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Centre for International  
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# Argentina: An Opportunity to Rethink the WTO's Working Practices

Hector Torres





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## About the Author

**Hector Torres** is a senior fellow with CIGI's International Law Research Program. He is a former executive director at the International Monetary Fund (IMF). At the World Trade Organization (WTO), he served in the Economic Research and Statistics Division and provided legal counsel from the Appellate Body's Secretariat. At CIGI, Hector conducts research on global governance reform, on the Group of Twenty (G20) and WTO ministerial, and on promoting legal coherence in global policy making.

Prior to joining CIGI, Hector held several senior roles with the IMF and the WTO, including as a member of the Task Force on Financial Crisis and coordinator of technical cooperation for Latin America and the Caribbean. He was a consultant on trade for the United Nations Environment Programme, and a member of Argentina's professional diplomatic service. Hector frequently acts as a panelist, consultant and writer in the areas of international economic law and trade.

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## About the ILRP

The International Law Research Program (ILRP) at CIGI is an integrated multidisciplinary research program that provides leading academics, government and private sector legal experts, as well as students from Canada and abroad, with the opportunity to contribute to advancements in international law.

The ILRP strives to be the world's leading international law research program, with recognized impact on how international law is brought to bear on significant global issues. The program's mission is to connect knowledge, policy and practice to build the international law framework — the globalized rule of law — to support international governance of the future. Its founding belief is that better international governance, including a strengthened international law framework, can improve the lives of people everywhere, increase prosperity, ensure global sustainability, address inequality, safeguard human rights and promote a more secure world.

The ILRP focuses on the areas of international law that are most important to global innovation, prosperity and sustainability: international economic law, international intellectual property law and international environmental law. In its research, the ILRP is attentive to the emerging interactions between international and transnational law, Indigenous law and constitutional law.

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## Acronyms and Abbreviations

<b>G20</b>	Group of Twenty
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GVCs</b>	global value chains
<b>IEOs</b>	independent evaluation offices
<b>IMF</b>	International Monetary Fund
<b>LDC</b>	least-developed country
<b>MC11</b>	Eleventh Ministerial Conference of the WTO
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OIO</b>	Office of Internal Oversight
<b>S&amp;D</b>	Special and Differential Treatment
<b>TFA</b>	Trade Facilitation Agreement
<b>WTO</b>	World Trade Organization

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## Executive Summary

A protectionist sentiment is growing in countries that used to champion trade liberalization, putting the World Trade Organization (WTO) under serious strain and compounding the drawback effect of some dysfunctional working practices. Trade ministers meeting in Buenos Aires (December 11–14, 2017) should not paper over these tensions, but rather use the opportunity to pause negotiations and ask the WTO to take stock of working practices that need to be updated and recalibrated. The paper illustrates this point by addressing two dysfunctional working practices that lie at the core of the WTO’s predicament and that could be fixed through updating and recalibration. Finally, the paper proposes that trade ministers could contemplate the creation of an independent policy watchdog, such as those existing in the International Monetary Fund (IMF) and the World Bank. This would engrain a learning culture into the WTO’s day-to-day business, facilitate incremental reforms and obviate a wake-up crisis.

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## Introduction

A dangerous protectionist sentiment has been growing in some developed countries. The case of the United States is not unique, but it is particularly worrisome. The United States used to be the leader of trade liberalization, but recent announcements of possible trade “cataclysms”<sup>1</sup> are putting the WTO under serious strain. The stage seems to be set for a trade war.

It is comfortable — but wrong — to believe that trade problems have originated in one administration or another. Admittedly, the Trump administration is compounding trade tensions, but Washington’s current protectionist rhetoric is

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1 During a June 21, 2017, hearing on US President Donald Trump’s trade agenda and budget, US Trade Representative Robert Lighthizer told the Senate Finance Committee that the non-market economy fight with China “is without question the most serious litigation matter we have at the WTO, right now. And I have made it very clear that a bad decision with respect to non-market economy status with China would be cataclysmic for the WTO.” “Lighthizer: U.S. loss in China NME dispute would be ‘cataclysmic’ for WTO”, *Inside U.S. Trade* (23 June 2017), online: <<https://insidetrade.com/inside-us-trade/lighthizer-us-loss-china-nme-dispute-would-be-cataclysmic-wto>>.

