The WTO and Institutional (In)Coherence and (Un)Accountability in Global Economic Governance

By

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Abstract

The creation of the WTO was accompanied by a commitment to achieve greater coherence and accountability in global economic governance and to establish mechanisms by which institutions can address each other. In this paper, we map institutional cooperation and attempts to build greater coherence and mutual accountability in global economic governance as well as in ostensibly non-trade areas such as environment, food, health, and development. We address two questions. First, where do the rules of the WTO overlap or compete with those of other institutions? Second, what explains coherence and incoherence, on the one hand, and, on the other, mutual accountability or unaccountability between the WTO and other international institutions? The paper argues that while the WTO’s Coherence Mandate has produced some progress on coherence and accountability among the major international economic institutions, the scope of that success has been largely limited to policies that directly facilitate trade liberalization and development, not macroeconomic policy. Moreover, the complexities of the international trade regime, imbalances in institutional power, and persistent, though shifting, structural asymmetries between North and South in combination explain why the WTO is normatively and legally constrained in its attempts to build greater coherence in non-traditional areas. The legitimacy and accountability of global economic governance is increasingly at risk if the WTO is unable to navigate these challenges.
I Introduction

The creation of the World Trade Organization (WTO) in 1995 marks one of the most significant advances towards legally rigorous economic integration in the global political economy. The scope of trade rules has expanded well beyond managing barriers to trade at the border to shaping national labour, environmental, human health, food safety, and development policies. The range of actors affected by WTO rules has grown exponentially and the WTO’s focus on national legal and regulatory systems has raised a chorus of legitimacy concerns. These dramatic changes were accompanied by a commitment to achieve greater coherence and accountability in global economic governance and to establish mechanisms by which institutions can address each other. In order to assess mutual accountability, we map institutional cooperation in global economic governance across a range of areas – finance and aid, intellectual property rights, environmental and social regulations – and address two primary questions. First, where do the rules of the WTO overlap or compete with those of other institutions? Second, what explains mutual accountability or unaccountability between the WTO and other international institutions? We examine these questions within the context of the WTO’s coherence mandate, the most significant attempt to deal with these issues, because mutual accountability must go hand in hand with coherence in global economic governance. We recognize that extending the scope of our inquiry beyond macroeconomic coordination moves well beyond the WTO’s formal mandate for economic coherence. Such a move is justified, however, because any discussion of economic coherence and accountability must acknowledge that the WTO’s challenge extends to the relationship among global economic, environmental and social stability.
We argue that the accountability challenge differs depending on whether we are dealing with the core areas of economic governance or ostensibly non-economic areas and we make three interlinked arguments below. First, we find clear attempts by the WTO to support the coordination of policies aimed specifically to facilitate trade liberalization and to develop mechanisms of mutual accountability with institutions of relatively equal size and power. However, states have been unwilling to provide the WTO the capacity or mandate to play a significant role in reconciling broader inconsistencies on macroeconomic policies or mandates across global economic institutions that might indirectly undermine the goals of the trade regime. Therefore, progress in achieving mutual accountability in core, economic domains has been modest. Second, the complexities of the international trade regime, imbalances in institutional power, a fairly narrow normative underpinning to the trade regime, and persistent, though shifting, structural asymmetries between North and South render the WTO normatively and legally constrained in its attempts to navigate institutional conflicts in non-traditional trade areas. These tensions give rise to a different set of challenges that have, thus far, made it virtually impossible to establish mechanisms for mutual accountability. In areas that parties have directly targeted to facilitate trade liberalization, such as intellectual property rights, aid, and finance, the WTO can and should play the role of regulatory institution in cooperation with other relevant international institutions, and increase the scope of its coherence mandate to improve performance, mutual accountability, and better reconcile tensions or contradictions in global economic governance. Third, as a corollary, in areas such as social and environmental regulation where the goal of regulation is to “embed” economic governance in broader societal goals, larger accountability challenges are at stake and the mechanisms set up in international economic governance
institutions are insufficient to solve them. Indeed, these challenges would be best addressed if states ensure WTO rules continue to leave space for a global division of labour and allow other institutions to do the regulating. The legitimacy and coherence of global economic governance is increasingly at risk if the WTO’s mandate or rules make it unable to manage these tensions.

The paper proceeds in four parts. First, we briefly discuss the importance of mutual accountability of institutions in global economic governance and highlight the lack of attention to this concern in the literature. Second, we provide a brief account of the WTO’s Coherence Mandate, which focuses exclusively on its relationship to the Bretton Woods institutions and is aimed at coordinating trade, finance and aid policies. It is under these auspices that the most significant attempts to achieve mutual accountability have occurred. We examine its limited success at promoting macroeconomic consistency and mutual accountability in the global economy, but greater success in two key initiatives focused more narrowly on liberalization: the Enhanced Integrated Framework and Aid for Trade. Third, we look beyond the formal Coherence Mandate to examine regime complexity in the international intellectual property rights (IPR) regime. This serves to illustrate and assess the challenges of mutual accountability in an area of new economic regulation, but one still close to the core economic underpinnings of the global marketplace. Fourth, moving still further from the traditional trade agenda, we examine the tensions that arise between WTO rules and social and environmental standards and regulations designed to “embed” economic governance within broader societal values.

II Mutual Accountability in Global Economic Governance

The need for accountability in global economic governance is widely recognized. At a minimum, accountability requires information and transparency about the exercise of power,

mechanisms to monitor and evaluate performance and institutional effectiveness, opportunities for decision-makers to justify their actions, and procedures through which poor performance or abuses of power can be corrected. Moreover, most scholars agree that international organizations (IOs) should be accountable to affected persons. Indeed, according to Scholte, an IO “would be accountable to the extent that it is transparent to those affected, consults those affected, reports to those affected and provides redress to those who are adversely affected.”

However, there is a wide ranging debate over who counts as ‘affected’, who is entitled to hold decision-makers in IOs accountable, and what constitutes an abuse of power.

Some scholars argue that participatory and democratic models of accountability are essential for effective and legitimate global governance. Others emphasize the need for ‘good governance’ and argue that horizontal or delegation models of accountability place sufficient limits on the exercise and abuse of power in global governance. Grant and Keohane specify that multilateral IOs like the WTO, World Bank and IMF are consistently subject to a combination of these two models of accountability and failure to distinguish between them has generated considerable confusion in contemporary discourses of accountability. Meanwhile, the requirements of political and legal accountability and the prospects for global administrative law to set rules of accountability in global governance have garnered significant attention in recent years. The debate is rendered even more complex by the transnational character of many global

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4 Scholte forthcoming, 17.
5 Grant and Keohane 2005.
6 Held 1995; Papadopoulos 2010; Steffek 2010.
8 Grant and Keohane 2005.
9 Chesterman 2008.
issues, the extension of IO rules into these domains and their interaction with institutions – whether intergovernmental, non-state or hybrid in form – that already purport to address these issues. These interactions produce corresponding disagreements over who is responsible for the development, implementation and monitoring of new rules in these issue areas. These challenges are especially acute in the area of global environmental governance and have led scholars to ask whether a rescaling of responsibility has occurred.¹⁰

Despite this lively debate, little has been written about whether international institutions have mutual accountability to one another in areas where their competencies overlap. In this paper, we focus on mutual accountability in global economic governance, from the perspective of the WTO in particular, because the extension of WTO rules into the policy spheres of other IOs and transnational governing institutions raises major, far-reaching challenges. In our view, mutual accountability requires policy coherence. Any discussion of mutual accountability in global economic governance must consider institutional coherence and incoherence between international and transnational organizations. Mutual accountability also requires inter-institutional coordination to develop mechanisms for monitoring the impact of overlapping policies, mutual assessments of progress in implementing agreed commitments, common procedures for justifying actions and decisions, and mechanisms for addressing poor performance.

III The Coherence Mandate: Coordinating Trade, Finance and Aid Policies

a. Context

Improving the coherence of global economic policymaking is a core function of the WTO and is essential for the achievement of mutual accountability, especially in the area of trade

¹⁰ Mason 2008.
liberalization. The 1994 Ministerial Declaration on Achieving Greater Coherence in Global Economic Policymaking established the Coherence Mandate of the WTO and emphasized the special relationship between the WTO and the Bretton Woods Institutions.\textsuperscript{11} Article III, 5 of the Marrakesh Agreement Establishing the World Trade Organization states that “the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies” and the Doha and Hong Kong Ministerial Declarations reiterate this commitment.\textsuperscript{12} Achieving coherence and mutual accountability makes sense because all three institutions share a normative commitment to sustainable growth, development and poverty reduction through the further liberalization of the global economy.\textsuperscript{13} Although major work remains to be done, cooperation between the WTO and Bretton Woods institutions has resulted in more coordinated and mutually accountable trade, financial, and aid policies directly relevant for trade liberalization. However, that cooperation has not extended significantly into coordination on broader macroeconomic policy.

The origins of the WTO’s Coherence Mandate date back to the launch of the Uruguay Round in 1986. The General Agreement on Tariffs and Trade (GATT), its successor, the WTO, and the Bretton Woods institutions were designed to bring stability to the international economy by managing international economic affairs in their respective policy domains – trade, finance, and monetary policy. The architects of the post-WWII international economic institutions

\textsuperscript{11} WTO 1994c.

\textsuperscript{12} WTO 2001a, 2005a.

