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Constructing an Executive Branch

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ABSTRACT

The World Trade Organization (WTO) as an institution accords much less of a role to its chief official and her staff, the WTO Director-General and the Secretariat, than do any of its sister international organizations—the World Bank, the International Monetary Fund, the Organization for Economic Cooperation and Development—to their chief officers and staff. The WTO Secretariat is much smaller than its peer international organizations and underfunded. In considering WTO reform, this deficiency needs to be rectified if WTO performance is to live up to its Members' needs.

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INTRODUCTION

When the term “WTO reform” is mentioned, what first comes to mind for most observers is restoring binding dispute settlement, followed by overcoming the lack of negotiation of new multilateral agreements, and in third place, if it is thought about at all, monitoring—a Secretariat function.¹ This grossly understates the current role of the WTO Secretariat and the role it might usefully perform.

It is a fact universally acknowledged by all students of political science that a proper representative form of governance must consist of three branches of activity—legislative (rulemaking in the case of the WTO), judicial (dispute settlement), and administrative or executive. Not every situation in international commercial relations requires a new rule, nor is it the subject of a dispute. There is, often, however, a steady demand for an administrative element that supports daily the smooth functioning of the world trading system. Here, there is an institutional deficiency that any serious consideration of reform should address. The role of the Secretariat, the staff of the WTO, differs substantially in many respects from those of its sister international economic institutions—the World Bank and the International Monetary Fund (IMF or Fund). There are also features that distinguish the WTO from the Organization for Economic Cooperation and Development (OECD). The differences have had consequences.

COMPARING THE ROLE OF THE WTO SECRETARIAT WITH THOSE OF ITS SISTER INTERNATIONAL ORGANIZATIONS²

The World Bank and the International Monetary Fund

Executive functions in the World Bank and the IMF are lodged in Boards of Executive Directors, who are on-site, full-time representatives of the membership as a whole, working together with the staffs of the Bank and the Fund. These Executive Boards act on behalf of the Board of Governors, whose members are usually Finance Ministers or heads of central banks.

The WTO has a different structure. There is no executive board. The General Council is made up of heads of all 164 delegations, most of whom reside in Geneva. It meets every two or three months. The Council has been delegated the full authority of the Ministerial Conference. Full meetings of Ministers are supposed to take place every two years (due to COVID-19, none were held for several years after December 2017). Mini-ministerial meetings do in fact take place more frequently with far fewer Members in attendance. They are hosted by a Member and are often scheduled to coincide with other events such as OECD Ministerial Meetings or the World Economic Forum at Davos.

Below the level of Ministerial Conferences, meetings of the whole membership occur in three different settings—the General Council, the Dispute Settlement Body (DSB), and the Trade Negotiating Committee (TNC). General Council and TNC meetings take place at the ambassadorial level, attended

1 Monitoring is encompassed in a separate PIIE Working Paper, “WTO 2025 – Enhancing Global Trade Intelligence.” <https://www.piie.com/publications/working-papers/wto-2025-enhancing-global-trade-intelligence>.

2 I benefitted from discussions with PIIE Senior Fellows Sean Hagan and Sherman Robinson in comparing the organization of the Bank and the Fund but take full responsibility for the views expressed herein.

by the permanent representatives. In addition, there are meetings of both operating and negotiating committees, attended by any Member wishing to do so, represented by its ambassador (the Member's Permanent Representative), a Deputy Permanent Representative or staff from the country's mission or, if very specialized, experts from capitals (e.g., for fishery subsidies). In short, almost everything at the WTO takes place in settings open to all Members, although some Members are far more active than others. Level and degree of participation depends on the subject at hand.³

While there is no WTO Board of Executive Directors, at various stages smaller groups of Permanent Representatives meet with the Director-General (DG) in his/her conference room. For example, during 2017–21, the DG would meet with all of the negotiating committee chairs in preparation for TNC meetings. For four or five years during the existence of the GATT, there was a Consultative Group of Eighteen that met regularly, something of a steering group, with a narrower mandate than the Council. It was suspended in 1979 and did not meet again.⁴ There is currently nothing as formal as that mechanism at the WTO.

Another major difference between the WTO and its sister international economic organizations is that in none of these settings does the DG or any Secretariat staff member make concrete policy recommendations, and none are expected from them. In sharp contrast, the World Bank President and the IMF Managing Director (MD) do make policy recommendations and initiate proposals and put them to their Boards for decision. Some of their proposals are very far-reaching, such as recommending the creation of new facilities or programs.

What explains the great divergence in the role of the leadership of the Bank and the Fund, as compared with the WTO? First, it is useful to see where the roles differ in these institutions' founding documents. The Marrakech Agreement creating the WTO could not be more economical in its reference to the DG. Article IV entitled "Structure of the WTO" does not mention the existence of either the Secretariat or the DG. Article VI states that the Ministerial Conference is to appoint a DG and stipulate his/her term of office. The DG is to appoint members of the staff of the Secretariat "and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference." The Agreement then provides for something that in fact did not happen: "The Ministerial Conference shall ... adopt regulations setting out the powers [and] duties of the Director-General." The role of the DG was left

3 For example, in accessions working parties, the US and the EU carry most of the burden of asking questions and reviewing documents and answers. They do this because they have the capacity to do it, and they have a strong interest in maintaining a high level of obligations that the WTO Membership should strive to meet. In the e-commerce Joint Statement Initiative (JSI), the co-convenors—Japan, Singapore and Australia—are of course very active, but so are Canada, China, and several others.

4 "Institutions and Procedure." World Trade Organization. https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/intitu_proced_e.pdf. Page 1115.

without anything more of a definition beyond being a chief of staff, with some limited, largely administrative, delegations found in the WTO Agreements.⁵ None specify a policy role.

