17 rounds of negotiations, 50 plus WTO members reached agreement in July 2015 on the coverage of a second, expanded information technology deal. Among the additional 201 products covered are new semi-conductors, optical lenses, GPS navigation systems, magnetic resonance imaging machines, ultra-sonic scanning apparatus, machine tools for manufacturing printed circuits, telecommunications satellites and touch screens. Participating governments will now work to conclude their implementation plans in time for the WTO's 10th Ministerial Conference which will be held in Nairobi in December 2015. The agreement also contains a commitment to tackle non-tariff barriers in the IT sector, and to keep the list of products covered under review to determine whether further expansion may be needed to reflect future technological development. According to preliminary estimates by the WTO Secretariat, these products represent 7 per cent of world trade – larger than global trade in automotive products or trade in textiles, clothing, iron and steel combined – worth US\$ 1.3 trillion annually.

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***The Information Technology Agreement (ITA) was the first and most significant tariff liberalization arrangement negotiated in the WTO***

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### Reducing tariffs on pharmaceutical and public health goods

Another interesting example of tariff liberalization under the WTO concerns pharmaceutical products. During the Uruguay Round, 12 WTO members negotiated a sectoral initiative to liberalize trade in a number of pharmaceutical products. These members, later joined by others, eliminated tariffs on pharmaceutical products and chemical intermediates used for their production. Although the agreement was only adopted by some members of the WTO, it covered the bulk of trade in pharmaceutical products at that time. Since the original negotiations were concluded, members have met periodically to review the agreement and expand the list of items covered. Four reviews have been completed, the last of which took place in 2010. A varying number of members participated in such reviews, which expanded significantly the number of products that participants agreed to trade on a duty-free basis.

Because these tariff reductions are implemented on an MFN basis, they benefit all members of the WTO. Over this period, developed countries have largely eliminated tariffs on additional health-related products. Tariffs applied by other countries have also fallen significantly, but the picture is still mixed. Developing countries tend to structure tariffs to promote local production, while LDCs apply lower tariffs on formulations than on bulk medicines and pharmaceutical inputs.

### Consolidating tariffication and addressing under-filled tariff rate quotas

A fundamental change introduced in the Uruguay Round was to prohibit the use of agriculture-specific, non-tariff measures and submit all trade in agricultural products to ordinary customs duties alone. Under this so-called "tariffication" process, non-tariff barriers were replaced with tariff equivalents, some of them very high. However, a very limited number of members, which for various reasons were not in a position to immediately introduce a tariff-based regime on certain products, were permitted temporarily to retain their non-tariff barriers, subject to strict conditions. This "special treatment" exemption was granted to four members (Japan, the Republic of Korea and the Philippines for rice and Israel for cheese and sheep meat) during the Uruguay Round, and to Chinese Taipei (again for rice) when it acceded in 2002. As of January 2015, this special treatment ceased to apply, meaning all agriculture trade within the WTO is tariff only, with one exception; the Philippines has a further waiver for rice until June 2017.

At the conclusion of the tariffication process in agriculture, members recognized that additional mechanisms were needed to ensure market access for agricultural products. The solution they negotiated was tariff rate quotas (TRQs). Under TRQs, imports within a previously established quota carry a lower duty than those outside it, with duties on the latter often being very high. TRQs were meant to ensure that quantities imported before the coming into effect of the Agreement on Agriculture of the Uruguay Round could continue to be imported, while also guaranteeing that some new quantities of imports carried rates that were not prohibitive. Over the past two decades the experience with TRQs has been mixed. Some TRQs have been fully utilized, others not. While some "under-fill" can be explained by market conditions, in others it is the way that governments administer their TRQs that inhibits rather than facilitates imports.

Recognizing the potential influence of administrative methods, WTO members took steps at the 2013 Bali Ministerial Conference to improve how certain TRQs are administered. They decided that if a quota is persistently under-filled – and information sharing and consultations do not lead to any improvement – the importing government has to take one of a prescribed set of steps to remove impediments. One such step would be to accept quantities within the quotas on a first-come first-served basis until the quota is used up. Developing countries have greater flexibility in their choice of administrative method.

### Consolidating and expanding the regulatory framework for trade in goods

The Uruguay Round shifted the mandate and scope of the GATT/WTO by expanding the ambit of trade negotiations, traditionally focused on tariffs, into new and sensitive areas of national economic policy-making. In tackling services, technical regulations, health standards, trade-related intellectual property, and other inside-the-border issues, the Uruguay Round produced a stronger and clearer legal framework for the conduct of international trade. The WTO has facilitated the implementation, administration and operation of this expanded regulatory framework. It has also furthered its objectives by negotiating an agreement on trade facilitation (see below) and by clarifying and consolidating disciplines in a number of other areas.

### Box 3: The Textiles and Clothing Agreement: phasing-out quantitative restrictions

From 1974 until the end of the Uruguay Round, trade in textile goods was governed by the Multifibre Arrangement (MFA), which established quotas limiting imports into countries whose domestic industries were facing serious damage from rapidly increasing imports. This conflicted with the GATT's preference for tariffs over quantitative restrictions; it was also an exception to the MFN principle, because quotas specified how much the importing country was going to accept from individual exporting countries.

In 1995 the WTO's Agreement on Textiles and Clothing (ATC) replaced the MFA, with the aim of fully integrating the sector into GATT rules. On 1 January 2005, all quotas in the sector ended. As a result, imports of textiles and clothing, which had risen from US\$ 319.4 billion to US\$ 494.2 billion in the 10 years to 2005, jumped to US\$ 804.8 billion in 2013. The progressive reduction of tariff protection also contributed to the growth of trade in textile and clothing products, with the world average import duty on these products falling from 19 per cent in 1996 to 14 per cent in 2013.

### Box 4: The Trade Facilitation Agreement in a nutshell

#### What does it seek to do?

Expedite the movement, release and clearance of goods, including goods in transit, and provide for effective customs cooperation.

#### How is this envisaged to take place?

By setting out targeted and effective rules that will be implemented by all 161 WTO members, complementing the existing regulatory framework.

#### What is so special about this agreement?

Apart from being the first multilateral trade agreement successfully concluded in Geneva for two decades, and the first global accord negotiated under the auspices of the WTO, the agreement has a number of innovative features. It stands out for its novel implementation architecture – allowing developing and least developed-country members to determine their own implementation schedules and by explicitly linking implementation to their technical and financial capacity – breaking new ground in how a WTO agreement is applied by the membership.

### Trade Facilitation Agreement

When negotiations on a trade facilitation agreement began few predicted that they would end so successfully. The conditions seemed challenging. The initial mandate was rather limited, restricting efforts to an "exploratory and analytical" nature. It took five years – from the 1996 Singapore ministerial to the 2001 Doha Ministerial Conference – to bring work closer to the realm of negotiations, and another three to actually get the talks off the ground. In addition, work had always been linked to developments in other areas. For the first 10 years – from the preparations for the Singapore ministerial meeting up until the 2004 decision to launch negotiations – trade facilitation was part of a package. As one of the four so-called "Singapore issues" (named after the ministerial which saw their addition to the WTO agenda), its advancement was linked to the others. The other three issues were competition policy, trade and investment, and transparency in government procurement, all of which were dropped from the negotiating agenda in 2004.

For a long time, trade facilitation was seen as a relatively peripheral issue. Other elements of the DDA attracted considerably more attention. But at the same time, it did not generate too much controversy, and being out of the spotlight turned out to be conducive to work. Even the fact that negotiations started with a considerable delay – trade facilitation was the last new subject to be added to the DDA, three and a half years after the Round had commenced – was a blessing in disguise. During the initial negotiating phase, the "latecomer" status helped generate a sense of there not being any time to waste. Keeping a low profile allowed the negotiating group to address the issues on their own merits. Members were able to advance work at the technical level, which helped address initial concerns about what the envisaged agreement was going to imply. Progress was also facilitated by the group's inclusive, member-driven working method, which placed emphasis on a bottom-up approach and the creation of a transparent negotiating environment. This early momentum in the talks was all the more important since subsequent phases saw no shortage of trials.

Challenges were encountered both within the trade facilitation negotiations and at the broader level. In some cases, the external linkages caused considerable delays, for example, when the DDA was temporarily



suspended after the global negotiations broke down in 2006. Members missed several deadlines before finally being able to conclude the trade facilitation negotiations at the Bali Ministerial Conference in December 2013.

The agreement promises to accelerate the movement, release and clearance of goods thereby significantly reducing trade transaction costs by an average of 14.5 per cent, according to the forthcoming World Trade Report 2015. Moreover, the scope for trade cost reductions is greatest for low and lower middle income countries. The creation of a more transparent and predictable business environment is further expected to increase trade and investment. Once implemented small and medium-sized enterprises are going to find it easier to engage in cross-border trade; governments will be able to better allocate scarce resources; and consumers are likely to benefit from lower-priced goods. Developing and least-developed countries stand to particularly benefit from the new agreement. Studies predict they will reap more than half of the total gains.

Even before its implementation, the Trade Facilitation Agreement already had an impact on domestic and regional trade facilitation reforms. The mere start of the WTO negotiations led to a noticeable increase in trade facilitation initiatives. Substantive funding has been expended on trade facilitation reform in the past decade – and significant expertise has been acquired. Trade facilitation funding commitments rose from an average of US\$ 80 million in the period 2002-05 to reach US\$ 670 million in 2013. Since 2005, some US\$ 2.0 billion has been disbursed in trade facilitation support, according to figures reported to the OECD Creditor Reporting System. Once in force, the agreement promises to generate additional momentum. Donor responses to the 2015 monitoring exercise carried out by the OECD suggest that aid towards trade facilitation may rise still further. Twenty-two of the 37 donor respondents indicated that they expected their trade facilitation support to increase in the next five years – with four of the respondents (Australia, New Zealand, the United Nations Conference on Trade and Development (UNCTAD) and the African Development Bank) expecting a more than 10 per cent increase in support offered.

Another significant feature is the agreement's novel implementation mechanism. Not only are implementation schedules tailored to individual

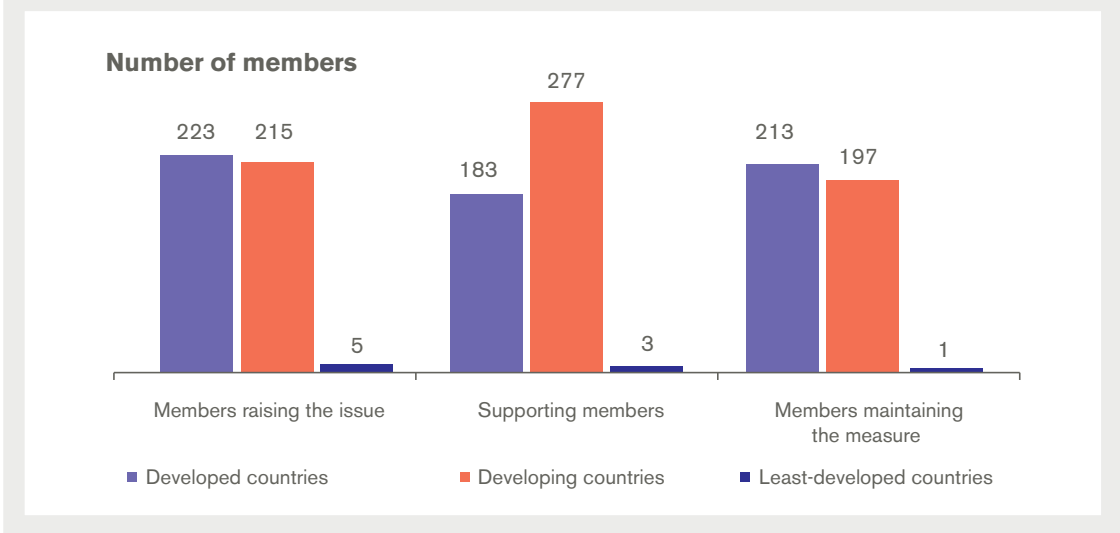
members' needs, but they are explicitly linked to members' technical capacity and financial resources – thus going well beyond traditional S&D approaches and breaking new ground. To help ensure that developing and least-developed country members have the necessary capacity and resources, the WTO launched a new Trade Facilitation Agreement Facility in 2014 – the first time that the WTO has created and directed such a facility – aimed at linking members with potential donors, sharing best practices in implementation, offering training and technical assistance, and, where sources of funding are unavailable, providing limited grants for "project preparation" and for "soft infrastructure" projects.

### **Fine-tuning the disciplines on non-tariff measures**

As tariffs have been steadily lowered in the GATT/WTO, it is non-tariff measures (NTMs) – such as technical barriers to trade (TBT) and SPS measures – that have increasingly come into focus. NTMs present the multilateral trading system with a challenge. How do you ensure that measures used for legitimate policy objectives do not unnecessarily restrict or distort trade? The rules-based system resulting from the Uruguay Round has expanded significantly to include a wide array of NTMs. However, the deepening integration of economies and the expansion of the rules-based system have created new policy challenges and brought into the debate a variety of actors, which raise new concerns about the tension between international rules and national policy space. In recent years, members have been making the most of the rules-based system created by the WTO by bringing the debate on the use and legitimacy of NTMs within the organization's walls, in the appropriate venues such as committees or other bodies.

Energizing the WTO committee system has been a key priority for members, in part because the committee structure plays such a key role in allowing members a regular opportunity to enhance their understanding of each other's trade policies and practices. In the course of 2014, around 19 issues were raised in the Council for Trade in Goods as "trade concerns" – that is, trade policy measures which possibly restrict or prohibit trade in goods. Oral and written questions are posed and members are invited to clarify the details of their national trade policy measures and regimes, above all where there is a perception that certain

Figure 8: WTO members' participation in consideration of sanitary and phytosanitary concerns (1995-2014)



Source: WTO Secretariat

specific measures may be inconsistent with WTO rules and a member's specific commitments.

The WTO's TBT and SPS agreements are part of a broader category of WTO agreements dealing with NTMs. While the TBT Agreement covers a broad range of measures affecting trade in goods, the scope of the SPS Agreement is narrower – it sets out basic rules for measures taken to ensure food safety or to protect animal and plant health. Both agreements are legally binding – enforceable through WTO dispute settlement – and share many key WTO principles, such as non-discrimination, transparency, predictability in market access (avoidance of unnecessary obstacles to trade), and the development dimension, with technical assistance and special and differential treatment for developing and least-developed countries. One difference is that, while having a scientific basis for measures is important under both agreements, under the TBT, it is just one element (among others) to be taken into account. Under the SPS, however, measures must have a scientific basis. Another important difference is that, while both agreements encourage governments to use international standards,

under the SPS Agreement, the standard-setting bodies are explicitly identified in the Agreement, while under the TBT Agreement they are not.

The number of product standards applied worldwide is large and continues to grow. In addition to governments, the private sector and other non-governmental stakeholders have also become involved in standard-setting activities. There is no definitive universal count of the number of standards; the International Organization for Standardization (ISO) alone has published some 19,500 international standards.<sup>2</sup> Perinorm, a consortium, maintains a database with more than 1.4 million national, European and international standards from 23 countries.<sup>3</sup> Many regulations are based on standards and WTO disciplines in this area have been important to safeguard market access conditions on the one hand and the right of members to regulate and to pursue legitimate public policy objectives – such as protection of human health or the environment – on the other.

### Strengthening the provisions of the TBT Agreement

The TBT Agreement has its roots in the Tokyo Round's Standards Code, whose provisions have been expanded and strengthened. There are specific provisions in the TBT Agreement for preparing, adopting and applying technical

<sup>2</sup> ISO website (last accessed March 2015): <http://www.iso.org/iso/home/about.htm>

<sup>3</sup> Perinorm website (last accessed March 2015): <https://www.perinorm.com/>

regulations and standards and for conformity assessment procedures (see Box 5).

The agreement has been designed and implemented to keep a balance – allowing regulatory autonomy for governments to pursue public policy goals, while avoiding unnecessary obstacles to trade. In other words, there is policy space to pursue legitimate objectives, such as national security, prevention of deceptive practices, protection of human health or safety, protection of animal or plant life or health, or the environment. However, disciplines also bind governments to respect certain key principles.

Non-discrimination is one of them. Like in other WTO agreements, the TBT Agreement requires members to ensure that measures do not discriminate against "like" foreign and domestic products or between foreign producers. Moreover, even if a regulation is non-discriminatory, it could still constitute an unnecessary obstacle to trade. The use of relevant international standards is encouraged; indeed, regulations based on international standards are presumed not to create an unnecessary obstacle to trade.

The provisions of the TBT Agreement have been strengthened with the guidance developed by members over the last 20 years through the work of the TBT Committee. For example, in the area of international standards, the committee has established Six Principles for the Development of International Standards, Guides and Recommendations.<sup>4</sup> The committee has had a dual role: it has provided a multilateral platform for members to discuss specific trade concerns (see Ch. 5 on transparency); and it has bolstered the implementation of the agreement with decisions, guidelines or recommendations in a number of areas such as transparency, conformity assessment, standards, technical assistance and special and differential treatment. Members' demand for technical assistance in the area of TBT continues to grow reflecting the importance attached to it.

Twenty years on, the TBT Agreement continues to serve as a unique multilateral instrument for addressing trade-related regulatory measures. It retains its relevance as an important forum to improve coherence and mutual supportiveness between open trade on the one hand, and domestic policies that countries may pursue to achieve public policy objectives on the other.

#### Box 5: TBT measures

**Technical regulations:** These lay down product characteristics or their related processes and production methods. Compliance is *mandatory*. They may also deal with terminology, symbols, packaging, marking and labelling requirements.