\textsuperscript{13} Sampson 1998, 259.
explicitly acknowledged that trade and finance are inextricably linked and viewed them as complementary.\textsuperscript{14} Indeed, according to Curtis:

\begin{quote}
[T]here was no problem of “coherence”: the basic principles of a gradual reduction of barriers to trade, the freeing up of international payments, and the “binding” of liberalization gains by commitments not to raise tariffs matched by parallel disciplines against competitive devaluation of currencies, were designed to be coherent and were seen to be so.\textsuperscript{15}
\end{quote}

Nonetheless, there have been important inconsistencies and competition between the goals of these institutions in the post-WWII period.

These inconsistencies stem from shifts over time in how states and international financial institutions have responded to the well-known “trilemma” identified in the Mundell-Fleming model, which argues that autonomy can only be maintained in two of the three macroeconomic policy areas of exchange rates, capital flows, and domestic monetary policy.\textsuperscript{16} Daunton suggests that these choices also have implications for trade policy, which in practice have created an “inconsistent quartet.”

The architects of the post-war economic order believed that trade liberalization was the key to peace, prosperity and an end to “beggar-thy-neighbour” competitive economic nationalism, but liberalization required increased liquidity and relatively stable exchange rates. The challenge was how to achieve these conditions while carving out exceptions that allowed states enough national economic autonomy to respond to payment imbalances and the havoc they could play with important national economic goals such as full employment. John Ruggie famously

\begin{footnotes}
\textsuperscript{14} For discussion of linkages between the GATT (1947) and the IMF see Zapatero 2006, 598-600; Auboin 2009, 5-6; Sampson 1998, 259-261. Notably, no comparable basis for cooperation exists between the GATT (1947) and the World Bank, largely because the latter’s core competency at its inception was post-WWII reconstruction.

\textsuperscript{15} Curtis 2007, 212.

\textsuperscript{16} Discussed in historical context in Daunton forthcoming; Pauly 1997.
\end{footnotes}
characterized the resulting compromise as “embedded liberalism”, or the idea that liberal markets must be premised on exceptions and exemptions necessary to maintain domestic stability. The Bretton Woods monetary order aimed to achieve this balance via a fixed exchange rate regime under IMF supervision, but that allowed currency devaluations and the imposition of export capital controls to counter balance-of-payment disequilibria. These trade-offs meant that states could pursue active domestic monetary policy: interest rates rather than capital mobility would be used to achieve stability. The rules of the GATT were constructed on this premise.

This solution began to unravel in the late 1960s under the weight of inflationary pressures associated with full employment policies and enormous budget deficits, especially in the United States. The story of the subsequent “collapse” of the Bretton Woods fixed exchange rate regime is well known, but its most significant implication for the discussion here is that it signalled that national capital controls had become increasingly obsolete by the early 1970s owing to the increased costs of such controls to domestic economies and the problem of leakage. As a result, leading states began to actively encourage the liberalization of financial markets and short-term capital mobility. The GATT, IMF and World Bank had no institutional capacity to interact with one another to adapt to this shift in the trilemma trade-off, which limited states’ ability to independently use interest rates to stabilize domestic economies. This problem became acute when massive global imbalances and macroeconomic problems of the early 1980s threatened to undermine the international trade regime.

A series of external shocks in the 1970s and early 1980s, including the collapse of the dollar-gold convertibility standard, the oil price shocks of 1973 and 1979, the related debt crisis

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17 E.g., Ruggie 1982; Bordo and Eichengreen 1993, 3-109.
in developing countries, and massive inflation and fiscal deficits in developed countries, exposed widespread policy incoherence at the national level. In an effort to manage these shocks, central banks tightened monetary policy – a move followed by growing global imbalances, dramatic exchange rate swings and a period of new protectionism, particularly in developed countries.\textsuperscript{19} From 1974 onward, the favoring of capital mobility in the “trilemma” established an entirely new context for international trade policy. GATT commitments, reinforced later by the creation of the WTO, largely kept trade barriers in check. However, the IMF adapted to the shift in the trilemma trade-off by allowing backdoor strategies to achieve protection in global markets. For example, through competitive currency devaluations or currency manipulation, various countries increase their exports’ competitiveness abroad while decreasing the competitiveness of imports at home. This can erode the achievements of trade liberalization and there is little recourse under the GATT/WTO to do anything about it. This situation persists to the present despite the enormous implications of currency manipulation for trade imbalances. A case in point is the sidelineding of the WTO in the dispute over whether China artificially suppressed the value of its currency, the Renminbi, against the US dollar after the onset of the 2008-2009 global financial crisis.\textsuperscript{20}

With some irony, currency manipulation remained outside the GATT/WTO purview even as the core responsibilities of the IMF, World Bank and GATT began to blur with the debt crisis of the early 1980s; the IMF waded into the World Bank’s traditional domain of microeconomic policymaking with its conditionality loans, the World Bank duplicated the work of the IMF by issuing “soft loans”, and both institutions tied lending to further trade liberalization. The launch

\textsuperscript{19} Curtis 2007; Sampson 1998.

\textsuperscript{20} For a discussion of how the trade regime should address currency manipulation, see Staiger and Sykes (2010).
of the Uruguay Round created the Negotiating Group on the Functioning of the GATT System (FOGS) to address these challenges.\(^{21}\)

b. The FOGS Response

Governments mandated FOGS negotiators to examine the linkages between “trade, money, finance and development…” in the international economy.\(^{22}\) Specifically, FOGS aimed to determine whether extreme exchange rate fluctuations were responsible for the rise in new protectionism and large current account imbalances.\(^{23}\) These issues put the predictability of international trade rules at risk.\(^{24}\) Moreover, market access restrictions made it extremely difficult for developing countries to service their large external debts with export earnings. Negotiators also explicitly recognised the adjustment costs to trade liberalization encountered by developing countries, the need to coordinate short-term support to ease the transition to more open markets, and to align GATT requirements and the trade policy recommendations made by the Bretton Woods institutions.\(^{25}\)

By 1989, the original objectives of the FOGS Negotiating Group were, according to Ostry, “pretty well dead.”\(^{26}\) Consultations between the Director General of the GATT and heads of the Bretton Woods institutions found insufficient evidence to link exchange rate misalignments, global imbalances and protectionism. Even if such links could be made, they deemed these areas “least amenable to improvement through action by the international agencies

\(^{21}\) GATT 1986, A(iii).

\(^{22}\) GATT 1986, Preamble.


\(^{24}\) Auboin 2007, 6-7.

\(^{25}\) Sampson 1998, 262; Auboin 2007, 8;

\(^{26}\) Ostry 1999.
themselves.” After seven years, the main outcome of FOGS negotiations was the Ministerial Declaration on Achieving Greater Coherence in Global Economic Policymaking, or Coherence Mandate. Analyses have described it as “largely rhetorical” and lacking substantive, binding commitments on issues that require coordination. In essence, the Coherence Mandate (1) re-articulates the importance of “achieving harmony” between “structural, macroeconomic, trade, financial, and development aspects of trade policymaking” at both the national and international level; (2) highlights the important role to be played by the IMF and World Bank in “supporting adjustment to trade liberalization, including support for net food-importing developing countries…”; (3) emphasizes the need to pursue and develop cooperation between the Bretton Woods institutions and the newly created WTO in order to achieve “consistent and mutually supportive policies”; and (4) “invite[s] the Director General of the WTO to review, with the Managing Director of the International Monetary Fund and the President of the World Bank, the implications of the WTO’s responsibilities for cooperation … [and] the forms that such cooperation might take.”

Subsequently, the WTO signed cooperation agreements with the IMF and World Bank in 1996. The agreements provide for procedural coordination between the three institutions, including procedures for consultation, staff participation in meetings, information sharing and the provision of “soft services” such as research and analysis of trade policy. The Doha Ministerial Declaration reiterates the commitment to fulfil the Coherence Mandate and WTO members agreed to set up a Working Group to further examine links between trade, debt and

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29 WTO 1994c, paras. 1-5.

30 WTO 1996a.
The 2005 Hong Kong Ministerial Declaration advanced the Mandate by making specific recommendations on capacity building in developing countries and, in Annex F, against the practice of cross-conditionality. Specifically, it asks donors and international economic institutions not to subject least developed countries to conditions “inconsistent with their rights and obligations under WTO agreements.”

Much has been written about efforts to fulfil the Coherence Mandate. Since 1995, the scope for cooperation has widened as the institutions try to cope with the impact of new trade rules for national and regulatory systems and deal with financial crises in the global economy. Low-level, ad hoc cooperation has helped the institutions present a coherent public face. However, there is little evidence that these institutional linkages have resulted in greater consistency between trade liberalization and macroeconomic policies promoted and supported through the IMF, nor is it any clearer how controlling currency manipulation – a difficult enough task on its own – could be realistically joined institutionally to international trade goals. To paraphrase Daunton, the policy “quartet” remains inconsistent and the levers to produce consistency did not materialize through linkages generated by the Coherence Mandate. In sum, the Coherence Mandate made virtually no inroads on creating mutual accountability on macroeconomic policy among the WTO and Bretton Woods Institutions. Rather, its most

31 WTO 2001a, paras. 5 and 36.
33 See for example Auboin 2009, Zapatero 2006. The WTO Director-General also produces annual reports on progress made in the Coherence Mandate. See WTO 2008, 2009a.
34 See for example, WTO 2004. There are some obvious exceptions. Most notable is the very public dispute between the World Bank and IMF over the management of the Asian Financial crisis.
35 Daunton forthcoming.
substantive impact has been in the provision of technical assistance for LDCs\textsuperscript{36} and in mainstreaming trade into development and poverty reduction strategies. The greatest strides in achieving mutual accountability have been made in this narrower context.

c. Aid for Trade, Enhanced Integrated Framework and the Doha Development Round of Multilateral Trade Negotiations

The Enhanced Integrated Framework (EIF) and Aid for Trade (AfT) initiatives grew out of the Coherence Mandate, and are clear attempts to harmonize policies between institutions of relatively equal size and power by mainstreaming trade into development and poverty reduction policies. In our view, these initiatives are both consistent with the scope and legitimate purpose of the WTO and likely to produce more coordinated and mutually accountable trade, financial and aid policies.