Compare the Articles of Agreement of the International Monetary Fund. The provision on the structure of the Fund formally includes the MD. That may seem a minor drafting choice, but what follows is not:

the Executive Board [which] shall be responsible for conducting the business of the Fund, . . . shall consist of twenty Executive Directors elected by the members, with the Managing Director as chairman. (Emphasis added).

The MD, as chairman of the Board, sets the agenda for Board meetings and makes proposals. She is given a vote if the Executive Directors are equally divided on an issue, and explicitly in the Articles of Agreement is given the right to participate in meetings of the Board of Governors. More than being the “chief of the operating staff of the Fund,” the MD is to

conduct, under the direction of the Executive Board, the ordinary business of the Fund.

Not surprisingly, since both institutions emerged from the Bretton Woods Conference, the President of the World Bank has the same role for the Bank as the MD has for the Fund: “The Executive Directors shall be responsible for the conduct of the general operations of the Bank” and the “President shall be chair of the Executive Directors,” casting any tie-breaking vote if one is needed.

The fact that the MD and Bank President each wear two hats constitutes an important difference from the situation of the WTO DG. The Bank President and Fund MD are each both Chair of the institution’s Executive Board and head of the staff. It is the combination of the two roles that makes the position so powerful. Since the staff are responsible for the analytical work that provides the basis for all recommendations to the Board, the Chair effectively controls the substance of these recommendations. The Chair of the Board both controls the agenda of the Board and guides the meetings as well—increasing the probability that the recommendations will get adopted.

To some extent, there is a role reversal. The Fund and Bank Executive Boards go about their business under the direction of their chairs, the MD for the Fund and the President for the Bank, rather than the reverse. While ultimate decisions as a formal matter rest with the Board, the issues for decision must be put to the board by the executive. The staff are to make expert judgments as to what sort

5 Several provisions of the WTO Agreement refer to the role of the WTO DG in specific contexts, namely:

- Article VII:1 of the WTO Agreement in the context of the WTO budget.
- Articles X:7, XIV:3-4, and XV:1 of the WTO Agreement, Article 20(1)-(2) of the Agreement on Customs Valuation, Articles 9.1.3, 9.6.1 and 9.10.1 of the Agreement on Trade in Civil Aircraft, and Article XXII:2, 12 and 17 of the Amended Agreement on Government Procurement on the Director-General’s role as WTO depositary.
- Article 18.3 of the Agreement on Trade Facilitation in the context of the appointment of an “Expert Group.”
- Article 8.7 of the DSU on the DG’s role in composing WTO dispute panels.
- Footnote 12 to Article 21.3(c) of the DSU on the DG’s role in appointing arbitrators on the reasonable period of time to comply in WTO disputes.
- Article 22.6 of the DSU on the DG’s role in appointing arbitrators to assess the level of suspension of concessions or other obligations in the context of WTO disputes.

of financial arrangements are needed, what projects are to be supported, and only then can a political and policy judgment be made by Board members. This is not to detract from the Board's ultimate decision-making power. The Executive Board is not a rubber stamp by any means. Policy must be derived from or at least approved by the Executive Board. Nevertheless, a strong executive function has been created, entrusted to the MD and the President, respectively, placing each in a position to provide leadership for their organizations.

There is another institutional difference. The Executive Directors (EDs) are appointed by country members, but they are paid by the Bank and the Fund.⁶ In addition, their immunity can only be waived by the IMF. The EDs are expected to serve full-time in their positions, applying themselves to the business of the Fund or the Bank, at the call respectively of the MD and the President. The EDs are imbedded in the international institution. This institutional affinity exerts a force on these individuals even as they are responsible to the governments that they represent. One manifestation of their unique role is to be found in the voting process: all EDs are elected and most of them are elected by "constituencies" (i.e., of countries), who pool their voting power to elect a single ED. However, when the ED casts a vote on the Board, he or she cannot split his/her votes. Each must cast his or her votes as a block—which further demonstrates the point that the ED is not the representative separately of each of the countries in the constituency. This arrangement dilutes the direct influence of individual constituent countries when they are represented in a group by a single ED, and further enhances the role of the Board chairs.

This is the polar opposite of the WTO, where the ambassadors of the Members chair WTO committees and are responsible for their output. Each of these permanent representatives speaks for only the country for which they are accredited, except when serving as a chair, and then acting in a neutral capacity. Decisions at the WTO are made by consensus, and Members' representatives are more closely extensions of their governments. It may be just a nuance, but it is an important nuance.

A comparison of institutional arrangements would not be complete without noting the additional delegations to the WTO DG which can be found in the various WTO agreements. Some of these delegations are not in themselves unimportant, at least conceptually. Members can, if they wish, call upon the DG to provide "good offices" to help mediate a dispute.⁷ There have been instances of Members calling upon the DG to play this role (delegated to a Deputy DG), but the frequency and importance, due to the confidential nature of the proceedings, are unknown. There is no evidence that this function has played a key part in settling disputes, qualitatively (how important were the disputes?) or quantitatively (how often has this facility been utilized?). Another potentially important specific delegation to the DG is to be found in the setting up of the Trade Policy Review Mechanism, calling on the DG to issue an annual report "setting out major activities of the WTO and highlighting significant policy issues

6 "By-Laws of the International Monetary Fund Section 14. Terms of Service." International Monetary Fund. <https://www.imf.org/external/pubs/ft/bl/bl14.htm>. Section 14(e)(1).

7 Articles 5.6 and 24.2 of the Dispute Settlement Understanding (DSU) on the DG's good offices, conciliation or mediation with a view to assisting Members to settle disputes generally and disputes involving least-developed country Members, respectively.

affecting the trading system.”⁸ This is an opportunity for the DG to emphasize the issues she considers to be of greater importance. How effective is this? Each of the heads of the international economic organizations is expected to issue an annual report. Do these reports shape the activities and preferences of their respective organizations or largely reflect current events and Members’ views? It is not clear that the annual reports are as important for the members as they are for the public to better understand these institutions. The remaining references to the DG are largely ministerial, appointing experts, panelists, being the depository of notifications, and the like. The institutional arrangements for the WTO do not suggest that the DG is to guide what the organization is to accomplish. This is a fundamental difference from the Bank and the Fund.

