



International Centre for Trade
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Strengthening the Global Trade and Investment System in the 21st Century Executive Summary

Ricardo Meléndez-Ortiz, Chief Executive, ICTSD
Richard Samans, Member of the Managing Board, World Economic Forum



 The **E15** Initiative

STRENGTHENING THE GLOBAL TRADE AND
INVESTMENT SYSTEM FOR SUSTAINABLE DEVELOPMENT

Foreword

Ricardo Melendéz Ortiz, Chief Executive, ICTSD

Richard Samans, Member of the Managing Board, World Economic Forum

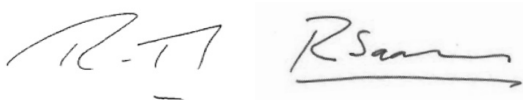
World trade has experienced a significant slowdown since the 2008 financial crisis. Over this period, the global ratio of trade expansion to income growth has halved. An effective global trade and investment system is crucial for reinvigorating economic growth and confronting 21st century global challenges. Yet the system—well performing as it is in many of its functions—is out of date and in need of greater coherence.

It is this reality that led the International Centre for Trade and Sustainable Development (ICTSD), the World Economic Forum, and 16 partnering institutions to bring together more than 375 international experts in over 80 interactive dialogues between 2012 and 2015 under the E15 Initiative. At the core of the initiative are 15 thematic Expert Groups and three Task Forces, each comprised of leading thinkers from developed and developing countries drawn from different fields and backgrounds. Their work has been complemented by an overarching dialogue looking at the global trade and investment architecture, involving consultations with hundreds of thinkers and policy-makers. The entire process has yielded approximately 150 analytical papers and its deliberations have stimulated a fresh look at the long-term challenges and opportunities facing the global trade and investment system, especially in respect of its efficacy, inclusiveness and contribution to sustainable development.

The policy option papers prepared by each E15 thematic group offered a detailed and comprehensive set of suggestions for improved governance of the global trade and investment system in the 21st century. They are accompanied by a Synthesis Report, which summarizes and interprets the significance of the proposals for progress on many of the international community's most important shared imperatives.

We wish to thank and salute each Expert Group and Task Force member, including particularly the Chairs, as well as the partner institutions which supported each group. Their commitment and diligence is what has made this significant contribution possible. We also wish to express our appreciation to the Initiative's distinguished Steering Committee, whose strategic guidance has been invaluable. It is important to note that not every Expert Group member necessarily agrees with every proposal or observation in their chapter, which were drafted under the responsibility of the Chairs. Nor do Expert Group and Steering Committee members necessarily agree with every representation made in the Synthesis Report, which was developed under our responsibility and does not represent an institutional position of either ICTSD or the World Economic Forum. Finally, we thank profusely the ICTSD and Forum E15 teams, including ICTSD Senior Fellow Dr. Harsha V. Singh and Senior Manager Marie Chamay as well as the Forum's Head of International Trade and Investment, Sean Doherty.

As conveners of the E15 Initiative, we have sought to provide a conducive environment for long-term strategic thinking among multiple stakeholders, regions and intellectual disciplines about the optimal evolution of the global trade and investment system in the 21st century. We believe this unprecedented process has produced a timely and relevant contribution at precisely the moment when the international community is beginning to consider a new direction. We commend it to the attention of policymakers, business leaders, scholars and citizens alike and look forward to the next phase of dialogue.



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Members of the E15 Steering Board

Jonathan Fried, Ambassador and Permanent Representative of Canada to the WTO

Paul Polman, Chief Executive Officer, Unilever

Nils Smedegaard Andersen, Group Chief Executive Officer, A.P. Møller-Maersk A/S

Mark Weinberger, Global Chairman and Chief Executive Officer, EY

Ernesto Zedillo, Director, Yale Centre for the Study of Globalization (former president of Mexico)

Richard Samans, Managing Director and Member of the Managing Board, World Economic Forum

Ricardo Meléndez-Ortiz, Chief Executive, International Centre for Trade and Sustainable Development

E15 Co-Convenors

Ricardo Meléndez-Ortiz, Chief Executive, ICTSD

Richard Samans, Managing Director and Member of the Managing Board, World Economic Forum

E15 Knowledge Manager

Harsha Vardhana Singh, Senior Associate for Strategic Research and Policy Analysis, ICTSD

E15 Managers

Marie Chamay, E15 Senior Manager, ICTSD

Sean Doherty, Head, International Trade & Investment, World Economic Forum

E15 Editor

Fabrice Lehmann, ICTSD

E15 Joint Project Team

ICTSD

Ahmed Abdel Latif

Vinaye dey Ancharaz

Christophe Bellmann

Kimberley Botwright

Shuaihua Cheng

Sofie H. Flensburg

Jonathan Hepburn

Ingrid Jegou

Anne-Katrine Pfister (2012–13)

Miguel Rodriguez Mendoza (2012–13)

Sherry Stephenson

Alice Tipping

Petra Walterova (2012–13)

Marie Wilke (2012)

Vivienne Blyth-Moore

World Economic Forum

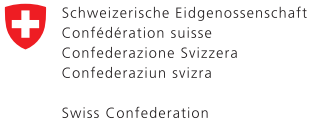
Francesca Bianchi

Katarina Hrubá

Cristian Rodriguez Chiffelle

Aditi Sara Verghese

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National School of Development



Executive Summary

Strengthening the Global Trade and Investment System in the 21st Century

The recent failure by WTO member governments to reach agreement on a continuation of the Doha Round of multilateral trade negotiations has left the international community without a shared agenda for the future evolution of the global trading system. To be certain, there is no lack of initiative and innovation within the system. Regional and bilateral activity has never been more robust. But there is palpable unease about this lack of a common strategic vision and project, as well as questions about where the current dynamic of “competitive liberalization” will lead, even among its main drivers. Such questions include:

- Will the system fragment and degrade into trade-diverting regional blocs?
- Will global trade expansion continue its disappointing recent pattern of lagging global economic growth, rather than leading and propelling it?
- Will the system be able to contribute to rather than complicate progress on other global priorities, such as climate change, sustainable development, inequality, employment, population ageing, depletion of fish stocks and biodiversity, corruption and money laundering, etc.?
- Will it be able to contain the recent proliferation of non-tariff barriers, which can be just as big an obstacle to trade as the tariffs that successive multilateral rounds of negotiations have done so much to reduce?
- Will trade-related rules be able to adapt to the technological changes transforming the operating context of businesses and the very nature of commerce and investment?
- As globalization deepens, will the system succeed in striking the right balance between the policy-making prerogatives of national and local governments, on the one hand, and the logic of international economic integration and cooperation, on the other, particularly when key social values are implicated?
- In sum, will the trading system be able to maintain its essential *positive sum game* character, both in economic fact and political perception?