The EIF has its roots in early attempts by the WTO to help LDCs integrate more fully into the global economy through the provision of coordinated, trade-related technical assistance. At the Singapore Ministerial Conference in December 1996, WTO members adopted the Comprehensive and Integrated WTO Plan of Action for the Least-Developed Countries which “envisage[d] a closer cooperation between the WTO and other multilateral agencies assisting least-developed countries.”\textsuperscript{37} Subsequently, six organisations — the WTO, IMF, World Bank, UN Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP) and International Trade Centre (ITC) — collaborated to establish the Integrated Framework (IF) in 1997.\textsuperscript{38} It was designed to offer a broad range of services,

\textsuperscript{36} Though, the effectiveness and limited scope of such assistance has been subject to criticism, discussed in part below.

\textsuperscript{37} WTO 1997a, Preamble.

\textsuperscript{38} WTO 1997b.
including assistance in acceding to the WTO, implementing Uruguay Round commitments, improving the capacity of LDCs to participate in multilateral negotiations, and strengthening export supply capabilities, trade support services and trade facilitation.\textsuperscript{39} This proved a more difficult challenge than anticipated.

A mandated, independent review of the IF in 2000 found it largely ineffectual in its primary mission to provide technical assistance to LDCs.\textsuperscript{40} These findings prompted the six agencies to restructure and re-launch the IF in 2001, alongside the Doha Development Round, with a new purpose: To promote LDCs’ full integration into the multilateral trading regime by mainstreaming trade into national development plans such as the World Bank’s Poverty Reduction Strategy Papers (PRSPs), facilitating the coordinated delivery of trade-related assistance, and linking assistance to conditional debt financing.\textsuperscript{41}

The major innovation in 2001 was the Diagnostic Trade Integration Study (DTIS); each LDC would qualify for an initial DTIS that “evaluates internal and external constraints on a country’s integration into the world economy, and recommends areas where technical assistance and policy actions can help the country overcome these barriers.”\textsuperscript{42} A new IF Trust Fund would finance the preparation of the DTIS and provide bridge financing to jump-start the policy actions identified in the DTIS.

The reformed IF also added a Steering Committee to overcome problems associated with inter-institutional coordination. Located at the WTO, it consists of a tripartite group of donors,

\textsuperscript{39}WTO 1997b.

\textsuperscript{40}WTO 2000a. Winters 2007, 470, provides a thorough discussion of the main issues with the IF during this period.

\textsuperscript{41}For more information about the IF see <http://www.integratedframework.org/about.htm>.

\textsuperscript{42}For information on country trade diagnostic studies see <http://web.worldbank.org/WEBSITE/EXTERNAL/TOPICS/TRADE/0,,contentMDK:20615178~menuPK:1574524~pagePK:148956~piPK:216618~theSitePK:239071,00.html>.
LDCs and the six international agencies. An internal Working Group manages its day-to-day operations and the UNDP manages the IF Trust Fund consisting of donations from both bilateral and multilateral donors. These changes increased the mandate of the IF, targeted a wider range of countries and aimed to improve LDC ownership over the delivery of trade-related technical assistance.

Despite these changes, independent evaluations of the IF in late 2003 found they did little to correct the problems identified in the first IF evaluation and, in some respects, exacerbated process inefficiencies; the evaluations identified implementation gaps across LDCs and highly variable effectiveness of the IF as a whole. In response, intensive negotiations between the three stakeholders – agencies, donors and LDCs – in 2004 and 2005 led to the creation of an IF Task Force at the WTO to recommend how to enhance the IF. The 2005 Hong Kong Ministerial Conference endorsed its recommendations and singled out three essential elements for an Enhanced IF (EIF): 1) increased, additional, predictable financial resources to implement Action Matrices; 2) strengthened in-country capacities to manage, implement and monitor the IF process; and 3) enhanced IF governance. In June 2006, the IF Steering Committee adopted its recommendations on the EIF. Although much work remains to be done to implement the recommendations and to overcome concerns about the IF’s scope, effectiveness and funding

43 For information regarding the IF Governance Structure see <http://www.wto.org/english/tratop_e/devel_e/teccop_e/if_e.htm>.


45 WTO 2005, para. 31.

46 WTO 2006a. Modalities for achieving these recommendations are discussed in detail in WTO 2006b.
deficiencies, the EIF was formally launched in July 2009 and shows better prospects of fulfilling its mandate.\textsuperscript{47} This is largely owing to its partnership with the global AfT initiative.

The 2005 Hong Kong Ministerial Declaration endorsed the new AfT programme and a Task Force to operationalise and implement it\textsuperscript{48} in response to a growing consensus at the time that developing countries were ill-equipped to participate effectively in international trade, that improvements in market access alone were insufficient to set them on a path towards sustainable economic growth, and that they required official development assistance (ODA) to help correct human, institutional and infrastructural capacity deficits.\textsuperscript{49} The Task Force had a mandate to provide recommendations on “how AfT might contribute most effectively to the development dimension of the DDA [Doha Development Agenda]” and to “consult with Members as well as with the IMF and World Bank, relevant international organizations and the regional development banks with a view to reporting to the General Council on appropriate mechanisms to secure additional financial resources for Aid for Trade.”\textsuperscript{50}

AfT is the provision of ODA – concessional loans and grants – for trade-related programs and projects. The EIF and AfT are meant to be complementary processes to enable developing countries to use trade to achieve economic growth and poverty reduction.\textsuperscript{51} The broad scope of AfT reflects the complex challenges developing countries face. It includes technical assistance

\textsuperscript{47} For more information see <http://www.wto.org/english/tratop_e/devel_e/teccop_e/if_e.htm> and <http://www.integratedframework.org/>. Current projects and financial pledges are detailed in Integrated Framework 2009.

\textsuperscript{48} Notably, Aid for Trade is a complement to the Doha Development Round, but it is not conditional upon its successful conclusion.

\textsuperscript{49} MDG Gap Taskforce 2010 recently re-articulated this consensus.

\textsuperscript{50} WTO 2005, para. 57.

\textsuperscript{51} WTO 2006c, F.1. For further discussion concerning the rationale behind Aid for Trade see Prowse 2006; Hoekman 2007.
to improve the negotiating capacity of developing countries, infrastructure such as roads and telecommunications, investment in industries across a broad range of sectors, and financial assistance to compensate for short term costs of trade liberalization or losses owing to preference erosion.\textsuperscript{52}

For LDCs, AfT is the supply-side of the EIF. Through the EIF diagnostic process (the DTIS), LDCs identify and prioritize their trade-related assistance needs. AfT also aims to redress major funding deficiencies that plague the EIF Trust Fund, which only provides bridge financing for projects and priorities identified in DTIS. Through the AfT process, development partners can provide additional, predictable, and sustainable funding. It is the process through which trade-related diagnostics requiring technical assistance are converted into funded and implemented projects. In other words, the EIF leads LDCs to access AfT.\textsuperscript{53}

Although the provision of ODA for trade was not new in 2005, the explicit acknowledgment that these issues require the cooperation of both the trade and development communities was. Moreover, the initiative aims to dramatically increase the mobilization of financial resources over time, mainstream trade into national development plans and poverty reduction strategies, and respond to developing countries’ priorities. The WTO’s role is to work with bilateral donors, multilateral agencies, and international financial institutions, especially the World Bank and IMF, to ensure they understand the trade related needs of its Members and to improve the effectiveness, coordination and overall coherence of the disbursement of aid.\textsuperscript{54} It is

\textsuperscript{52}Details of the AfT initiative are available at <http://www.wto.org/english/tratop_e/devel_e/a4t_e/a4t_factsheet_e.htm>.

\textsuperscript{53}WTO 2007a.

\textsuperscript{54}The WTO’s partners in the global AfT initiative are: the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, IMF, Inter-American Development Bank, Islamic Development Bank, ITC, OECD, UNCTAD, UNDP, UNECA, UNIDO and the World Bank. The key challenges to the coherent provision of AfT are detailed in WTO 2006c, E.
also responsible for monitoring and evaluating AfT in order to “strengthen mutual accountability
between donor and recipient countries through improved transparency.”\(^{55}\) To this end, it
publishes jointly with the Organization for Economic Cooperation and Development (OECD) the
biannual Global Review of Aid for Trade, which takes stock and evaluates the impact of existing
AfT flows and highlights the needs of particular regions.\(^{56}\) Improving quantitative and
qualitative criteria for AfT evaluation also forms a core element of the WTO’s AfT work
programme.\(^{57}\) The AfT initiative is a clear attempt to establish mutual accountability between
the WTO and its partners for development results. Inter-institutional coordination has resulted in
the development of mechanisms for carrying out mutual assessments of progress and for
monitoring the impact of overlapping policies.\(^{58}\) As a result, the WTO and its partners are more
answerable for the developmental impact of their policies than ever before.\(^{59}\)

The EIF and AfT clearly hold promise as important vehicles for coordinating the
priorities and policies of the WTO, donors, multilateral agencies, and Bretton Woods institutions.
They also increase awareness of the linkages between trade and development, monitor progress
in the delivery of aid, and go some distance to enhance the mutual accountability of the partners.
However, there is wide ranging debate over their effectiveness and efficiency, and the absence of
adequate mechanisms for correcting their poor performance. While the supply of AfT has

\(^{55}\) WTO 2007b, 4.