Besides looking at specific delegations of authority and institutional arrangements stemming from an analysis of the documents setting up the three institutions, one can logically differentiate the executives of the Fund, the Bank, and the WTO based on the functions of their organizations. A bank or monetary fund cannot operate without making daily decisions on conditions for extending credit to particular borrowers. These matters cannot be managed by a large group, by a committee of the whole that includes all the members. This suggests the need for a strong executive function. But what of the WTO’s DG? Is the utility of having the WTO simply to host independent dispute settlement and provide rooms in which negotiations can take place? This view would relegate the DG to being a personnel director for staff and a facilities manager for the WTO buildings, and nothing more. Is that all the world trading system needs? The question is answered by the fact that two major purposes of the WTO—negotiations and dispute settlement—are not working well at all, and part of the cause may lie in the absence of a stronger executive. It is also answered by the choice of a new DG in 2021 whose selling point was high visibility, hardened by ministerial service in her country under the most trying of conditions,⁹ and very good connections at the highest levels of Member governments. In short, the Members chose to enter an era of more vigorous leadership from their DG, although some might experience buyer’s remorse.

Another institutional comparison is that the WTO was always going to be a forum in which difficult political decisions would have to be taken. Trade liberalization is often a tough political sell to domestic constituencies, and so is the adoption of new rules. The WTO is about restraining Members’ ability to restrict trade, although you will generally not see this in any pamphlet on the organization. The Fund and Bank may have a similar effect on the countries to whom they are extending financial support, but the Boards are dominated by the voting power of the lenders, the sources of finance. That is one more reason why at the outset, there would be a desire for strong leadership at the Bank and the Fund to protect members’ assets and for weaker leadership at the WTO—and the GATT before it—to protect Members’ freedom of action, known as their “policy

8 Paragraph G of the Trade Policy Review Mechanism on the annual report to be prepared by the DG “setting out major activities of the WTO and highlighting significant policy issues affecting the trading system” in the context of the annual overview of developments in the international trading environment by the Trade Policy Review Body.

9 In her autobiography, Ngozi Okonjo-Iweala tells the story of her mother being kidnapped when Ngozi was Nigerian Minister of Commerce to intimidate her in the conduct of her official duties. The effort failed, and her mother was returned.

space” to regulate and restrict trade (even if doing so would be to their net detriment as other Members’ trade restrictions are burdens on each exporting country’s own commerce).

There is one more international economic organization that should be looked at for purposes of comparison.

The Organization for Economic Cooperation and Development

The OECD has far fewer members (38 versus the 164 of the WTO). When it was founded in 1961, it had only 20 members.¹⁰ It might have been practical to operate like the WTO, based on a committee of the whole, but its charter gives more of an institutional role to its Secretary-General. The Secretary-General is appointed by the OECD Council, but also serves as Chairman of the Council when it meets at sessions of Permanent Representatives and “may submit proposals to the Council or to any other body of the Organization.”¹¹ Another difference is the effective operation of the OECD’s committees (more on this below).

The OECD is in terms of its functions perhaps more comparable to the WTO than to the Bank and the Fund. A large part of its work is in the nature of international economic policy coordination and providing member governments and the public with relevant data. But it diverges in several important respects. Total staff numbers are larger (3,300 at the OECD versus 600–700 at the WTO Secretariat). The OECD staff has, members and staff say, a greater amount of discretion as to the economic research it believes is useful to conduct and for the issuance of reports, albeit within overall member guidance. The OECD staff may sometimes withdraw from an activity or study on a subject upon the objection of a member, but this is relatively rare. With much greater resources and freedom, and with the support of members, OECD studies are produced at a far greater rate than those of the WTO. The depth of expertise in particular areas causes national governments to shy away from directly challenging the OECD to prevent it from engaging in the range of analyses that it does. A larger staff, a greater budget (supplemented by individual member contributions to sponsor research on topics of specific interest to the donor, something strongly resisted by a few influential WTO members), and more freedom to choose what it wishes to address and how research is conducted—all make a difference in what can be delivered.

Another source of strength for the OECD, allowing it to be more proactive and directly relevant to current challenges, is the nature of its committees. The OECD Secretariat works closely with the over 300 committees and task forces. The Trade Committee attracts the participation of senior trade policy officials from capitals. Those in attendance are not generally reading instructions drafted by someone else because they have often chaired the process at home that develops the positions taken, and they often have the flexibility to amend their

10 The official OECD founders are Austria, Belgium, Canada, Denmark, France, (West) Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States. The Organization for European Economic Cooperation (OEEC) was the forerunner of the OECD.

11 “Convention on the Organization for Economic Cooperation and Development.” OECD. <https://www.oecd.org/general/conventionontheorganisationforeconomiccooperationanddevelopment.htm>.

positions as deliberations occur. Given the smaller and more homogeneous membership, there is more of an opportunity for key members to consult with each other and with staff before and during meetings to move the agenda forward. The members' primary interest is policy coordination and sponsoring research, not negotiation of new agreements, which makes the process more open and less guarded. As the conversation does not go to legal obligations, it can be less formal. While the objective may be forming a consensus, there is enough in the way of common interests to avoid the threat of vetoes or hostage-taking. The outcomes are reported to the Council, but since the committee members are experts in their fields, are senior, and based in capitals, the Council is not usually an obstacle to reaching a unified member view, which can then be transmitted to Ministers for ultimate approval as necessary. Select non-members are invited to non-confidential discussions. Invited as observers are Argentina, Brazil, Chile, Hong Kong-China, Singapore, the European Free Trade Association, the IMF, and the WTO.

