

CONCLUSIONS

Principal conclusions and recommendations of the Consultative Board

Globalization and the WTO - make the case for liberalizing trade

1. The Consultative Board believes that the process of globalization and the role played by the WTO are widely misunderstood and seriously misrepresented. While the WTO represents the most dramatic advance in multilateralism since the 1940s, too many constituencies understand neither its benefits nor its limitations. The Report of the Consultative Board sets out some of the arguments.

Time to respond to the erosion of non-discrimination

2. **The Board is deeply concerned by the current spread of Preferential Trade Agreements (PTAs).** It is unconvinced by the economic case for them and especially concerned that preferential treatment is becoming merely a reward for governments pursuing non-trade related objectives. Meanwhile, non-discriminatory, most-favoured-nation treatment - a fundamental principle of the WTO - is close to becoming exceptional treatment. **Governments need to show restraint or risk more damage to the multilateral trading system. The first test of any new initiative should be that it clearly improves trading and development prospects of beneficiaries and does not harm the interests of those outside.**

3. **The long-term remedy to the “spaghetti bowl” of discriminatory preferences is through the effective reduction of MFN tariffs and non-tariff measures in multilateral trade negotiations. The need for success in the Doha Round is manifest from this perspective. A commitment by developed Members of the WTO to establish a date by which all their tariffs will move to zero should now be considered seriously.**

4. **Preferential trade agreements need to be subject to meaningful review and effective disciplines in the WTO.** Using the Trade Policy

Review Mechanism to provide a vehicle for analysis and comment on developments within, and the external impact of, PTAs will help. Some tentative steps are being taken in that direction but more needs to be done.

Concerns over sovereignty and the WTO - more gains than losses

5. The WTO has competences and powers that were previously the monopoly of states. Ultimately what counts is whether the balance between some loss of “policy space” at the national level and the advantages of cooperation and the rule of law at the multilateral level is positive or negative. The Consultative Board’s view is that it is already a positive for all WTO Members and will increasingly be so in the future.

Coordination and coherence - better global governance

6. Cooperation with other intergovernmental agencies generally adds value and legitimises the activities of the WTO.

7. However, the Consultative Board is convinced that the creation and interpretation of WTO rules is for WTO Members alone and should be preserved from undue external interference. The issue of observer status by other organizations in WTO Bodies should not be examined in relation to the political tensions and conflict that prevail in other fora. The WTO is not part of the United Nations, nor should it be so. The WTO is a *sui generis* international organization and **observer status should be granted solely on the basis of potential contribution to the WTO’s role as a forum for trade negotiations.** In the absence of such potential, observer status should not arise.

8. Developing countries, as they increasingly turn to trade liberalization, often cannot afford adjustment mechanisms to cushion the

short-term impact on employment and other aspects of social welfare. **International development agencies, chiefly the World Bank, should have, or should improve, programmes to fund trade policy related adjustment assistance for developing countries.** They should do so in close cooperation with the WTO and other agencies.

9. Achieving coherence in global economic policy-making should be a priority for all multilateral economic institutions. **The General Council gave the WTO's Director-General a mandate, in 1996, to pursue a serious coherence agenda.** Some useful steps have been taken. He should now review options for expanding and intensifying WTO activities in this area.

Dialogue with civil society - responsibilities on both sides

10. Much has been achieved in the area of external transparency over the past few years. Nevertheless, the framework for the WTO's relations with non-governmental organizations as well as with the public generally should be kept under review.

11. It must be recognized that the primary responsibility for engaging civil society in trade policy matters rests with WTO Members. While the WTO's relations with civil society have their own integrity and dynamics, they are inextricably bound to government /civil society relations at the national level.

12. **The membership should develop a set of clear objectives for the WTO's relations with civil society and the public at large.** Within the general framework of these objectives, the 1996 General Council *Guidelines for Arrangements on Relations with Non-Governmental Organizations* should be further developed so as to guide Secretariat staff in their consultations and dialogue with civil society and the public.