\(^{56}\) OECD and WTO 2007; 2009. The conference programme and submissions for the second AfT Global Review
are available at <http://www.wto.org/english/tratop_e/devel_e/a4t_e/global_review09_prog_e.htm>.

\(^{57}\) WTO 2009b.

\(^{58}\) These achievements are consistent with the objectives for enhancing mutual accountability laid out in the Paris
Declaration on Aid Effectiveness and the Accra Agenda for Action. OECD 2008.

\(^{59}\) Marceau and Illy (2009) reach a similar conclusion.
increased significantly since 2005, concerns persist about its distribution and impact.\textsuperscript{60} Winters suggests that the WTO should abandon its foray into development policy and the provision of aid because the transaction costs far outweigh the tangible returns.\textsuperscript{61} Indeed, the precise role of the WTO as a ‘development’ institution is a growing preoccupation of scholars.\textsuperscript{62} Critics contend that conditionality and a market driven approach to development are inappropriate to reduce poverty in LDCs.\textsuperscript{63} Advocacy organizations in the South have also raised concerns that the EIF and AfT initiatives will lead to cross-conditionality, inadequate policy space and an erosion of special and differential treatment.\textsuperscript{64}

Given that the EIF and the AfT initiatives are still in their genesis phases, the jury is still out on their long term implications for development. However, it is clear that these initiatives will be litmus tests for the WTO’s ability to coordinate policies and enhance mutual accountability with institutions of relatively equal size and power in the global economy.\textsuperscript{65} The World Bank, IMF and WTO are institutions that align ideologically, their work is mutually supportive, and they have engaged in extensive, formal efforts to enhance the coherence and mutual accountability of global economic policymaking, at least with respect to trade and aid. These efforts are consistent with a growing post-Washington consensus that development should be the foremost priority in the global economy. They are also consistent with the scope and legitimate purpose of the WTO. In light of the global economic downturn, the related liquidity

\textsuperscript{60} For comprehensive assessments see Hoekman and Wilson 2010; Hallaert 2010.

\textsuperscript{61} Winters 2007.

\textsuperscript{62} See for example Qureshi 2009.

\textsuperscript{63} Saner and Paez 2006; Grabel 2007.

\textsuperscript{64} South Centre 2005.

\textsuperscript{65} Evenett 2009.
crisis, and the lack of progress being made in the DDA, the need for coordination in the areas of trade, finance and aid is more important than ever.\textsuperscript{66}

While EIF and AfT show some promise, broadening the perspective on economic governance even slightly beyond the attempts to build coherence and mutual accountability amongst the core international economic institutions reveals even greater challenges owing to power imbalances and North-South politics. Take the Financing for Development initiative that emerged out of the 2002 Monterrey Consensus, for example.\textsuperscript{67} It operates in parallel to the EIF, although they are meant to be complementary, and the 2008 Doha Declaration on Financing for Development explicitly identifies EIF and AfT as means of fulfilling the Consensus. One important output from the 2002 Monterrey Conference – largely unnoticed at the time – was a commitment to high-level dialogue of the three core international economic institutions with the UN Economic and Social Council (ECOSOC). On one hand, bringing together these institutions reflects an ideological rapprochement on development policy when compared to the 1980s and 1990s.\textsuperscript{68} On the other hand, despite the apparent unity of purpose, almost 10 years later, calls for greater coherence among international financial, monetary and trading systems is still a major theme. In the context of the 2008-2009 financial crisis, such meetings have focused especially on a desire for a more coherent approach to addressing global financial and trade imbalances, as well as limiting currency speculation. However, according to a report by the President of ECOSOC on the March 2010 high-level meeting, “there [remains] no agreed international regulatory system for enabling trading partners to avoid distortions stemming from financial

\textsuperscript{66} Hoekman and Wilson 2010, 4.

\textsuperscript{67} On the history of UN, WTO, and Bretton Woods coordination in the follow-up to the Monterrey Conference on Financing for Development, see Pauly 2007.

\textsuperscript{68} Thérien 2007.
shocks and exchange rate misalignments."\textsuperscript{69} Nor was there consensus at the meeting that exchange rates are a major component or cause of trade imbalances. Thus, while these meetings might suggest new formal channels of accountability, they reflect instead the continued sidelining of ECOSOC in any influential discussion on global financial reform and absence of any notable improvements in coherence. Until that changes, mutual accountability in this domain will remain out of reach.

With discussions on coordination occurring in multiple institutional settings, the question arises not only of where coherence and mutual accountability might ideally be facilitated, but also where it is most likely to be achieved in practice. Arguably, a forum like the G20 would facilitate negotiations toward such a new regulatory framework better than ECOSOC. However, while participants at the ECOSOC meeting recognized the “importance of having a mechanism for dialogue between the United Nations and the G20”, many participants “stressed the central role of the United Nations in achieving a greater coherence and coordination among different actors and areas of global governance” and suggested that “ECOSOC should serve as the principal international body for coordinating all economic and social issues.”\textsuperscript{70} This preference likely reflects that longstanding ideological and interest divides between North and South have not been entirely washed away despite significant convergence on development policy. It should not be surprising, then, that developing countries might prefer ECOSOC, where they hold a majority and where their understandings of social justice and equity hold more sway in economic

\textsuperscript{69} ECOSOC 2010, 10.

\textsuperscript{70} ECOSOC 2010, 10.
discussions. Such preferences expose the challenge, and perhaps the need to move beyond the formal Coherence Mandate.

IV The WIPO – WTO Relationship: Complex and Unaccountable

The extension of WTO rules into services, investment and IPR increased the density and complexity of international institutions governing these areas. The concept of “regime complex” developed by Kal Raustalia and David Victor to describe “an array of partially overlapping and non-hierarchical institutions governing a particular issue-area” nicely captures the resulting institutional terrain in these areas. Regime complexes are inherently competitive environments because there is no agreed-upon hierarchy for resolving disputes between overlapping legal agreements. They often lack clear mechanisms for coordination or there are stark inequalities in size and power among the relevant institutions. Actors exploit these features by proposing rules and norms in fora that favour their concerns and strategic interests through forum shopping, and sometimes may even shift rule-making processes or the scope of authority of regimes that favour their interests in what Hefler labels “regime shifting.”

Regime complexity can be found in a range of issue areas. Here, owing to space limitations, we focus exclusively on the international IPR regime because it provides one of the clearest illustrations of the challenges complexity poses in global economic governance, and the lack of accountability that can result under regime complexes, especially those characterized by

71 Thérien 2007.
72 Raustalia and Victor 2004, 279.
73 Raustalia 2007, 1021; 1025.
74 Hefler 2004; 2009 argues that unlike forum shopping, which is limited to single episodes, regime shifting is a long-term, iterative strategy.
significant power differentials. The relationship between the WTO and the World Intellectual Property Organization (WIPO), in particular, engenders conflict, forum shopping, regime shifting, and the emergence of counter-regime norms. Power differentials between institutions and structural asymmetries between developed and developing countries have thus far prohibited effective coordination and mutual accountability in these areas.

Until 1995 and the introduction of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the WIPO had primacy and near exclusive responsibility for rule-making in the international IPR regime. It is a specialised agency of the United Nations established in 1970 to protect IP and promote the development and harmonization of IPR rules among its members. It currently administers 24 international treaties on IP protection and classification.

The WIPO came under fire from IP-based industry in the early 1980s for failing to prescribe minimum substantive IP standards and for lacking the necessary enforcement mechanisms to ensure members’ compliance with those treaties. Industry groups also criticized it for identifying too closely with developing countries that, from the perspective of IP-based industry, “abet the theft of intellectual property.” Prior to the TRIPS Agreement, businesses in a wide range of sectors faced substantial losses due to inadequate IP protection abroad. Indeed,

75 Similar challenges can be located in services and investment regime complexes, but space limitations prevent a discussion on those issues here.

76 Ibid.

77 For the history and evolution of WIPO see May 2009; Okediji 2008; Sell and May 2006.

78 For an overview of the purpose and key activities of WIPO see <http://www.wipo.int/about-wipo/en/core_tasks.html>.

79 Details of the treaties administered by the WIPO are available at <http://www.wipo.int/treaties/en/>.

80 Sell and Prakash 2003, 158.
Sell and Prakash estimate that U.S. industry lost between $43 billion and $61 billion in 1986 alone.\textsuperscript{81} Consequently, IP-based industry forged a powerful private sector coalition aimed at securing more stringent international IP protection, linking it to the multilateral trade regime, and establishing enforcement and dispute settlement mechanisms.\textsuperscript{82} The result was the 1994 TRIPS Agreement.

The TRIPS Agreement incorporates treaties administered by the WIPO but broadens the scope of IP protection in significant ways.\textsuperscript{83} It has commonly been referred to as a Berne-Plus or Paris-Plus agreement because it imposes greater and more stringent obligations on member states. First, Most-Favoured Nation and National Treatment principles now constitute the cornerstones of the global IPR regime. Second, the TRIPS Agreement treats IP as a commodity and is designed to ensure that IP protection works to encourage innovation and the transfer of technology. It provides a universal blueprint that sets minimum standards of protection and enforcement for industrial property (patents, trademarks, geographic indicators of source, industrial designs) and copyright (literary and artistic works).\textsuperscript{84} All WTO signatories are required to provide 20 year minimum patent protection “for any [new] inventions, whether products or processes, in all fields of technology without discrimination.”\textsuperscript{85}

\textsuperscript{81} Sell and Prakash 2004, 154.