As with any organization, the fact that a problem engages the attention of the OECD does not mean that it is solved. I was a founder and first chair of the OECD Steel Committee in 1979. Steel had been a source of trade friction during that era, particularly involving trade among the European Commission, Japan, the United States, and the Nordic countries, all OECD members. Cartelization, subsidization leading to excess capacity, dumping, and import-related injury characterized the sector. The idea behind the committee was straightforward—that transparency with respect to production and trade would allow more sensible investment decisions to be taken by both governments and private producers. There was substantial restructuring and consolidation in the United States and Europe, but with China becoming the world's largest steel producer, trade frictions (antidumping cases, national security restrictions) have persisted through to the present times.

It is fair to ask why there are no industry sector committees at the WTO. WTO discussions are held mostly on a broader basis when the problems that occur are manifested in trade. Talks on subsidies, for example, are not focused solely on steel trade. There are a few areas of focus by sector: they are non-industrial products, and they are exceptions. One is the negotiations to curb fisheries subsidies. A second prospective negotiation is very different in motivation and provenance: it is for cotton, at the instance of four of the poorest cotton producers, the C-4 (Cotton Four—Benin, Burkina Faso, Chad, and Mali). Neither has produced negotiated results as of this writing.

The OECD is a place for launching agreements in a number of substantive areas fostering various aspects of international economic cooperation. These can include political commitments, but they are not enforceable. There is no OECD dispute settlement facility. Examples of OECD work products: (1) the OECD provides a model tax treaty for allocation of income between host and parent country of cross-border corporate activity; (2) OECD members have agreed to non-binding guidelines for transfer pricing for the allocation of profits derived from international transactions; and (3) major economies agreed under its auspices to impose a minimum corporate tax. Its members also agreed to guidelines against bid-rigging in government procurement.

As a parallel, the WTO could logically have provided a model for free trade agreements. It has not done so.

The International Trade Organization

One additional institutional comparison is useful, this one historical. Had the International Trade Organization (ITO) come into effect, under its Havana Charter, there would have been an Executive Board consisting of 18 persons selected by the Conference of the whole membership. As with the WTO, the ITO Charter does not specify any duties for the ITO DG, leaving this to the Conference. It only provides that “the Director-General or his representative shall be entitled to participate, without the right to vote, in all meetings of any organ of the Organization.” In short, the authority of the ITO DG came under the heading of “to be determined,” much as is the case for the WTO DG.

The WTO governing structure

As noted, under the Marrakech Agreement Establishing the WTO, all authority, except over staff, is vested in the General Council, a committee of the whole, and therefore composed of 164 members, meeting as itself or for dispute settlement purposes as the dispute settlement body, and in three other councils operating under the Council’s guidance. The three additional Councils are the Council for Trade in Goods, the Council for Trade in Services, and the Council for TRIPS. The General Council also meets as the Trade Policy Review (TPR) Body. The Councils are assigned a central role. They are charged with overseeing the functioning of the WTO Agreements. These five committees of the whole operate by consensus.

Under the Marrakech Agreement, the Ministerial Conference is to establish the powers and duties of the DG, but none have been specified. As the General Council has been delegated the powers of the Ministerial Conference, it could specify further functions of the DG if it wished to do so. It does request on occasion reports from the DG, but it does not delegate further powers to that office.

The three Councils are assigned task of “overseeing the functioning” of the WTO Agreements. This can be a broad mandate. The Councils could determine whether the agreements are accomplishing what was intended by the signatories, specify how they should be administered, and decide on whether they should be amended. The Marrakech Agreement in setting up the Councils did not confer a negotiating mandate on them. That was done in, for example, two Uruguay Round Agreements—the Agreement on Agriculture (AOA) and the General Agreement on Trade in Services (GATS). The Committee on Agriculture in Special Session and the Committee on Services in Special Session have ongoing negotiating mandates. Neither of these committees has produced new formal agreements (with the possible exception of the political commitment in Nairobi at the 2015 Ministerial Conference for developed country members to forego agricultural export subsidies).¹² Several WTO committees meet in special sessions to address Doha Development Agenda (DDA) issues. Again, no agreements have emerged, and there is no consensus as to whether the DDA is alive at all.

At the WTO, there is one exception to the absence of the DG from a formal policy role. In setting up the DDA, the DG was made Chairman of the TNC,

12 «Nairobi Package.» World Trade Organization. https://www.wto.org/english/thewto_e/minist_e/mc10_e/nairobipackage_e.htm.

which is responsible to the General Council. The TNC meets back-to-back with General Council meetings on adjacent days, and the DG calls on Chairs of the WTO's negotiating committees (e.g., the Committee on Agriculture in Special Session, the TRIPS Council in Special Session) to report. To date, the areas where negotiations are most active, in the Joint Statement Initiatives (JSIs, each of which is an open plurilateral discussion or negotiation), are ignored by the TNC, because they are not DDA activities. The only live negotiations within the purview of the TNC are the fisheries subsidies talks. The JSI reports are presented to the General Council. Any Secretariat involvement in the JSIs is kept low-key as these plurilateral activities are not sanctioned by the Membership as a whole.

The role of the WTO DG is often described as that of being an honest broker. Brokers require parties and counterparties. Being a broker in the absence of strong interest on the part of Members motivated by a sense of purpose, intent on reaching positive conclusions, is a description of an empty assignment. It is not a recipe for action, unless and until there is momentum developing among the Members to add to the WTO rulebook or to open markets.

Reciting the mantra that the WTO is a "Member-driven" organization has become an excuse for not developing any executive functions, preventing the Secretariat from initiating proposals. This may be fine if there is universal interest in achieving a result, whatever the subject—food security, e-commerce, or domestic support of agricultural commodities, for example. The hope, if it exists, that the regular Committees or those in Special Session will produce results with an inert DG is based on misplaced optimism. The WTO must make greater use of the skilled and experienced Secretariat. This cannot substitute for Members reaching agreements, but it could foster the process of getting to results.