**Standards:** These are approved by a recognized body responsible for establishing rules, guidelines or characteristics for products or related processes and production methods. Compliance is *not mandatory*. Standards may also deal with terminology, symbols, packaging, marking and labelling requirements.

**Conformity assessment procedures:** These are used to determine that relevant requirements in technical regulations or standards are fulfilled. They include procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity, and registration, accreditation and approval.

#### Strengthening the provisions of the SPS Agreement

The SPS Agreement sets out the legal framework for food safety and animal and plant health requirements. It aims to ensure that governments can apply measures to ensure that consumers are being supplied with food that is safe to eat, while also ensuring that strict health and safety regulations are not being used as an excuse to shield domestic producers from competition. The main principles are that SPS measures should be non-discriminatory (unless justified by health risks), transparent, science-based and not more trade-restrictive than required to achieve the appropriate level of health protection. Furthermore, governments are encouraged to base national SPS measures on international standards, guidelines and recommendations, where they exist. This process is often referred to as "harmonization".

The SPS Agreement explicitly identifies the Codex Alimentarius Commission (Codex) standards, developed jointly by the Food and Agricultural Organization (FAO) and the World Health Organization

<sup>4</sup> G/TBT/9, 13 November 2000, para. 20 and Annex 4.

(WHO), as relevant for food safety; the standards of the World Organization for Animal Health (OIE) for both animal health and for animal diseases affecting humans (zoonoses); and those of the FAO International Plant Protection Convention (IPPC) for plant health. However, members may set their own, more stringent requirements if there is scientific justification and the measures are based on an appropriate assessment of risks – so long as the approach is consistent and not arbitrary.

The SPS Agreement established a set of rules and disciplines in an area where no specific guidance to governments existed – apart from the old Standards Code – thus becoming the basic framework for bilateral, regional and multilateral interactions related to SPS measures. Anecdotal evidence from delegates and capital-based experts suggests that bilateral negotiations normally use the SPS Agreement as a starting point, either explicitly or implicitly, as do many regional trade agreements.

The SPS Agreement also establishes a dedicated committee as a forum for member governments to exchange information on all aspects of its implementation. The SPS Committee reviews how countries are complying with the agreement, discusses issues that may impact on trade and maintains close cooperation with technical organizations in the field. The specific trade measures that are most frequently discussed in the committee tend to deal with animal health issues, such as bovine spongiform encephalopathy (BSE, or mad cow disease), avian influenza (bird flu) or foot and mouth disease, and with various plant pests, such as fruit flies, or with food safety concerns. The most common complaints concern importing countries that are not following the international standards and long delays in completing risk assessments or allowing imports.

The SPS Agreement recognizes the special difficulties developing country members of the WTO may encounter. Their special trade and development needs may hinder their ability to fully discharge their obligations under the SPS Agreement. Technical assistance and special and differential treatment provisions were therefore envisaged to assist them. In particular, developing countries may face difficulties in meeting new or modified SPS requirements of their trading partners, and hence in achieving or maintaining market access. These difficulties may

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## ***Over 90 per cent of members have notified the WTO of their national legislation and administration procedures covering import licensing.***

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relate to technical and/or institutional capacity, infrastructure and technology. Overcoming these difficulties may require capacity building, institutional development, technical assistance. Since SPS measures are taken for health protection reasons, they often cannot be put on hold or withdrawn. The SPS Agreement also encourages developing countries to participate as actively as possible in the international standard-setting organizations.

### **Strengthening multilateral disciplines on import licensing and customs valuation**

Import licensing (sometimes called import control or import register systems) has been used extensively by governments since the 1960s as one of the policy tools to manage trade. Product coverage subject to import licensing procedures was extensive, ranging from agricultural products, chemicals, pharmaceuticals, food and medical equipment to weapons and explosives. To bring transparency to governments' import licensing practices, and to establish a "code of conduct" in this area, a set of international disciplines was first negotiated and agreed on (the Import Licensing Code) during the Tokyo Round. The fact that only a dozen GATT contracting parties signed it defined it as a "plurilateral" agreement from the very beginning. The Uruguay Round went much further in terms of strengthening the existing provisions as well as in "multilateralizing" the agreement to make it binding on all WTO members.

Since the establishment of the WTO, multilateral disciplines on import licensing have been further strengthened through the work of the Committee on Import Licensing. As an example, the procedure for notifying the WTO of regulations and practices, and changes to them, was clarified, including on the time frame for members to submit responses to the annual questionnaire on licensing procedures. Thanks to the peer-review and monitoring functions of the committee, the transparency and predictability of members' import licensing regimes have significantly

improved. Over 90 per cent of members have notified the WTO of their national legislation and administration procedures covering import licensing. With the help of technical assistance undertaken by the WTO Secretariat, the level of compliance on notification requirements keeps increasing every year.

The WTO Agreement on Customs Valuation seeks to establish a fair, uniform and neutral system for the valuation of goods for customs purposes. The agreement is built around the idea that the "transaction value" should be the primary basis for determining the customs value. Transaction value is the price actually paid or payable by the importer for the goods being imported and can include other payments incurred by the buyer but not included in this price. The agreement also recognizes that customs value should be based on simple and equitable criteria, consistent with commercial practices, and that valuation procedures should be of general application without distinction between sources of supply.

Thanks to the monitoring of the committee, transparency and predictability of WTO members' customs valuation procedures have significantly improved. More than three quarters of WTO members have notified the WTO of their national legislation on customs valuation. Moreover, some disciplines have been further strengthened through the work of the Committee on Customs Valuation. As an example, it clarified the manner in which interest charges and software imports have to be treated for customs valuation purposes, as well as the manner in which members have to notify the WTO of any relevant rules in this area.

### **Improving understanding of Trade-related Aspects of Intellectual Property Rights (TRIPS)**

In reviewing the implementation of the TRIPS Agreement, the TRIPS Council oversaw the most comprehensive, geographically diverse and far-reaching overhaul of intellectual property (IP) laws and enforcement measures ever undertaken. In doing so, it accumulated a unique, authoritative collection of policy-related information in the field of IP and cognate areas, enabling greater understanding of the diverse policy choices and use of flexibilities deployed by over 130 national governments, in turn laying the ground work for a more informed, inclusive and representative policy discourse on sensitive IP issues.

As in other policy areas, this intensive exchange of information on national IP objectives – and the wider education of WTO members about the various policy options in play – represented an important, if difficult to measure, advance for the multilateral system.

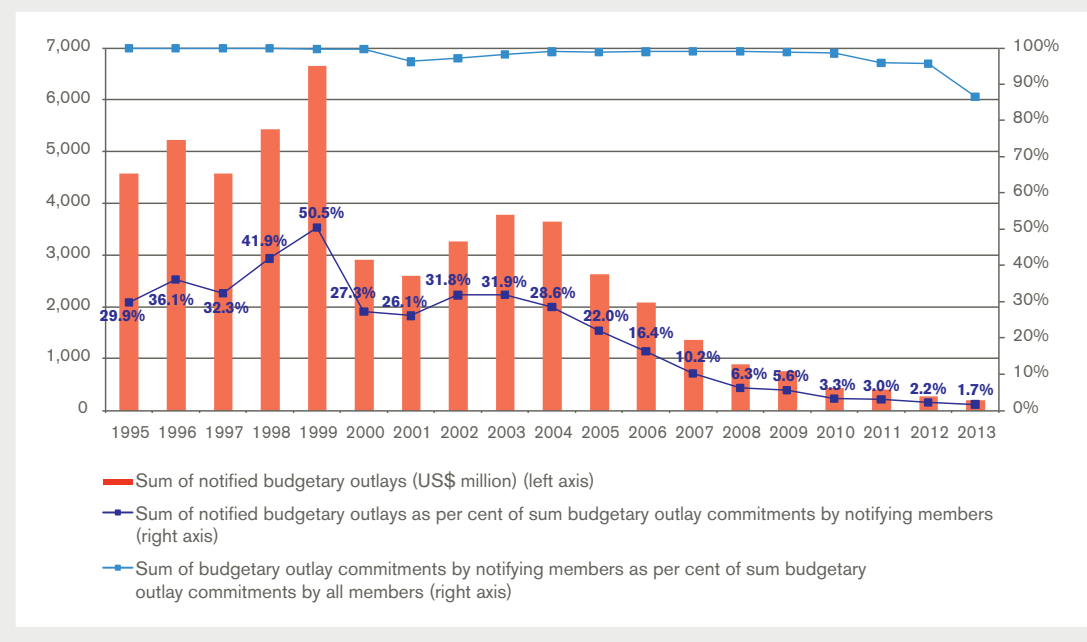
### **Promoting the reduction of agricultural subsidies**

The proliferation of export subsidies was one of the key issues in the agricultural negotiations in the Uruguay Round. Export subsidies for industrial products had been subject to strict disciplines under GATT rules – and totally prohibited for developed countries since the Tokyo Round. But in the case of primary products, including agricultural ones, such subsidies were only subject to limited disciplines that, moreover, were often ineffective. The Agreement on Agriculture marked a major shift by prohibiting WTO members from using export subsidies for agricultural products, except for those subject to reduction commitments under the quantitative and budgetary limits set out in schedules. It also allowed developing country members to use – during the implementation period and under certain conditions – some export subsidies aimed at reducing the cost of marketing and transportation and included anti-circumvention provisions for the export subsidies not listed in the Agreement on Agriculture.

Export subsidies and related export measures are a key element of the Doha Round negotiations, which aim at the parallel elimination of all forms of export subsidies and the setting of disciplines on all export measures with equivalent effect, including international food aid, export credits, export credit guarantees, insurance programmes and agricultural goods-exporting state trading enterprises. The Bali ministerial meeting reaffirmed the objective on export competition and made a strong political statement by agreeing to "exercise utmost restraint" in using any form of export subsidy. It also put in place a new process to improve information sharing and monitoring to support the reform in this area.

During the period 1995-2013, the use of export subsidies by WTO members, as notified to the WTO, significantly decreased (see Figure 9). This positive trend can be explained by overall higher international prices since 2000, but also by the reforms undertaken by some members, some of which were preparing for a possible accord within the DDA negotiations.

Figure 9: Evolution of total export subsidy budgetary outlays as notified to the WTO (1995-2013). Based on data available on 30 June 2015



Source: WTO Secretariat

It was in the Uruguay Round that members first agreed to discipline domestic support measures, the technical term for farm subsidies, and impose numerical limits to the most trade distorting. At the same time, members agreed that governments should have scope to design domestic agricultural policies that took into account the specific circumstances in individual countries and in individual agricultural sectors. The change in approach was triggered by increased awareness that the causes of disarray in world agriculture went beyond market access issues, which had been the traditional focus of GATT negotiations. Furthermore, it was necessary that new commitments in the area of market access and export competition were not undermined by domestic support measures.

Since the end of the Uruguay Round, there has been a significant decrease in the most trade-distorting support provided by members traditionally considered to be the biggest subsidizers. Such support fell 90 per cent in monetary terms, for example, in the case of the European Union between 1995 and 2012 and 82 per cent in the case of Japan. In the

case of the United States, trade-distorting support fell 60 per cent between 2000 and 2012. These decreases were in many cases due to domestic policy changes triggered by the new disciplines, or moves in anticipation of new rules expected to emerge from the Doha Round. But high farm prices also played a role. Non-trade-distorting agricultural support by members on which no restrictions are set has increased significantly during the same period.

The Doha Round aims at further reducing trade-distorting support by lowering existing limits and introducing new ones. In Bali, trade ministers decided to add some rural livelihood and land-use programmes of special interest to developing countries to the list of those considered to cause little or no trade distortion, and which can therefore be freely subsidized. They also gave temporary protection to food stockholding programmes under which countries stockpile staple food crops for food security purposes. This means that, within certain limits, WTO members cannot be legally challenged under the Agriculture Agreement regulations, even if they breach agreed limits on farmer support subsidies. This is an interim solution to

bring some relief to those using public stockholding programmes, while members negotiate a permanent one – which they were asked to do within four years. It is noticeable that the WTO rules – both existing and future – have become an integral part of domestic debates on agricultural policy in many WTO members.

## Consolidating and expanding the disciplines on trade in services

One of the most remarkable achievements of the Uruguay Round was the expansion of trade rules to services. With the creation of the General Agreement on Trade in Services (GATS), the largest and fastest-growing sector of the world economy came under the purview of WTO disciplines. The GATS responds to a shift away from public monopoly of many infrastructure and social services towards greater reliance on private competitive markets to supply such services. It also encapsulates the increased potential for trading services brought about by advances in information and communication technology. Moreover, the GATS profited from taking shape in an era when governments had begun a shift in policy towards a welcoming of foreign investment as a means to promote economic development.

Underpinning the GATS is the acknowledgment that, contrary to traditional perceptions, services are "traded". The intangible nature of many services implies that suppliers and consumers often have to be in physical proximity for service provision to take place. But to account for the whole range of international services transactions, the notion of "trade" in the GATS encompasses not only cross-border activities, but also commercial activities involving services-related investment and the movement of people, both as providers and consumers of services. The GATS thus internationally codified, once and for all, what trade in services is.

This is more significant than it might appear at first sight. By adopting this wide definition of trade, WTO members have accepted that trade rules apply not only to traditional border measures, they also apply to the whole array of laws and decisions that govern how services are consumed and produced domestically. They have effectively consented to international scrutiny of some hitherto exclusively domestic areas of policy-making. Just think about the cross-border temporary movement of professionals

to deliver services ("mode 4" in GATS parlance). By defining it as "trade in services", governments have agreed, for the first time, to subject a component of their immigration policy, however small, to a set of binding, internationally agreed disciplines enforceable under the WTO's dispute settlement system.

And what are the WTO disciplines that apply to services trade? In principle, the same basic tenets that underpin the GATT are also found in the GATS. They include principles such as transparency, predictability of access and non-discrimination, promotion of trade and development through progressive liberalization. In some respects, the agreement goes even further. The GATS lays down the first multilaterally agreed set of competition policy rules. It contains provisions that, when applied in full, reduce governments' ability to restrict market size to a limited number of domestic service suppliers and their operations. It includes provisions disciplining the behaviour of monopoly service suppliers. It also contains a mandate to develop pro-competitive disciplines with respect to non-discriminatory licensing and qualification requirements and procedures and technical standards. It enables members to agree on sector-specific regulatory principles that ensure that any market opening liberalization is not frustrated by anti-competitive practices and to decide, individually, whether to undertake legally binding commitments on some or all of these principles. From the perspective of the GATS, therefore, it is not just the openness of a market to foreign entrants that matters, it is the overall level of contestability – that is, the extent to which a market is competitive.

Still, it is fair to acknowledge that the GATS framework is not, as yet, complete. Due in large part to the specificities of services trade and the dearth of detailed statistical information, not all the rules that apply to goods trade have been translated to the GATS. WTO members have chosen not to develop anti-dumping disciplines for services trade, for instance, and have been debating for years whether to adopt an emergency safeguard mechanism, which would allow members to protect their markets against a surge in imports. WTO members have also been debating whether to create rules for service subsidies and government procurement, and the kind of disciplines that could be applied to non-discriminatory licensing and qualification requirements and procedures and technical standards.

Regardless of any gaps, for the WTO's large and diverse membership to bring into existence an agreement with the scope of the GATS, its obligations and market opening rules had to be flexible. Members agreed that many of the GATT principles could not be transposed automatically when applied to the entire range of "inside-the-border" services policies. Members were also conscious that relatively new and untested regulations, coupled with rapid technological and economic change in services markets, implied that the GATS had to be capable of accommodating the inevitable evolutions in regulatory measures. Hence, an ambitious agreement such as the GATS could only be based on the notion that trade liberalization would be a progressive, longer-term endeavour.

What has the creation of such a remarkably wide-ranging framework implied over the past 20 years of its existence? First and foremost, the GATS has provided effective guarantees that "bound" services regimes will be stable. Schedules of commitments are key in this regard. Schedules are legally binding documents where each member indicates clearly, for the service sectors it pledges to open up, the restrictions that it wishes to be able to maintain and apply. By rendering the commitments practically irreversible, the GATS provides guarantees against a potential roll-back in favour of domestic or incumbent suppliers. As such, schedules offer a valuable mechanism to make credible pledges with respect to market opening, including if such opening is to be implemented at a future date. This may help explain why, between 1998 and 2005, a number of members decided autonomously, i.e. outside a negotiating context, to bind their national market-opening reforms in their GATS schedules. These voluntary improvements of commitments, often made on telecommunications reforms, where nothing is asked "in exchange" are highly significant. Countries with weaker institutions may especially value the stability of the access guarantees made in their GATS schedules, as they provide a means of holding in place hard-won reforms and fostering greater policy credibility with investors.

At no point was the value of credibly locking in services regulation more evident than following the financial crisis of 2008. Despite rising domestic pressures to introduce protectionist measures, governments' overall response was restrained. The existence of binding commitments under the GATS no doubt contributed to preventing any

protectionist influence on regulations being brought to bear by domestic or incumbent suppliers. This was likely compounded by governments' awareness of the significant spillover effects of measures restricting trade and competition in services markets. Services trade barriers affect not only the economic performance of the sector in question, but, particularly where infrastructural services are concerned, they may also impact the export competitiveness of manufacturing and other downstream service industries. They may thus crucially affect the ability of governments to participate as much as possible in global value chains.

However, aside from the commitments undertaken by acceded countries, GATS schedules generally bound access conditions at levels significantly more restrictive than those that were applied in practice. Moreover, the policy space thus provided is likely to have increased much further over the past 20 years, given the many service sectors that have been autonomously liberalised and opened up to competition in many economies since the end of the Uruguay Round. But this is not a reason to dismiss the value of the GATS. Besides providing assurance that access terms will not be made more restrictive than specified in schedules, the agreement has created a framework within which members may progressively improve their commitments, whenever they choose to do so.