These questions and others have taken on heightened importance in the aftermath of the Nairobi WTO ministerial, but they have been building up within the system for some time. It is for this reason that the International Centre for Trade and Sustainable Development and the World Economic Forum organized the E15 Initiative, a multistakeholder, long-term strategic review of international trade and investment rules and arrangements. Unprecedented in substantive scope and regional and stakeholder engagement, the Initiative convened 15

Expert Groups and three cross-cutting Task Forces, with participants from 57 countries, posing the question: how should trade- and investment-related rules and institutional arrangements evolve in each area over the next 10 years to 2025?

The groups were invited to conceive of the global trade and investment system broadly, including but by no means restricted to the WTO or other formal trade institutions and agreements. They were asked to think structurally, not incrementally, and not be bound by current calculations of political feasibility. Finally, they were instructed to be specific – to make concrete proposals and prioritize them.

A Synthesis Report created by the two convening institutions summarizes and interprets the significance of the proposals made by the Expert Groups and Task Forces. It draws directly from the policy option papers compiled by each group as well as many of the over 150 underlying research papers or “think pieces” authored by many of the 375 academic, business, civil society and governmental experts participating in the process. The Synthesis Report and individual Expert Group policy option papers are published as a single volume, and readers of the former are encouraged to delve more deeply into the latter for further detail. The think pieces, which are a remarkably rich resource in themselves, were published as they became available over the past three years and can be found on the E15 website: www.e15initiative.org. The process has received strategic guidance from a distinguished steering committee composed of eminent scholars, business leaders and policymakers.

Strengthening the Global Trade and Investment System in the 21st Century

Important shifts in the world economy and political economy of trade policy in recent decades have resulted in an increasingly fragmented and sometimes trade-diverting system that has moved off the centre of the stage of international economic cooperation and is losing legitimacy and relevance for key constituencies. A new common agenda is required that can reset the trajectory of the system's evolution in ways that equip it to respond tangibly to contemporary concerns that are top of mind in Cabinets, boardrooms and kitchen tables around the world.

The output of the E15 Expert Groups and Task Forces is encouraging in this respect. Their proposals demonstrate

that an agenda to strengthen and update the system is not only conceivable but also plausible. As synthesized and interpreted in the following chapters, they form a blueprint for how the international community could come together to make progress on each of the following shared imperatives through improvements in trade and investment rules and arrangements:

Boosting Global Growth and Employment
Reducing Commercial Friction and Investment Uncertainty
Accelerating Sustainable Development in Least Developed Countries
Increasing Economic Diversification and Competitiveness in Middle-income Countries
Ensuring Food Security
Combating Climate Change and Environmental Degradation
Preserving National Policy Space to Make Societal Choices
Strengthening the Legitimacy of the Global Trading System

The substantial nature of the proposals that have emerged in each of these areas suggests that there are important, potentially even transformational, benefits in this agenda for every region and major constituency. **Just because the world was not able to agree to the particular multilateral agenda on the table in the Doha Round does not mean that a common (as opposed to single) undertaking that leaves each better off is not possible.**

However, the path toward deeper and more effective international trade and investment cooperation in the 21st century only comes into view if one steps back from a specific focus on the WTO and appreciates the much wider ecosystem of institutions and instruments available to influence trade and investment behaviour. The proposals summarized below take such a systemic view, spanning a wide range of disciplines and institutions in a way that contrasts with most trade policy analyses, including the two formal reviews commissioned since the turn of the century by the WTO. Embracing a broader frame of reference and deploying a much wider array of tools available for international economic cooperation is fundamentally what will make a *positive sum game* outcome possible in the current, more complex, economic and political context.

This insight has important implications for national and international governance. The agendas of trade ministers and institutions need to be embedded in larger strategies set by higher authorities that integrate other policy and stakeholder dimensions. This will be the focus of the next phase of the E15 Initiative -- a dialogue around the world about the implications of this blueprint for how trade and investment policy is set and administered in countries and at the global level -- and how improvements in international cooperative architecture could help.

Boosting Global Growth and Employment

Were the world economy able to return to its historical pattern of international trade and output growth in which trade expands at about 160% of the rate of economic activity, global growth would be nearly a full percentage point (i.e., one-third) above currently forecasted levels. International trade and investment contribute to growth by facilitating the flow of capital, labour and particularly technology to their most productive uses across the world economy. E15 Expert Group proposals would increase the global diffusion of productivity-enhancing technologies, improve the allocation of the capital and skills to their most productive potential applications and expand trade and investment in employment-intensive industries.

Diffusing Technological Progress

Scale Internet-enabled SME trade:

- Adopt interoperable, digitally-enabled **single windows for customs and border compliance**, and releasing open application program interfaces (APIs) to allow developers to create digital platforms to services to seamlessly link SMEs to large numbers of country single windows supported by an expansion of Aid for Trade capacity-building assistance for developing countries.
- Create comprehensive, **online, single points of enquiry for cross-border services providers** to learn about host country regulatory, licensing and other administrative requirements.
- Establish higher, standardized **de minimis customs levels** to facilitate cross-border flows of small packages supplied by internet-enabled retail services providers, especially SMEs, for example by adopting the APEC \$100 (or even \$200) minimum common threshold for developing countries and higher threshold, such as \$800, for advanced countries.