ACTIVITIES OF THE WTO SECRETARIAT

The fact that the DG does not chair the Council is the most visible structural difference between the WTO and its sister international economic organizations.¹³ This does not mean that the WTO Secretariat is not playing a vitally important role. Far from it, it is essential for the functioning of the organization. The question is whether the role that it is currently assigned is sufficient.

At present, WTO Secretariat support is often unseen but critical for all Council and committee work. Briefing notes and detailed papers on subjects requested by the committees provide the foundation of the WTO's work. These efforts are well-known to Members and particularly committee chairs and appreciated. Where the WTO Secretariat is most visible independently is in monitoring and in preparing the DG's annual world trade report illuminating to a significant degree what is taking place in the world of trade. The report serves as the basis for each TPR. The Secretariat is also active in disseminating information notes and in issuing the world trade barometer and other reports generated by the Economic Research and Statistics Division (ERSD) or requested by the operating committees of the WTO. During the pandemic, the Secretariat

¹³ One exception is that a Deputy DG chairs the Consultative Forum on Cotton Development Assistance, which is another committee open to all who wish to participate. It is a bright spot in the WTO with the goodwill shown to the poorest cotton producers, and in concrete terms, it is beneficial to them. The Deputy DG in charge of agricultural issues chairs this Forum. I did so from 2017–21, and Jean-Marie Paugam does so at present.

decided on its own to issue numerous reports giving useful data to aid Members in framing their own policies in response to the health crisis. The Secretariat is also very much engaged in training activities, particularly in the Least Developed Countries, relating to WTO rules and procedures, and in helping applicant countries work their way through the process of accession.

The DG and her Deputy DGs attend meetings with other international organizations and fan out across the globe to build support for the multilateral trading system. The Secretariat otherwise seeks to be largely invisible. In every WTO committee, there is a dedicated committee secretary, who is a senior Secretariat member. The secretary sits next to chairs of committees at meetings and usually does not speak unless asked to address a particular matter. Since chairs come and go, as do most ambassadors accredited to the WTO who usually serve a three- or four-year term, the institutional knowledge of the trading system is largely contained within the Secretariat. The deciduous nature of the body of permanent representatives is most obvious when in every General Council meeting, the Chair reads out the names of departing permanent representatives and the list of arriving ones. True, some permanent representatives are less impermanent, coming back to the WTO in a more senior capacity, having served in a more junior capacity in missions to the WTO in prior times, or having had responsibility in their capitals for relations with the WTO.

There is a lot of talent in the ambassadorial corps, but without negotiations in progress that demand the attention of capitals, the work is largely in the hands of transients, with continuity provided by largely invisible Secretariat members. The conclusion to be drawn is not that the system cannot work as it is. It is that it could work better if a more proactive role was assumed by the Secretariat.

There is another invisible role that is essential to the workings of the organization, which is both a strength and a weakness of the functioning of an important part of the trading system administered by the WTO. The Secretariat provides essential support to dispute settlement panels and, when it existed, to the Appellate Body (AB). AB Members were to be commuters, and not devoted full-time to this assignment, and panel Members were selected by the individual litigation. In contrast, Secretariat turnover was limited. Over time, the Secretariat and particularly the AB's Division Director became very influential, having a deep institutional history and expertise. To critics of the dispute settlement system, this was not a positive development.

WHAT IMPROVEMENTS COULD BE MADE?

Secretariat Culture

Starting with basics: the DG must be the chief motivator of staff members, defining their mission and individual roles. This is the essence of leadership.

The Secretariat must be imbued with an *esprit* that is the result of a conscious attempt at an inculcation of common values. Successful national governments have a mandarin class of civil servants, loyal to their political masters, but having the expertise in both substance and process to drive agendas forward. This takes training as well as attitude, and the two are related. There is no specific common training to be a division director at the WTO. This should be remedied. The French civil service has created a cadre of professionals (such as the *Inspection Générale des Finances*, from whose ranks were drawn one

President of France and four French Prime Ministers¹⁴), well-equipped to meet the extraordinary challenges that seem to only grow larger and more daunting with time. Most countries pay attention to the career development of their civil services in an organized way. Attention to structured career development for the Secretariat would be of substantial value and appreciated, especially if paired with improved opportunities for promotion. In addition, Directors should rotate through management positions, to the extent possible, to have varied sets of experiences. Their purpose is to create a vibrant organization, not spend a career in an administrative fiefdom.

There is a justifiable expectation among Members that the Secretariat is to be neutral with respect to substantive positions taken by individual Members. But it is a near-fatal flaw to be neutral as to whether there are positive results. The absence of an explicit delegation of policy functions to the DG and her Secretariat should be viewed not solely as a detriment, but equally as a potential benefit. By virtue of how Member decisions are taken at the WTO, there is scope for innovation, for improvements to be made in the role of the Secretariat, in practice rather than through solely through amendments of the Marrakech Agreement. As all Member decisions are taken by consensus, the Members will not likely agree to a delegation of responsibilities which they too jealously guard (just as they cannot easily move forward with a negotiating agenda). However, where decisions are made by consensus, the Members are equally unlikely to agree to circumscribe the role of the Secretariat as it might be defined by a strong leader as DG. This is not a recipe for unwise aggressive steps to be taken by any DG that would not have substantial Member support. Going too far with a self-defined mandate could simply cause the organization to become even more dug in, to remain at an impasse.

What is needed from a DG is forward-leaning leadership to be exercised with political acumen. Passivity would be deadly, especially given the diversity of interests of the Members that need to be moved toward to find common ground. The Secretariat must work with *ad hoc* coalitions of “willing members” to see what can be accomplished at the WTO. A DG should be an advocate for ensuring that the Members fulfill their current obligations but should go beyond this to illuminate the path forward for new rules where they are needed, and for trade liberalization where it would be feasible.