The agreement has demonstrated that it can be an effective instrument to negotiate improved commitments on specific sectors, even outside a wider round of trade talks. At the end of the Uruguay Round, members considered that the commitments scheduled in finance, telecommunications, maritime transport and mode 4 were not sufficiently deep, and agreed to extend the negotiations in these areas. Those single-topic negotiations proved to be extremely successful in telecommunications and financial services, resulting in enhanced commitments from around 70 members in each of the two sectors. The post-Uruguay Round negotiations in mode 4 also achieved some, albeit more modest, success, while no agreement could be reached for maritime transport.

Besides the single-issue nature of the talks, what is remarkable about the successful extended negotiations is that, while delivering an MFN outcome, they were conducted and put into force solely by



a "critical mass" of members. The negotiations concluded when the participants agreed that the offers on the table accounted for a sufficiently large share of global trade in the sector. The relevant commitments were annexed to a protocol, and it was the signatories who decided on its entry into force. Although negotiated plurilaterally, once in force the commitments applied to the entire WTO membership under the MFN principle. This innovative approach proved very valuable. It did not require that all members participate in, much less contribute to, the negotiations, thus arguably accelerating the process, yet it nonetheless ensured that the outcome would be extended for the benefit of all members.

The GATS has also generated a new avenue to examine and, possibly improve, domestic services policy-making. Indeed, the agreement can be argued to have helped increase countries' regulatory capacity. The various WTO services bodies provide a forum where national regulators can share trade-related information, best practices and regulatory experiences, facilitating the diffusion of information and encouraging the adoption of new regulatory practices. A case in point is the telecommunications Reference Paper, which sets out pro-competitive regulatory principles to reinforce the opening up of telecom markets. The Reference Paper, which was adopted in 1996 and is legally binding for those members that appended it to their services' schedules, largely encapsulates best practices in telecom regulation with regard to the independence of the regulator, interconnection safeguards, licensing procedures, universal service obligations and the allocation of scarce resources, among others. It codifies members' shared understanding of how competition in the sector should be safeguarded. In this sense, it is considered an international blueprint for telecommunications reform. Its principles are sufficiently broad to accommodate country-specific regulations, but precise enough to hold to account those governments that have undertaken relevant bindings in their GATS schedules.

Another example is the disciplines on domestic regulation for the accountancy sector agreed in 1998. The disciplines aim to ensure that regulation pursuing public policy objectives does not turn out to be an unnecessary, and unintended, barrier to trade. They include provisions on the administration of licensing requirements, qualification requirements and procedures

and technical standards for the accountancy profession, as well as a number of transparency requirements and other general provisions

The GATS has additionally served as a forum for the first examination of regulations affecting trade across the entire services economy on the basis of a common set of trade-inspired principles. In merchandise trade, WTO schedules, which list bound tariffs, exist alongside national tariff schedules, which lay out applied tariff rates. When it comes to services, however, no national inventories exist of actually applicable restrictions across the entire services economy. All that is easily available by way of information on services trade restrictions are GATS schedules. But they do not provide information on actual terms of access. However, until the GATS, the notion that levels of restrictiveness might be compared across different services sectors was unthinkable. Schedules have put committed restrictions under the spotlight, particularly to the benefit of service consumers.

Furthermore, the establishment of a trade policy dimension for services has helped generate academic debate and analysis as to the costs and benefits of services trade liberalization, as well as its impact on the wider economy. It has also brought home the importance of obtaining information about actual access conditions in the different services markets, as well as improving the measurement of services trade. This realization has spurred various data-gathering and analytical efforts, including on the part of many international organisations. Examples include the WTO/World Bank I-TIP services database, which provides details on services commitments in the GATS, in economic integration agreements and applied regimes, complemented by statistical information, as well as the World Bank's and OECD's indicators of services trade restrictiveness and the WTO air transport liberalization index.

### **Modernizing and expanding the reach of disciplines on government procurement**

Government procurement represents 15 per cent or more of the world economy and is an increasingly important strategic focus of governments. The WTO Plurilateral Agreement on Government Procurement (GPA) covers government purchasing of goods,

services and construction services (public works) and is arguably the world's main tool to maintain and promote open markets in this sector. The growing reach and importance of the agreement, as well as its significance as a focus of WTO negotiating and policy development activity, are manifested by the successful conclusion of the decade-long GPA renegotiation in 2011-12, and its coming into force in April 2014.

Accession to the GPA requires a careful, informed assessment of national strategic interests, reciprocal market access opportunities and the relevance of good governance principles. To meet this need, the Secretariat undertakes an intensive programme of technical assistance, reinforced by policy analysis, aimed at elaborating the benefits and costs of accession. This work, together with the enlargement of the European Union, has been instrumental in the addition, since 1996, of 23 WTO members to the overall coverage of the agreement (see Table 6). Facilitating accessions also involves collaboration between the Secretariat's Intellectual Property Division, which provides comprehensive support for the agreement's management and to any related negotiations, as well as technical assistance, and its Accessions Division, in the course of whose work related commitments may be made and discussions held.

The renegotiation of the agreement, conducted by the WTO Committee on Government Procurement outside the scope of the Doha Round, involved both the updating of the agreement's text and a significant expansion of related market access opportunities covering the purchase of both goods and services (see Boxes 6 and 7).

#### Box 6: Highlights of the revised GPA text

The improvements to the text, which have come into force, include the following:

- A complete revision of the wording of the provisions, with a view to making them more streamlined, easier to understand and user-friendly;
- Updating of the text to take into account developments in government procurement practice, notably the use of electronic tools;
- Additional flexibility for parties' procurement authorities, for example in the form of shorter notice periods when electronic tools are used;
- A new substantive requirement for participating governments to avoid conflicts of interest and prevent corrupt practices in their procurement activities; and
- Revised and improved transitional measures ("special and differential treatment") for developing countries that accede to the agreement.

Table 6: Growth in the GPA's scope since 1995: from 22 to 45 WTO members covered

Year	Initial coverage of the Agreement/additions over time	Cumulative number of WTO members covered
<b>1996 (initial coverage)</b>	Canada, the European Union and its then 15 member states (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom) Israel, Japan, Norway, Switzerland and United States	22 WTO members
<b>1997</b>	Netherlands with respect to Aruba	23
<b>1998</b>	Hong Kong, China; Korea, Republic of; Liechtenstein; and Singapore	27
<b>2002</b>	Iceland	28
<b>2005</b>	Cyprus*, Czech Republic*, Estonia*, Hungary*, Latvia*, Lithuania*, Malta*, Poland*, Slovak Republic* and Slovenia*	38
<b>2007</b>	Bulgaria* and Romania*	40
<b>2010</b>	Chinese Taipei	41
<b>2011</b>	Armenia	42
<b>2013</b>	Croatia*	43
<b>2015</b>	Montenegro and New Zealand	45

\* As a result of accession to the EU

### Box 7: The expansion of GPA market access commitments

The additional market access commitments embodied in the revised GPA have been valued at U\$ 80-100 billion annually, and comprise:

- Coverage of (at a minimum) more than 500 additional central, sub-central and other government agencies;
- Improvements in the coverage of goods;
- Downward adjustments in the thresholds applied by some parties;
- Coverage of new services sectors by almost all parties, especially in the area of telecommunications services;
- Full coverage of construction services by all parties, whereas some previously provided less-than-full coverage;
- For the first time, explicit coverage of build-operate-transfer contracts (BOTs)/public works concessions or other forms of public-private partnerships by three parties; and
- The elimination, by several parties, of miscellaneous restrictions on market access.

The WTO Secretariat supported the GPA renegotiation by providing an enabling environment and a forum for trade negotiators to meet, and by monitoring progress. Its support also extended to research on quantifying the eventual benefits of the negotiations, including through the additional accessions that were expected eventually to follow; and to joint planning and cooperation with the then chair, including in regard to contacts with relevant senior capital-based officials and ministers. The statistical reports of the GPA parties were used, to the extent possible, to provide an objective factual foundation for the negotiations. This same foundation enabled technical assistance to be better focussed on the specific needs and circumstances of individual members. The resulting deeper understanding of the GPA's impact has become particularly important as a range of developing/transition economies have pursued potential interest in the agreement.<sup>5</sup>

The provision of fact-based policy support and advice has also been facilitated by efforts to promote cooperative approaches and strengthen coherence in the advice provided by relevant international

organizations. An informal cooperation arrangement with the European Bank for Reconstruction and Development (EBRD) has substantially leveraged WTO resources invested in technical assistance in this subject-area, also promoting practical understanding of the contribution of the GPA to wider economic policy and good governance objectives. Possibilities for enhanced cooperation/policy synergies are also being explored with the World Bank.

## Conclusion

Since 1995, WTO members have negotiated and signed several important agreements – in addition to implementing the far-reaching results of the Uruguay Round – that have contributed to further opening of goods and services markets. There were single-issue agreements in information technology products, financial services and basic telecommunications. There was the widening and deepening of the Government Procurement Agreement. There were also initiatives to secure greater market access for LDCs, such as the decision to expand duty-free and quota-free market access to LDC products (see Ch. 2). More recently, the 2013 "Bali Package" represented another major step forward. In Bali, trade ministers took decisions aimed at helping LDCs better use export preferences by improving the transparency of preferential rules of origin, at strengthening the implementation of duty-free and quota-free market access, and at putting into operation a waiver allowing members to grant preferential market access to LDC services and service suppliers. In addition, Bali delivered a new Trade Facilitation Agreement – the first global trade accord in 20 years – which promises to reduce average global trade costs by an average of 14.5 per cent. None of this is a substitute for a successful conclusion of the DDA, which would allow WTO members to achieve a higher level of services liberalization; to achieve a reduction in support and protection in agriculture; and to reduce non-agricultural tariffs and non-tariff barriers, in particular on products of export interest to developing countries.

<sup>5</sup> At present, ten WTO members are actively negotiating to join the GPA or have formally initiated the accession process. These comprise Australia, Albania, China, Georgia, Jordan, the Kyrgyz Republic, Moldova, Oman, Tajikistan and Ukraine. Additionally, in the past five years, Costa Rica, India, Indonesia, Malaysia, Pakistan, the Russian Federation, Thailand, the former Yugoslav Republic of Macedonia and Viet Nam have all become observers to the agreement.

# 5



A meeting of the General Council at the WTO's headquarters in Geneva.

# Improving transparency – strengthening monitoring, surveillance and consultation

The past 20 years have shown that transparency is an indispensable element of the multilateral trading system. Enhanced surveillance and regular monitoring of trade policies and practices have significantly contributed to global efforts at countering the potential threat of protectionist pressures and at ensuring compliance with trade commitments. Transparency requirements – and the knowledge that WTO members stand on watchful guard – create a powerful incentive for members to abide by their commitments. This increases the level of confidence in the system. Moreover, the institutionalization of domestic transparency in trade policy-making enhances government accountability and public understanding, and reduces the scope for discretionary use of trade policy measures.

Under transparency provisions in GATT/WTO agreements, the organization collects, administers, disseminates and, as necessary, analyses information about members' trade policies and practices. Transparency in the WTO is mainly provided through the Trade Policy Review Mechanism (TPRM), specific provisions in Regional Trade Agreements (RTAs) and the relevant notification obligations under many WTO agreements. Surveillance takes place principally through the various committees or WTO bodies. The raw material for this surveillance comes from the notifications, specific trade concerns raised by members and requests for consultations. There are also comprehensive factual reports prepared by the Secretariat, such as the country-specific trade policy review reports. As already noted, the WTO committee system has been energized by members over the last 20 years and offers members a regular opportunity to enhance their understanding of each other's trade policies and practices and to clarify the details of national trade policy measures and regimes. Discussions and consultations have allowed the resolution of many trade concerns at the committee level, without their escalating into actual

disputes. The cumulative impact of these various forms of information gathering and dissemination has greatly enhanced the transparency of trade policy-making. Moreover, all of this information is publicly and freely available to all on the WTO website.

## Reviewing trade policies to encourage policy dialogue

The Trade Policy Review Mechanism (TPRM) was originally established under the GATT on a provisional basis in 1989, when it covered only goods trade. Its establishment marked the first time that members had allowed the Secretariat to produce independent reports on members' trade policies. It became permanent with the launch of the WTO in 1995. Its purpose was stated as: "To contribute to improved adherence by all members to rules, disciplines and commitments made under the multilateral trade agreements and, where applicable, the plurilateral trade agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of members."

With the birth of the WTO, its coverage was expanded to new areas under the WTO Agreement (i.e. intellectual property rights and services), as well as any other measures affecting production and trade. But the mandate clearly specifies that the mechanism is not intended to enforce specific obligations under WTO agreements, or for dispute settlement purposes, or to impose new policy commitments. While the TPRM mission and objectives have remained unchanged since its inception, the preparatory process, the review procedures and the dissemination of the results have been considerably streamlined in line with the recommendations of five appraisal exercises undertaken by the membership between 1999 and 2013.

The trade policy review reports are comprehensive documents prepared by the member under review and the Secretariat, and involve the appraisal and critical assessment of a member's trade and trade-related policies. A wide range of issues are covered, including the economic environment, the institutional structure and procedures of policy-making bodies, the member's laws and policies on trade and related matters, sectoral regulations and policies, and the actual composition of its trade, among other matters. The TPR reports describe the member's trade policies and measures, their rationale or objectives, the costs incurred in terms of expenditures or government revenue foregone in pursuit of them and, lastly, offer an economic evaluation of the effectiveness of the policies and measures in achieving their objectives.

The reviews are carried out by the Trade Policy Review Body (TPRB), made up of all WTO members, and are based on two reports, one from the Secretariat and the other from the member government being reviewed (this report is a shorter forward looking policy statement). These reports are circulated to members at least five weeks prior to the scheduled date for the review, and all members are allowed to submit advanced written questions to the country being reviewed or to raise issues at the meeting. The country under review is obliged to reply to the questions and issues raised. The frequency of review depends on a member's share in world trade in goods and services. The four biggest traders – currently, the United States, the European Union, China and Japan – undergo review every two years, while the 16 next largest are reviewed every four years. The rest are reviewed every six years, although it can be possibly a longer period for LDCs. Between 1989 and 2014, the TPRB had conducted 405 reviews covering 149 out of 161 members. Particular effort has been made to review LDCs; of the 34 least-developed members of the WTO, 31 had been reviewed by the end of 2014. More recently, greater efforts have been made to review members as a group – in joint reviews – as long as members agree and where such a grouping is justified by, for example, participation in a regional trade or economic agreement.

The Secretariat's report examines the trade policies and practices of the member under review, and describes its trade policy-making institutions and the macroeconomic situation. It also looks at how policies and measures not covered by WTO rules

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## ***The country under review is obliged to reply to the questions and issues raised.***

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may nonetheless have an important bearing on trade conditions affecting goods and services. Its review of broad macroeconomic and structural policies attempts to place trade and trade-related policies in their broader policy setting, thereby contributing to a better assessment of the coherence of these policies. The Secretariat's report constitutes a link between WTO commitments and sound economic policy-making. It is an effort to understand developments in members' trade and trade-related policies from all possible angles and the relevance of these policies to the member under review and to the entire membership.

Prepared on its own responsibility and not negotiated with the government under review, the Secretariat's reports are generally considered as more descriptive than analytical. They neither pass judgment on the compliance of members' laws nor make detailed prescriptions. Despite the independence of the Secretariat reports, continued cooperation between the government of the member under review and the Secretariat in preparing the reports has been essential to their quality. The reports are important sources of information, not only on the trade regime, but also on the trade-related legal and economic conditions in the country under review, particularly for members where up-to-date online information is scarce.

Typically, the reports are based on information supplied by the member through a questionnaire sent by the Secretariat, the member's notifications to the WTO, official reports, studies or papers from national and international sources, academic publications, and media information properly substantiated. Data collection is complemented through a week-long visit by the Secretariat team to the country concerned to discuss outstanding questions with government authorities and other stakeholders (e.g., private sector, academics) whose points are taken on board whenever adequately substantiated. In general, cooperation has improved over the years as government agencies have become more acquainted with the intricacies of the process and better equipped to cope with the preparatory stages.

The TPRM has also helped throw light on how policies and measures not necessarily covered by WTO rules (e.g. competition, corporate governance and environmental policy matters) may have an important bearing on the international movement of goods, services, capital and labour, and can have effects equivalent to more conventional measures (such as import tariffs and direct subsidies) that are subject to existing WTO disciplines. The reviews offer some useful guidance for policy-making. For example, one of the main lessons is that impediments to further economic development are largely home grown. By fostering transparency, particularly in evaluating the effectiveness of policies and measures in achieving their objectives and their overall impact (intended or unintended) on the economy, the review mechanism can be a catalyst for unilateral reform, including liberalization of trade and foreign direct investment (FDI) regimes. The TPRM not only encourages different departments of a national administration to cooperate and to take stock, it also assists them in identifying potential problems and legislative tasks. Thus, the process has been used by members under review as a way to assess technical assistance needs.

The TPRM remains essential for getting credible and timely information on trade-policy matters not covered under other transparency-related activities of the WTO. The TPRM reduces the informational disadvantage of small and developing countries, benefitting particularly those countries that do not have the resources to collect information by themselves. Over the past 20 years, transparency activities in the WTO, in particular those based on institutional reporting, have gradually expanded. The TPRs remain the sole worldwide activity of this type in terms of scope and frequency, and their operational aspects, largely conceived by the Secretariat, have evolved to address several procedural challenges. The TPRM has been beneficial to the system, individual members and domestic stakeholders.