more a symptom of distributional tensions than an aberration.<sup>2</sup> Frustration with trade distributional consequences has made trade negotiations politically sensitive. Like the WTO's hapless Doha Round, many other major trade negotiations have faced serious domestic opposition, as questions have been posed about their fairness and capacity to promote inclusive growth. This is the context in which the WTO's Eleventh Ministerial Conference (MC11), which Argentina has volunteered to host, will take place in December 2017.<sup>3</sup>

Preparing the terrain for gatherings of trade ministers is never easy. Deals are postponed until the very last minute, as a horse-trading dynamic prevails. Geneva negotiators hold their cards close to their chest, hoping that somebody else will blink first. Spells of reasonableness normally emerge only when ministers arrive at the venue and after desperate efforts from the hosts. Eventually something is delivered — typically wrapped in some constructively ambiguous language and marketed for more than its value. But this time it could be even worse.

International trade is at a crossroads and while it would be disingenuous to paper over its problems we should not count on last-minute miracles. It is unlikely that ministers meeting in Buenos Aires will reach breakthrough agreements. Yet they could agree on a new work program for the WTO.

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## A New Work Program for the WTO

The WTO is central to preserving a cooperative international trade environment, and the challenge for ministers in Buenos Aires is to marshal support for the WTO. This is a tall order, but if they fail, economic nationalism may shape a new world — and it could be quite an ugly one.

Assuaging concerns over international trade among those who feel left behind by globalization will require adjusting domestic policies. This cannot be achieved by the WTO, let alone by a ministerial gathering. Nevertheless, the WTO can play an important role in promoting a better understanding of what is at stake and in enhancing coherence in policy making.<sup>4</sup> Beyond this, the WTO itself will need some updating and recalibration. This will require an honest soul-searching exercise that WTO members have never undertaken before. This exercise is largely overdue, as problems affecting the WTO's capacity to serve as a negotiating forum are not new. It cannot be done at a conference, but the MC11 comes at the right time to pause and ponder how best to achieve it.

This paper addresses two dysfunctional working practices that lie at the core of the WTO's predicament and that could be fixed through updating and recalibration. The paper then suggests how the WTO could embrace incremental reforms by introducing a learning culture into its day-to-day business practices.

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2 A recent study produced jointly by the World Bank, the Organisation for Economic Co-operation and Development (OECD), the Institute of Development Economics, the Research Center of Global Value Chains at the University of International Business and Economics, and the WTO, shows that over a 15-year period (1995–2010), global value chains (GVCs) in China allowed for significant wage increases for all workers. This contrasts with the situation in the United States, where most of the benefits were cropped by high-skill workers while compensation for low-skill workers remained mostly flat. *Global Value Chain Development Report 2017: Measuring and Analyzing the Impact of GVCs on Economic Development*, at 3–4 and figures 4 and 5, online: <[www.wto.org/english/res\\_e/publications\\_e/gvcd\\_report\\_17\\_e.htm](http://www.wto.org/english/res_e/publications_e/gvcd_report_17_e.htm)>.

3 Buenos Aires, December 11–14, 2017.

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4 A first step in this direction has already been taken. A recent joint report prepared by the WTO, the IMF and the World Bank has put forth some valuable suggestions on domestic policies that could improve public attitudes toward trade liberalization by mitigating adjustment costs. *Making Trade an Engine of Growth for All*, online: <[www.wto.org/english/news\\_e/news17\\_e/wto\\_imf\\_report\\_07042017.pdf](http://www.wto.org/english/news_e/news17_e/wto_imf_report_07042017.pdf)>.

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# Updating Special and Differential Treatment

The WTO currently has 164 members, about two-thirds of which have declared themselves “developing countries,” claiming their right to benefit from Special and Differential Treatment (S&D). In general, S&D provides longer periods to introduce less ambitious tariff reductions<sup>5</sup> and is available for all developing WTO members.