Establish clear rules pertaining to the electronic transmission of data and related services:

- Allow the **free flow of data across borders** subject to an exceptions provision based on the General Agreement on Trade in Services (GATS) Article XIV concerning the right of countries to protect the privacy of personal data as long as such right is not used to circumvent the provisions of the agreement.
- Establish regulatory certainty and coherence by **aligning rules with leading practices** regarding intermediary liability, privacy, intellectual property, consumer protection, electronic signature and dispute settlement.
- Establish a **permanent moratorium on the imposition of customs duties on the electronic transmission of products.**

Initiate negotiations to establish a Plurilateral Digital Trade Agreement or “eWTO”:

- A forward looking group of countries from various regions should take the initiative to create an **agreement to implement a comprehensive set of policies and leading regulatory and multistakeholder practices such as those outlined above**, to maximize the growth and employment potential of Internet-enabled trade. If such a group included, among other countries, the United States, China and European Union, its provisions could be extended on a most-favoured-nation basis to all countries as a “critical mass” agreement under WTO rules, serving as a thereby a powerful stimulus to global growth and employment particularly in the SME sector.

Create a WTO Working Group on Digital Trade to examine how the needs of digital trade are now covered under the existing rule framework, identify areas where coverage is inadequate or ambiguous, and recommend appropriate clarifications or adjustments.

Include research services in GATS and establish an Agreement on Access to Basic Science and Technology aimed at strengthening the global commons in science and technology without unduly restricting private rights in commercial technologies.

Improving the Global Efficiency of Capital and Labor Allocation

- **Ensure correspondent-banking availability in developing countries**, which has decreased as a result of the tightening of Know Your Customer (KYC) requirements, by ensuring that the BIS, FSB or Wolfsberg Group mentored or sponsored at least one bank per country for purposes of validating its KYC process.
- **Deepen regional regulatory cooperation in financial services**, including through the creation of regional credit bureaus and rating agencies, facilitation of free data flows and offshoring and standardization of documents and documentation requirements.
- **Scale the blended (public-private) financing of infrastructure and industrial investment** through expanded deployment of risk mitigation, co-financing, capacity building assistance and other public finance tools.
- **Streamline processes and procedures related to visas and work permits and establish a plurilateral but open “innovation zone”** working through GATS within which skilled researchers and technical personnel would be able to migrate freely for up to 10 years.

Expanding Trade and Investment in Employment-intensive Industries

- **Develop a comprehensive WTO Framework for Trade Facilitation in Services**, with attendant measurable indicators as in the Trade Facilitation Agreement. This Framework should encompass both cooperative and negotiating mechanisms, complemented by capacity building and technical assistance.

Reducing Commercial Friction and Investment Uncertainty

A large and growing share of the world’s economic activity is organized through global value chains (GVCs) and strategic networks, rather than through arm’s length sales between vertically integrated buyers and sellers in different countries. The most obvious evidence of that trend lies in the percentage of world trade made up of intermediate goods – a *nearly 60% share of world imports and close to three-fourths of the imports of large developing economies, such as China and Brazil*. In this networked world, steps aimed at increasing the quality and reliability of goods and services, decreasing time to market, and enhancing the ability to innovate matter more than lowering the price wedge that tariffs can create. Enabling local firms’ participation in GVCs requires a focus on improving both an economy’s “hardware” (for example, transportation and communications infrastructure) and its “software” (e.g., institutional arrangements, quality and safety standards; improvements in customs procedures, and so on).

- **Establish a Global Value Chain Partnership**, a public-private platform to improve the efficiency and inclusiveness of global supply chains. The platform would facilitate cooperation between governments seeking to integrate their economies into international supply chains and the companies and experts who could be their partners. The action orientation of the partnership would be underpinned by important new analytical efforts to map existing value chains and impediments to their expansion in new geographies as well as to assemble evidence and examples of good practice that can inform the strategies of developing country governments to maximize the contribution to sustainable development of their economies’ participation in these production networks.
- **Simplify the conduct of business across the more than 400 existing regional and preferential trade agreements** through an **RTA (regional trade agreement) Exchange**. This comprehensive open information platform would aim to enhance transparency and understanding about the similarities and differences of RTAs, encouraging a dynamic of learning, best practice adoption and cooperation that leads ultimately to the alignment and even multilateralization of subsets of their rules.
- **Simplify the conduct of business across the more than 3,200 existing international investment agreements** (IIAs) through development of a **Model Investment Agreement** for the 21st century world economy. The Investment Policy Framework for Sustainable Development recently issued by UNCTAD could serve as a starting point for this process, which would seek to build common ground on not only the articulation of and set of definitions for this restatement of the purpose of IIAs but also the design of the main elements of a 21st century international model agreement, using as building blocks a few of the more

recently concluded bilateral agreements and perhaps the prospective US-China bilateral investment treaty that is under negotiation. This new model framework, formulated as a best practice open for voluntary adoption, would be a bottom-up way to spur the modernization and harmonization.

- **Strengthen the transparency of national regulations.** Transparency obligations in the Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Agreements are the most far-reaching in the WTO regime. One-stop shops, enquiry points, intervals between the preparation and adoption of measures coming under the aegis of the two agreements constitute important innovations. Regulation, however, extends to areas not covered by the TBT and SPS Agreements. A new, consolidated framework on regulatory transparency should be agreed in the WTO in which:
 - There is a “mapping” of national mechanisms that are intended to provide transparency with respect to various national regulatory processes.
 - WTO members notify all adopted measures, whether based on international standards or not;
 - They explain the rationale behind their measures (“reasoned transparency”).
 - They involve affected parties at an early stage in the process.
 - Business is provided observer status in the TBT, SPS and other Committees.
- **Integrate services and goods in policy by deepening the Trade in Value Added research of the OECD and WTO and establishing a WTO Working Group** to recommend ways to reduce distortions resulting from the separate rules for goods and services, which are increasingly out of step with the transformation of economic activity in many sectors in which services are embedded in products.
- **Build upon the competitive neutrality principles for state-owned enterprises included in the Trans-Pacific Partnership and EU-Canada CETA agreements** by expanding application of these provisions to other RTAs.
- **Improve cooperation among competition and trade policy authorities** by inviting national competition authorities to evaluate the competition consequences of national decisions bearing on tariffs, antidumping, government procurement, foreign direct investment, services regulation and so forth. In addition, informal discussions in the International Competition Network (ICN), OECD and UNCTAD should be deepened, concentrating on multi-jurisdictional mergers as the most likely source of consequential, inconsistent decisions. Agencies could voluntarily, but effectively, collaborate in joint investigation and enforcement.