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***Governments were concerned that the crisis would bring back trade protectionism. Transparency in trade policy developments was therefore crucially needed.***

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## **Monitoring trade policies to understand trends and contain protectionism**

The WTO started monitoring global trade policy developments in the wake of the financial and economic crisis that began in 2008 in order to enhance the transparency of trade policy developments and provide WTO members and observers with regular updates on the main trends, both liberalizing and restricting. Governments were concerned that the crisis would bring back trade protectionism, some of it hidden. Transparency in trade policy developments was therefore crucially needed.

Currently, the WTO Secretariat produces two biannual reports. One report, which is issued in the name of the Director-General, covers developments in the international trading environment which are having an impact on the multilateral trading system. The report was authorized by the membership and derives its mandate from the Trade Policy Review Mechanism (TPRM). The second report is a joint effort with the Organisation for Economic Cooperation and Development (OECD) and the UN Conference on Trade and Development (UNCTAD) on trade and investment measures taken by members of the G20 group of leading developed and developing countries. The WTO-wide reports are discussed by the membership at dedicated meetings of the Trade Policy Review Body (TPRB), while the G20 reports are submitted to G20 leaders at their summits. All reports are made public, thus adding to transparency. Since 2009 the Director-General has used his trade monitoring reports to highlight significant policy issues facing the WTO and its membership. At the WTO's 8th Ministerial Conference in 2011 ministers requested for the trade monitoring work to be continued and strengthened. Since 2009, 14 WTO-wide reports have been discussed by the TPRB and 12 reports have been submitted to the G20.

Although these reports differ in terms of mandate, geographical coverage and categorisation of trade measures, the qualitative data collection and the close cooperation with members are key common denominators. In particular, at the heart of the WTO monitoring exercise lies the so-called "verification step" which ensures that all information received and collected by the Secretariat from different external sources is systematically sent for verification by the concerned member. All the country-specific

information collected by the WTO Secretariat since the beginning of the trade monitoring is made public through a dedicated database, the Trade Monitoring Database. The exercise has become a useful complement to the country-specific trade policy reviews and receives considerable public and press interest. The Secretariat is taking steps to encourage more WTO members and observers to contribute to the monitoring reports, which will increase the transparency of the exercise and generate a greater sense of "ownership" of the process.

## Monitoring and documenting RTAs

The Transparency Mechanism for Regional Trade Agreements (TM) was one of the first achievements of the Doha Round. The mechanism, which was adopted by the WTO's governing General Council in December 2006, improves and harmonizes WTO procedures to monitor RTAs and introduces a number of requirements to ensure greater transparency. It requires that all RTAs be notified to the WTO before the implementation of any trade preferences. It also states that all RTAs are to be treated in the same manner. The latter was a key departure from previous procedures under which RTAs notified to the WTO under the so-called "Enabling Clause" (see Ch. 3) on developing country treatment were not systematically examined by WTO members. It also requires the Secretariat to prepare a factual presentation on each RTA. The mechanism is being applied provisionally and is to be reviewed and made permanent as part of the overall results of the DDA.

The mechanism encourages members to make an early announcement of new RTA negotiations or RTAs that have been negotiated. The RTA must be notified to the WTO once it is ratified and before the application of preferential treatment between the parties. It also requires parties to RTAs to notify any changes they make to existing agreements as soon as the changes have entered into force, and submit a short written report once the RTA has been fully

implemented. The Secretariat was instructed to create a public database (<http://rtais.wto.org>) on regional trade agreements and it has been available to the public since January 2009. The database includes information on all RTAs notified to the WTO (early announcements, notifications, factual presentations and minutes of meetings as relevant), as well as tariff and trade data provided to the Secretariat for the preparation of factual presentations (see below).

By specifying a more precise timetable, the mechanism has been effective in encouraging members to notify their agreements. Since January 2007, members have notified the WTO of 244 RTAs, which include free trade agreements and customs unions. In addition, the WTO Secretariat has received 98 early announcements either of RTA negotiations or agreements that have been signed but have not entered into force, thereby improving knowledge of these future RTAs. Most RTAs are implemented over a transition period and the transparency mechanism also requires RTA parties to submit a report on the completion of the liberalization commitments as originally notified. Less progress has been made in this area, with the first such report being received by the Secretariat only in 2014.

The factual presentations prepared by the Secretariat have allowed members to consider RTAs on the basis of the same, standard information, which makes them easier to monitor and compare. The presentations contain detailed information not only of provisions found in the texts of RTAs, but also on liberalization in goods and/or services envisaged by the RTA. Since December 2006, the Secretariat has prepared and distributed factual presentations of 194 RTA notifications, involving around 48 per cent of all RTAs notified to the WTO and the GATT. For RTAs notified before the application of the mechanism, the Secretariat has prepared shorter documents (factual abstracts) which provide limited information on these agreements; factual abstracts cover around 18 per cent of all RTA notifications.

There remain difficulties, however, especially in the receipt of data and/or comments on factual presentations from some members. As a result, factual presentations remain to be done for approximately 28 per cent of all RTA notifications. A key difficulty concerns RTAs between WTO members and non-members. While the provision of data for factual

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***Since January 2007, members have notified the WTO of 244 RTAs, which include free trade agreements and customs unions.***

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presentations is mandatory for members it is not for non-members and many choose not to provide data. Despite these difficulties, it is clear that the mechanism has greatly enhanced our understanding of RTAs and how they may interact with the multilateral trading system, as well as enhanced the transparency of this type of trade relations.

## Increasing transparency through notifications

Notifications, a self-reporting tool, are the oldest and most commonly found transparency mechanism in WTO agreements. All WTO members are required to inform the WTO Secretariat about the enactment of legislation, the adoption of new measures or the progress made in implementing commitments. Certain agreements, such as the SPS and TBT agreements, also require members to notify the WTO of relevant draft measures or set up offices (called enquiry points) to respond to requests for more information on new or existing SPS/TBT measures, including how the member justifies the requirements and how the regulations are applied.

Transparency is a central principle in the SPS and TBT agreements. Under both agreements, governments are required to notify each other, through the WTO Secretariat, of any new or changed SPS or TBT requirements that affect trade when these are still at a draft stage. This gives interested trading partners the possibility to comment on the draft text, thereby increasing predictability and reducing trade disruptions. By systematically communicating information and exchanging experiences, members can improve their national measures. The increased transparency also protects consumers and trading partners alike from protectionism hidden in unnecessary technical requirements.

Over the last 20 years, 23,404 notifications have been submitted in the TBT area. These notifications of draft technical regulations and conformity assessment procedures have been submitted by 126 members from all regions and at all levels of development. Notifications have grown year-on-year from 389 in 1995 to over 2,000 annually since 2012. In 1995 developed members submitted almost 80 per cent of the TBT notifications. By 2014, however, over 80 per cent of the notifications were submitted by developing and least-developed country members

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***Countries have to implement what they have agreed under the WTO framework, and other countries want to see how well that work is progressing.***

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(see Figure 10). A similar trend, both in terms of numbers and share of the notifications by developing country members, can be observed in the SPS area.

Other committees also contribute to enhancing transparency by overseeing the implementation of WTO rules. Countries have to implement what they have agreed under the WTO framework, and other countries want to see how well that work is progressing. For example, the Agriculture Committee, comprising all WTO members, has the mandate to "... oversee the implementation of the Agreement on Agriculture". The committee monitors how well members are complying with the rules that resulted from the Uruguay Round and with their own commitments. In order to do so, it needs information. Central to this is information that countries share with the rest of the membership – often annually – through notifications to the committee on how they are complying with the agreed rules and their legally binding commitments (as listed in their schedules). These notifications then form the basis for reviewing how the agreement is being implemented, although other information is also used.

Because notifications are central to this task, the committee also reviews how well members are complying with their obligations to notify what they are doing in agriculture. The Goods Council, the body with oversight over the whole of trade in goods – similarly comprising all WTO members – also takes an interest. If members are not up to date with their notifications, the WTO Secretariat reminds them annually. The Secretariat also alerts delegations annually about the regular notifications they will have to file in the coming year.

By the first quarter of 2015, more than 3,500 agriculture notifications had been submitted to the Committee on Agriculture for review (see Figure 11). These notifications provide information

on the agricultural policies implemented by WTO members and are publicly available via a database known as the Agriculture Information Management System (<http://agims.wto.org/>).

Beyond formal notification procedures, transparency in trade policy is also enhanced through the discussions that take place in many regular WTO bodies. One particular mechanism that provides additional transparency is the discussion of specific trade concerns (STCs) in the TBT and SPS committees. The SPS and the TBT committees have been working quietly to review members' measures, increase transparency and predictability, prevent conflict and solve concerns.

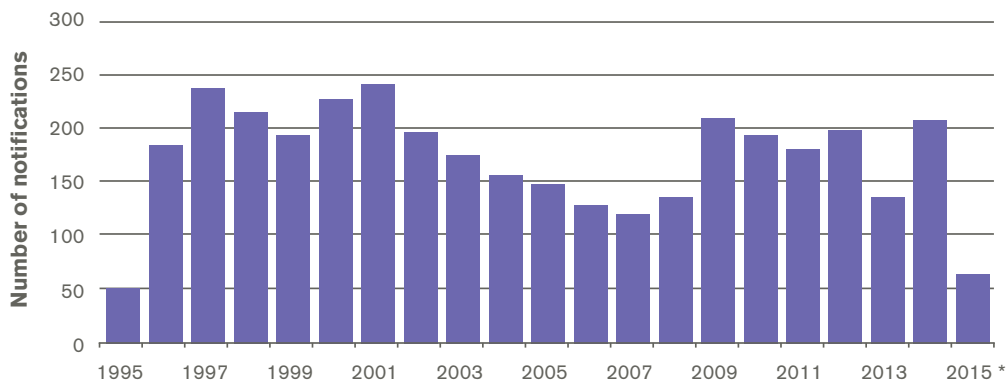
If comments or concerns raised regarding a notification cannot be resolved bilaterally, members use the SPS and TBT committees to seek clarification on their STCs, which are often complex technical matters. For example, members can resort to the good offices of the committee chair to hold consultations. In July 2014, the SPS Committee formally adopted a procedure to facilitate the use of the chair's good offices for ad hoc consultations to help members wishing to make use of this option

to resolve specific trade concerns. The number of STCs raised in the TBT Committee has increased from just four in 1995 to a record 47 new STCs in 2014, while in the SPS Committee, the number of new STCs raised has fluctuated around an average of 20 new issues per year (see Figure 12).

Essentially, the committees provide a forum where technical solutions might be found. The channels available in the SPS and TBT committees do not preclude the right of members to use formal WTO dispute settlement procedures when necessary. However, both the information exchange through the transparency provisions of the SPS and TBT agreements and the possibility to address specific trade concerns in the committees have proven to be effective in pre-empting the need for formal dispute settlement proceedings in certain situations.

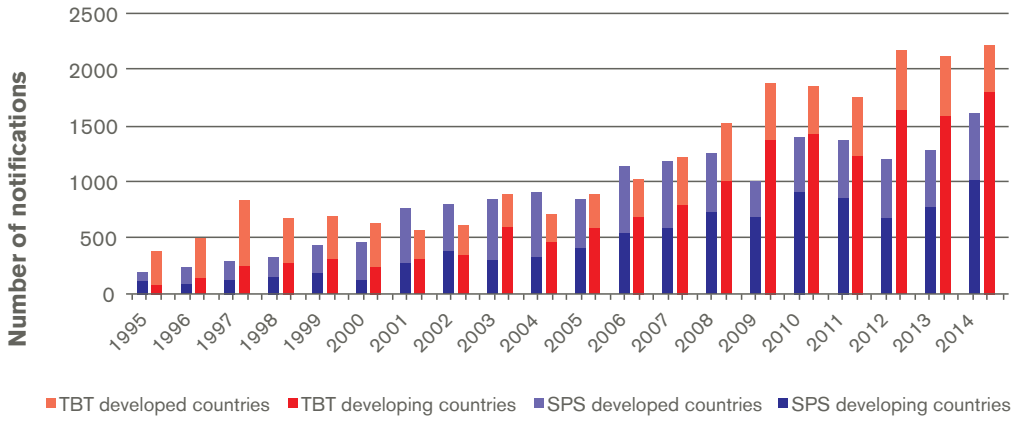
Over the past 20 years, 382 trade concerns have been raised in the SPS Committee and about 450 in the TBT Committee – yet only 17 SPS-related disputes (on 11 issues), and five TBT disputes have been brought to WTO dispute settlement, suggesting that a large proportion of these concerns may have been resolved in committee discussions.

Figure 10: Agriculture notifications submitted to the WTO since 1995



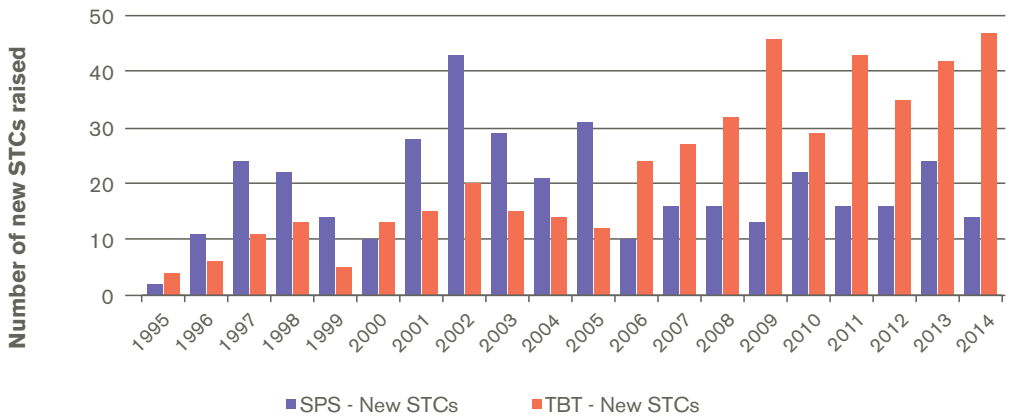
\* up to 10 April 2015.  
Source: WTO Secretariat

Figure 11: SPS and TBT notifications



Source: WTO Secretariat

Figure 12: New SPS and TBT specific trade concerns



Source: WTO Secretariat

This type of monitoring also takes place in other committees, including the Committee on Agriculture. The questions members ask each other as they review notifications are part of the committee's key responsibility of overseeing how countries are complying with their commitments. Delegations can also raise any concerns about developments in other members' agricultural policies.

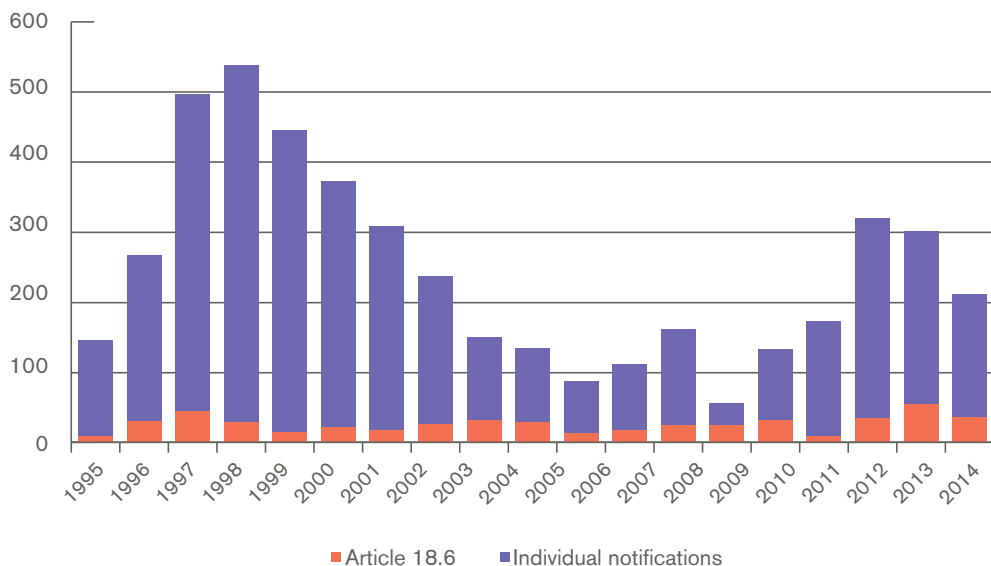
A substantial amount of information has been supplied since 1995 through questions and answers, with members asking each other 5,013 questions (up to 2014). The vast majority – 87 per cent – was about notified information, with 12 per cent being about implementation of commitments and the remainder covering overdue notifications and other issues. But the share is not static and the percentage of implementation questions has risen in recent years (see Figure 13). As is the case for the SPS and TBT committees, this type of review process strengthens the monitoring functions of the Committee on Agriculture and gives members an opportunity to seek clarification and resolve trade concerns before deciding to escalate to dispute settlement.

## Conclusion

Over the past 20 years, the Trade Policy Review Mechanism has ensured the collective evaluation of almost all members' individual policies and measures. The mechanism has guaranteed a level of policy transparency and provided an opportunity for neutral and unbiased information sharing. It has facilitated country comparisons as virtually the same questions are asked for all countries, trade matters are analysed using consistent methods, and a similar standard of rigour is applied in its outcomes. The TPRB's open dialogue and sharing of policy experience has also helped concentrate the attention of all members on a single country's set of trade and trade-related policies, allowing them to ask questions about specific trade practices and helping them to identify and possibly change specific trade restrictive measures.