Status as a developing country is self-determined and declared to the WTO, and this alone grants across-the-board S&D rights. There is no benchmark to assess whether a country is progressively developing and no indicator to determine whether some of its industries could be weaned off S&D.<sup>6</sup> Not surprisingly, no developing country member has ever become a “developed” country member, or indicated that it is ready to relinquish the benefits of S&D for some of its industries.

S&D has legitimate benefits. It facilitates adjustment by domestic industries facing competition from abroad in open markets, and may help mitigate the risk of some industries being unable to adapt to new market conditions. Even if the labour and capital that are eventually displaced could be reabsorbed by more efficient industries, the adjustment could still be painful, and social and political tensions may unsettle governments.

Countries with fiscal space can implement active policies to smooth the process. But developing countries have typically lacked the fiscal resources needed to facilitate the transition. Consequently, imposing lighter obligations on them made sense. Without this deference, it would have been difficult to marshal their support for trade liberalization.

However, since S&D was first introduced into the rules of the General Agreement on Tariffs and Trade (GATT),<sup>7</sup> many developing countries have grown richer and some of their industries have reached a level of international competitiveness. This makes it increasingly difficult to justify the need for all developing countries to enjoy a timeless right to opt out of WTO general obligations<sup>8</sup> and to argue that such deference should apply across all sectors of their economies. Yet reforming S&D has been politically taboo at the WTO.

When two-thirds of WTO members claim a preferential status, the remaining one-third will not be inclined to exchange trade concessions.<sup>9</sup> This creates a perverse feedback loop. Developed countries’ refusal to add substance to S&D commitments drafted in mostly exhortatory language breeds frustration in the “developing” camp, which seems to justify the refusal of hardliners to discuss “new issues”<sup>10</sup> and to consent to negotiating “plurilateral agreements.”<sup>11</sup> This

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5 The Trade Facilitation Agreement (WTO, *Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization*, WTO Doc WT/L/940 (2014), [TFA]) is exceptional in many respects. All members adopted similar goals but it has few “shall” obligations. Most commitments are drafted in what appears to be exhortatory language (for example, “shall, to the extent practicable and in a manner consistent with its domestic law and legal system...”). Moreover, the extent and timing of the implementation of commitments is contingent on each developing and least-developed country (LDC) member’s “implementation capacities.” It is up to each developing country and LDC to decide under which of three categories (A, B or C) it will implement the TFA provisions. Measures included in Category A should be implemented by the time the TFA enters into force (2017). Measures included in Category B should be implemented after a transitional period determined by the member itself. For measures included in Category C, the member can indicate dates for implementation and may require assistance and support for capacity building. In any event, the implementation of all commitments can be delayed: “Where a developing or least-developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired” (TFA, art 13(2)).

6 Within the “developing” group, the WTO recognizes special status for LDCs, namely those countries designated as such by the United Nations. There are currently 48 LDCs on the UN list, 36 of which to date have become WTO members.

7 This occurred in 1979, by the inclusion of the so-called “Enabling Clause” (Part IV) in the GATT, which allows for derogations to the most-favoured nation clause, including preferential treatment among developing countries. *Differential and more favourable treatment reciprocity and fuller participation of developing countries*, GATT CP Decision L/4903, 28 November 1979; *General Agreement on Tariffs and Trade*, 30 October 1947, 55 UNTS 194, TIAS 1700 (entered into force 1 January 1948).

8 Some hard-law agreements contemplate differentiation among developing countries (for example, the subset of developing countries included in Annex VII, the Agreement on Subsidies and Countervailing Measures, are not bound by the general prohibition (article 3.1 (a)) of providing subsidies contingent on export performance.

9 Ten of the 23 original GATT members were developing countries.

10 Issues not contemplated in the Doha Round agenda (for example, electronic commerce and investment facilitation).

11 WTO “plurilateral agreements” bind only those members that have accepted them, in contrast to “multilateral agreements,” which bind all WTO members. Plurilateral agreements could be negotiated among like-minded countries and need not include S&D. They could be used to develop trade rules for specific sectors. However, unless plurilateral agreements extend concessions on a most-favoured nation basis, they need to be included in Annex 4 of the Marrakesh Agreement by consensus (*Agreement Establishing the World Trade Organization* (1994), 1867 UNTS 154, 33 ILM 1144 [Marrakesh Agreement], at art X(9) and art II(3)).