There are too many instances of Secretariat members afraid of being accused of violating their responsibility to be free of bias if they take a position that happens to align with that of one or more Members. The Secretariat should be neutral as to Member positions from the point of view of not taking instruction from any Member(s). It cannot both be effective and remain neutral as to whether there are results, whether in negotiation or dispute settlement. Again, political acumen needs to be applied to gauge the sustainable limits of independence.

14 “The French General Inspectorate of Finance.” Public Financial Management Blog. January 17, 2017. <https://blog-pfm.imf.org/pfmblog/2017/01/the-french-general-inspectorate-of-finance.html>. An Assistant Secretary of the US Treasury (John Petty) in an earlier era wished to emulate this but was only partially successful. The Treasury Attaché in Tokyo, Tim Geithner, was to become Chairman of the Federal Reserve Bank of New York and then Treasury Secretary.

Most human progress has been achieved by seeking to move past perceived and self-imposed limits. There is a benefit to failing to perceive that what one is attempting is not likely to succeed. The WTO, as beneficial as its existence is and has been, has been far less productive in many respects than it should have been or that the GATT was. The question is whether there is a role for the Secretariat to help change the current relatively flat trajectory of the WTO. Earth satellites that do not maintain sufficient velocity find themselves in a decaying orbit and end in extinction. This need not be the case for the WTO. I am not suggesting that members of the Secretariat and delegates to the WTO conduct themselves based on an eschatological philosophy,¹⁵ but the reverse. They should see themselves as being posted at the WTO for a reason—the active good management and improvement of the trading system.

The Culture of the Members

A culture of timidity, of dwelling on inhibitions rather than possibilities, cannot be allowed to prevail. One forward-leaning ambassador lectured his colleagues: “you must not say to the public, to your own governments, that nothing is possible at the WTO, because that is a self-fulfilling prophecy.” The same is doubly true for trade ministers. Governments must send their representatives to Geneva with the instruction that their job is to reach agreements designed to improve the trading system. Their attitude must be that they are negotiators. The one mark of success for negotiators is to bridge differences and reach agreements.

The WTO’s mantra that the institution is “Member-driven” must be discarded. It is obvious that final decisions are to be taken by the WTO’s Members, sometimes collectively, and always individually. Repeating this empty slogan has become an excuse for inaction, not just for the Secretariat, but for those Members who do not seek to make progress. It is true that the Secretariat will not be able to instill in unwilling Members a thirst for greater international trade liberalization and expansion of the rules of the multilateral trading system. For there to be some assurance of a rebirth of the WTO, those who formulate trade policy in capitals must believe that the institution their governments labored to create and maintain is worth the investment of their efforts. Member governments need to not only pay lip service to the importance of the multilateral trading system when they are in G20 meetings but demonstrate through positions and actions taken at the WTO that the system is vitally important to them and that its improvement is essential.

Committee chairs should be neutral as to Member positions but not neutral as to whether needed negotiated outcomes are achieved. They cannot accomplish progress without strong Secretariat support, combined with their own untiring efforts.

While positive change needs to emanate from committee work, coordination of Member efforts more broadly is needed as well. To manage agreements and improve them, smaller groups of Members need to meet to develop positions. The greatest authority that the DG has, unwritten but nevertheless real, is her convening power. This was demonstrated during the financial crisis, bringing

¹⁵ *The part of theology concerned with death, judgment, and the final destiny of the soul and of humankind... the science of last things.* See Oxford English Dictionary.

international financial institutions and large commercial banks together. During the pandemic, the DG brought producers of vaccines and governments together. During the dramatic loss of food security due to Russia's invasion of Ukraine and making the Black Sea impassible, the DG convened experts, and representatives of food exporting and importing countries together, with the World Food Program.

To move the system forward, the DG should meet with different configurations of Members depending on the issue at hand. But there is also a need for management of the work of the organization more generally. A standing group of about 18 (not much larger), as once existed, should be reconstituted for oversight of the agreements and negotiations. For binding dispute settlement, the DSB should have a small steering group of Members, with a Deputy DG as co-chair to oversee the operation of the Dispute Settlement Understanding (DSU).

DGs have risen to the challenge to exercise leadership at crucial times in the history of the multilateral trading system. Some of those that stand out are Arthur Dunkel, who tabled a compromise draft that allowed the Uruguay Round to proceed toward a successful conclusion; Peter Sutherland, who is credited with helping to drive that Round across the finish line, without which there would have been no WTO; and Pascal Lamy, who instituted heightened monitoring of trade restrictions, which helped the world economy weather the financial crisis without that recession becoming a second global economic depression.

This is not to say that more could not have been done on occasion, for example, to have trade serve to fight the pandemic. That story is still not complete, over two years after the onslaught of COVID-19.

Secretariat leadership must be given some space within which to operate. This will require a change in attitude on the part of Members. Members must conclude that consensus can no longer mean that every Member has a veto over everything, no matter how small, or even for large matters. Each Member cannot consider that it controls the agenda if paralysis is to be avoided. As for large decisions, a Member's blocking a JSI from legitimacy within the WTO cannot be allowed where there is no direct harm to the non-participant. Opting out by non-participants is a better outcome for the institution than blocking progress that can be made by groups of the willing.

Budget

An important difference between the Bank and the Fund on the one hand and the WTO on the other is funding. The Bank and the Fund operate on earnings, what they make on extending credit, plus other fees and charges.^{16,17} The World Intellectual Property Organization (WIPO) also exists on fees.¹⁸ The ability of an

16 "Build Forward Better: IMF Annual Report 2021." International Monetary Fund. <https://www.imf.org/external/pubs/ft/ar/2021/eng/downloads/imf-annual-report-2021.pdf>. See, for example, pages 54–56 of the 2021 IMF Annual Report.