The reviews have also helped throw light on how policies and measures not necessarily covered by WTO rules (e.g. competition or environmental policy) may have a bearing on the international movement of goods, services, capital and labour, and can have

Figure 13: The proportion of questions asked in the Committee on Agriculture by type has fluctuated: Evolution of questions according to whether they are about notifications (1995–2014)



Source: WTO Secretariat

effects equivalent to more conventional measures (such as import tariffs) that are subject to WTO disciplines. They have also contributed to improving adherence to WTO principles and commitments.

Trade monitoring has further strengthened the transparency of trade policy around the world by providing regular, comprehensive and up-to-date information on trade and trade-related measures implemented by WTO members and observers. The WTO monitoring reports have been widely welcomed by both the WTO membership and the G20 economies as significant contributions towards understanding trends and developments during the 2008 financial crisis and its aftermath. The Transparency Mechanism for Regional Trade Agreements has greatly increased the understanding of RTAs through an improvement in notifications and by allowing members to consider a greater number of RTAs in the relevant WTO bodies.

Last, but not least, notifications have acquired an increasingly important role in a number of areas. Together with the discussion of specific trade concerns, they have helped clarify rules, increase transparency and predictability, prevent conflict and solve concerns and disputes. Improving WTO members' compliance with their notification obligations, where it is currently low, will allow these virtuous effects to expand beyond their current reach.

# 6



# Dispute settlement – clarifying rules and resolving disputes

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One of the most important features of the WTO – and a major result of the Uruguay Round – is its strengthened dispute settlement system. Settling disputes has always been a core function of the multilateral trading system, but the WTO's Dispute Settlement Body (DSB) represents a significant improvement over the GATT's approach in several important respects. Above all, the system is more efficient – this is an acknowledgement of the importance of prompt dispute settlement to an effective and smooth functioning WTO. Whereas GATT disputes had no fixed timetables, the WTO instituted a more structured process with clearly defined stages and deadlines. As a result, the WTO has one of, if not the, fastest international dispute settlement mechanisms. At the panel stage, most cases are completed in about 14 months; and Appellate Body reports are, with very few exceptions, issued in no more than three months.

Another important feature of the WTO system is that it is now based on "reverse consensus", meaning that establishment of dispute settlement panels and adoption of rulings cannot be blocked unless all members, including the complaining member, agree to do so. This is in contrast to the GATT's consensus approach where just one member, including of course the responding member, could block such steps. Further, with the establishment of the Appellate Body in 1995, to which members may appeal legal issues in panel reports, a respected body of case law has developed that contributes to the security and predictability of the multilateral trading system.

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***To date, developing country members have initiated 226 disputes compared to the 292 initiated by developed country members.***

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That members have more confidence in the WTO system is reflected in the frequency with which it is used. Whereas 121 cases were dealt with by the GATT in 50 years, five times as many complaints have been brought to the WTO since 1995, and some 300 reports (judgments) have been issued. In fact, the WTO dispute settlement system is perhaps the most prolific of all international dispute settlement systems. It far outstrips the International Court of Justice, the United Nations' principle adjudicative body, which has received 161 disputes since its establishment over 68 years ago, as well as the International Tribunal for the Law of the Sea, which has heard 23 cases since its creation in 1996. In part, the increasing number of disputes brought to the WTO is simply the result of expanding world trade and the enhanced rules negotiated in the Uruguay Round; but the fact that more disputes are coming to the WTO also reflects a growing faith in the system and the increasing importance members attach to the rule of law in international trade relations.

## **An accessible dispute settlement system**

One of the most striking features of the WTO's dispute settlement system is its accessibility to all members, not just developed countries. To date, developing country members have initiated 226 disputes compared to the 292 initiated by developed country members. Some years have even seen developing country complainants significantly outstrip developed country complainants. For example, in 2010 and 2012, 65 per cent and 63 per cent, respectively, of complaints were initiated by developing countries, reflecting partly their growing share of world trade and partly their increasing confidence in the dispute settlement system.

Sometimes members prefer not to challenge a measure on their own and prefer to join forces with one or more other members. The Dispute Settlement Understanding (DSU) allows a single panel to consider challenges against a measure

brought by several members. In addition to securing desired political support, members may also enjoy cost savings by pooling resources. This approach not only encourages collaboration among members, but also ensures coherence and consistency in the application of WTO law, especially when the challenged measure applies to members generally.

### **Representation in dispute settlement by private counsel**

The tendency, particularly among developing country members, to use private sector lawyers to assist them in defending their trade interests has grown during the past 20 years, and has proven helpful in enabling members to fully access the dispute settlement system. The ability of parties to use private lawyers in dispute settlement proceedings was confirmed by the Appellate Body in 1997 in the *EC – Bananas* dispute.<sup>6</sup> In that case, the Appellate Body acknowledged that representation by private counsel of a government's own choice may well be a matter of particular significance for developing country members, since it enables them to participate fully in dispute settlement proceedings even if they do not have dedicated trade law departments in capitals.

### **Legal assistance to developing country members**

One of the reasons for significant developing country involvement in the dispute settlement process is undoubtedly access to the Advisory Centre on WTO Law (ACWL). This independent international organization, established in 2001 by a group of WTO members, has provided free or low-cost legal support to its developing country members and LDCs in 45 separate WTO dispute settlement proceedings, either directly through its in-house lawyers or, in six proceedings, through external counsel.

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***Disputes are settled on the basis of the international legal obligations agreed to by members when they joined the WTO.***

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<sup>6</sup> As discussed in more detail below, the Appellate Body also recognized that a member, as a sovereign entity, has the right to decide on the composition of its delegation to dispute settlement hearings.

Additionally, the WTO system recognizes that developing countries may need assistance in bringing and defending cases. To this end, the DSU includes a provision directing the Secretariat to make available legal expertise upon the request of any developing country member.

### **Members' right to initiate a dispute**

Under the WTO dispute settlement system, a WTO member can challenge a measure regardless of whether it has a direct trade interest in that measure. This is not the case in many legal systems where some sort of link or legal interest must be demonstrated before a case can be launched. This explains why WTO members are said to have an automatic right to initiate a dispute. This principle, which dates back to the GATT period, was revived in the case brought against the European Community's banana import policy by Ecuador, Guatemala, Honduras, Mexico, and the United States. The Appellate Body confirmed in the bananas case that the United States had sufficient interest to bring proceedings against the European Community even though, in practical terms, the United States did not export bananas.

### **Establishing a rules-based system for resolving disputes**

Improved access is not the only achievement of the WTO dispute settlement system. Just as important is its record of achieving its main objective, namely, settling disputes between members so as to ensure the "security and predictability of the multilateral trading system". The main way the WTO's dispute settlement system has achieved this is by establishing a rules-based system for resolving disputes. This is a second significant strand running through WTO dispute settlement during the last 20 years.

### **Prohibition against unilateral measures – only the WTO may authorize retaliation**

In essence, a rules-based system means that disputes are resolved according to the rule of law rather than through diplomatic means, as was often the practice under the GATT. A diplomatic approach to dispute settlement suited the post-Second World War era – when the trading system was composed of a smaller group of like-minded countries and when economic integration was not as deep. But in an increasingly globalized world where the outcome of a dispute may well be of economic interest to more



than just the disputing parties, such an approach does not always result in a legally justifiable result.

Under the system created through the DSU, disputes are settled on the basis of the international legal obligations agreed to by members when they joined the WTO. Pursuant to this more legalistic, rules-based approach, members are expressly prohibited from taking unilateral measures against another member considered to have violated WTO agreements.

### **Preference for mutually agreed solutions**

Although the DSU sets out rules governing how disputes should be conducted, it makes clear that a mutually agreed solution is always the preferred outcome of a dispute. To this end, the DSU sets up procedures to encourage parties to settle their disputes without having to resort to the formal adversarial procedures. Parties are required to consider whether bringing a dispute would be "fruitful". Once a formal complaint is filed, members have 60 days to talk to (or, as the DSU puts it, "consult") each other to see whether they can resolve their differences. The multilateral nature of the WTO is taken into account even at the consultations stage, with the DSU providing that any member can request to join in the consultations if it considers that it has a substantial trade interest in the dispute.

The desire to see disputes settled without resorting to formal adversarial proceedings is clear in the DSU provision that allows parties to request the Director-General to use his good offices or offer conciliation and mediation to resolve a dispute without resorting to adjudication. The combined effect of these provisions has been that, since the WTO's establishment, parties have settled more than half of lodged disputes at the consultation stage.

### **Automaticity of procedural steps in the dispute settlement process**

Arguably, the DSU's most important innovation is the "automatic" chronological progression, or automaticity in WTO parlance, of significant stages of the process, using the rule of "reverse consensus". This innovation has been important in depoliticizing the process whereby one member could thwart the will of the majority. The DSU eliminated the right of individual parties, typically the party whose measure was being challenged, to block the establishment of panels

or the adoption of a panel report. Under the DSU, the DSB establishes panels and adopts panel and Appellate Body reports unless there is a consensus by the WTO membership not to do so.

### **Creation of the Appellate Body to review issues of law and legal interpretations**

Although panels existed under the GATT, the Uruguay Round negotiators created an important new legal institution in the DSU – the Appellate Body. Considering the significant amount of jurisprudence that has emanated from the Appellate Body, as well its firm standing as an international adjudicative body, it might seem surprising that it was thought that the Appellate Body would not be highly active in WTO dispute settlement. The Uruguay Round negotiators thought that it would rarely hear appeals; however, the reality is that about 70 per cent of panel reports have been appealed. In hearing appeals, the Appellate Body has an important role to play in clarifying members' rights and obligations under the WTO agreements. At the same time, it must be mindful that its rulings, as well as the reports being appealed, cannot add to or diminish the rights and obligations of members under the WTO agreements. Furthermore, the Appellate Body contributes to the security and predictability of the multilateral trading system by helping to ensure consistency in the interpretation of WTO agreements.

### **Multilateral surveillance of actions taken by the losing party to implement panel and Appellate Body reports**

Where a measure is found to be inconsistent with a member's obligations, that member must bring the inconsistent measure into conformity with WTO agreements. There are no monetary awards or compensation offered to the winning party. This reflects the DSU's desired outcome: withdrawal of the inconsistent measure. The Dispute Settlement Body (DSB) created a surveillance mechanism to ensure that members follow and implement its rulings and recommendations following adoption of panel and Appellate Body reports. This mechanism, which it administers, allows any member, not just the winning member, to raise the issue of compliance at a DSB meeting. Although the rate of compliance by losing parties in WTO dispute settlement is very high, in some cases members have been slow to comply with adverse rulings, especially when their parliaments need to modify the measures.

The DSU has taken account of this possibility of non-compliance by allowing the member whose trade has been affected by the illegal measure to retaliate. Formally this is known as the suspension of WTO concessions or other obligations to the non-complying member for a value equal to the trade damage suffered by the winning member, but in everyday language it is often referred to as sanctions or retaliation. The goal of retaliation is to incentivize the losing member to bring its inconsistent measure in line with WTO rules. The DSB automatically authorizes the "sanctions" unless parties disagree on the level of trade affected by the illegal measure, in which case there will be arbitration to determine the level of retaliation.

Although the DSU prefers that retaliation be imposed in the same sector as the violation occurs (in agricultural goods, for example, if the dispute concerns trade in bananas), this may not always be practicable or effective, especially if the member wishing to retaliate is a developing country with limited trade volumes. Thus the DSU permits a winning member to suspend concessions or obligations in another sector of trade. Ecuador, for example, was allowed to retaliate against the European Union over its WTO-inconsistent bananas regime in other sectors, including copyright and geographical indications addressed in the WTO's TRIPS Agreement. Specifically, Ecuador was authorized to produce sparkling wine and call it champagne even though, ordinarily, such use of the geographical indication "champagne" would be contrary to the TRIPS Agreement.

## Lessons, issues, and principles from 20 years of WTO case-law

The remainder of this chapter is divided into three sections. In the first section we consider how the principle of transparency has emerged in the jurisprudence as a key value underpinning the WTO system. In the second section, we look at how the dispute settlement system has struck an appropriate balance between the sovereign right of WTO members to prioritize non-trade concerns and the interest of the multilateral economic system in avoiding protectionist economic behaviour. Finally, in the third part, we consider the ways in which the relationship between WTO law and other areas of international law has been delineated in the cases over the last 20 years.

## Encouraging transparency

The case law of the last 20 years shows that the WTO agreements are as much about encouraging transparency and coherence in trade policy and international trade relations as they are about removing trade barriers. Indeed, a key lesson of the jurisprudence is that WTO law is not committed to opening markets "at all costs". Rather, the key mission of WTO law is to ensure that trade policies are made and implemented in ways that are transparent, non-discriminatory and, where they impede the movement of goods and services across international borders, justifiable as a rational policy response to an important social good. Thus, in the words of a 2013 WTO report, *The Future of Trade: The Challenges of Convergence*, "transparency is a key governing principle of the WTO. Members have an obligation to pursue a transparent approach in their dealings. Policies should not be a secret. Procedural aspects of their application and decisions taken in pursuance of their objectives should not be secrets either. ... An absence of commitment to transparency negates a principle, weakens the system, fosters mistrust and breeds a culture of opacity."

## Domestic publication of all laws and regulations affecting traders

The importance of transparency is manifest most clearly in the many legal provisions concerned with ensuring that trade regulations are made and administered in a transparent way. For example, Article X of the GATT 1994, which forms part of the WTO rulebook, lays down rules regarding "publication and administration of trade regulations". These rules are not about the content of trade policy, but instead impose requirements relating to the transparency, accessibility and reviewability of trade regulations and decisions based thereon. The requirement to publish trade regulations is repeated across WTO agreements.

These provisions are commitments undertaken by all members and enforceable through dispute settlement. Panels and the Appellate Body have consistently recognized the centrality of these obligations. They are a core part of the WTO's broader mission of encouraging good governance in international trade relations. Thus, in a number of cases the Appellate Body has found that WTO members have acted inconsistently with their international obligations because, for example, they imposed trade regulations retrospectively or without sufficient notice, or because they

had not instituted a process for independent administrative review of customs-related decisions.

### Notifications to the WTO of all laws and regulations affecting trade

As noted in a previous chapter, the WTO Agreement also requires members to notify to the WTO domestic laws, regulations and other measures or actions that may have an impact on international trade or are otherwise connected with WTO-related matters. There are a total of 175 notification obligations across the WTO agreements. Notifications are especially important to the dispute settlement system because they *inter alia* facilitate surveillance by the membership of measures that could be distorting, discriminatory, or otherwise challengeable under WTO law. Additionally, these provisions are legally binding and enforceable through dispute settlement.

As with the publication obligations, panels and the Appellate Body have made clear that these obligations, though not touching upon the substance of trade regulation, are nevertheless central to the proper operation of the WTO system, and failure to notify can itself constitute a violation of WTO law. For example, in *US – Clove Cigarettes* the panel stated that the notification requirement in Article 2.9.2 of the TBT Agreement "is at the core of the TBT Agreement's transparency provisions",<sup>7</sup> and found that the respondent had violated its WTO obligations by failing to notify its measure at an "early appropriate stage".<sup>8</sup> Similarly, in *Brazil – Aircraft* the Appellate Body emphasized the importance of the notification provision in the Agreement on Subsidies and Countervailing Measures, which, it explained, "aims to promote transparency by requiring Members to notify their subsidies".<sup>9</sup> Disputes about notification have also arisen in the context of the Agreement on Safeguards<sup>10</sup> and the SPS Agreement,<sup>11</sup> where members have been found to have violated WTO law by failing to notify their measures.

### Transparency in dispute settlement procedures

Finally, it is important to highlight that transparency has become central to the procedures and operation of the dispute settlement system itself. Although dispute settlement proceedings are in principle confidential, members are free to make part or all of their submissions available to the public. And the DSU provides that, upon the request of any member, a party to a dispute must "provide a non-

confidential summary of the information contained in its written submissions that could be disclosed to the public". Moreover, all WTO dispute documents, including requests for the establishment of a panel and notices of appeal, communications from the panel and the Appellate Body, and the final reports of panels and the Appellate Body, are freely available to the general public on the WTO website in all three of the WTO's official languages.

Additionally, in recent years panel and Appellate Body proceedings have been open to the public in a number of cases. Public hearings are still not the norm in WTO dispute settlement, and hearings will only be opened to the public if all parties to a dispute so request. Moreover, an "open hearing" does not usually entail the presence of observers in the room; more commonly, the hearing is screened in a different room in the WTO. This enables the transmission to be suspended if, for example, a third party member wishes to give a statement in confidence.

### Preserving members' policy space: the issue of "sovereignty"

#### Centrality of state sovereignty in WTO law

In its 2004 review of the WTO system, the Sutherland Commission on the Future of the WTO noted that "there is a perception, often amplified in political or media circles, that states are progressively losing their ability to decide for themselves their own policy directions and priorities."<sup>12</sup> Questions about the relationship between state sovereignty and WTO law are still raised in some quarters, but for the most part concern that the WTO might "impinge upon" state sovereignty has largely eased. This is thanks in no small part to the work of the dispute settlement system. Panels and the Appellate Body have been careful not to overstep the boundaries of members' sovereign authority. They have emphasized that state sovereignty remains central, rather than marginal,

<sup>7</sup> Panel Report, *US – Clove Cigarettes*, para. 7.536.

<sup>8</sup> Panel Report, *US – Clove Cigarettes*, paras. 7.538 and 7.542. This finding was not appealed.

<sup>9</sup> Appellate Body Report, *Brazil – Aircraft*, para. 149. The Appellate Body noted that notification does not "prejudge[the] legal status of those subsidies".

<sup>10</sup> See e.g. Appellate Body Reports, *Korea – Dairy and US – Wheat Gluten*.

