

# The WTO as an Institution—What Next Steps are Needed? An UNCTAD in the Making? Is Internal and External Transparency Needed, Achievable?

## Presentation Summary and Comments

HON. PETER DAVIDSON,\* RICHARD STEINBERG,\*\* ANDREW STOLER,\*\*\* AND  
TED POSNER\*\*\*\*

*Peter Davidson:* Davidson argued that the more experts can explain the World Trade Organization (WTO), the more the world will understand, and, therefore, accept it. Additionally, a broad acceptance now exists that mercantilism, or commercial protection, should not be tolerated.

Davidson compared the WTO dispute settlement system to the former arrangement under the General Agreement on Tariffs and Trade (GATT) in order to illustrate his point about transparency. Under the GATT dispute settlement system, there was a small group of very well informed individuals. However, virtually no transparency or political legitimacy is associated with it. With the formation of the WTO, dispute settlement procedures have become more transparent, and, as a result, they have acquired more legitimacy.

The remaining issue is whether the WTO is capable of further evolution. (1) Can we figure out a way to maintain the confidence in the panels and the WTO's Appellate Body? (2) Can certain member countries be convinced of the need for greater transparency? (3) Is it possible to achieve a public understanding of the WTO that is essential to both its survival and its success? Davidson concluded with the following suggestions to increase transparency: open WTO dispute settlement hearings to the press and public, provide timely access to submissions and panel reports, allow *amicus* submissions, and make more WTO documents public.

*Richard Steinberg:* Steinberg asked how we are to understand and evaluate institutional change at the WTO. He suggested that we use a political metric: to what extent are WTO

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institutions supported by powerful states? This is a central question because international institutions are politically functional only if they are supported by powerful states.

Steinberg argued that it is impossible to democratize the WTO, which is an international organization and does not constitute a global political community. The WTO is made up of states and state-like entities, some of which have more power than others. Powerful states are unlikely to give weaker states substantially more authority. Most current debates over institutional change at the WTO are "battles for more power" initiated by various states or interest groups within certain states. Transatlantic market power strongly influences WTO outcomes. Developing countries have reacted to that exercise of power with demands for increased "internal transparency" (transparency of WTO processes to those within the WTO) and capacity building, but these efforts will not succeed to the extent that they would undermine processes through which Brussels and Washington have dominated WTO decision-making.

With respect to "external transparency" (transparency of WTO processes to those outside the WTO), Steinberg argued that further transparency in the negotiating process will be constrained by developed country negotiators' preference for some secrecy in fashioning agreements so that draft agreements will not be attacked before completion and packaging. Moreover, many developing countries believe that increased external transparency may lead to greater influence of non-governmental organizations headquartered in developed countries, thus increasing the influence of developed countries; hence, they oppose increased external transparency in both the negotiating process and dispute settlement.

*Andrew Stoler:* Stoler argued that attempts should be made to enhance transparency. Certainly, no harm will come of such an attempt, and increased transparency has the potential to have numerous benefits. Transparency does not have to mean the participation of external actors, and more transparency would serve to demystify the entire WTO process.

In terms of institutional reform, Stoler asserted that the question that needs to be addressed is how to manage internal transparency while maintaining the functioning of the system as a whole; for example, by maintaining a role for small groups to organize and make progress.

Finally, Stoler argued that the idea of reforming the WTO system of consensus building in favor of voting would be a serious mistake that would only serve to weaken the organization.

*Ted Posner:* Posner focused his discussion on improving external transparency. From a U.S. congressional perspective, improving external transparency would be a positive, perhaps even a necessary, development to help convince domestic constituencies that the WTO is a beneficial organization. Currently, people realize that the WTO may have a meaningful impact on issues, but they are often suspicious of the nature of such an influence due to the lack of transparency of the WTO institutions. Consequently, in order to address these concerns, more transparency must occur.

*Questions and Answers:* First, the panel was asked to comment on (1) whether or not the WTO could meet the challenges presented by the Doha Round; (2) what it saw as the alternatives to the WTO; and (3) what reforms should be made to the organization.

Steinberg responded that the WTO was up to the task of the Doha Round if the European Union and the United States could cooperate. Steinberg stated that he did not see any multilateral alternatives to the WTO. Although there could be regional alternatives, any given depth of regional liberalization could not provide as much economic benefit as

the same depth of liberalization through the WTO. As a WTO reform, he supported policies to constrain judicial law-making (what some call “judicial activism”) by the Appellate Body.

Posner agreed that the organization was up to the task of the Doha Round, and that no viable alternatives existed to the current World Trade Organization. Posner did note, however, benefits to other types of international agreements. He too would reform the WTO by constraining judicial activism by panels.

Stoler added as a potential reform that mediation procedures should be used more before a dispute reached the panel stage.

Second, the panel was asked whether the WTO needed to “reign in” the dispute settlement panels and the Appellate Body. Steinberg noted that the adoption of specific language in WTO agreements intended to constrain judicial law-making had not worked. He favored a litmus test in appointing members of the Appellate Body that would turn on a candidate’s approach to interpretation of WTO agreements.

Stoler added that language in the WTO agreements should be tightened to reduce the possibility of original interpretation by panels and the Appellate Body.