Accelerating Sustainable Development in Least Developed Countries

Maximizing Preferential Market Access

- **Developed countries should extend full Duty Free Quota Free (DFQF) market access for all LDCs.** The European Union, Canada and Japan have essentially met this objective. A phased programme could be devised by the United States to address the small number of apparel tariff lines that are important for Sub-Saharan African exporters and covered by the African Growth and Opportunity Act.
- **Middle-income countries should follow the leadership of China, India and Brazil by implementing DFQF programmes that attain 97% tariff line coverage** within the next 5 to 10 years. China expects to reach this goal by the end of 2015 for LDCs with which it has diplomatic relations. Other middle-income countries should demonstrate a similar degree of commitment to South-South trade and the eradication of absolute poverty by following suit.
- Both groups of countries should follow the leadership of Canada and **implement rules of origin for these preference arrangements using an extended cumulation approach, forming, in effect, a broad cumulation zone** among all LDCs and countries that are members of free trade agreements (FTAs) in which the importing country participates. This approach would significantly stimulate exports from LDCs, judging from the evidence of similar rule of origin changes in the past.

Improving the Terms of Foreign Investment

- Use the Investment Policy Framework for Sustainable Development recently issued by UNCTAD as a starting point for the development of a **Model Investment Agreement** as described in the preceding section, including:
 - An articulation of **fundamental investor obligations**, including with respect to responsible business conduct in areas like corruption, human rights and taxation (i.e. for example, the new OECD Base Erosion and Profit Shifting framework) and benefit sharing. Supplemental sector-specific responsible investment frameworks could be developed through public-private dialogue, such as in the area of responsible mineral and natural resources development;
 - A new **international appeals framework** that states could choose to opt into as part of their bilateral agreements or FTAs. This mechanism would provide recourse for either party of an arbitral judgment to an ad hoc appellate body composed of members from a pool of investment adjudication specialists accredited by the international framework.
- Establish an **Advisory Centre on International Investment Law** to level the playing field for developing country governments that lack the legal expertise to defend themselves adequately in disputes, based on the model of the Advisory Centre on WTO Law.

- Expand donor country assistance to support for **capacity building to developing countries** in the implementation of the new model framework. This can be done by extending the WTO Aid for Trade initiative to cover investment-related as well as trade-related capacity building. These programmes of assistance could be shaped by the Investment Policy Reviews of UNCTAD or relevant reviews by OECD or the WTO.
- Scale **technical assistance from the International Monetary Fund or multilateral development banks to LDC sovereign debt issuers** to ensure they have the capacity to negotiate terms based on the model frameworks developed recently to eliminate judicial/sovereign risks, and in turn provide for efficient restructurings should the need arise.

Expanding the Inclusivity of Norm Setting and Adoption

- **Establish regional institutions for structured support programs to enhance local capacity** to conform to global standards, and provide links to lead firms to increase understanding of international market developments.
- Develop norms for making regional and plurilateral agreements more inclusive. In addition to more permissive rules of origin, devise methods or principles by which the multilateral system could accommodate newly emerging trade regulatory regimes.

Increasing Financing for Trade-Related Development

- **Expand the scope and scale of trade-related capacity building assistance** and the Aid for Trade initiative. Several E15 Expert Groups proposed major increases of such aid for the development of rules and administrative and adjudicatory capacity in the areas of services, legal and regulatory reform, investment frameworks, private standards adherence, responsible supply chain practices and labor, environmental and anti-corruption institutions, etc. While the Aid for Trade initiative has made important progress since it was launched 10 years ago, it and related bilateral donor programmes need to substantially broaden their scope and considerably boost funding levels so that a fuller spectrum of institutional weaknesses that raise trade costs and create investor uncertainty.
- **Deploy official development assistance (ODA) more strategically in further ways**, particularly by increasing use of blended finance to catalyze private investment and creating a more business-friendly policy environment through the strengthening of institutional capacity in the financial sector and public expenditure, tax and judicial systems. In particular, concrete steps could be taken to increase efforts to support implementation of OECD BEPS measures (e.g., with modest international support, Kenya's revenue collection from transfer pricing audits doubled recently from \$52 million to \$107 million)
- **Establish an agricultural subsidy solidarity fund** to support food security and climate change adaptation in LDCs in which financial contributions would be made in proportion to the magnitude of such domestic support in advanced and emerging countries. With total ODA to agriculture in the order of \$9 billion and official

trade-distorting support (OTDS) to agriculture in these countries amounting to about \$200 billion, a contribution of even just 1% or 2% of OTDS by each donor country would result in an expansion of ODA to agriculture by 20% to 40%, funds that could support a significant boost in capacity-building assistance for climate-smart agricultural productivity improvements and export performance in at-risk LDCs.

Increasing Economic Diversification and Competitiveness in Middle-Income Countries

Middle-income countries (MICs) face growing competition in traditional markets from other developing countries and the challenge of boosting their technological sophistication in order to compete effectively with advanced countries in higher value-added products and services. The best way for MICs to avert this so-called middle-income trap is to improve domestic competitiveness at the level of the firm, industry and the nation itself.

The evidence regarding industrial development over the past 50 years, including particularly the experience of a number of successful East Asian economies, suggests that horizontal (non-sector specific) policies to improve the enabling environment for private sector development are ultimately more important to success than vertical (sector- or firm-specific) ones. In particular, by **combining improvements in infrastructure, investment climate institutions and workforce skills with openness to foreign direct investment** in key sectors, countries create the possibility for technology and know-how from those foreign firms to be transferred more widely and organically through the bottom-up creation of forward and backward linkages. These linkages can build over time into clusters of industrial capabilities that propagate local production, investment and innovation.