<sup>11</sup> See e.g. Appellate Body Report, *Japan – Agricultural Products II* and Panel Reports, *Japan – Apples* and *EC – Approval and Marketing of Biotech Products*.

<sup>12</sup> See Sutherland Report (2004) *The Future of the WTO: Addressing institutional change in the new millennium*, Geneva: WTO.

to the WTO system, and that WTO law does not constrain but, in fact, facilitates the adoption by members of trade and other policies in accordance with their own goals and priorities, provided that they do so in ways that are WTO-consistent.

Time and again, panels and the Appellate Body have reaffirmed the right of members to regulate to protect important social values, provided, of course, that they do so in a way that is non-discriminatory and does not represent a disguised restriction on international trade. Hence, panels and the Appellate Body will not "second-guess" policy decisions made by members concerning the degree of risk they are willing to accept, or the level or intensity at or with which they decide to pursue a particular policy goal. That decision is reserved for the members themselves, and the dispute settlement system cannot require a member to modify its "appropriate level of protection". Thus, criticisms that the WTO "dictates" or otherwise controls members' domestic policy on such issues as health and environmental protection are unfounded. WTO dispute settlement is designed to ensure that particular measures are consistent with the agreed disciplines; it is not concerned with questioning, let alone overruling, members' policy objectives and preferences.

The early case *Japan – Taxes on Alcoholic Beverages* well illustrates this point. There, the Appellate Body made clear that WTO members are free to adopt any taxation system they wish. They are free to set the level of taxation as high or low as they like. They are also free to decide not to have any taxation regime. However, whatever system they choose, they must tax all like products from all WTO members similarly. Likewise, a number of WTO agreements, such as the SPS Agreement, expressly protect the right of WTO members to impose domestic standards that are "higher than" (i.e. more stringent than) international standards, so long as there is a scientific justification.

The question of sovereignty has also arisen in a number of recent cases concerning control of, and trade in, natural resource products, where some members have claimed that their WTO obligations are limited by, or at least must be interpreted and applied in light of, the public international law principle that all countries are "sovereign over their natural resources". The Appellate Body explained that requiring members

to comply with their WTO obligations is fully consistent with the principle that members retain full sovereignty over their natural resources, noting that, "in becoming a WTO Member, [a state] has of course not forfeited permanent sovereignty over its natural resources, which it enjoys as a natural corollary of its statehood ... [It] has, however, agreed to exercise its rights in conformity with WTO rules, and to respect WTO provisions when developing and implementing policies to conserve exhaustible natural resources."<sup>13</sup>

Appellate Body rulings make clear that taking on treaty obligations is not an impingement on, but rather an exercise of, sovereign authority. At the same time, those rulings reflect awareness that, in a multilateral environment, the sovereign rights and obligations of states must be carefully balanced against each other. While members retain sovereignty over their natural resources, this right cannot be relied upon to justify a denial of other members' sovereign rights, including the right to trade, except to the extent provided for in WTO agreements.

### **"Not in clinical isolation": the relationship between the WTO and other areas of international law**

#### **WTO Agreement must be interpreted in the context of general international law**

A further important lesson emerging from the case law of the last 20 years is that WTO law does not exist "in clinical isolation" from other areas of international law. In its very first case, the Appellate Body explained that Article 3.2 of the DSU, which provides that the WTO Agreement shall be interpreted "in accordance with customary rules of interpretation of public international law", requires that WTO law be interpreted and applied according, *inter alia*, to the rules in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (Vienna Convention), the major public international law instrument codifying the law on the interpretation of treaties. In saying this, the Appellate Body clarified that WTO law has important links to other areas of international economic and public law that impact upon the ways in which "people live and work and die".<sup>14</sup>

<sup>13</sup> Panel Report, *China – Rare Earths*, para. 7.270.

<sup>14</sup> Appellate Body Report, *EC – Hormones*, para. 187.

This point is perhaps best illustrated in *US – Shrimp*, a complaint launched in 1996 by India, Malaysia, Pakistan and Thailand against a US ban on the import of their shrimp and shrimp products. Here the Appellate Body interpreted the term "exhaustible natural resources" as used in Article XX of the GATT 1994 in the light of non-WTO treaties dealing with the environment and natural resources. In particular, the Appellate Body found the definition of "natural resources" contained in those treaties instructive – a broad definition that includes living and non-living resources, and which underlines the importance of their conservation by the international community.

### Respecting and integrating the work of other international bodies

Similarly, a number of the WTO agreements provide that measures adopted by a member in conformity with international standards developed in other fora will generally be presumed to be WTO-consistent. For example, a sanitary measure adopted by a member "which conform[s] to international standards, guidelines or recommendations" will be "deemed" consistent with the SPS Agreement. Similarly, Article 2.4 of the Agreement on Technical Barriers to Trade (TBT Agreement) requires members to base their technical standards on any relevant existing "international standards". Although these provisions do not incorporate international standards into WTO law per se, they do create an incentive towards harmonization and coherence between WTO law and rules and regulations developed in other specialist fields. In this context, it is important to note that the WTO has "working relationships" with almost 200 international organizations. This ensures that the WTO is firmly integrated within the broader realm of international cooperation.

Many of the dispute settlement procedures themselves also reflect the WTO's position as an integral part of the broader international system. Perhaps most importantly, the Appellate Body has interpreted Article 13 of the DSU as authorizing panels to seek "information and technical advice" from other international organizations with expertise in areas such as customs procedures and human and animal health. In cases under the SPS Agreement, for example, it is common for panels to seek technical information from scientific experts working in international organizations, such as the World Organisation for Animal Health. Similarly, in cases concerning tariff rates, panels

have occasionally sought advice from the World Customs Organization (WCO) about the proper interpretation of the international treaty on customs classification that is administered by the WCO.

### Receiving and considering information from amicus curiae and non-governmental organizations (NGOs)

Additionally, the Appellate Body has made clear that in exercising their right to seek information, panels are entitled to receive, consider and make use of unsolicited *amicus curiae* briefs. These are documents submitted by interested members of civil society, which may provide panels with insight into the broader effects and consequences of a challenged measure. By enabling panels to receive and consider such material, the Appellate Body has ensured that the dispute settlement system maintains an open channel of communication with the world beyond the halls of the Centre William Rappard, the WTO's headquarters.

## Conclusion

As one of the busiest international dispute settlement mechanisms in existence, the WTO dispute settlement system is continually evolving. As the WTO enters its third decade, members and observers can be sure that new principles will emerge and new features will develop as the needs of the membership evolve. One thing, however, is certain: the dispute settlement system, buttressed by a strong negotiated framework and 20 years of experience, will continue to produce reports of the highest quality and, perhaps most importantly, will continue to serve the crucial function of facilitating the settlement of international trade disputes. Both the members themselves, and the traders who rely on the smooth and predictable application of WTO law, expect nothing less.

# 7



UN Secretary-General Ban Ki-moon speaking at the WTO's 2014 Public Forum.

# Strengthening policy coherence – cooperation with other organizations

In the 20 years since the launch of the WTO, the world has changed fundamentally and so too have the challenges faced by the international community. Countries and their economies are more interdependent and interconnected than ever. Financial and economic shocks, climate and environmental damage or life-endangering epidemics spread faster than before, sometimes with devastating or potentially devastating effect, as shown by the global financial crisis of 2008 or epidemics such as SARS or bird flu earlier in the decade.

This has put incredible pressure on the role and functions of international organizations, on the need for increased and more effective cooperation and above all, on more coherent policies to tackle the multitude of problems the world is experiencing. The 2008 crisis gave a deeper coordinating role to the G20 group of leading developed and developing countries, reflecting the changed geopolitical and economic landscape. The United Nations Chief Executives Board, formed in 1997 to bring together the leaders of all major intergovernmental institutions, also took on a new importance in the drive for better coordination and policy coherence. International leaders reaffirmed their commitment to meeting the 2000 Millennium Development Goals (MDGs), aimed at addressing a wide range of development challenges through international cooperation. For the WTO, too, increased global integration and the relationship between trade and other policy areas has led to growing spillovers from areas such as finance, the environment and climate change, employment and public health.

Greater coherence in global economic policy-making has long been one of the WTO's core objectives. It is laid down in Article III.5 of the Marrakesh Agreement. Twenty years ago, this meant closer cooperation with the IMF and the World Bank. Back then the international architecture of global cooperation and coordination was very much driven by specialization and separation of responsibilities. While the original coherence mandate of the WTO still guides an important part of its international cooperation

and coordination, it is now recognized that the WTO system is part of a much broader set of international rights and obligations that bind its member countries.

The WTO maintains extensive institutional relations with many of its sister organizations, participates as observer in their work and has established several partnerships to help improve the trading opportunities and capacities of developing and least-developed countries. Examples of such partnerships are the Enhanced Integrated Framework (EIF), the Standards and Trade Development Facility (STDF) and the Aid for Trade Initiative. WTO cooperation with other international organizations continues to evolve and is more than ever a function of the need for increased global coordination and better governance.

It is also clearly acknowledged that coherence starts at home. Incoherent national policy formulation cannot be corrected at the international level, nor can the latter be held responsible for inconsistencies designed at country level. Bearing this in mind, the multilateral trading system has also responded to the new challenges by strengthening policy coherence in a number of areas such as statistics, research, standard-setting and technical assistance and training.

## Expanding policy coherence: Art III.5 and beyond

### Implementing the coherence mandate

At the end of the Uruguay Round, WTO members issued a ministerial declaration – "The WTO Contribution in Achieving Greater Coherence in Global Economic Policy Making" – which called on the WTO to cooperate with the IMF and the World Bank. This one-page declaration defined the principles under which a better articulation of trade and other economic policies could be achieved. It recognized that trade liberalization and multilateral rule-making worked best if supported by stable financial and macroeconomic policies, and development policies that aimed at strengthening the capacity of developing

countries to participate in international trade, including with development aid. It also acknowledged that, while structural, trade, macroeconomic and economic development policies were increasingly intertwined, policy coherence should be achieved at home first. Inter-agency cooperation could only improve the coordination and articulation of such policies, not correct basic inconsistencies at country level.

The WTO "coherence mandate", supported by two joint cooperation agreements – WTO-IMF and WTO-World Bank, concluded in 1996 – led to two distinct streams of work in the WTO. One aimed at ensuring that trade issues played a prominent part in development strategies through WTO-World Bank cooperation, notably in the context of the Doha Round, the implementation of the Trade Facilitation Agreement, the Enhanced Integrated Framework, and the Aid for Trade Initiative. A recent example of the strong and growing research collaboration between the two organizations is the publication in 2015 of the first joint WTO-World Bank report, "The Role of Trade in Ending Poverty". WTO-IMF cooperation, on the other hand, aimed at addressing and better understanding the relationship between trade and finance. The flexible implementation of the mandate has served the three institutions and their respective members well in the past 20 years. This cooperation increased even further after the creation of the G20, which uses the three institutions as vehicles for tighter international policy coordination.

The link between trade and development is at the core of the trade-related initiatives in favour of least-developed countries, notably in the context of the EIF and Aid for Trade. As discussed below, the EIF involves strong cooperation between the WTO and the World Bank, as well as with the IMF and other agencies. Its final aim is to ensure that the trade dimension is included in the development strategies of countries, with a maximum degree of local control and involvement, or "ownership". It also helps provide a diagnosis of sectoral bottlenecks preventing better integration of these countries into regional and world trade, and finances projects that reduce such bottlenecks.

Another important area of cooperation is Aid for Trade, where there is a strong commitment to dedicating a stronger share of global development assistance to trade-related projects in developing countries, both in terms of technical assistance and in the construction

of physical infrastructures for trade. Some of these projects are directly under WTO management, others are run by the World Bank. Another important area of joint work is trade finance. In recent years, the WTO and World Bank have teamed up to support the availability of trade finance in poor countries, with the creation of specific facilities, such as the global trade liquidity fund. The latter brings together governments, development finance institutions and private sector banks to support trade in developing markets and address a shortage of trade finance since the 2008 global crisis.

With Secretariat support, WTO members have been examining the relationship between exchange rates and trade, both from an economic and an institutional point of view. Excessive exchange rate fluctuations or misalignments may create tensions within the global trading system, increasing pressure to use trade-related instruments to redress them. The IMF has supported this discussion with presentations at the WTO on its progress towards the strengthening of exchange rate and macroeconomic surveillance in general. Informed debate on such a sensitive topic helps both institutions to better fulfil core tasks, which for the WTO is to prevent protectionism and for the IMF to promote better exchange rate surveillance. The IMF helps WTO members better understand the effect of financial crises on real economy producers and traders. The world trading system has been on the receiving end of a number of financial crises, be they regional (the Asian and Latin American crises of the late 1990s) or global (2008). A better understanding of the spillover effects of the macroeconomic policies of large economies on other economies is a major contribution to policy coherence.

### **Cooperating on trade and the environment**

The need for international cooperation on issues concerning trade and the environment has grown in the light of the United Nations' Sustainable Development Goals (SDGs) and the post-2015 UN development agenda, along with global environmental challenges, such as climate change. The link between trade and environmental protection requires coherence between the rules-based multilateral trading system, embodied by the WTO, and the institutions of environmental governance (see the discussion on multilateral environmental agreements below). The objective of sustainable development is enshrined in the WTO's founding charter. The WTO's Committee on Trade and Environment (CTE)



has a broad-based mandate to promote sustainable development and works to enhance the mutual supportiveness between trade and the environment.

The trade and environment chapter in the Doha Round also supports coherence. The negotiating mandate, without prejudging the outcome, covers: the relationship between existing WTO rules and "specific trade obligations", set out in multilateral environmental agreements (MEAs); the procedures for regular information exchange between MEA secretariats and the relevant WTO committees, and the reduction or elimination of tariff and non-tariff barriers on environmental goods and services.

Trade and environmental policies can complement each other. Trade openness provides a means for generating the economic growth needed for development and environmental protection. Reducing or eliminating trade barriers on environmental goods and services can in turn make such products, technology or know-how more accessible to countries as they pursue their environmental and broader sustainable development objectives. There is ample policy space (see Ch. 6) and "general exceptions" available within WTO rules to support the right of members to take measures to protect and preserve the environment. While WTO members can take measures to advance legitimate objectives, such as to pursue environmental goals, such measures must be consistent with the rules-based global trading system and should not be applied as a form of disguised protectionism.

### Cooperating on trade and labour

WTO ministers at Singapore in 1996 affirmed their support for the work of the International Labour Organization (ILO) as the competent body – rather than the WTO – to set and deal with internationally recognized core labour standards, and noted that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. WTO ministers also rejected the use of labour standards for protectionist purposes.

In Singapore, ministers further determined that "the WTO and ILO Secretariats will continue their existing collaboration". The WTO maintains contact with the ILO Secretariat and participates in various ILO meetings. In 2006, responding to growing

concerns regarding possible negative effects of trade and, more generally, globalization on labour market outcomes, the WTO and the ILO launched a common research programme on trade and labour which has already produced several publications. The latter include a volume of contributions by leading experts on how to make globalization socially sustainable.

### Cooperating on SPS, food security and commodities

As noted, the WTO's SPS Agreement names the FAO/WHO Codex Alimentarius Commission (Codex), the World Animal Health Organisation (OIE) and the FAO International Plant Protection Convention (IPPC) as the relevant standard-setting organizations for food safety, animal health and plant protection, respectively. All of them have observer status in the SPS Committee, and the WTO participates as an observer in the main meetings of these bodies. The WTO Secretariat provides reports on relevant activities at these meetings in an ongoing effort to bring attention to the need for policy coherence between trade and health matters at both the global and national level. Cooperation has been further reinforced through the contribution of these organizations to dispute settlement proceedings of the WTO, and through their regular participation in joint technical assistance activities, including through the Standards and Trade Development Facility.

All three standard-setting bodies participate in regional SPS workshops as well as in Geneva-based training activities. The SPS Committee has developed numerous recommendations seeking to improve coordination and collaboration between the SPS Committee, Codex, IPPC and the OIE resulting from periodic reviews of the SPS Agreement, specific workshops or decisions from the SPS Committee. It has also granted observer status to a number of other international and regional organizations active in food safety and animal and plant health areas, allowing them to contribute to the discussions of the committee.

Following the global food price crisis of 2007-08, in which prices for certain staple foods in developing countries soared, the United Nations set up a Secretary General-led High-Level Task Force of 23 UN agencies and international organizations, including the WTO, to boost coordination and food security responses. Since January 2013, the task force has focused on the 'Zero Hunger Challenge' (ZHC), a five-point food security campaign aiming for a future where all enjoy

"a fundamental right to food". Among its objectives are universal and adequate access to nutritious food and the environmental sustainability of food systems.

The WTO has been actively involved in G20 work on agriculture, price volatility and food security, participating in meetings and contributing to reports prepared with other international organizations. The WTO Agriculture and Commodities Division assists the Agricultural Market Information System (AMIS) that was set up at the behest of the G20 in June 2011. It is housed and serviced by the FAO and functions as a joint venture between governments and international organizations. It aims at enhancing food market transparency and encouraging countries to coordinate policy action to mitigate price volatility and market uncertainty in major food commodities (rice, wheat, corn and soya beans). The WTO provides regular support to this major transparency and coordination initiative, supplying specific information on trade policy developments in the monthly AMIS publications, including its "market monitor". The information is disseminated by means of interactive web tools, fostering a better understanding of the international market situation and outlook of the relevant commodities.

### Cooperating on statistics

Unified statistical methodologies that allow comparability across time and space are one of the clearest examples of an international "public good" – defined by economists as something beneficial, like fresh air, that is available to all. The first serious attempt at harmonizing tariff classifications internationally dates back to 1853 when an international statistical congress held in Brussels debated the necessity of unifying customs schedules.