\textsuperscript{82} Controversy over the appropriate scope and forum for IP protection has a long history. However, this was the first time IP was recognized as a “trade issue”. Yu 2009a; Sell and May 2006.

\textsuperscript{83} TRIPS incorporates the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, which were the cornerstones of the global IPR regime for over 100 years. It also incorporates the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, and the Treaty on Intellectual Property in Respect of Integrated Circuits. WTO 1994b, Art. 1(3).

\textsuperscript{84} For an extensive discussion of the ways in which the TRIPS Agreement adds to the requirements of the WIPO Agreements see Dinwoodie and Dreyfuss 2009.

\textsuperscript{85} WTO 1994b, Art. 27(1).
Third, while WIPO members grant IP protection at their discretion, TRIPS requires all WTO members to implement minimum levels of IP protection in their national legislation and to bring national patent regimes into line with their TRIPS obligations. It also requires the same levels of IP protection regardless of members’ level of development, although it grants gradated grace periods for implementation. Finally, IP rules are virtually unenforceable under the WIPO. By contrast, TRIPS introduced the possibility of inflicting retaliatory commercial measures for non-compliance through the WTO’s mandatory dispute settlement system. Since 1995, members can impose punitive trade sanctions in any field of trade (not just IP) on violators of the Agreement. For the first time, stringent intellectual property rules were legalized and married to the international trade regime.

The WIPO remains an important actor in the IP arena. Some even claim that the growing dominance of the WTO rejuvenated the WIPO, which today has three primary tasks in the global IPR regime. First, it processes and registers applications for patents, trademarks, designs and appellations of origins. Second, it provides technical assistance to help developing countries build sufficient capacity to implement their international obligations. Finally, and most significantly for this paper, it works to develop new international IP treaties and harmonize existing IP rules. For example, it facilitated new treaties in response to the increasingly global reach of digital communications and its ongoing work addresses IP issues in areas of particular importance.

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86 For a discussion of the implications of a “one-size fits all” approach to intellectual property rules for developing countries see Fink and Maskus 2005.

87 Developing countries had until 2005 to bring their national patent legislation into line with TRIPS. LDCs have until 2013 and they do not have to provide protection for pharmaceutical patents until 2016. See <http://www.wto.org/english/tratop_e/trips_e/ldc_e.htm>.

88 Yu 2009b, 12.

89 The so-called WIPO ‘Internet Treaties’, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty pertain to copyright protection for digital media.
concern to indigenous communities not covered by the TRIPS Agreement including traditional knowledge, traditional cultural expressions and genetic resources.\(^{90}\)

The WIPO and the WTO have a joint mandate to set rules in the international IPR regime. However, the relationship, especially the law-making relationship, between the two institutions is ill-defined. While the TRIPS Agreement incorporates provisions of WIPO treaties, it provides few explicit directives on devising a consultative or cooperative framework. It does mandate the TRIPS Council to build cooperative arrangements,\(^{91}\) but it leaves details of these arrangements to future negotiations.\(^{92}\) It may also “consult with and seek information from any source it deems appropriate,” though the WIPO only has observer status in these consultations.\(^{93}\)

The WTO-WIPO Agreement is the main instrument of coordination, but it focuses exclusively on administrative coordination to exploit the WIPO’s administrative competency in the provision of technical and legal assistance.\(^{94}\) Article 2 provides mechanisms to facilitate transparency of rules and laws in the international IPR regime\(^{95}\) and Article 3 formally integrates the WIPO into the TRIPS administrative framework. The Agreement also directs the WIPO and WTO secretariat to cooperate in the provision of technical and legal assistance to developing

\(^{90}\) See <http://www.wipo.int/tk/en/>.

\(^{91}\) WTO 1994b, Art. 68. The TRIPS Council was also directed to explore the relationship between the TRIPS Agreement and the CBD but no formal agreement has developed.

\(^{92}\) WTO 1995.

\(^{93}\) Dinwoodie and Dreyfuss 2009, 1196.

\(^{94}\) WTO 1995.

\(^{95}\) Art. 2 (1, 2) requires the WIPO’s International Bureau to provide all WTO members, including those who are not members of WIPO, with copies and translations, and access to electronic databases, of laws and regulations. Okediji 2008, 98.
countries to help them meet their international obligations. In addition, the WIPO conducts its Development Agenda, adopted in 2007, through a formal agreement with the WTO that links it to the DDA. These links support its aim to help developing countries implement their TRIPS obligations, increase protection for “domestic creations, innovations and inventions” and make use of flexibilities contained in the TRIPS Agreement and reaffirmed in the Doha Declaration. Nonetheless, their relationship in practice falls dramatically short of the objectives of the mutual accountability mechanisms outlined above.

The provision of technical assistance has been a notable source of controversy. As in the case of the WTO more generally, critical analyses charge that technical assistance is too focused on socializing developing countries rather than enabling them to adapt policies that suit their needs or better formulate their negotiating positions. Specifically in the context of IP, Sell argues that, “not surprisingly, through technical assistance programs developing countries’ patent offices have been set up to resemble those of their OECD counterparts. Emphasizing property protection and enforcement tilts the balance toward foreign rights holders.” Sell suggests there is some irony in technical assistance institutionalising a form of IP protection in developing countries that is “under attack” in the North for overly favouring industry interests, while

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96 Art. 4(1) specifies that WIPO “shall make available to developing country WTO Members which are not Member States of WIPO the same legal-technical assistance relating to the TRIPS Agreement as it makes available to Member States of WIPO which are developing countries. The WTO Secretariat shall make available to Member States of WIPO which are developing countries and are not WTO Members the same technical cooperation relating to the TRIPS Agreement as it makes available to developing country WTO Members.” While Membership in WTO and WIPO is not co-extensive, few countries do not belong to both.


98 The WIPO’s Development Agenda work programme is divided into six clusters and 45 recommendations. Cluster “A” concerns technical assistance and capacity building. See WIPO 2007.

99 Grabel 2010; Ostry 2009.

100 Sell 2010b, 7.
industry associations from the North are controlling the focus of technical assistance to promote administrative convergence.101

The introduction of the TRIPS Agreement also increases regime complexity, creates conflict and raises unique accountability issues in the IP arena. These tensions play out in a variety of ways. First, the cooperation agreement contains no substantive provisions for the law-making relationship between the WTO and the WIPO. Conflicts may arise owing to discrepancies between the TRIPS Agreement and incorporated WIPO treaties or when TRIPS standards differ from WIPO Treaties' provisions.102 Only the WTO has the capacity to interpret the rules and authorize trade sanctions for non-compliance, and it provides no direction on when and how it ought to seek the WIPO’s expertise and opinion; it leaves such decisions entirely to the discretion of each dispute panel or appellate body.103 The absence of clear provisions for dealing with conflicts between overlapping policies and institutional imbalances between the WTO and the WIPO not only hinder mutual accountability, but also clearly have implications for accountability to more vulnerable member states that have a greater voice in the weaker WIPO.

Article 31 of the Vienna Convention on the Law of Treaties may provide some guidance on how potential conflicts or incoherence between TRIPS and WIPO might play out. It states that a treaty or rule of international law may be used to interpret another agreement provided that “agreement… was made between all parties”104 or they accept an interpretive relationship

101 Sell 2010b, 7.
102 These potential conflicts are dealt with extensively by Dinwoodie and Dreyfuss 2009, 1201-1211.
103 Okediji 2008, 116-117 discusses the circumstances under which TRIPS dispute panels or appellate bodies have referenced the WIPO.
104 UN 1969, Art. 31(2a).
between the treaties.\textsuperscript{105} Few countries do not belong to both the WTO and the WIPO,\textsuperscript{106} and the TRIPS dispute panel ruling in \textit{US – Section 110(5) Copyright Act} reinforced this view when it agreed with the United States that the WIPO Copyright Treaty, adopted in 1996, sheds light on the exceptions test in the TRIPS Agreement.\textsuperscript{107} Nonetheless, with very few IP cases adjudicated so far,\textsuperscript{108} there remains considerable legal ambiguity about how subsequent TRIPS dispute panels would treat WIPO treaty developments. Notwithstanding vigorous scholarly debate over which institution should have primacy over the future development and interpretation of IP rules, this relationship will likely only be defined through future TRIPS disputes.

Second, IP issues often emerge rapidly, which creates a need to frequently recalibrate the rules in response to new knowledge production and changing realities. Conflict also exists over which is the appropriate negotiation forum for new rules. Incremental or even experimental rule changes are difficult to achieve at the WTO because of its consensus decision-making rules. Moreover, according to Dinwoodie and Dreyfuss, the “[Dispute Settlement Body] DSB has interpreted the TRIPS Agreement so narrowly that Member States cannot otherwise adapt their laws to new circumstances.”\textsuperscript{109} The slow pace of Doha Round negotiations is also a source of frustration for developed countries at the WTO. Meanwhile, developing countries are generally unwilling to negotiate more stringent commitments at the WTO because they view the TRIPS Agreement rules as “maximalist”. This impasse encourages regime shifting.\textsuperscript{110}

\textsuperscript{105} UN 1969, Art. 31(3a).

\textsuperscript{106} May 2006, 435.

\textsuperscript{107} WTO 2000a.

\textsuperscript{108} 28 cases to date. For details see <http://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm>.

\textsuperscript{109} Dinwoodie and Dreyfuss 2009, 1191.