has undermined confidence in the capacity of the WTO to deliver an updated set of trade rules.<sup>12</sup>

A fossilized S&D bodes ill for an evolving economy. This anachronism reverberated at the Doha Round of multilateral trade negotiations. In the wake of the tragic events of September 11, 2001, ministers agreed in Doha to launch a development round. By that time, it was already apparent that big emerging market economies were increasingly gaining economic weight and that some of their “developing” industries were ready to compete on an equal footing. However, the Doha Round agenda called for the strengthening of S&D provisions (making them more precise, effective and operational),<sup>13</sup> without inviting members to contemplate adding some criteria to update S&D. The oversight was excusable. The world needed to show unity and determination to cooperate and it was not the time to raise a politically divisive subject.

Negotiators soon noticed that, thanks to the flexibilities available for developing countries, the bargaining of reductions in tariffs for non-agricultural market access would not squeeze the “water” out from the large binding overhang that sheltered big and fast-growing developing countries, the so-called emerging market economies. To make things worse, the 2007–2008 financial crisis hit the WTO’s advanced economies the hardest. By 2010, the largest emerging market economies had proven macro-economic resilient, gained relative economic weight and turned out to be the powerhouses

of global demand.<sup>14</sup> This compounded the perception that S&D was not entirely justified, and that some developing industries were increasingly ready to compete on an equal footing with developed economy industries.

Nevertheless, reforming S&D remained taboo. To sidestep the unmentionable, developed countries tabled several sectoral initiatives.<sup>15</sup> Tariffs would be brought to zero in advanced economies and developing countries would bind their tariffs to close to zero, with some exceptions.<sup>16</sup> The key to success depended on achieving a critical mass of participation and for this, large emerging markets had to be on board. But the sectoral initiative was not included in the Doha Development Agenda;<sup>17</sup> it was rejected and the Doha Round hit a wall.

The concept of “developing” is a dynamic one, yet in the WTO no country ever “develops.” This incongruity is not alien to the fact that so many trade negotiations (successful and unsuccessful) were initiated outside the WTO. Ironically, while the WTO’s developed countries would like to see big emerging markets have more obligations, in the IMF and the World Bank they resist the struggle of emerging markets for increased responsibilities (paying larger quotas,<sup>18</sup> which would give them more votes to reflect their increased economic weight in the world economy).

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12 Robert Baldwin notes that because of frustration with S&D, developing countries use “the consensus practice” to block discussions on so-called “new issues” and liberalization efforts in traditional areas. Robert E Baldwin, “Key Challenges Facing the WTO” in Debra Steger, ed, *The World Trade Organization* (New York: Routledge, 2014) 351 [Steger, *World Trade Organization*].

13 WTO, Doha WTO Ministerial, *Ministerial Declaration* (20 November 2001), WTO Doc WT/MIN(01)/DEC/1, at para 44, online: <[www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)>.

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14 The 2008 crisis was mostly a North Atlantic financial crisis. In 2010, countries most affected (Belgium, Germany, Greece, Ireland, the Netherlands, Spain, the United Kingdom and the United States) had to use about 6.4 percent of their GDP to support their financial sector. By 2010, the overall fiscal deficit in G20 advanced economies was equivalent to -8.2 percent of GDP, whereas in G20 emerging markets it was -3.6 percent of GDP. Gross public debt in G20 advanced economies (2010) was equivalent to 102.9 percent of GDP, whereas in G20 emerging markets it was 35.2 percent of GDP. Moreover, several turned out to be net creditors to the world and were asked to provide bilateral financing to buttress the IMF’s capacity to contain the financial crisis. IMF, “Shifting Gears: Tackling Challenges on the Road to Fiscal Adjustment”, *Fiscal Monitor* (April 2011), online: <[www.imf.org/en/publications/fm/issues/2016/12/31/shifting-gears-tackling-challenges-on-the-road-to-fiscal-adjustment](http://www.imf.org/en/publications/fm/issues/2016/12/31/shifting-gears-tackling-challenges-on-the-road-to-fiscal-adjustment)>.