17 "International Bank for Reconstruction and Development: Management's Discussion & Analysis and Financial Statements." The World Bank. June 30, 2021. <https://thedocs.worldbank.org/en/doc/9e6e5c7c885899cba176dd6e1409cbeb-0040012021/original/IBRD-Financial-Statements-June-2021.pdf>. The World Bank's "business model" is displayed on page 6 of its 2021 Financial Statements.

18 Fee income annually is over US\$1 billion.

executive branch of an international organization to function is arguably linked to its funding. Each must propose a budget and get it approved by the members, but for the WTO, the budget is a cost to Members to be borne without the institution having an income stream of its own. Whether this is a psychological or real difference might be best seen in the fact that the budget of the WTO has not increased for over 10 years, and discretionary funding is very limited. Staff promotions are difficult to provide. Activities can be rearranged but the overall level of activities at the WTO is not going to increase, absent a necessary increase in funding. In recent years, the debate over the budget in the WTO Budget Committee has become a means for individual Members to exercise greater control over the activities of the Secretariat, to do less rather than more, coupled with some Member's resisting permitting the WTO to accept additional donations from Members to fund activities.

Expectations of the Members

A distinguishing factor between the WTO and its sister international economic organizations is the composition of their respective memberships and how they exercise control. The Fund and the Bank operate by voting, and votes are weighted by contribution. Thus, the influence of providers of financial resources outweighs by far the consumers of these resources at those institutions.

The OECD has greater homogeneity of interests given that it was created to coordinate aid largely if not almost entirely provided by the United States for the reconstruction of Europe and is now dominated by major European countries and those of North America. Although it has voting provisions, it operates largely by consensus, and its membership is more homogeneous than that of the other institutions (i.e., developed countries). This may change, as on January 25, 2022, the OECD Council [decided to take the first step in accession discussions with six candidate countries](#) to OECD Membership—Argentina, Brazil, Bulgaria, Croatia, Peru, and Romania.

The WTO operates by consensus. There are voting provisions (one vote per Member, not weighted by its share of world trade), but no votes are ever taken. The Members range from being least developed, to developing, to industrialized. Interests are diverse: There are groups of small vulnerable economies, conflict-affected countries, land-locked countries, those which acceded after the WTO was created (thus not original Members), major agricultural exporters, net food importers, members of free trade areas and customs unions, countries outside of many of these arrangements, those who very much like the *status quo*, and those who seek change. On many issues, there will be divided views. The salient common denominator is the apparent tacit agreement among all Members that there will be no voting. Voting would imply that every Member, each of which now has a veto, would lose more control than it would gain. An unfortunate derivative of the diversity of interests is having a neutral DG, not only neutral as to positions of individual Members, but neutral as to whether anything that the Members have not agreed to should be attempted.

The lowest common denominator dominates. It consists of Members on average making pledges to multilateralism without pressing too hard for change in the *status quo*. This is not the position of all Members, but the sum of all positions. A strong executive would have to overcome this inertial state.

ELEMENTS OF REFORM FOR CONSIDERATION

If there is to be a plan for a WTO 2.0 or WTO 2025, which is very much needed, a re-examination of the role of the DG and the Secretariat should be an important part of the conversation. The suggestions contained in the following are presented to help stimulate a debate about this important but underdeveloped institutional aspect of the WTO. It is time to have a third branch of global trade governance that goes beyond monitoring, alongside enhancing the monitoring function.

There are three broad categories to examine, after determining the institutional place of the DG:

- The DG's and the Secretariat's role in dispute settlement and trade agreement enforcement.
- The DG's and the Secretariat's role in trade negotiations.
- The DG's and the Secretariat's role in administering the trading system.

The Place of the Director-General in the WTO

- **The Ministerial Conference shall entrust the operation of the WTO to a newly constituted Consultative Group of 24 (CG24), working within the guidance of the General Council. The General Council is granted the full powers of the Ministerial Conference (MC) between sessions of the MC.**
- **The General Council shall be chaired by the DG.**
- **The DG shall be responsible for the day-to-day operations of the WTO, including strategic foresight and policy planning.**
- **Consultative Group of Twenty-Four (CG24):** A standing group of about 24 Members (and perhaps smaller), chaired by the DC, should be constituted for oversight of the operation of the agreements and negotiations.
 - » These steps mirror the organization of the World Bank, the IMF, and the OECD.
- To move the system forward, the DG should also meet with different configurations of Members depending on the subject at hand and appoint working groups of Members chaired by Deputy DGs as needed.
- The DG should be an advocate for assuring that the Members fulfill their current obligations and should go beyond this to illuminate the path forward for new rules where they are needed and for trade liberalization where it would be feasible.
- The DG and the Secretariat are to work with *ad hoc* coalitions of “willing members” to see what can be accomplished at the WTO.
- The DG is to be the chief motivator of the staff, defining their mission and individual roles.
- A conscious attempt at an inculcation of common values is needed with attention to training for staff to be promoted to the level of Director. Attention is to be paid to structured career development for the Secretariat. Directors should rotate through management positions, to the extent possible, to have varied sets of experiences.

The Secretariat's Role in Trade Agreement Enforcement (Including Dispute Settlement)

Binding dispute settlement, mandated by the DSU, cannot be restored absent change. Change can occur in a variety of ways. One path forward is to make changes to the structure of the AB and provide additional written instructions to that body. Another route is re-examining governance by creating a different balance within the institution. If there is no active legislative function, a body that serves to a degree as a check or balance to judicial power will have to be lodged somewhere else, in the DSB, in the Secretariat, or both. Judicial restraint can be achieved, for example, by enabling the DSB to have an actual authoritative role on behalf of the Members. The creation of an entirely new independent Office of Legal Counsel (OLC) within the WTO will, no doubt, be viewed as being extreme. But it is a possible approach, as outlined below. The alternative is kriticalarchy, or rule by judges, and that has proved to be unsustainable.