This dynamic can be accelerated by attracting investments by lead firms in global or regional value chains through the maintenance of an enabling tariff and non-tariff barrier environment for the importation of key inputs and improvements in trade facilitation (particularly customs administration and logistics). In this sense, **modern industrial policy emphasizes the facilitation rather than restriction of imports and inward foreign investment.**

Vertical policies can also be helpful, but based on a recognition that they are more likely to be effective and cost-efficient if executed within a robust horizontal enabling environment and determined through a **rigorous and dynamic evaluation of the country's latent competitive advantages** that is insulated from rent-seeking behaviour of vested interests.

E15 Expert Groups propose several ways in which the international trade and investment regime can be strengthened to help countries translate enabling environment improvements into increased flows of foreign investment and commerce which contribute to economic

diversification and industrialization. Rather than creating new rules, much of this agenda concerns facilitation, particularly of cross-border investment, services trade and integration into global value chains, as these are vehicles for introducing additional capital, technology, know-how and skills transfer into an economy. Specifically:

Create an international support programme for sustainable investment facilitation, focused on improving *national* FDI regulatory frameworks and strengthening investment promotion capabilities. In a world of global value chains, the Aid for Trade Initiative and the TFA address one side of the equation, namely the trade dimension; an international support programme for sustainable investment facilitation would address the other through enhanced transparency of both host government rules and practices as well as an expanded array of promotional services.

- One option would be to extend the Aid for Trade Initiative to cover investment or create a separate Aid for Investment initiative. The initial emphasis could be on investment in services, with a focus on sectors key to promoting sustainable development, such as environmental services, energy, transportation, and professional services
- Another, more ambitious, and medium-term option would be to expand the Trade Facilitation Agreement to cover sustainable investment as well, to become an Investment and Trade Facilitation Agreement, conceivably through an interpretation of that Agreement or through amending that Agreement.
- A third option is for a group of interested countries to launch a Sustainable Investment Facilitation Understanding that focuses entirely on practical ways to encourage the flow of sustainable FDI to developing countries. Work on such an Understanding could be undertaken in the WTO or within another international organization with experience in international investment matters, perhaps UNCTAD or the World Bank or the OECD. Or, a group of the leading outward FDI countries could launch such an initiative, perhaps through the G20.

Several of the proposals presented in the three preceding sections would also contribute strongly to economic diversification and competitiveness in middle-income countries, namely:

- **Establish a Global Value Chain Partnership** to expand the efficiency and inclusiveness of international supply chains through sectoral mapping, development impact analysis and facilitation.
- **Promote international trade in services and SME exports** by:
 - Helping countries to provide comprehensive, online, single points of enquiry for cross-border services providers to learn about host country regulatory, licensing and other administrative requirements and tasking an international organization or independent agency to benchmark country progress.
 - Help countries to implement the Trade Facilitation Agreement and adopt interoperable, digitally-enabled single windows for customs and border compliance, and release open application program interfaces

(APIs) to allow developers to create digital platforms for services that seamlessly link SMEs to large numbers of country single windows.

- Encourage the establishment of higher standardized *de minimis* customs levels to facilitate cross-border flows of small packages supplied by Internet-enabled retail services providers, especially SMEs.
- **Improve Regulations and Standards**
 - Develop human capital and allow the movement of skilled workers. Establish an innovation zone within which skilled researchers and technical personnel would be able to migrate freely.
 - Strengthen competition monitoring and establish competition best practices and cooperation.
 - Update the WTO telecom reference paper to regulate competition that affects Internet access and competition over the Internet.

In respect of vertical industrial policies:

- **Soften and monitor local content requirements.** Local content requirements (LCRs) could be “softened” by broadening them to encompass inputs from regional economic communities, strengthening regional value chain development. But at the same time, WTO notification should be required for formal LCRs and captured in the trade-monitoring database, with regular review via the Trade Policy Review Mechanism. Research should be undertaken to improve understanding of the conditions required for LCRs to achieve the objective of generating positive spillovers for the local economy. Finally, conversion of the WTO LCR prohibition into an “adverse effects” test similar to the regulatory system for domestic subsidies could be considered for some LCRs.
- **Allow non-actionable subsidies** related to publicly available R&D, regional development, environmental protection and disaster recovery by reviving a revised form of Article 8 of the ASCM.

Combating Climate Change and Environmental Degradation

The international community has resolved through the 2030 Agenda for Sustainable Development to protect the planet from degradation, including through sustainable consumption and production, sustainable management of natural resources and urgent action on climate change. The obvious links between trade and environmental outcomes require a convergence between regimes. In particular, work is needed to create additional clarity and space for climate measures that countries implement to carry out their commitments under the recent Paris UN climate change accord:

- **Establish a process involving the WTO and UNFCCC to assess and make recommendations for the trade-related legal implications of the Paris accord**, for example through the WTO Committee on Trade and Environment and a subsidiary UNFCCC scientific body. This process should produce a **clear definition of what constitutes a climate action under the Paris accord for purposes of informing WTO dispute settlement**. It could also lead to creation of a UNFCCC dispute

settlement mechanism to adjudicate disputes relating to this definition as well as an interim “peace clause” on trade law challenges to certain measures. And it should consider the extent to which WTO dispute settlement should defer to trade-related climate accords adopted by the International Maritime Organization and International Civil Aviation Organization.