15 Chemicals, electronics and electric equipment, industrial machinery, forest products, gems and jewellery, environmental goods, health care, etc.

16 David Laborde, “Sectoral Initiatives in the Doha Round” in Will Martin and Aaditya Matoo, eds, *Unfinished Business? The WTO’s Doha Agenda* (Washington, DC: The World Bank Group, 2011).

17 The Doha Development Round is also known semi-officially as the Doha Development Agenda, as its fundamental objective was to improve the trading prospects of developing countries. WTO, “The Doha Round”, online: <[www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm#development](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm#development)>.

18 Contributions to the IMF’s and World Bank’s pool of international resources.

Sadly, on both sides of the Atlantic, intransigence, even if coming from different quarters, has something in common: denial of reality.

It is time to have an honest discussion on S&D. It should no longer be taboo. Members need to identify credible commitments, on both sides, to update S&D and ensure that it provides effective benefits to those that need it most.

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## Recalibrating Consensus

The WTO is founded on the principle that all members are equals in rights and obligations. This egalitarian paradigm contrasts with the fact that some countries have much larger markets than others.<sup>19</sup> Theoretically, decisions could be adopted by voting;<sup>20</sup> however, most if not all WTO decisions are made by consensus.<sup>21</sup> This is wise and should not change.

Calling for votes would deprive WTO decisions from effectiveness and legitimacy. Decisions adopted by head counting<sup>22</sup> would fly in the face of “market-size reality,” rendering them ineffective. On the other hand, using weighted voting (as do the IMF and World Bank), allocating votes according to members’ market-size, would call into question their legitimacy and the WTO’s dispute settlement mechanism, which has been so successful in resolving disputes between members with different “political weight.”

Consensus ensures that all WTO members have an equal opportunity to make their points and can withhold support until they see their interests and concerns accommodated. Admittedly, building consensus can be slow

and cumbersome, but such decisions are regarded as legitimate and mostly respected.

Consensus is at its best when there is a common interest, large economies lead the process and the limitations of small economies are adequately accounted for. This collegial spirit was apparent in the old GATT, where crucial decisions on dispute settlement had to be adopted by consensus, and it was common practice to accept adverse rulings even when the “loser” could block it.<sup>23</sup>

The WTO has had tremendous success in attracting new members and it is no longer a small club of free-traders like the GATT. Yet more than the number of players, it may be the loss of the collegial spirit that has made consensus difficult to achieve.

Consensus does not require a positive vote of each and every WTO member.<sup>24</sup> Technically, consensus can be interrupted by those that adamantly oppose the matter to be decided, but consensus does not require unanimity; rather, it requires the silent acquiescence of those that are not particularly uncomfortable with the proposed decision. However, the working practice at the WTO is to interpret consensus as a universal right to veto, such that even exploratory discussions on matters of interest to some members can be blocked by any member.<sup>25</sup> Not surprisingly, this abusive practice entices would-be leaders to move discussions out of the WTO.

The practice of interpreting consensus as a universal right to veto is dysfunctional. The WTO is weakened each time the rule of consensus is used without restraint, because the practice of blocking incipient consensus — even when understandings are supported by a large number of like-minded countries — is inimical to the collegial spirit that should prevail in international cooperation.

Rather than an absolute right, consensus could be interpreted differently; namely, as a right that entails the obligation to strive for collegial interests. WTO members should discuss how to ensure that their right to disagree and disapprove is exercised sparingly and with responsibility.

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19 Negotiations at the WTO are ultimately about exchanging market access concessions.

20 The WTO could adopt decisions by simple or qualified majorities. *Marrakesh Agreement*, *supra* note 11 at art IX.

21 Debra Steger notes that consensus decision making has been a practice of the GATT since 1960, and that WTO members have only voted once (to approve the accession of Ecuador in 1995). “The Culture of the WTO: Why It Needs to Change” in Steger, *World Trade Organization*, *supra* note 12, 411.

22 The one-country, one-vote principle was established in the *General Agreement on Tariffs and Trade*, 15 April 1994, 1867 UNTS 187, 33 ILM 1153 (entered into force 1 January 1995), at art XXV(3).

