

Intelligence MEMOS



From: Debra Steger
To: Trade Ministers of “Like-Minded” WTO Members
Date: October 23, 2018
Re: REFORM OF THE WORLD TRADE ORGANIZATION

Canada is hosting a ministerial meeting tomorrow evening and Thursday in Ottawa on reform of the World Trade Organization (WTO). Twelve “like-minded” WTO members are expected to attend, including the European Union, Japan, Brazil and Mexico. The United States and China were not invited, and India and Russia are not attending. The Director-General of the WTO, Roberto Azevedo, will attend, signifying the importance of the meeting to the organization’s future.

Proposals for reform have been circulated by [Canada](#) and the [EU](#). The main themes identified by Canada are: 1. Improving the WTO Monitoring Function, 2. Safeguarding and Strengthening the Dispute Settlement System, and 3. Modernizing the Trade Rules.

WTO reform has been on the agenda for many years. There have been high-level commissions before (the [Sutherland Report](#) and the [Warwick Commission](#)) and several studies. But the WTO trudged on. Members grew accustomed to the glacial pace of negotiations, and put their faith in the “jewel-in-the-crown” dispute settlement system.

So why the urgency now?

The WTO is threatened as never before. Major countries are openly flouting its rules, inviting retaliatory actions. The dispute settlement system is under threat from being over-burdened with too many cases and the Appellate Body may become dysfunctional due to the current US blockage of appointments. The rule-making system, based on multilateral rounds, the single undertaking and consensus principles, has proved to be ineffective and inefficient in concluding agreements among 164 members with widely varying interests and stages of development.

Here are some key points that ministers could consider:

1. Preserve the WTO as a rules-based organization. The WTO is a unique international body. Its functions are to implement and administer the multilateral trade agreements, provide a forum for trade negotiations, administer dispute settlement, and conduct trade policy reviews. The system revolves around the rules, which are binding and enforceable. This system protects smaller, non-aligned, and developing countries. Any move toward a complex, multi-tier system, with various “soft law” and non-binding types of understandings, could make the WTO more like the United Nations, and less like the GATT and WTO we know and respect. Members should consider any changes carefully before opening such a Pandora’s box.
2. Set priorities – not everything can be done in the short to medium term. What is in crisis? What is achievable? Limit the goals to those which are critical to the system’s preservation. Formulate a longer term work program, but fix the crises first.
3. The immediate crisis is in the dispute settlement system, in particular, preserving the Appellate Body. The Appellate Body has shrunk from a full complement of seven to only three members, which is the minimum required to hear a case. Appointments have been blocked for two years. The Appellate Body can and should comply with the rules of the Dispute Settlement Understanding, including its time limits, no advisory opinions, etc. However, the Appellate Body must also be respected as an institution. It needs its full complement of members, highly-qualified, who are appointed for longer terms, and reside in Geneva, to guarantee their independence and impartiality.
4. WTO members cannot have it both ways – a rules-based system and member control over every aspect, including dispute settlement. Member control over dispute settlement ultimately means a system where the most powerful country wins.
5. Differentiate between reform of the rule-making procedures and reform of the trade rules. The time for major multilateral rounds has passed. Proposals have been made to allow plurilateral agreements rather than the single undertaking approach to negotiations. Some have also advocated relaxation of the consensus principle for decision making. If the rulemaking procedures can be made flexible and adaptive, the WTO can be modernized to keep pace with changes in the global economy: in e-commerce, AI, technology, investment, development and services.

Multilateralism can work for all. The world is waiting for ministers to lead the way.

Debra P. Steger is Professor of Law at the University of Ottawa. She was the first Director of the Appellate Body Secretariat of the World Trade Organization and a Senior Trade Negotiator for the Government of Canada in the Uruguay Round.

To send a comment or leave feedback, email us at blog@cdhowe.org.

The views expressed here are those of the author. The C.D. Howe Institute does not take corporate positions on policy matters.