- **Encourage the consistency and inter-operability of national climate change mitigation strategies** by:
 - Developing international standards for carbon accounting, including for carbon embedded in products and services
 - Creating a waiver from WTO obligations for certain climate measures targeting embedded carbon
 - Recognizing certain carbon taxes as indirect taxes under GATT Article II or creating a bespoke waiver for them
 - Clarifying that the exemptions under WTO Article XX apply to protection of the world’s climate as a means of facilitating the creation of nationally determined emissions trading schemes and related border adjustment mechanisms that meet certain common criteria.
- **Facilitate the creation of higher ambition climate clubs within RTAs or new plurilateral arrangements** (such as the carbon pricing club of countries announced in Paris) by including in the WTO code of conduct for plurilateral arrangements described below an affirmation that club members may accord each other WTO-plus benefits or discriminate in certain ways against non-members.
- **Mandate within the WTO the disclosure and phased prohibition of fossil fuel subsidies**, according special and differential treatment to poorer developing countries.
- **Extend the ongoing Environmental Goods Agreement negotiations** to certain services and NTBs, while extending tariff liberalization in a second phase to a broader range of environmental goods.
- **Discourage overuse of trade remedies against public support for clean energy technology development** by making climate change a criterion in public interest tests, extending GATT Article XX on General Exceptions to such subsidies, creating a permanent climate change exception under the SCM Agreement or agreeing a clean energy waiver; and **clarify the treatment of energy flows** (e.g. classification of electricity as a good or a service) to provide greater certainty to energy markets.
- **Develop a sectoral agreement on trade in finite natural resources**, as exists for agriculture, due to the trade and investment specificities and development importance of the mining, oil and gas sectors.
- Address, through multilateral negotiation, the current legal vacuum on **export restrictions and level the playing field with respect to export taxes** for natural resource products between newly acceded countries to the WTO and original members.

- **Build on the momentum of recent national and public-private initiatives and the important elements of the TPP agreement to reduce fisheries subsidies and address Illegal, Unreported and Unregulated (IUU) fishing** by establishing a cooperative network of such schemes. The aim over time would be to strengthen and link them through trade agreements and/or in mutual recognition standards arrangements in a manner that could eventually close off the global market for illegally caught fish.

Ensuring Food Security

Food security considerations have been upended by the emergence of a new normal in agricultural prices. Extreme price volatility has encouraged insulating policies that erode confidence in global markets while domestic support has seen a resurgence. As the primary means of livelihood for large, impoverished populations and with the growing challenge of water stress related to climate change, agriculture need to be addressed with care in trade policy.

- **Undertake confidence-building, non-binding commitments among governments** to rebuild trust, starting with time-limited pledges not to exceed domestic support levels that are at or above current levels but below bound rates, and moving in a second step market access.
- **Initiate plurilateral negotiations among major, like-minded countries on domestic support and market access** that, depending upon the countries engaged and commodities covered, could lead either to a closed agreement along the lines of the WTO Government Procurement Agreement or an open, critical mass agreement providing its benefits to all countries.
- **Discipline export restrictions** in the WTO to avoid price spikes and maintain confidence in the reliability of international markets as a reliable source of food. In the first instance humanitarian aid should be exempted from export restrictions as covered in the Nairobi agreement. Current disciplines should be made enforceable, while in the longer term export taxes and restrictions could simply be prohibited.
- **Support the establishment of emergency humanitarian food reserves** to prepare for times of crisis by updating the 1986-88 fixed reference price used for calculating the level of permissible domestic support and clarifying that if the administered price is below the market price then the support measure would be considered green box compatible (i.e., not an actionable subsidy). To address longer-term food insecurity a system of global food stamps or similar approaches, such as the “transfers to cover the poverty gap” proposed by the FAO, the International Fund for Agricultural Development (IFAD) and the World Food Programme (WFP), are worthy of attention.
- **Drive transparency in agricultural market data and government support** to avoid trade distortions. All nations should provide requested data to the Agricultural Market Information System and notify, in particular, support to biofuels more comprehensively. On the

basis of this added transparency, consideration should be given to distinguishing between public-good and income-maintenance “green box” subsidies, with the latter possibly subject to some limitations.

- **Expand facilitation of agricultural trade**, not least domestically and regionally, by broadening the focus of the Trade Facilitation Agreement to hard and soft agricultural supply chain infrastructure as well as the **use of international sanitary and phyto-sanitary standards**.
- **Promote an integrated Agri-Food Value Chain approach to future negotiations** to provide an opportunity to address relevant aspects in an integrated manner, ranging from tariffs and non-tariff barriers, services related to agriculture (e.g. storage, handling, shipping or processing), seeds, pesticides and fertilizers, trade facilitation, transport and logistics, innovation and ITC.

Preserving National Policy Space to Make Societal Choices

There is rising concern among some countries and constituencies that international trade and investment liberalization have gone too far in the sense of unduly restricting the ability of governments to pursue critical national objectives that their societies may value as much as or more highly than the facilitation of cross-border trade and investment, in particular industrial development and certain social values in such areas as public health, environmental protection, labour and human rights, consumer protection and cultural heritage.

The Expert Group on Reinvigorating Manufacturing concluded that **for the most part international trade disciplines still do not pose a significant barrier to the kinds of industrial development strategies that have proved effective in places such as South Korea, Taiwan, China and India**. This is principally because a) while multilateral disciplines do exist and have been tightened in some respects in recent years regarding “vertical” or industry-specific policies (notably, intellectual property rights), most such strategies are still available to developing countries on either a *de jure* or *de facto* basis; and b) the most effective policies for spurring industrial development have in fact proved to be “horizontal” (not industry specific) in nature, and these measures are essentially unconstrained by international trade and investment disciplines.