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23 Joost Pauwelyn, “The Transformation of World Trade” in Steger, *World Trade Organization*, *supra* note 12, 145.

24 *Ibid.*

25 For instance, several members wanted to initiate exploratory discussions on investment facilitation. The initiative was blocked by members opposing the initiative at the WTO General Council on May 10, 2017.

For instance, negotiators at the Paris climate summit in 2015 could reach agreement thanks to a simple method adopted from the Zulu and Xhosa peoples of South Africa called *indaba*. Negotiators had the right to hold out from an agreement, but this was not an absolute right. They could voice their views and even draw “red lines,” but to exercise that right they had to put forth proposals aimed at finding common ground.

Good faith is essential, and *indaba* worked in Paris.<sup>26</sup> It could also work at the WTO. When consensus is close but still out of reach, WTO members should be under an obligation to put forth creative solutions to bridge the remaining gaps, or otherwise show readiness to allow like-minded members to engage in plurilateral discussions on matters of interest to them. Using consensus as a veto right against the possibility of benefiting from the WTO structure, to discuss and eventually negotiate open-ended plurilateral agreements, is an extortive practice that turns consensus against the collective interest of WTO members.

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## Ingraining Reform in the WTO’s Routine

Ongoing adaptation to a changing context is facilitated when a learning culture is “wired into” the organization’s normal functioning. A wake-up crisis is no longer needed when a ruthless truth-teller regularly shakes things up. With this purpose, both the IMF (2001) and the World Bank (2006) established independent evaluation offices (IEOs).<sup>27</sup> These policy watchdogs remain totally independent from their management and executive boards. Both watchdogs are chaired by professionals who are familiar with those institutions but are no longer part of their “family.”<sup>28</sup> With relatively small budgets,<sup>29</sup> they are leanly staffed and occasionally hire external consultants with expertise in the topics addressed in their reports.

Paying to have somebody scrutinize one’s work is not an attractive idea. It is much more comfortable to avoid criticism, but it compounds the tendency to be self-complacent. For some time, problems can be brushed under the carpet and reformers sidelined. But indulgence with dysfunctional working practices comes at a cost. Normally, that cost is a crisis.

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26 Akshat Rathi, “This simple negotiation tactic brought 195 countries to consensus”, *Quartz* (12 December 2015), online: <<https://qz.com/572623/this-simple-negotiation-tactic-brought-195-countries-to-consensus-in-the-paris-climate-talks/>>.

27 Only that of the IMF is called an independent evaluation office. That of the World Bank is called the “Independent Evaluation Group.” For the sake of simplicity, the acronym corresponding to the name of the Fund’s watchdog (IEO) is used here.

28 Caroline Heider chairs the World Bank’s Independent Evaluation Group (online: <<http://ieg.worldbankgroup.org/expert/caroline-heider>>); Charles Collyns was recently selected to chair the IEO (online: <[www.imo-imf.org/ieo/pages/ManagementandStaff.aspx](http://www.imo-imf.org/ieo/pages/ManagementandStaff.aspx)>).

29 The Fund’s IEO budget represents approximately one percent of the IMF’s administrative budget. The budget of the World Bank’s Independent Evaluation Group represents approximately 1.3 percent of the World Bank Group administrative budget.

The benefits of periodic scrutiny are not alien to the WTO. The objective of its trade policy review mechanism is to enable a regular evaluation of “Members’ trade policies and practices” and “examine (their) impact on the multilateral trading system.”<sup>30</sup> Unfortunately, the WTO itself is not subject to any regular evaluation of its own working practices.<sup>31</sup>

Indeed, the WTO’s working practices have grown dysfunctional over time. The problems underscored above are not new; had they been laid bare by an independent evaluator, the WTO would not be in its current predicament. When problems can’t be ignored, reform is ingrained in the routine of the organizations and incremental changes can be implemented without a crisis.