\textsuperscript{110} Hebler 2009, 39.
Frustrated by the inertia at the WTO, developed countries – especially the United States and the European Communities (EC) – have shifted their efforts to achieve more stringent IP protection to bilateral and regional trade and investment agreements. In exchange for market access in developed countries, developing countries agree to comply with more stringent IPR commitments than the TRIPS Agreement requires. In many cases, these “TRIPS-Plus” agreements require developing countries to introduce a range of provisions, including those that extend patent terms beyond 20 years, limit the use of compulsory licenses, and lead to the erosion of flexibilities or policy space provided for in the TRIPS Agreements. Unlike the GATT Article XXIV, there is no general exception for free trade agreements or customs unions in the TRIPS Agreement. Developing countries that grant TRIPS-Plus favours to one country must extend those favours to all WTO members.\textsuperscript{111} The profusion of TRIPS-Plus agreements, when combined with the Most Favoured Nation (MFN) principle, has the effect of setting new minimum standards for IP protection.\textsuperscript{112}

By contrast, developing countries are shifting to other international institutions, including the Convention on Biological Diversity, World Health Organization, Food and Agriculture Organization and, most notably, the WIPO. Attention has shifted from the WTO to the WIPO as the forum for ongoing IP rule negotiation, in large part because developing countries view it as the more responsive, inclusive institution; it can expeditiously address new issues,\textsuperscript{113} introduce

\begin{footnotesize}
\textsuperscript{111} WTO 1994b, Art. 4.

\textsuperscript{112} Drahos 2007 and Sell 2010a refers to this as the “global IP ratchet effect”.

\textsuperscript{113} The WIPO decision-making process is not bound by a requirement for consensus and the WIPO secretariat may take a more active role in rule-making. The WIPO Internet Domain Name Process provides an excellent example of these features. See Abbott 2000, 71-74.
\end{footnotesize}
soft law or experimental measures to address new issues, and it provides opportunities for a more diverse range of inputs. The WIPO also prioritizes developing country concerns and provides them with a voice in IP rule-making. In other words, WIPO has created accountability mechanisms that do not exist in the WTO. The WIPO’s Development Agenda (DA) is most significant in this regard.

Argentina and Brazil proposed the DA in 2004, with enthusiastic support from 11 other developing countries, to address the short-comings of the TRIPS Agreement, the costs of increased IP protection for developing countries, and concerns about the harmonization of substantive patent law. The six clusters of 45 recommendations that form the core of the DA were adopted by consensus in 2007. They take into account the special needs and interests of developing countries, explicitly reject a one-size model of international IP rules, and improve the participatory process at the WIPO by introducing mechanisms to widen the involvement of “all WIPO members and their stakeholders, including accredited intergovernmental organisations (IGOs) and NGOs.” The DA aligns the WIPO’s work with aims of the UN system by mainstreaming development into the international IPR regime. While the WIPO continues to promote the protection and enforcement of IP rules, it explicitly recognizes that IP protection is not an end in itself.

The DA is in its early implementation phase and the precise details of how to operationalise the recommendations are yet to be determined. Thus, it remains unclear

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114 See for example the Uniform Domain Name Dispute Resolution Policy (UDRP) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) to deal with “cyber-squatting.” This soft law instrument has gradually hardened as its usefulness is tested. See Dinwoodie 2007, 80-84.

115 The Group of Friends of Development was comprised of Argentina, Brazil, Bolivia, Cuba, the Dominican Republic, Ecuador, Egypt, Iran, Kenya, Sierra Leone, South Africa, Tanzania and Venezuela.


117 WIPO 2007, Cluster F, 45.
whether it will successfully mainstream development, or have any “teeth” in the international IPR regime. However, there is no doubt that the WIPO’s DA marks a paradigm shift in the international IPR regime that conflicts fundamentally with the trend towards bilateralism and TRIPS-Plus Agreements, and shifts the focus of mutual accountability in the global IP regime toward the UN, but perhaps at the expense of the WTO/TRIPS - WIPO relationship.

In short, whereas achieving coherence and mutual accountability in new areas of international trade rules such as intellectual property rights is important, regime complexity engenders conflict and inhibits coordination. Imbalances in institutional power and legal traction, legitimacy concerns and persistent structural asymmetries between developed and developing countries have thus far rendered the WTO unable to successfully navigate institutional conflicts and generate mutual accountability in these areas.

V Social and Environmental Regulation and Standard Setting: The Case for Regulatory Space

Whether by design or effect, the expanded scope of WTO rules has created implications for policy areas that, on the surface, appear distant from its core competencies. As in cases of new economic regulation discussed above, these implications stem in part from the GATT/WTO’s evolution from an institution primarily concerned with controlling barriers at borders to one that, in order to address barriers to access in new areas of competency, may require ‘behind-the-border’ reforms to domestic legal and regulatory systems. The problem is exacerbated, however, when its rules affect ostensibly non-economic areas where WTO rules do not explicitly dictate policy, but may interact with those policies nonetheless. Such interactions

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118 This section draws heavily from Bernstein and Hannah 2008.
are a major source of the WTO’s legitimacy problems.\textsuperscript{119} In particular, environmental, food safety and health issues have been focal points for criticism as governments increasingly ask the WTO to adjudicate in areas where the original architects of the GATT system had purposely carved out space for domestic intervention and policy development.\textsuperscript{120} A dilemma is thereby created. At the same time as new agreements – on food safety, intellectual property, services, and technical barriers to trade – open the door to trade challenges that touch on ostensibly non-trade areas with fragmented regulatory structures, governments show increasing reluctance to advance issues related to the environment or social standards on the agenda of WTO negotiations.

There is a dynamic scholarly debate over whether social and environmental standards should be incorporated into the WTO through positive rule making.\textsuperscript{121} For instance, Trachtman argues that the strength of the DSM and the enhanced possibility of issue linkage make the WTO the ideal institutional framework for negotiating and enforcing new rules in these areas.\textsuperscript{122} In our view, this approach is wrongheaded. Rather, WTO members should ensure that the trade regime leaves international and transnational ‘regulatory space’ for social and environmental regulation and standard setting in the global polity and marketplace rather than try to create additional rules on what standards to accept. These issues fall outside the legitimate social purpose of the WTO and developed and developing countries alike lack the political will to bring social and environmental issues under the auspices of the WTO. Moreover, much broader accountability challenges are at stake in these domains and the WTO is ill equipped to address them.

\textsuperscript{119} Ostry 2009; Howse 2001.

\textsuperscript{120} Ruggie 1982.

\textsuperscript{121} E.g., Thomas 2004; Shahin 2009.

\textsuperscript{122} Trachtman 2005.
Therefore, coherence and accountability in environmental and social regulation of the global economy is best achieved if the WTO carves out negative policy space and defers authority for positive rule-making to other institutions, whether intergovernmental or non-state.

We favour a non-interventionist approach based on our reading of WTO negotiating history on environmental and social concerns. More overt action, such as amending the exceptions delineated in GATT article XX, are not only unlikely to succeed, but will unnecessarily politicize the issue or risk causing undesirable spillovers in the eyes of many members. Consistent with the minimalist approach, we found in an earlier study a general consensus among European Commission, WTO, and NGO officials we interviewed, supported by a wide variety of commentators, that the WTO is not the appropriate body to develop social and environmental standards. Environmental and social policies are simply outside its competency. Therefore, the question of whether the WTO has mutual accountability with international or transnational organizations that have competency in these domains is moot from our point of view, except from the perspective of transparency and recognition: The WTO should recognize the legitimacy of international standards in these areas, as long as they fulfil the requirements for legitimate standard setting as specified in relevant agreements, such as on Technical Barriers to Trade (TBT) or Sanitary and Phytosanitary Measures (SPS). Some may suggest that carving out regulatory space – whether intergovernmental or non-governmental – from WTO disciplines will lead to the widespread proliferation of standards with no concrete or effective way of adjudicating between them. Our proposal should not be read as encouraging a thousand flowers to bloom. On the contrary, we suggest that existing rules already offer sufficient leeway and guidance. For example, where standardization bodies meet or exceed

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123 Bernstein and Hannah 2008.
commonly accepted norms of democratic procedures and accountability mechanisms and comply with relevant WTO provisions, they should be allowed to operate without the impending risk of Members who adopt or support them being subject to trade disputes. In addition, other, better qualified organizations – both non-governmental and intergovernmental – are filling the regulatory gap and doing so in ways that are consistent with WTO rules. These organizations are also better equipped than the WTO to address the accountability challenges in social and environmental regulation. A norm of “regulatory space” prevents WTO members from being drawn into collectively having to pick and choose among potential international social and environmental standards. Given the controversies over the WTO’s record on environmental and social issues, simple prudence suggests governments and the WTO secretariat should avoid allowing the institution to be thrust further into the position of having to adjudicate social and environmental regulation.\(^{124}\)

Environmental and social standard setting highlights the dual tension in the WTO between positive and negative rule-making. In areas that liberalize trade, such as intellectual property rights, aid and finance, the WTO should play the role of regulatory institution; making positive rules, coordinating its work with other institutions, and working to enhance mutual accountability. In other areas, coherence and accountability in global economic policymaking is best achieved if the WTO makes space for a global division of labour and allows other institutions to do the regulating. This argument builds on the basic premise of John Ruggie’s

\(^{124}\) Aaronson (2007), in contrast, argues that WTO members and staff can actively research and provide clarity on which standards or corporate social responsibility (CSR) initiatives ought to be supported and which are trade distorting, rationalize the plethora of initiatives, and thereby help promote CSR. We are more sceptical that such efforts would lead to rules or processes to clearly differentiate or choose among mechanisms, with anything but a lowest common denominator outcome. In only one sector – ‘conflict diamonds’ – has anything approaching such a process led to members endorse a particular initiative. They did so through a waiver allowed under current rules, not through a new norm or rule that could offer future guidance. Moreover, this example is exceptional owing to its high political profile and narrow target, among other factors, which make it unlikely to be replicated in other sectors.
idea of embedded liberalism that informed the original Bretton Woods negotiations. In that era, the compromise was to allow exceptions and exemptions for national policies to ensure social stability – especially labour and welfare policies – which might be otherwise viewed as protectionist. In a more globalised era, a new locus of attempts to socially regulate or buffer the effects of pure laissez-faire liberalism is international and transnational environmental and social regulation.\footnote{Ruggie 2007; Bernstein and Hannah 2008.} Thus, while there are other facets to the trade and environment or social regulation debate, we limit our focus to the problem of (in)coherence and (un)accountability between the WTO and these international instruments or standards.