Guidance should include the criteria to be employed in selecting organizations with which the Secretariat might develop more systematic and in-depth relations. **However, no single set of organizations should be constituted to the permanent exclusion of others. Further, the Secretariat is under no obligation to engage seriously with groups whose express objective is to undermine or destroy the WTO.**

13. **A special effort should be made to assist local civil society organizations dealing with trade issues in least-developed countries, especially in Africa.** This might be done in collaboration with continent-wide and regional organizations and think tanks.

14. The administrative and financial implications of a more active programme of civil society engagement should be carefully assessed. The World Bank and other intergovernmental organizations that have developed extensive relations with civil society have done so with substantial budget support. **Improved WTO relationships with civil society cannot be achieved without more resources.**

Dispute settlement - a success that can be reinforced

15. The Dispute Settlement Understanding (DSU) is a significant and positive step forward in the general system of rules-based international trade diplomacy. Although it believes that caution and experience are necessary before any dramatic changes are undertaken, the Consultative Board makes a number of proposals.

16. Any measures or ideas for reform that would create a sort of "diplomatic veto" or the opportunity for specific disputants to "nullify" or change aspects of the final adopted panel report should be strongly resisted.

17. **The Dispute Settlement Body (DSB) should occasionally select particular findings**

for in-depth analysis by a reasonably impartial, special expert group of the DSB, so as to provide a measured report of constructive criticism for the information of the WTO system, including the Appellate Body and panels.

18. The principle of allowing the Appellate Body to remand a case to the first level panel should be pursued and clarified, especially if remands can be achieved without adding delays to the process.

19. **To ease the particular problems that have been witnessed in panel selection, consideration should be given to utilizing a combination of roster and ad hoc appointments for designating the membership of first level panels.**

20. With regard to *amicus curiae* briefs, the Consultative Board agrees generally with the procedures already developing for acceptance and consideration of appropriate submissions of this type. **However, to fairly and appropriately handle *amicus curiae* submissions to first level panels and the Appellate Body, general criteria and procedures should be developed, balancing worries about resource implications with fairness, and a general recognition that such submissions can improve the overall quality of the dispute settlement process.**

21. To alleviate some anxieties about transparency, as a matter of course, first level panel and Appellate Body hearings should generally be open to the public. This new practice would be susceptible to a motion by a panel (or Appellate division) or by a disputing party arguing there is a “good and sufficient cause” to exclude the public from all or part of a hearing.

22. The issue of compliance with panel and Appellate Body rulings is important and, in some respects, worrisome. In particular, the notion that the DSU provides a free choice to losing parties whether to implement obligations or, otherwise, to provide compensation or

endure retaliation is erroneous. “Buying out” of obligations is harmful to the system, to trading conditions and, especially, to the interests of developing country complainants which cannot resort to a credible retaliatory option. Monetary compensation to poorer complainants, as a temporary measure pending full compliance, might be an approach worthy of experimentation.

23. It is self-evident that the better informed are diplomats, government officials and legislators on the fundamentals of international dispute settlement the better. **The WTO Secretariat should encourage and facilitate technical assistance to instill broader understanding of the role of “rule orientation” in treaty implementation, as well as the general approaches that virtually all juridical institutions, national and international, take to their work.**

24. The dispute settlement system needs to be better understood, not only by the diplomats and public officials that have to engage in it, but also by the general public who provide the constituencies that are being served by the system. **Further efforts should be made to inform and educate, perhaps including some by expert groups appointed by the WTO or by the DSB.**

Moving negotiations forward - a new look at decision-making and variable geometry