The WTO is closely identified with the development of statistics for trade in services. When the General Agreement on Trade in Services (GATS) entered into force in 1995, trade negotiators required more detailed information on trade in commercial services. The UN Statistical Commission, the highest body in the global statistical system, had created a task force in 1994 to develop international concepts, definitions and classifications for trade in commercial services. From its launch, the WTO was an active participant and has been charged by the task force with coordinating the training of national statisticians. Another field of cooperation is the monitoring

of the trade-related MDGs, which it has done in cooperation with UNCTAD and the International Trade Centre (ITC), an agency specializing in promoting small and medium-sized businesses in developing countries. Trade and market access will also have a role in the SDGs, which are due to be approved by the United Nations in September 2015.

The future of statistical cooperation looks bright. The WTO promoted new ways of measuring trade in value-added, which traces the value added by each industry and country in a production chain, in order to capture the main effects of global manufacturing in the 21st century, and developed, in cooperation with the OECD, the trade in value added database, TiVA. Another active dimension of inter-agency cooperation is related to market access statistics, in particular for non-tariff measures (NTMs). The WTO has worked with other agencies, such as UNCTAD and the World Bank, to devise a common classification of NTMs and compile data.

### Cooperating on health and intellectual property

The incorporation of the Trade-related Aspects of Intellectual Property Rights (TRIPS) Agreement in the WTO Agreement sparked debate about the appropriate place of intellectual property (IP) rules within trade law and trade policy. Nevertheless, the increasing attention being paid to the "value-added" component of trade, and the significance of IP in forging links within global value chains, led to a growing understanding of the substantive importance of IP within international trade, including the importance for development of balanced and effective IP administration. However, the "coherence" debate soon expanded to cover a wider range of issues, most notably IP and health (see below), but also the significance of the TRIPS Agreement and national IP law and policy settings for a number of global issues. These included efforts to protect the environment, to combat climate change, to ensure the conservation of biodiversity and the equitable sharing of benefits from the utilisation of genetic resources and related traditional knowledge, along with promoting innovation and advancing social and economic development and human rights.

The TRIPS Council, which oversees the TRIPS Agreement, has become an important policy forum for the consideration of these global issues. The need to provide coherent and effective technical assistance also guided the development of a

growing range of partnerships within the multilateral system, ranging from the WHO to the United Nations Framework Convention on Climate Change (UNFCCC), along with many other intergovernmental, regional and non-governmental organisations.

### Cooperating on government procurement

Significant progress is being made toward strengthening coherence and promoting cooperative approaches in the work of the WTO and other intergovernmental organizations in the field of government procurement, or government purchases. The Model Law on Government Procurement of the United Nations Commission on International Trade Law (UNCITRAL), the top UN body on commercial law, is already well harmonized with the revised WTO Agreement on Government Procurement (GPA). This is in part due to the commonality of the two instruments' underlying principles and to the cooperation and the sharing of information between the WTO and the UNCITRAL secretariats when the two instruments were being renegotiated. Such a harmonized approach is important because, while the UNCITRAL Model Law is a voluntary instrument, containing procedures and principles aimed at achieving value for money and avoiding abuses in the procurement market, it is a tool that has been used by a number of countries to implement national procurement legislation that is intended to comply with the WTO's GPA.

As a further example of the progressive strengthening of inter-agency cooperation and coherence, a new partnership has been implemented between the Secretariat and the European Bank for Reconstruction and Development (EBRD) for the delivery of technical assistance on the GPA in Central and Eastern Europe and Central Asia. This partnership has enabled the Secretariat to leverage significantly its resources for technical assistance on government procurement in these regions. In parallel, it has helped to ensure a high degree of congruity in policy advice for countries in the regions that are implementing procurement reforms, many of which are seeking or are committed eventually to seek accession to the GPA.

Significant possibilities for closer alignment in relevant instruments and guidelines are also being discussed with the World Bank. These include possible recognition by the Bank, in its forthcoming new procurement guidelines and/or related assessment methodologies, of GPA accession as a pathway to the adoption of national procurement

legislation that will meet, at least partially, the Bank's standards. Possibilities for greater cooperation are also being explored with other aid donors. These and other developments are expected to enhance the coherence of policy advice and to permit further leveraging of the Secretariat's limited resources for technical assistance.

### Cooperating on technical assistance and empowerment of developing countries

Contributing to coherence in economic policy-making and providing technical assistance to developing members are of key systemic importance in the WTO. By focusing on development issues, the Doha Round gave added importance to technical assistance to help developing country members make the most of the multilateral trading system. This required greater emphasis on close coordination and coherence both within the WTO, through its technical assistance coordination task force, as well as between the WTO and other international organizations. As a result, around half of WTO technical assistance has been undertaken with partner institutions. Given the multiplicity of technical assistance providers worldwide, the WTO promoted the creation of the Global Trade-Related Technical Assistance Database (GTAD) to facilitate coordination. The GTAD is an inter-agency information management tool that covers national and regional projects and provides training courses with the aim of enhancing transparency, mutual information sharing and efficiency among the different partner agencies.

The WTO has participated in a number of global initiatives targeting the particular needs of LDCs. One was the Integrated Framework (IF), established in 1997, and its successor, the Enhanced Integrated Framework (EIF), launched in 2005 (see below), both with the objective of promoting economic growth and sustainable development in LDCs. At the regional level, the WTO has also organized joint technical assistance with a number of partners, including: in Africa, the African Development Bank (ADB) and the UN Economic Commission for Africa (UNECA); in Latin America, the Inter-American Development Bank (IADB) and the Organization of American

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***The WTO has participated in a number of global initiatives targeting the particular needs of LDCs.***

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States (OAS); in Asia, the UN Economic and Social Commission for Asia and the Pacific (UNESCAP). Others include the Islamic Development Bank, the Arab Monetary Fund (AMF) and the IMF Centre for Economics and Finance (IMF-CEF). More recently, collaboration has expanded to include academic institutions through the WTO Chairs Programme (WCP) (see Ch. 8), with the main objective of linking research and policy-making, thus further strengthening coherence in trade policy decisions.

## Coherence in action

### Enhanced Integrated Framework (EIF): coherence and coordination

The 1996 Singapore Ministerial Declaration states: "We remain concerned by the problems of the least-developed countries and have agreed to [...] a meeting to foster an integrated approach to assisting these countries in enhancing their trading opportunities." This meeting took place at the WTO in October 1997 and was attended by LDCs, donors and the IMF, ITC, UNCTAD, the United Nations Development Programme (UNDP) and the World Bank. It resulted in the establishing of the "Integrated Framework for Trade-Related Technical Assistance, including for Human and Institutional Capacity-Building, to Support Least-Developed Countries in their Trade and Trade-Related Activities" – the Integrated Framework (IF) for short.

The IF's aims included increasing the efficiency and effectiveness of the agencies in the delivery of trade-related technical assistance in cooperation with others. The IF was thus conceived as a coordination mechanism. It helped identify trade-related technical assistance needs in LDCs through questionnaires and by bringing together bilateral and multilateral development partners at round tables to match needs with resources and expertise. The ultimate objective of the IF was to help in overcoming major supply-side constraints faced by LDCs which hampered their ability to significantly benefit from market access opportunities.

To support the coordination function of the IF, a permanent governance structure was established. The WTO housed and staffed the IF Secretariat and convened the IF Steering Committee (IFSC) and the IF Working Group (IFWG) to oversee, manage and coordinate the implementation of

the IF programme among partners. At the country level, IF structures were set up to coordinate the delivery of trade-related technical assistance by all development partners actively supporting trade development in LDCs. In LDCs, the IF fostered coordination by funding diagnostic trade integration studies (DTISs) and their action matrices, which help countries identify and address constraints to trade, economic growth and sustainable development. Through them, LDCs can prioritize their trade-related technical assistance needs and they serve as a platform for agencies and development partners to identify and coordinate on what needs support.

Following an evaluation in 2003, the IF partners decided to enhance the programme. The enhancement was endorsed by the Sixth WTO Ministerial Conference in Hong Kong in December 2005 in parallel with the Aid for Trade Initiative, for which the Enhanced Integrated Framework is a major vehicle for LDCs to access assistance. Rules of operation for the EIF were agreed, a trust fund set up and an Executive Secretariat – administratively housed at the WTO – recruited between 2005 and 2008 so that the EIF could start operations in 2009.

To date, 51 countries are EIF beneficiaries, including most LDCs and three recently graduated LDCs. Forty-nine countries have done comprehensive trade-related technical assistance needs assessments with the support of the EIF. Through the EIF Trust Fund, EIF beneficiary countries receive funding to coordinate the delivery of trade-related technical assistance and to leverage resources for priority technical assistance needs. The assistance is coordinated by the EIF structures in the countries and at the global level through the EIF Board and the EIF Steering Committee. The Fifth Global Review of Aid for Trade in June/July 2015 launched the second phase of the EIF, approved by EIF partners in December 2014. The new phase will further strengthen the EIF's coordination function to ensure an effective and efficient delivery of trade-related technical assistance from all EIF partners and ensure that LDCs receive the best value for the funds provided by the EIF donors.

### Millennium Development Goals (MDGs)

The WTO has been involved in efforts to critically evaluate how well the MDGs worked to meet development challenges overall and to set priorities for a post-2015 development agenda. It is a member

of the technical support team on the SDGs, which brings together some 60 UN system entities and other intergovernmental organizations to support the work of UN members to formulate the new development goals. The WTO was most closely linked to the monitoring of MDG 8 with its call for a global partnership for development. The multilateral trading system has made a sound contribution not only to the realization of this goal but also to goal 1 (eradicate extreme poverty and hunger), primarily by providing economic stability and predictability and helping to keep protectionist measures in check. In the past decade, trade growth benefitted from further trade liberalization and the active participation of China and other important emerging countries in the system. Poverty levels approaching 47 per cent of the population in the 1990s have been reduced to less than 22 per cent today.

However, 1.2 billion people still live in poverty and Sub-Saharan Africa is not on track to meet the poverty reduction goal in MDG 1. The WTO will continue to work closely with the UN and other organizations to implement the SDGs, which will soon replace the MDGs, and the post-2015 development agenda. The rules-based, open, non-discriminatory multilateral trading system embodied in the WTO is being looked at as one of the main drivers for securing greater and inclusive economic growth and sustainable development. *The Role of Trade in Ending Poverty* is the title of a co-publication between the World Bank and the WTO.

### Contributing to coherence in public health policy-making

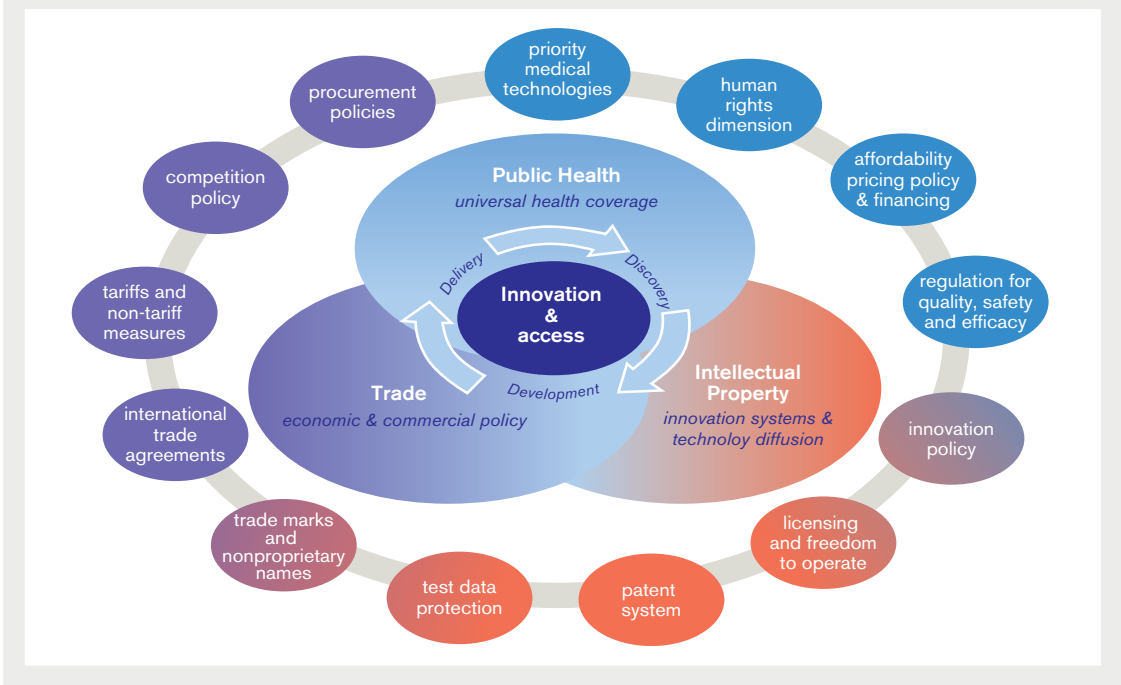
The 2001 Doha Declaration on the TRIPS Agreement and Public Health proved to be a turning point for the WTO in its treatment of health issues. By then it had become abundantly clear that it was not possible to deal with the daunting health challenges confronting many developing countries without engaging, in an informed and practical way, with the intellectual property system and international trade policy. Intellectual property protection was introduced into the multilateral trading system at the end of the Uruguay Round with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). But almost from the start, some developing countries and non-governmental organizations (NGOs) active in health questions had raised concerns that the new IP agreement could make it more difficult for poor countries to get access to medicines – at

affordable prices – to tackle health emergencies, such as HIV/AIDS. They saw TRIPS as limiting access to generic drugs. The TRIPS Agreement allowed governments to issue compulsory licences to firms to break patents and produce needed medicines in a health emergency, but only for use in their domestic markets. This left a question mark over what happened to poorer countries that lacked the domestic capacity to produce medicines for themselves.

The Doha Declaration made it clear that "the TRIPS Agreement does not and should not prevent members from taking measures to protect public health." In particular, it said that the agreement should be "interpreted and implemented in a manner supportive of WTO members' right to ... promote access to medicines for all". The principle was clear, but there remained the question of how to put it into practice. The solution found, first as a waiver and then as a formal amendment, was to allow compulsory licences to be issued also for export, under certain conditions. The so-called Paragraph 6 system, named after a paragraph in the ministerial declaration, will become a permanent feature of the TRIPS Agreement once two-thirds of WTO members have formally ratified it. It is the only amendment proposed to any WTO multilateral trade agreement. So far it has only been invoked once, which has led some members to question whether the conditions applied are not too restrictive. But it could also be that the very existence of the system has kept prices down and encouraged pharmaceutical companies to come to voluntary arrangements.

After the Doha Declaration, the Secretariat progressively built its technical cooperation and policy dialogue with counterparts in the United Nations system, notably the World Health Organization (WHO) and the World Intellectual Property Organization (WIPO), and with civil society and industry. Emphasis also turned increasingly to creating a robust, integrated and inclusive base of empirical data to build a platform for informed policy debate. The holistic approach to public health policymaking was epitomised in the 2013 publication, jointly produced by WHO, WIPO and the WTO, *Promoting Access to Medical Technologies and Innovation*, which addressed the intersections between public health, intellectual property and trade. This study mapped out the full policy domain to provide a practical guide to policymakers dealing with the public health dimension of trade and intellectual property.

Figure 14: Mapping the policy intersections: Key areas of law and policy for innovation and access



Source: WHO, WIPO and WTO (2013) Promoting access to medical technologies and innovation, Geneva WHO, WIPO and WTO.

Furthermore, the chiefs of the three organizations have convened a series of policy symposia to chart current issues and report on experiences from the field in order to provide a comprehensive and informed view of current developments with bearing on innovation and access to vital medical technologies. The WTO's work on public health issues exemplifies the trend towards policy coherence within the international community on pressing global issues. Above is a graphic from the WHO-WIPO-WTO trilateral study illustrating the "coherence agenda" in the field of public health

### Standards and Trade Development Facility

Projects funded by the Standards and Trade Development Facility (STDF) (see Ch. 3) demonstrate that collaboration and coherence in capacity-building initiatives can enable all stakeholders involved to achieve more effective and sustainable results together than would be possible alone. For instance, the STDF is currently funding three related projects in Africa, Asia and Latin America, aiming to help small exporters and farmers who are trying to get ahead by capturing a little piece of the global export market for their speciality crop, like dragon fruit grown in Viet Nam and

papaya grown in Senegal. The problem faced by these farmers and exporters is that there are no maximum residue levels (MRLs) for most pesticides on these speciality crops. Harmonization of MRLs in accordance with international standards adopted by the Codex Alimentarius Commission, one of the standard-setting bodies referenced in the WTO SPS Agreement, is vital to improve market access of agri-food products.

The STDF projects have established a new collaborative approach for pesticide data generation and exchange within the three regions, based on public-private partnerships and regional cooperation. This is expected to result in more efficient use of resources. By developing a process to facilitate the establishment of Codex MRLs for specialty crops of economic importance to developing countries, these STDF projects are expected to enhance the ability of producers to access important export markets and improve rural economic opportunities. By bringing together the SPS expertise and skills of its founding partners and other organizations, the STDF provides a unique forum to encourage collaboration and coherence in SPS capacity building.

### Multilateral environmental agreements (MEAs)

WTO members have consistently endorsed in the Committee on Trade and Environment the view that multilateral solutions based on international cooperation and consensus are the best and most effective way for governments to tackle global environmental problems. There are specific provisions in the WTO to accommodate the use of trade-related measures needed for environmental purposes, including measures taken under MEAs. WTO disciplines relevant to the environment include specific agreements such as the SPS or TBT agreements, as well as the "general exceptions" of the GATT for measures "necessary to protect human, animal or plant life or health" or for "the conservation of exhaustible natural resources". But as we have seen, exercising the right to pursue environmental policy objectives has to be balanced with non-discriminatory application of the measure and the avoidance of unnecessary obstacles to trade.