Reforms are, admittedly, always resisted, but not having a whistle-blower puts all the weight on the shoulders of reformers. If the WTO had a policy watchdog, members would have been prompted to discuss its weaknesses, paving the way for gradual reform.<sup>32</sup>

Not surprisingly, the WTO has been able to avoid honest discussions on taboo issues. It is time to wire a learning culture into its regular work to facilitate the continuous adaptation of the WTO’s working practices.<sup>33</sup>

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## Conclusion

Trade is at a crossroads, and the MC11 is an opportunity to ask the WTO to pause and reflect. The negative sentiment toward trade and multilateral rules is compounding the drawback effect of some dysfunctional working practices that need to be updated and recalibrated.

This makes the MC11 particularly challenging. Its success should not depend on (or be measured by) the capacity of trade negotiators to agree on trade deliverables. The MC11 is an opportunity to pause, take stock of mistakes and identify best practices and opportunities to foster international cooperation.<sup>34</sup>

Ministers meeting in Buenos Aires could agree on launching a work program for the WTO that should be explicitly ring-fenced from any intent to use it as a platform to launch new negotiations. Discussions could be based on the Chatham House Rule<sup>35</sup> to ensure that Geneva negotiators put their horse-trading instincts to rest.

The objective of taking a brief respite is to ask the WTO to identify reforms that could update and recalibrate some of its working practices. Ministers could also contemplate the creation of an IEO, such as those existing in the IMF and the World Bank, to ingrain a learning culture in the WTO and facilitate incremental reform.

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30 Trade Policy Review Mechanism, Objectives, *Marrakesh Agreement*, *supra* note 11, Annex 3.

31 Idea borrowed from a conversation with former deputy director general of the WTO Alejandro Jara.

32 Any proposed reforms would need to be approved by the WTO’s General Council.

33 The WTO has recently taken a first step in that direction. In 2015, it created an Office of Internal Oversight (OIO) responsible for conducting internal audits, investigations and “any other assessment deemed necessary to strengthen accountability, internal controls, compliance, value for money and governance in the WTO Secretariat.” The director of the OIO is part of the Secretariat and, as such, she/he is appointed by the director general, but only after consulting the Committee of Budget and Financial Administration (where WTO members are represented). The OIO can perform “evaluations,” but it reports to the director general and is mostly devoted to internal audits and investigations.

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34 This could include some initiatives that are quietly prospering outside the WTO, such as those identifying best practices in regulatory cooperation. See e.g. OECD, “International regulatory co-operation and trade policy,” online: <[www.oecd.org/gov/regulatory-policy/international-regulatory-cooperation-and-trade-policy.htm](http://www.oecd.org/gov/regulatory-policy/international-regulatory-cooperation-and-trade-policy.htm)>.

35 Under Chatham House Rule, “participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.” See online: Chatham House <[www.chathamhouse.org/about/chatham-house-rule](http://www.chathamhouse.org/about/chatham-house-rule)>.

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## About CIGI

We are the Centre for International Governance Innovation: an independent, non-partisan think tank with an objective and uniquely global perspective. Our research, opinions and public voice make a difference in today's world by bringing clarity and innovative thinking to global policy making. By working across disciplines and in partnership with the best peers and experts, we are the benchmark for influential research and trusted analysis.

Our research programs focus on governance of the global economy, global security and politics, and international law in collaboration with a range of strategic partners and support from the Government of Canada, the Government of Ontario, as well as founder Jim Balsillie.

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## À propos du CIGI

Au Centre pour l'innovation dans la gouvernance internationale (CIGI), nous formons un groupe de réflexion indépendant et non partisan qui formule des points de vue objectifs dont la portée est notamment mondiale. Nos recherches, nos avis et l'opinion publique ont des effets réels sur le monde d'aujourd'hui en apportant autant de la clarté qu'une réflexion novatrice dans l'élaboration des politiques à l'échelle internationale. En raison des travaux accomplis en collaboration et en partenariat avec des pairs et des spécialistes interdisciplinaires des plus compétents, nous sommes devenus une référence grâce à l'influence de nos recherches et à la fiabilité de nos analyses.

Nos programmes de recherche ont trait à la gouvernance dans les domaines suivants : l'économie mondiale, la sécurité et les politiques mondiales, et le droit international, et nous les exécutons avec la collaboration de nombreux partenaires stratégiques et le soutien des gouvernements du Canada et de l'Ontario ainsi que du fondateur du CIGI, Jim Balsillie.



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