\subsection*{a. MEAs and the WTO}

Much has been written about the overlap and compatibility between Multilateral Environmental Agreements (MEAs) and international trade rules.\footnote{Conca 2000; Sampson 2001; Winham 2003; Ekersley 2004; Carlarne 2006.} Currently there are 250 MEAs in force, 14 of which are considered by the WTO to have implications for international trade.\footnote{WTO 2007c.} The WTO deals with the potential conflict between MEAs and WTO rules in three ways.

First, WTO members agreed to negotiate the relationship between MEAs containing “specific trade obligations” (STOs) and WTO rules at the 2001 Doha Ministerial Conference.\footnote{The mandate is quite narrow as Paragraph 31(i) specifies that “negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question”. Paragraph 32 further qualifies that “the outcome of this work… shall not add to or diminish the rights and obligations of members under existing WTO agreements…nor alter the balance of these rights and obligations.” WTO 2001a.} Despite the convening of a special session of the Committee on Trade and Environment (CTESS) to oversee these negotiations that was supposed to conclude by 2005, WTO members’...
positions on what constitutes a relevant MEA, measures that constitute STOs, and the appropriate relationship between WTO rules and relevant MEAs, remain intractable. The CTESS has done little more than compile summaries that report the disparate submissions of WTO member states.\(^{129}\) Negotiations on MEAs have been stalled since 2008\(^{130}\) and the likely outcome is a general statement about the mutual supportiveness of MEAs and WTO rules. Such a statement falls far short of enhancing the mutual accountability of MEAs and the WTO.

Second, WTO members are working to establish procedures for information exchange between the WTO and MEA secretariats.\(^{131}\) The WTO secretariat sponsors information sessions with select MEA secretariats, it invites the secretariats of UNEP, UNCTAD and MEAs to participate in WTO Trade and Environment seminars, and members of the WTO secretariat attend and give presentations at side events at MEA negotiations.\(^{132}\) The WTO secretariat also grants observer status to several MEAs.\(^{133}\) While these interactions provide useful opportunities to exchange information, they fall short of coordination and mutual accountability. With the exception of vague promises by MEAs to ensure the rules are “mutually compatible” with WTO rules, no concerted efforts have been made to harmonise rules, devise a common framework for monitoring the impact of overlapping rules, or introduce mechanisms for addressing the performance of rules.

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\(^{129}\) One notable exception is the Matrix of Trade Measures Pursuant to MEAs, designed by the CTESS to help WTO members identify STOs. However, there remains considerable disagreement between WTO members over what constitutes an STO or ‘relevant’ MEA.

\(^{130}\) Notably, the CTE has not received a WTO Member submission on Para. 31(i) since May 2008. WTO 2010.

\(^{131}\) WTO 2001a, Para. 31 (ii).

\(^{132}\) WTO 2007d.

\(^{133}\) See Jinnah 2010, 62-69 on the role of the WTO secretariat in managing trade and environmental interactions within the CTE/CTESS.
Third, the relationship between WTO rules and MEAs could be clarified through the interpretation and enforcement of rules and principles in dispute settlement. To date, no party has brought a formal dispute involving a trade-related measure under an MEA to the DSB and there is a general lack of political will to do so.134 However, in the event that WTO-MEA compatibility is raised in a dispute, we suggest the panel is best advised to consider trade-related measures adopted under an MEA to constitute legitimate measures under Article XX exceptions (interpreted broadly). This would ensure that Members can meet their MEA obligations without the threat of being challenged in a WTO dispute.

Whether one agrees with this position, the lack of jurisprudence suggests that the issue is unlikely even to arise unless one of the parties is not a member of the MEA. As in our earlier example of the panel decision in United States-Section 110(5) of the US Copyright, existing jurisprudence, consistent with the Vienna Convention, suggests that the MEA would not be invoked in the ruling. This is precisely what occurred in the EC — Approval and Marketing of Biotech Products panel report, which used the Vienna Convention to justify not taking into account the Convention on Biological Diversity or Biosafety Protocol in its decision, because the United States was not a party.135

However, this position leaves unaddressed the thornier problem of the potential of a future dispute to involve unilateral trade measures – such as a border tax adjustment to combat unregulated carbon emissions in the production, or processing methods of imports – that might be imposed and justified on the basis of a climate change MEA, even if it contains no specific trade provisions. There also remains much disagreement in the literature over whether such

134 For a discussion of the three disputes adjudicated at the WTO involving the environment, unilateral trade measures and the application of GATT Article XX see Charnovitz 2007, 695-705.

135 WTO 2006d; Charnovitz 2007, 705 fn. 103.
future measures, even if endorsed in a successor agreement to the Kyoto Protocol, could be justified under WTO rules.\textsuperscript{136} Such controversies point to potential future tensions if the stalemate on addressing potential conflicts between MEAs and trade rules continues.

\textbf{b. Non-State Governance Systems and the WTO}

An added level of complexity for coherence and accountability arises in environmental and social regulation owing to the proliferation of transnational non-state mechanisms designed to create authoritative social and environmental standards in the global marketplace. These mechanisms – usually in the form of producer certification and product labelling systems that include third-party auditing – are a sub-set of the broader ‘corporate social responsibility’ (CSR) category, but are remarkable for their similarity to state-based regulatory and legal systems.\textsuperscript{137} Such mechanisms can now be found in sectors including forestry (e.g., Forest Stewardship Council), apparel (e.g., Fair Labour Association), tourism (e.g., Sustainable Tourism Stewardship Council), agriculture and food (e.g., Fair Trade Labelling Organization), and fisheries (e.g., Marine Stewardship Council). Coined, ‘non-state market driven’ (NSMD) governance systems,\textsuperscript{138} they aim not only to create standards for products and services, but also to regulate processes of production, environmental and social impacts, and working conditions. Because they operate largely independently from states, they differ from more traditional standard setting bodies that derive their authority from governments or intergovernmental organizations, such as Codex Alimentarius (established by the Food and Agricultural

\textsuperscript{136} Eckerseley 2009; Werksman and Hauser 2009; Hufbauer, Charnovitz, and Kim 2009.

\textsuperscript{137} Meidinger 2007.

\textsuperscript{138} Cashore 2002. Others labels include ‘transnational regulatory systems’ (Meidinger 2007) and ‘civil regulation’ (Vogel 2008).
Organization and World Health Organization), or from national standard setting bodies, such as the International Organization for Standardization (ISO).

As long as non-state governance systems only affect niche markets for environmentally or socially responsible products and services, and are truly voluntary for firms to join, they are unlikely to conflict or overlap with international trade rules and can operate outside the purview of WTO law. However, four issues complicate this relationship. First, NSMD systems are vying for recognition as international standard setting bodies. Normally, recognition of international standards could either occur through explicit references in relevant international trade agreements, such as the TBT or SPS, or through WTO dispute settlement rulings. As we have argued elsewhere, WTO law is not definitive on the requirements for recognition of NSMD standards.139

Second, NSMD environmental or social standards are likely to fall under the rules of the TBT. The Agreement aims primarily to ensure that (mandatory) technical regulations and (non-mandatory) standards140 do not “create unnecessary obstacles to international trade.”141 The TBT permits national technical regulations, including those for environmental purposes and those based on international standards, as long as they do not discriminate on the basis of national origin, are necessary for the stated objective, and are the least trade restrictive to achieve that objective.142 Under a strict reading of the TBT, voluntary standards, including NSMD standards, are not actionable under WTO law even if governments promote or endorse them.

139 Bernstein and Hannah 2008, 586-587.
140 WTO 1994a, Annex 1
141 WTO 1994a, Preamble, Art. 2.2. Note, Article 2.2 applies only to technical regulations.
142 WTO 1994a, Art. 2.
However, potential conflicts arise when voluntary standards segment the market, deny exporters access, and thereby become *de facto* mandatory.\(^{143}\)

Third, there is disagreement over whether non-product-related production and processing methods (npr-PPMs) (e.g., life-cycle analysis that takes into account values or effects not directly related to production) are covered by the TBT Agreement and therefore subject to dispute under the TBT. This matters for NSMD systems because many include npr-PPMs. And fourth, some governments and commentators see environmental, social, labour and human rights standards as potentially disguised forms of discrimination, especially against developing country products or services and, therefore, may constitute the basis of a future dispute at the WTO.\(^ {144}\)

In the absence of an official process or body that determines which standards are authoritative, NSMD systems are engaged in a multi-pronged strategy to conform to every possible relevant international rule to increase their legitimacy and uptake, and the chances their standards would survive a trade challenge. The International Social and Environmental Accreditation and Labelling (ISEAL) Alliance plays a leading role in establishing and monitoring compliance with a Code of Good Practices for Setting Social and Environmental Standards.\(^ {145}\) The Code is designed to help NSMD systems conform with or surpass any requirements under WTO rules for recognition as legitimate standardization bodies.\(^ {146}\) The Code also sets a very high bar for democratic accountability; the requirements for transparency and

\(^{143}\) Voluntary standards determined to be mandatory in practice have been the subject of several trade disputes. See for example GATT 1984; WTO 2000b.