As for domestic policy autonomy in respect of social values, the current controversy over investor-state dispute resolution is a manifestation of a wider question about the appropriate limits of international economic integration, in particular a new generation of FTAs that involve much deeper integration of economies. By virtue of their emphasis on investment and services, these new trade initiatives are increasingly focused on improving regulatory coordination, sometimes on topics for which societies have differing or still-evolving underlying value systems (e.g. precaution, privacy, industrial relations, etc.). **The essential question such deeper integration poses is: what is the right balance between investor and citizen rights, investment certainty and democratic**

due process, and regulatory coherence in a highly-integrated world economy and deference to legitimate national values and choices? E15 Expert Groups propose several ways in which the trade and investment rules and institutions could be improved to support a better balance:

- **Modernize and strengthen the coherence of investment agreements** as outlined above. The proposed new Model Investment Framework, formulated as a best practice open for voluntary adoption, would include a number of specific additional innovations that would help negotiating parties to strike a better balance regarding the preservation of essential national policy space, including:
 - An articulation of **fundamental investor obligations**, including with respect to responsible business conduct in areas like corruption, human rights and taxation (i.e. for example, the new OECD Base Erosion and Profit Shifting framework). Supplemental sector-specific responsible investment frameworks could be developed through public-private dialogue, such as in the area of responsible mineral and natural resource development.
 - A new **international appeals framework** that states could choose to opt into as part of their bilateral or FTA agreements. This mechanism would provide recourse for either party of an arbitral judgment to an ad hoc appellate body composed of members from a pool of investment adjudication specialists accredited by the international framework.
 - A new **dimension of citizen participation** modelled on the OECD Guidelines for Multilateral Enterprises. Specifically, a Consultative Committee for the new model framework could be established for the purpose of providing input into not only the elaboration of the framework but also its implementation. Various stakeholders could be accorded consultative status to identify and offer analysis of specific dispute settlement cases that they believe illustrate the need for further clarification or the evolution of the framework going forward.
 - To help level the playing field for developing country governments that lack the legal expertise to defend themselves adequately, an **Advisory Centre on International Investment Law** should be established, modelled on the Advisory Centre on WTO Law. Created in 2001, this provides services to developing countries through its own staff or outside counsel at reduced rates.
- **Create a safe harbour for subsidies to address market failures**. The E15 Initiative Task Force on Subsidies made a set of additional proposals that would clarify (and thereby increase) the latitude governments have to address market failures or create public goods. They propose reinstating a modified version of Article 8 of the Agreement on Subsidies and Countervailing Measures concerning Non-Actionable Subsidies that expired in 2000. This would create a safe harbour for the use of subsidies that address four social objectives on the grounds that these are problems of the commons or other market failures whose remediation would have positive externalities: mitigation and adaptation to climate change; inclusion of marginalized regions; promotion of publicly available R&D; and recovery from natural disasters and conflict.

- **Promote the levelling up of social and environmental standards** over time through regulatory cooperation among self-associating clubs of countries and the parallel scaling of responsible supply chain practices by multinational and other companies. In particular:
 - Encourage like-minded countries to form open clubs that establish a common floor for such standards and help other countries join by extending trade and investment preferences and substantial capacity-building assistance to them.
 - Multinational enterprises be encouraged and even expected by their home governments and shareholders to **apply to their operations abroad the basic worker rights and pollution control rules to which they are subject in their home country.** This would go a long way towards addressing the concern in advanced countries about the implicit subsidy or artificial advantage represented by weaker standards in poor countries without prescribing legal and institutional changes that would impinge on domestic policy autonomy.
 - The **new initiative by G7 countries to spread responsible labour and environmental practices throughout the worldwide supply chains of companies headquartered in their countries should become a rallying point for public-private cooperation** to scale the voluntary application of best practices through a combination of governmental jawboning of the type suggested above and funding of developing country technical assistance and outreach. A concentrated effort over the next two to three years could build a critical mass of corporate adherence within most key industrial sectors.

Strengthening the Legitimacy of the Global Trading System

Three features that have historically underpinned the global trade system's legitimacy are widely perceived as being eroded. First is the bedrock principle of *non-discrimination*, which has guided the construction of a rules-based multilateral framework open to broad participation, ensuring the system has the character of a global public good. Second is the notion that the system is a *means serving larger ends*, in particular the objective of sustainable development but also other societal priorities determined by national polities. Third, the long Doha Round stalemate during a period of dramatic transformation of the world economy has raised the question of whether the system remains sufficiently *adaptive and fit for purpose*.

Inclusiveness: Five sets of proposals have emerged that would particularly help to reinforce the universality or inclusiveness of the system's benefits. These would help to ensure that the variable geometry made necessary by the complex economic and political landscape of the 21st century evolves in a way that encourages the widest possible inclusion of countries in such "clubs" (or key elements thereof) in the near term as well as the progressive integration of such regional and plurilateral arrangements (or key elements thereof) into a growing body of non-discriminatory multilateral norms over the medium to long term.

Establish the **RTA Exchange, Model Investment Agreement; and Regulatory Transparency** procedures outlined in previous sections.

Launch a formal process of negotiations to create a **WTO "code of conduct" for plurilateral agreements** that enshrines a specific set of proposed principles and rules. Draft **Multilateral Impact Statements** for regional arrangements that would examine the extent to which such agreements (a) create contestable markets that provide benefits to outsiders as well as participants, and (b) serve as the modular components of a more integrated global trading system. One mechanism for establishing this practice would be for an independent authoritative body—either a think tank or distinguished panel of trade authorities perhaps commissioned by the RTA Exchange described above or the WTO—to lay out a set of relevant criteria and then to apply these to an analysis of RTAs.

These initiatives, in addition to the proposal above for all countries to follow the leadership of Canada and **implement rules of origin in preference arrangements using an extended cumulation approach for LDCs** (forming, in effect, a broad zone linking all LDCs with countries participating in particular FTAs), would have the combined effect of carving a constructive path for the system out of the current "spaghetti bowl" of fragmentation. They could set in motion a self-reinforcing dynamic of **modular multilateralization** in which individual regional and plurilateral rules are progressively reintegrated at the multilateral level over the next 10 to 20 years.

Synergy. The E15 Initiative has proposed many ways in which the global trading system could be strengthened to maximize its contribution to and minimize the complications it creates for the wider sustainable development agenda. These have been summarized particularly in three of the preceding chapters:

- *Boosting global growth and employment*
- *Accelerating sustainable development in least developed countries*
- *Combating climate change and other environmental degradation*

If the international community were to adopt the reforms outlined in these chapters, it would render the international trade and investment regime a much more potent force for progress on three of the most pressing global challenges of our times. Well beyond promoting coherence in the bureaucratic sense, these three sets of proposals would enlist the global trading system as a full partner---an accelerator of action---on each, in so doing enhancing the system's relevance and legitimacy for all countries.