The Convention on International Trade in Endangered Species (CITES) is a much-cited example of an MEA with trade measures. CITES aims to protect endangered species by regulating and monitoring global trade in these animals or products derived from them. Its measures range from permits or quotas to the suspension or banning of trade. Despite several decades of co-existence, there has never been any challenge of CITES measures in the GATT or WTO. In fact, the mutual supportiveness is evident in a WTO Appellate Body finding that referred to CITES in the *US – Shrimp* dispute, and found that marine turtles could be considered as "exhaustible natural resources" as such species were included in Appendix 1 of CITES. The threat to sea turtles from some forms of shrimp fishing was cited by the United States as a reason for banning shrimp and shrimp product imports from a number of countries, which responded by bringing a complaint against it at the WTO.

To further enhance mutual supportiveness, the Doha negotiations on trade and environment cover the relationship between WTO rules and specific trade obligations set out in MEAs (without prejudice to the rights of non-parties to MEAs). Procedures for granting observer status and for regular information exchange between MEA secretariats and the relevant WTO committees are also on the agenda. Over the years, best practices have developed. It is widely recognized

that coordination between trade and environment officials at the national and international level can play an important role in ensuring that commitments made in the WTO and in MEAs can be mutually supportive.

Information sessions, exchange of documents, side-events and joint technical assistance and capacity building activities have been organized to boost collaboration between the WTO and MEA secretariats. Several international organizations have observer status and participate regularly in discussions of the WTO Committee on Trade and Environment, including the United Nations Environment Programme (UNEP) and the secretariats of CITES, the Convention on Biological Diversity (CBD), the International Commission for the Conservation of Atlantic Tuna (ICCAT) and the United Nations Framework Convention on Climate Change (UNFCCC). In addition to the UNEP Governing Council, the WTO attends select meetings of MEAs that involve trade-related measures.

### Conclusion

Increased global integration and the relation between trade and other policy areas has led to growing spillovers from areas such as finance, the environment and climate change, employment and public health. And while the original coherence mandate of the WTO still guides an important part of its international cooperation and coordination, the multilateral trading system has strengthened its policy coherence in a number of areas. As discussed in Chapter 6, an important lesson emerging from the case law of the last 20 years is that WTO law does not exist "in clinical isolation" from other areas of international law or from the wider world more generally.

That chapter looked at how many dispute settlement procedures reflect the WTO's position as an integral part of the broader international system. This chapter has shown how the WTO maintains extensive institutional relations with many of its sister organizations, participates as observer in their work and has established several partnerships to help improve the trading opportunities and capacities of developing and least-developed countries. WTO cooperation with other international organizations continues to evolve and is more than ever a function of the need for increased global coordination and governance.



WTO spokesperson Keith Rockwell responding to journalists at the July 2008 ministerial meeting in Geneva.



# Strengthening outreach – towards enhanced engagement

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The growing global prominence of the WTO – especially compared to the largely unknown GATT – and the increasing public scrutiny of its work, represented one of the major challenges facing the organization over the past 20 years. Almost from the start, the WTO was subject to criticism from an anti-globalization movement deeply suspicious of the new trade body. Protests marred the WTO's May 1998 Ministerial Conference in Geneva and peaked in December 1999 with massive demonstrations at a ministerial meeting in Seattle. The ferocity of the protests, which brought tens of thousands onto the streets of the US city, severely disrupted the ministerial proceedings and came as a shock to both the organization and its supporters. The "Battle of Seattle" soon became a rallying cry for critics of the WTO, who accused the organization of being excessively secretive and insensitive to the needs of the world's poorest and most vulnerable people.

A period of deep reflection followed Seattle. Members realized that much more needed to be done to communicate with civil society and counter the criticisms being directed at the WTO, while respecting the intergovernmental nature of the organization. Today, the WTO Secretariat leads an active outreach programme involving representatives from media, non-governmental organizations (NGOs), national parliaments, academics and the business community. Transparency has been at the centre of these efforts, enhanced by an active public communication strategy via the WTO's website. These efforts culminate each year in the annual Public Forum at WTO headquarters in Geneva, which provides a platform for participants to discuss and debate the latest developments in world trade and to propose ways of enhancing the multilateral trading system.

As a result, understanding between the WTO and civil society has improved. For example, the Secretariat's outreach efforts with activist groups on the TRIPS and access to medicines debate have produced a constructive dialogue and considerably reduced tensions on this important issue. The Secretariat has made a particular effort to boost contact with media in developing and least-developed countries in order to improve understanding of the WTO.

## Reaching out to NGOs: creating a mutually respectful working relationship

The WTO's initial engagement with NGOs was primarily aimed at countering criticisms that the organization's procedures limited civil society's direct participation in meetings and activities. This criticism focused on the perceived secrecy of the WTO's newly created dispute settlement system and its reach into areas such as intellectual property, services, the environment and development. Ministerial guidelines adopted in 1996 gave the WTO authority to expand outreach with NGOs in several ways, most notably by allowing NGOs concerned with trade matters to attend WTO ministerial conferences, to organise ad-hoc, issue-specific symposia on matters of interest to NGOs during the conferences and to engage directly with NGOs on a regular basis through the Secretariat. In 1998 the Secretariat initiated informal meetings with NGO representatives to improve mutual understanding as well as regular briefings on the discussions taking place in different WTO committees and working groups. The Secretariat also made available to members position papers submitted by NGOs and established a dedicated NGO section on the WTO website.

The post-Seattle period led to new initiatives. In the run-up to the 2001 Ministerial Conference in Doha, the Secretariat organised technical seminars for NGOs both in Geneva and in the regions. The first official WTO Symposium on Issues Confronting the World Trading System, an initiative for NGOs that later became the Public Forum (see below), took place in July 2001. In the post-Doha era, the Director-General's office established an informal NGO Advisory Group, which met in 2003 and 2004 to discuss ideas, present views and provide feedback to the WTO chief. Further improvements took place in 2006, when the Secretariat outlined a programme to enhance transparency and engagement with NGOs, civil society and the general public by reporting on a regular basis to these groups. The longstanding practice of holding issue-specific and general briefings for NGOs was institutionalised, including briefings following every General Council and Trade Negotiations Committee meeting.

Since 2000, more than 200 briefings have been organized for NGOs by the Secretariat. NGOs have participated in various recent public events at the WTO, including the Global Review of Aid for Trade and the annual Open Day. Nearly 350 NGOs from 66 countries were accredited for the Bali Ministerial Conference in 2013, including representatives supporting environmental, development, consumer, trade union, business and agricultural interests. NGOs were given the opportunity to organize public and private events at the Bali conference centre, holding approximately 15 public events.

NGO interest in the WTO has become less intense in recent years, in part perhaps because of the continued impasse in the Doha Round trade talks, in part because NGOs have refocused their efforts on mega-regional negotiations, such as the Trans-Pacific Partnership, involving Pacific Rim countries, and the Transatlantic Trade and Investment Partnership talks between the United States and the European Union. But the WTO's evolving practices for transparency and engagement can be credited for diffusing tensions with NGOs and creating a mutually respectful working relationship.

### **Reaching out to parliamentarians: safeguarding approval**

Parliamentarians play an important part in the multilateral trading system and the WTO. Any deal resulting from intergovernmental negotiations at the WTO will, in most cases, need approval from legislators. The first gathering of legislators from WTO members took place in December 1999 on the margins of the Seattle Ministerial Conference. This gathering agreed on the need for parliamentarians to be more closely associated with the work of the WTO and called for the establishment of a standing body of parliamentarians where members of parliaments could exchange views, be informed and monitor WTO negotiations and activities. In addition, through the WTO's Information and External Relations Division (IERD), the WTO maintains regular dialogue with parliamentarians and organizes workshops, in partnership with parliamentary organizations, to encourage dialogue. These workshops are often organized at a regional level. The WTO has plans to strengthen further its work with parliamentarians.

### **Reaching out to business: rekindling engagement**

The Trade Facilitation Agreement has sparked renewed business interest in the WTO's work. Various industry groups issued statements of support for the work achieved in Bali and encouraged members to build on that success.

The WTO Secretariat's past initiatives with the business community included establishing a dedicated webpage and electronic newsletter for business, hosting meetings with business leaders and experts at the WTO and abroad, and including business in more regional and national outreach activities with developing country WTO members.

Over the past few years, regional events were held in Kuwait for participants from the Middle East/North Africa region, in Bangkok for the Association of Southeast Asian Nation (ASEAN) countries and in Nairobi for participants from Eastern Africa. In addition, the private sector has taken a more active role in the Public Forum, organizing sessions on issues of interest to the business community.

### **Reaching out to media: building trust**

The success of the Bali Ministerial Conference in 2013 and the subsequent efforts to ensure the entry into force of the Trade Facilitation Agreement attracted fresh media attention to the WTO. Nearly 300 journalists and around 30 television networks covered the Bali Ministerial Conference. Among the journalists were 12 from least-developed countries, whose trip to Bali was partially financed by the WTO. Dispute settlement also continues to attract broad media coverage, particularly in cases involving the major trading members.

The WTO has hosted a variety of outreach events for the media. These include regional workshops for journalists in Africa (Accra, 2012), Southeast Asia (Bangkok, 2011), Latin America and the Caribbean (Geneva, 2011 and Santo Domingo, 2013) and Russia (Geneva, 2013-15). The WTO Secretariat also organised a broader "introduction to the WTO" seminar for Geneva-based press in 2011, as well as a workshop in Geneva for French-speaking African journalists in 2012.

### **Reaching out to academia: the WTO Chairs Programme**

One of the WTO's most recent outreach initiatives focuses on the academic world. Launched in 2010, the WTO Chairs Programme seeks to enhance the knowledge and capacities of academics in trade-related issues within developing countries. It is specifically targeted at academic institutions because they help the WTO raise awareness on trade issues and form a knowledge base for effective decision-making by policymakers. The programme provides financial support to beneficiary institutions for a period of four years. A total of 14 institutions were awarded a WTO Chair in the first phase of the programme,

with an additional seven institutions selected in 2014 to be part of the network. Universities awarded a WTO chair are expected to cooperate with their counterparts through joint research, shared lecturing arrangements and student/academic exchanges, and to organize public activities aimed at disseminating research and promoting discussion regarding international trade and trade cooperation.

### Other forms of outreach: visitors, WTO publications

One of the most successful outreach efforts to date has been the welcoming of visitors to WTO headquarters. More than 200 groups came to the WTO in 2014, many of them university students, but also representatives from business associations, governments and civil society. Reviews of the visits have been overwhelmingly positive. Most of the visitors are given presentations on the work of the organization and the history of the WTO, but some request specific presentations on topics such as agriculture, intellectual property rights and dispute settlement.

The WTO issued over 70 publications in 2014, with the vast majority of them available as free downloads from the WTO website. Keeping up with changes in technology, the WTO now makes available its *World Trade Report* via a tablet app. The WTO Publications Facebook page has over 36,000 fans and its Twitter page has amassed over 39,000 followers. WTO Publications also has a presence on Foursquare, Google+ and Pinterest.

### Public Forum – the WTO's biggest outreach event

The Public Forum is the WTO's largest annual outreach event, providing a platform for participants to discuss the latest developments in world trade and to propose ways of enhancing the multilateral trading system. The event regularly attracts over 1,500 representatives from civil society, academia, business, the media, governments, parliamentarians and inter-governmental organizations. The first Public Forum – known then as the WTO Symposium (see above) – was held in 2001. Then WTO Director-General Mike Moore summed up the importance of the meeting: "The debate about globalization means we are now closely scrutinized. I welcome this attention. The WTO does important work and decisions taken by our institution affect the lives of ordinary men and women all over the world. It is right that we should be held accountable."

More than 9,000 participants have attended the Public Forum since that inaugural meeting. Each

meeting has centred on a different theme, such as the Doha Development Agenda, the forces shaping world trade and expanding trade through innovation and the digital economy. The theme of the 2015 Public Forum is how trade works through the multilateral system to boost growth, lift people out of poverty, increase access to goods and medicines and promote peaceful, mutually beneficial relationships between nations. The meeting will also examine where trade can work better and where the WTO can do more in the years ahead.

### Reaching out in cyberspace: the WTO on the web and on social media

The WTO has greatly expanded its outreach efforts on the Internet, with the organization's website serving as the main vehicle for communication. The website regularly attracts over 1.9 million visits a month. In 2014 total page views exceeded 42 million. Major events, such as the Bali Ministerial Conference and the launch of the new Trade Facilitation Agreement Facility, have attracted considerable interest when made available on video.

The Secretariat has made considerable efforts to step up the availability of news items on the website. Nearly 300 news items were posted in 2014, almost double the number posted in 2000. The number of people registered to receive email alerts when news items are published has also expanded to more than 113,000. Social media has become increasingly important in disseminating information about the WTO and to promote events such as the Public Forum and book launches. The number of fans and followers of the WTO's Facebook page and Twitter account has quadrupled since the end of 2013, while the Director-General's own Twitter account has seen a three-fold increase in followers since the start of 2014. The WTO also has a presence on the social media platforms YouTube, Flickr and Weibo (in Chinese).

### Conclusion

Ironically, the WTO's growing prominence – and the controversy which the organization attracted in its early years, notably at its 1999 Seattle Ministerial Conference – has actually helped over time to create a much more transparent and engaged WTO, as well as a more informed public debate on the role of multilateral trade liberalization and cooperation. The organization has not silenced all its critics; but the increased public scrutiny of its work has served to strengthen the WTO, encouraging it to become more open to the public, more welcoming of new ideas, and more engaged in discussion and debate.



WTO OMC

# Ministerial Conference

NAIROBI | 15 - 18 December 2015



Amina Mohamed, Kenya's Cabinet Secretary for Foreign Affairs, speaking about preparations for the Ministerial Conference in Nairobi.

# Conclusion

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The WTO has achieved much over its first 20 years – perhaps even more than some of its defenders recognize. Global trade barriers are historically low, international trade rules are respected, participation in an open, increasingly integrated and rules-based world trading system has become nearly universal. More members are making use of the dispute settlement system and – with each new case – a more relevant body of WTO trade law develops. More members have access to information, not just about national trade policies, but about international trade relations as well, through the WTO's transparency and surveillance mechanisms. And more members are using WTO councils, committees, and working groups to coordinate policies and head-off disputes, providing a "soft power" complement to "hard power" rules. The fact that members are increasingly committed to expanding cooperation, respecting rules and resolving disputes through the WTO – even during periods of economic crises and uncertainty – is the strongest testament to the system's success.

But the success of the WTO – and its growing importance to global economic relations – has inevitably given rise to new challenges. Having resolved the easiest issues in previous trade rounds, the WTO now finds itself tackling the toughest subjects, such as agriculture, which were largely sidestepped in previous negotiations. Having dramatically lowered border barriers, such as tariffs and quotas, the system is grappling with "inside the border" issues, such as health standards or environmental laws. These issues can impact trade, but were largely designed for non-trade reasons and cannot be solved through the simple exchange of trade "concessions"; they require cooperation and consensus across other policy areas, and often involve broader collaboration with other government ministries and international organizations. Because trade has become so important to developing countries' growth strategies, development issues and debates have become an increasingly important feature of the WTO – and not just in current negotiations, but in trade policy monitoring, in technical assistance and capacity building, and in the day-to-day work of the WTO's numerous councils and committees, not least the CTD.

As the number of issues has expanded, so too has the number of players. Fast-emerging powers, such as China, India and Brazil, play a role that was unimaginable even 20 years ago, while smaller countries naturally also want a greater say in a system in which they have a growing stake. And it is not just governments that recognize that the WTO matters. More non-state actors – businesses, unions, environmentalists, development NGOs – want the multilateral system to reflect their causes and concerns. Two decades ago, few people had even heard of the GATT. Today the WTO can be front-page news. A more visible WTO has inevitably become a more politicized WTO.

The basic aim of this book has been to show that, despite its size and complexity – or because of it – the multilateral trading system is the most successful example of international economic cooperation in history. But the system's success over the past two decades – indeed, over the past seven – is no guarantee of its future success. In the end the WTO represents no more or less than the willingness of its members to cooperate – and a recognition that their national interests are increasingly bound up in their collective interests. The multilateral trading system is a result – not a cause – of countries' desire to deepen their economic integration and interdependence. Whether the system's next 20 years are as successful is – of course – up to them. The danger is that – having created the kind of open, rules-based, universal trading system that the wartime architects could only dream of – countries will now take it for granted.

This 20<sup>th</sup> anniversary year is shaping up to be a critical one for the WTO, as members seek to build on Bali's achievements and produce another successful WTO ministerial conference in Nairobi in December – the first time that Africa has hosted the event. A successful Nairobi ministerial that delivers tangible outcomes and provides future direction for the WTO would be the most significant contribution that members could make to strengthening the multilateral trading system and to ensuring that it continues to play a central role in promoting economic growth and inclusive development over the next 20 years.



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*The WTO at Twenty: Challenges and Achievements* explores how multilateralism in trade has worked over the past 20 years – and provides some lessons about how it can work in the future. It describes the WTO's achievements across a number of key areas, including: strengthening the institutional foundations of the trade system; widening its membership and increasing participation; deepening trade integration through lower barriers and stronger rules; improving transparency and policy dialogue; strengthening dispute settlement; expanding cooperation with other international organizations; and enhancing public outreach. It concludes that the WTO has achieved much over its first 20 years but the success of the WTO has inevitably given rise to new challenges.



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