25. The Consultative Board believes that the consensus approach to decision-making in the WTO has many strengths. There is however, reason for serious further study of the problems of achieving consensus in light of possible distinctions that could be made for certain types of decisions, such as purely procedural issues. **In this context, the Consultative Board urges the WTO Members to cause the General Council to adopt a Declaration that a Member considering blocking a measure which otherwise has very broad consensus support shall only block such consensus if it declares in writing, with reasons included, that the matter is one of vital national interest to it.**

26. In recent years, WTO Members have faced considerable difficulties in making substantive progress in major negotiations. The experience is not new and reflects a variety of factors. Nevertheless, the Consultative Board believes that different approaches to negotiations should be reviewed outside the context of the Doha Round. **For example, there should be a re-examination of the principle of plurilateral approaches to WTO negotiations.** This should pay particularly sensitive attention to the problems that those not choosing to participate might face. Further, the approach should not permit small groups of Members to bring into the WTO issues which are strongly and consistently opposed by substantial sections of the rest of the membership. On that understanding, **if there is political acceptance of the principle, it is suggested that an experts group be established initially to consider and to advise on the technical and legal implications. In certain circumstances, a GATS “scheduling” approach would be an appropriate option. These two concepts should be further explored together.**

27. **Wherever possible, new agreements reached in the WTO, in future, should contain provisions for a contractual right, including the necessary funding arrangements, for least-developed countries to receive appropriate and adequate technical assistance and capacity building aid as they implement new obligations.**

Organizational changes to secure political reinforcement and efficient process

28. The Consultative Board considers that the performance of the WTO would be enhanced by more intensive political involvement. It makes a number of proposals. **First, Ministerial conferences of the WTO should normally take place on an annual basis. Second, the Director-General should be required to report on trade policy developments to ministers, in writing, on a six-monthly basis. Third, a WTO Summit of World Leaders should be held every five years.**

29. There is a need to place WTO negotiations and other activities in a much broader policy environment than is currently the case. Work in Geneva is, necessarily, tightly focused and not always clearly related to the large-scale political, economic and development issues with which governments must deal domestically. **The Consultative Board therefore proposes that a senior officials’ consultative body to be chaired and convened by the Director-General be established to meet on a quarterly or six-monthly basis without executive powers and with a broad agenda. Membership should be limited and composed on a partly rotating basis.** Funding should be available to ensure senior officials from the capitals of developing countries attend. When necessary, the consultative body could meet wholly or partially at ministerial level.

30. Having already proposed the establishment of a senior officials’ consultative body, it is further proposed that such a body meet prior to Ministerial meetings to ease the working transition between the two levels.

31. **The Director-General and Secretariat should have the capacity and the standing to be at the centre of negotiations during Ministerial meetings.** Deputy Directors-General and divisional Directors should work alongside facilitators throughout the proceedings.

32. **To further improve transparency and inclusiveness, the Director-General should explore with the relevant groups the potential for increased coordination and group representation in restricted meetings.**

Getting the best out of the Director-General and Secretariat

33. **As required by the Marrakesh Agreement, the “powers and duties” of the Director-General should now be spelled out clearly by the General Council, in part on the basis of the advice of present and past holders of the post.**

34. It is vital for WTO Members to get the best-qualified people possible at all levels in the Secretariat; in particular, at the top. **Technical competence and appropriate experience should be prerequisites in the appointment of Directors-General. The Consultative Board would favour the abandonment of the agreement that permits WTO Members to make nominations only of their own nationals, or that candidates must have the backing of their own governments. Any tendency towards alternating between developing and developed countries and any regional sequencing should be avoided.**

35. **The Consultative Board would like to see a strengthened management culture in the Secretariat, perhaps through the appointment of a chief executive officer who would be the equivalent of a deputy to the Director-General.**

36. The role of the Secretariat as the guardian of the WTO system should be reaffirmed. **The membership should encourage and stimulate a greater intellectual output and policy analysis from the Secretariat.**

37. **A vast increase in the WTO budget may not be realistic in the current climate but there will certainly need to be meaningful increases and annual growth rates in excess of other better-funded institutions.**