\(^{144}\) WTO 1996b; Joshi 2004, 72.

\(^{145}\) ISEAL 2010a.

\(^{146}\) Discussed at length in Bernstein and Hannah 2008, 595-597.
multi-stakeholder consultations surpass the accountability mechanisms set up in the WTO.\textsuperscript{147} ISEAL recently introduced a Code of Good Practice for Assessing the Impact of Social and Environmental Standards. This Code establishes a process through which NSMD systems can measure and evaluate the effectiveness of their standards, address poor performance, and further enhance their accountability mechanisms.\textsuperscript{148} Another prong of the strategy of gaining recognition is to register with the World Standards Services Network (WSSN), a publicly accessible network of web servers of standardization bodies administered by the ISO Information Network.\textsuperscript{149} NSMD systems hope these efforts, amongst other advocacy activities to increase their exposure and support, will ensure their standards stand up to the legal scrutiny they may encounter if referenced by a WTO member government.

Meanwhile, WTO members have shown little willingness or ability to address the consistency of environmental and social standards with WTO rules, especially those that include npr-PPMs, in either the CTE or TBT Committees.\textsuperscript{150} Indeed, developed and developing countries alike have staunchly opposed any attempt to work through the Committees to consider whether the TBT Agreement permits or legitimises the use of standards based on npr-PPMs.\textsuperscript{151}

One way that WTO members may deal with uncertainties about the compatibility of social and environmental standards with WTO rules is by writing environmental or social standards into regional and bilateral trade agreements. The EU’s Forest Law Enforcement,

\textsuperscript{147} Bernstein and Hannah 2008, 22-23.

\textsuperscript{148} ISEAL 2010b.


\textsuperscript{150} The negotiating history is covered in detail in Bernstein and Hannah 2008, 601-603.

\textsuperscript{151} Joshi 2004, 82-83.
Governance and Trade (FLEGT) initiative is one such example. In the absence of any international agreement on forestry, the FLEGT initiative aims to combat illegal logging in countries that export to the EU. The EU is currently negotiating bilateral, voluntary partnership agreements (VPAs) with timber exporting countries wishing to access the EU market. The VPA will establish a licensing system in each country designed to distinguish between legally and illegally harvested timber; unlicensed timber will be denied entry at the EU border. Negotiated in this way, it is doubtful that FLEGT standards will be successfully challenged in a WTO dispute. Parties to a VPA that have mutually agreed to the FLEGT licensing measure are unlikely to mount a challenge at the WTO, especially because the EU will provide capacity-building assistance to help implement the licensing system and minimise the cost to the exporter. The EU does not require exporting states to sign a FLEGT agreement to gain market access; thus, the FLEGT is voluntary and non-discriminatory even though, once signed, forestry products will be tracked and certified and if found to be illegal, banned. However, one could imagine a different interpretation from the perspective of an exporting country government unwilling to sign a FLEGT agreement. It could argue that the policy would act as a de facto barrier to trade because it segments the marketplace and denies its exporters access to the ‘non-illegally logged products’ segment. Under this interpretation, the standard is de facto mandatory and could possibly be subject to dispute. However, since FLEGT

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152 The ‘Forest Annex’ in the US-Peru FTA is an example of mandatory provisions being written into an FTA to address illegal logging. Notably, it also requires both parties to fulfil their obligations in MEAs to which they are both party. See Del Gatto et al. 2009.

153 VPAs have been concluded with the Republic of the Congo, Cameroon and Ghana. Negotiations are going on with Democratic Republic of Congo, Gabon, Liberia and the Central African Republic. For updates see <http://www.eu-flegt.org/>.

154 Brack 2009, 3.

155 Switzerland expressed precisely this concern to the CTE and TBT committees. See WTO 2001b.
agreements fall within VPAs, it is likely that a general exception for free trade agreements under GATT Article XXIV would be invoked. It appears as though writing environmental or social standards into bilateral or regional trade agreements may be one way of ensuring they are WTO compliant. Of course, this is largely speculation since no such dispute has been brought to the WTO.

Adding to the complexity of the environmental and social standard setting landscape are increasing linkages between domestic environmental regulations and NSMD systems. For example, the 100-year-old US Lacey Act makes it illegal to “import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce” illegally harvested fish and wildlife. In 2008, Section 8204 of the US Farm Bill broadened the Act’s coverage to plants and plant products, including timber. The US is the first country to make it illegal under a domestic criminal code to trade in illegally harvested timber. The act does not aim to apply US law extraterritorially; “illegally sourced” is defined by the exporting country’s laws and the onus is on US importers to vet their imports and “declare the species, country of harvest, and other information related to timber imports.” Given the looming prospect of criminal and civil prosecution, US importers now have a powerful incentive to eliminate all illegally harvested wood from their supply chains by exercising what the Act refers to as “due care.”

As the Lacey Act is implemented, a number of observers note an increased reliance on third party

156 Brack 2009, 10.
157 USDA 2008.
158 McClanahan 2010, 11.
159 USDA 2008; and details and background for the Lacey Act are provided by the US Environmental Investigation Agency: <http://www.eia-global.org/forests_for_the_world/Lacey_Act_Background.html>
160 Salzman 2010.
NSMD certification systems such as the Forest Stewardship Council and Smartwood, run by the Rainforest Alliance.\textsuperscript{161} Given that the Lacey Act is not a trade measure applied at the border, and it applies equally to imported and domestically harvested fish, wildlife and plant products, it is doubtful a dispute will be raised at the WTO.\textsuperscript{162} Measures like the Lacey Act may constitute a backdoor through which WTO members can promote NSMD systems without explicitly referencing their standards in national regulations or procurement policies, and thereby running afoul of WTO rules.

In our view, WTO members should not develop rules that militate against the use or adoption of NSMD standards. Neither should the WTO be pulled into the political game of overtly deciding which standards are authoritative. Instead, the WTO should adopt an approach akin to the notion of “policy space,” but for transnational non-state governance in the environmental and social areas and not simply for national governments and policy development. Essentially, transnational regulatory space should be preserved or carved out from WTO disciplines such that these standards can proliferate – and in effect regulate directly in the marketplace – outside the direct purview of WTO disciplines. The rules found in the TBT and its annexes already set the bar high for recognition of such standards as international standards and the accountability mechanisms in NSMD systems exceed those set up in the WTO.\textsuperscript{163} Therefore, an exhortation by WTO members to refrain from making further WTO rules on standard setting or a simple endorsement of existing rules for environmental and social standards that preserves room for experimentation and promotes good practices should suffice.

\textbf{VI Conclusion}

\textsuperscript{161} Brack 2009, 9; McClanahan 2010, 11.

\textsuperscript{162} Brack 2009 shares this observation.

\textsuperscript{163} Bernstein and Hannah 2008.
This paper advanced three main arguments. First, the WTO is well equipped to achieve policy coherence and mutual accountability in areas that directly facilitate trade liberalization. Coordination between institutions that share an ideological commitment to market liberalization, pursue mutually supportive policies, and are relatively equal in size and power show good prospects for success on specific policy initiatives. The AfT and EIF are crucial tests for the formal Coherence Mandate and for efforts to achieve mutual accountability between the WTO and the Bretton Woods institutions. They show promise because they focus on areas where specific levers exist to mobilize resources and build on expertise within their existing, overlapping, mandates. Despite debates over the efficiency, effectiveness and appropriateness of these initiatives, they can go some distance to produce more coordinated and accountable trade, financial and aid policies.

However, the wider challenge of trade, coherence, and accountability in global economic governance may require an expanded Coherence Mandate beyond those institutions, especially to include the G20 and ECOSOC. So far, little evidence points to support among leading states’ for an expanded WTO mandate to play a more active role in resolving inconsistencies among trade and macroeconomic policies. The recent experience of responses to the 2008-2009 global financial crisis, in which the WTO has been essentially a non-player, is a case in point. While there may be good economic reasons to improve such coordination in principle, ongoing disagreements over the relationship between exchange rates and trade imbalances, among a variety of political reasons, have kept the WTO on the sidelines compared to the G20, IMF, Basel Committee or the Financial Stability Board in macroeconomic policy coordination. In the absence of improvements in coordination, the lack of mutual accountability between institutions is likely to persist in this domain.
Second, the extension of WTO rules into new trade areas increased the regime complexity of global economic governance. The international IP regime provides one example of the WTO’s inability to successfully mitigate the conflicts caused by the power dynamics in a regime complex. Regime shifting, imbalances in institutional power, and structural asymmetries between developed and developing countries have thus far inhibited effective coordination in the international IP regime. Similar dilemmas are arising in a range of other areas including agriculture, services and investment. The coherence and accountability of global economic governance is at risk if the WTO neglects to renegotiate its relationships with other institutions operating in these domains.

Third, there are dual tensions in the WTO between positive and negative rule-making that have serious implications for the coherence and accountability of global economic governance. In areas that facilitate trade liberalization, coherence and accountability are best achieved if the WTO acts as a regulatory institution and works to coordinate the rules among the relevant international institutions. However, the development of positive rules on environmental or social regulations falls outside the scope or legitimate social purpose of the WTO. In these domains, coherence and accountability are best achieved if the WTO leaves international and transnational ‘regulatory space’ for other institutions to make positive rules. In other words, coherence and accountability are best achieved by creating a global division of labour.
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