Effectiveness. E15 Initiative Expert Groups would boost the delivery and effectiveness of the global trade system by expanding the array of negotiating approaches at the disposal of governments within the WTO as well as widening the set of tools available to generate forward progress beyond such norm-setting negotiations, per se. The agenda summarized above spans approaches that are:

- *multilateral, plurilateral and unilateral*
- *formal and informal (including greater use of best endeavours frameworks linked to increased capacity building assistance)*
- *uni-disciplinary (trade rules and institutions) and multi-disciplinary (involving multiple international organizations and ministry portfolios)*

- *new approaches to longstanding challenges (e.g., domestic agricultural support, special and differential treatment through trade preferences)*
- *new approaches to new challenges (e.g., digital economy, investment, services, climate change, competition, social standards)*

Such a results-oriented, multi-dimensional approach will only be possible if the trade policy community and the WTO in particular conceive of themselves as embedded in a wider global trade and investment system. Rather than seeing this complex variable geometry as an intrinsic threat or even rival, they must conceive of the WTO as fundamentally embedded in rather existing above or apart from it, indeed *servicing* the wider ecosystem by assuming a greater sense of responsibility for its positive evolution through the execution of an expanded array of leadership functions.

The Future of the WTO

Partly because of its origins in the GATT, the WTO's institutional culture is somewhat inward looking---the custodian of multilateral rules arrived at through multilateral negotiations. This remains a critical function, but the international community requires more from the WTO in the 21st century. The WTO's own general principles as reflected in the preamble of its Charter also require more of it in this new context. Only if the institution's role is broadened from that of a framework for negotiations of reciprocal concessions and the settlement of disputes thereunder to *an enabler of the wider system's contribution to cross-border trade- and investment-related economic development* will the comprehensive set of opportunities for global trade summarized in the preceding chapters be realized and the fundamental legitimacy of the system be assured.

Informal Cooperation. There is much more the WTO should do in the areas of data, transparency, analysis, dialogue and facilitation of both normative coherence and expanded trade and investment flows in the service of economic development:

- **Strengthen the role of WTO Committees**, making them active platforms for deeper analysis and more productive *informal* dialogue (endnote think piece). This would entail extending the terms of Chairs and Vice Chairs from one to two or three years and empowering the corresponding secretariat directorates to be more proactive and independent in the structuring of their research agendas. There are multiple opportunities for the WTO to influence the course of national policy and even regional and plurilateral arrangements in this way.
- **Leading or otherwise participating actively in informal facilitation initiatives**, such as the Global Value Chain Partnership and possible Services and Investment Facilitation frameworks summarized above. These initiatives and others like them would combine evidence-based dialogue among governments, businesses and experts with the possibility of institutional capacity building assistance for developing countries that seek to capitalize on industrial development opportunities that the analysis and dialogue help to identify. As such, they have the potential to be just as catalytic of trade and investment flows as formal new trade agreements.
- **Leading or participating actively in informal anti-fragmentation initiatives**, such as the RTA and Investment Agreement Exchanges as well as enhanced

regulatory transparency platform described above. These exercises and others like them seek to create an open-source dynamic of transparency, peer exchange, learning and reform. They can be a powerful force for improved consistency, convergence and ultimately the integration of regional and plurilateral arrangement rules into an ever-expanding core of multilateral disciplines.

Formal norm creation. The WTO would stand a better chance of catalysing the progressive reintegration of the system over the next 10 to 20 years through the **modular multilateralization of specific features of RTA and plurilaterals** if it was similarly creative and pragmatic about its negotiating function. It could do so by encouraging the creation of plurilateral clubs that are consistent with this long term objective through adoption of a code of conduct for plurilaterals; conducting a Multilateral Impact Statement on all proposed and negotiated plurilateral agreements; and proactively identifying as a result of its own analysis and then proposing for negotiation specific best-practice features of RTAs and plurilaterals that are ripe for broader integration, whether through adoption by other RTAs or a global plurilateral or even meta-RTA agreement.

By embracing and adapting itself in these ways to a world of variable geometry, the WTO could help to steer the evolution of trade and investment liberalization, most of which occurs outside the WTO, in a direction that ultimately strengthens the global trading system's legitimacy. A more creative and assertive WTO along these lines is what could make the difference between a world of competing, trade-diverting blocs in which many developing countries fall further behind, and one in which the essential MFN nature of the system is rejuvenated and a virtuous circle of balanced integration across advanced and developing countries leads to a mutually-reinforcing cycle of broad-based progress in living standards within them.

The trade policy community and WTO would do well to learn from the recent experience of their climate change counterparts. It took the failure of negotiations in Copenhagen in 2009 for the UNFCCC to recognize that a near-exclusive focus on its own formal normative machinery was handicapping its effectiveness as an agent of progress. The negotiations in Paris in 2015 succeeded because the organization and key constituent governments embraced a wider, variable geometry of opportunities for progress—formal and informal, public and private—and steered them toward an integrated contribution. While the results were only partial, they were significant. And they created a blueprint for the construction of future, additional progress.

The agenda outlined above, derived through an extensive process of multistakeholder deliberation, is an analogous blueprint for adapting the WTO and the global trade and investment system to changed circumstances. By embracing the wider trade and investment cooperative ecosystem, assuming a broader role for enabling balanced progress within it, the WTO has a similar opportunity during its forthcoming “period of reflection” to develop a long-term plan to restore its relevance and safeguard the system's legitimacy. The international community is counting on it to succeed.



International Centre for Trade and Sustainable Development

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International Centre for Trade
and Sustainable Development
International Environment
House 2
Chemin de Balexert 7-9
1219 Châtelaine
Geneva
Switzerland

Phone: +41 22 917 84 92
Fax: +41 22 917 80 93
Email: info@ictsd.ch

www.ictsd.org

World Economic Forum
91–93 route de la Capite
CH-1223 Cologny/Geneva
Switzerland

Tel.: +41 (0) 22 869 1212
Fax: +41 (0) 22 786 2744

contact@weforum.org
www.weforum.org