- **An Independent OLC should be created within the Secretariat.¹⁹**
 - » The OLC would advise the DG and Secretariat on any legal questions involving the interpretation of WTO Agreements.
 - » The OLC would be responsible as an independent guardian of the trading system and would not otherwise take sides in any panel or AB process.
 - » The OLC would be responsible for performing its assigned duties both to the DG and the General Council.
 - » **Pre-litigation**
 - Upon request, skilled and experienced independent OLC staff would give informal, confidential non-binding analytical reports on the merits of a case upon request to prospective parties, helping to narrow issues for decision.
 - Upon request, Deputy DGs would provide good offices to potential litigants to seek resolution of differences without resorting to litigation, as is currently provided in the DSU.
 - » **After a request for consultations is filed, good offices to be utilized**
 - Parties are required to utilize the good offices of the DG and Deputy DGs before a panel would be formed.
 - » **Litigation**
 - The OLC would be expected to file amicus briefs on key points of legal interpretation, particularly with respect to negotiating history in order to discern the intention of the parties to the agreement. The OLC would identify areas where there appeared to be no coverage within a WTO agreement to the practice which is the subject to the dispute.
 - Neither the AB nor a panel would be bound by the opinion of the OLC.
 - If no appellate level is reconstituted, and there is one-tier dispute settlement, with panel decisions becoming final, some of the lack of

¹⁹ There is an existing OLC, which serves to advise the DG on administrative matters. It gives no opinions on the operation of the substantive agreements of the WTO and has no role in dispute settlement.

uniformity may be overcome if the operation of the panels generally is overseen by the appointment of an OLC reporting to the DSB. In rare cases of serious inconsistency, the OLC would be expected to file an amicus brief.

- The OLC would inform a panel if, in its view, the question cannot be decided under existing rules because the WTO Members had not yet negotiated a solution. In that case, the OLC would notify the panel members and litigants of the gap in the rules, recommend appropriate action, and report on the same to the DSB, and to WTO committees having subject matter jurisdiction over the issues being litigated.
- The OLC would have no direct powers to adjudicate matters.

» **Independent investigation**

- The OLC, on its own motion, or upon information received from one or more Members, would investigate suspected serious deviations from the WTO rules on the part of any Member that in its view would have significant systemic implications.
- Where the OLC concludes that significant systematic implications existed, it would:
 - * Publish its conclusions, identifying “questionable conduct” without itself initiating litigation.
 - * After consultation with the Chairs of the General Council, the DSB, and the Trade Policy Review Body, bring a case directly to the AB for necessary adjudication.²⁰

» **Gaps in the rules**

- Where existing rules were insufficient, the OLC would refer the matter to the General Council and relevant committees of subject matter jurisdiction.

» **Watch list**

- The OLC would regularly publish a watch list of measures that appeared to be on their face unjustified, and had a past, current or expected substantial negative effect on trade.

» **Relation to the DSB**

- The OLC would review the decisions of panels and AB panels and advise the DSB through triennial reports whether the intention of the parties, as discerned from negotiating history, was being applied, and include any recommendations as to remedies with respect to deviations from the intent of the parties to the negotiation.

20 Jeffrey J. Schott and Euijin Jung. “The WTO’s Existential Crisis: How to Salvage Its Ability to Settle Trade Disputes.” Peterson Institute for International Economics. December 2019. <https://www.piie.com/publications/policy-briefs/wtos-existential-crisis-how-salvage-its-ability-settle-trade-disputes> Schott and Jung would have the AB, where it found that the rules did not cover, on its own motion choose to refer a matter to the committees having jurisdiction over the subject matter.

- The Chairman of the DSB, supported by the OLC, would be responsible for the DSB becoming, to the extent possible, an effective body. The Chair should be active in attempting to get conflicts resolved wherever the Chair deems it would be productive, prior to and during litigation. It is the responsibility of the DSB Chair to bring political acumen to the goal of settling disputes.
 - * Where, for example, the result is almost fully for one party at the level of the first-instance panel, and for the other party at the appellate level, this may be a *prima facie* case for the Chair to seek to resolve the matter by directly working with the two parties and to suggest to them (in consultation with the OLC) that one or the other of the panels be reconvened to reconsider some elements of the case.
 - Operating procedures shall be adopted by the AB, in consultation with the OLC covering imposition of strict page limits for written submissions, guidelines for briefs, focused hearings, and questions to the parties, subject to approval by the DSB by positive consensus, or if no consensus, by the DSB chair and the OLC.
 - The OLC is to advise the DSB with respect to the selection of AB members to assure that, to the extent possible, AB panel members should have relevant experience and expertise. The background of candidates should be proportionate to the kinds of cases being brought. As many cases are about trade remedies, there should be added to the roster a sufficient number of persons with expertise, and preferably hands-on national administrative experience, to sit on cases having to do with anti-dumping, subsidization, countervailing duties, safeguards, and balance of payments measures. If there were cases in other specialized areas, the same care should be taken with appointments.²¹
- **A Deputy DG would co-chair the steering committee of the DSB with the DSB Chair to oversee the operation of the Dispute Settlement Understanding.**

21 Jennifer Hillman. "Three Approaches to Fixing the World Trade Organization, the Good, the Bad and the Ugly?" Institute of International Economic Law. December 10, 2018. <https://www.law.georgetown.edu/wp-content/uploads/2018/12/Hillman-Good-Bad-Ugly-Fix-to-WTO-AB.pdf>. Jennifer Hillman, Professor at Georgetown University Law Center, Fellow at the Council on Foreign Relations, and a former AB Member, has an alternative that should be considered: "One option would be to create a special Appellate Body to hear only appeals of trade remedy decisions. This special appellate institution—call it the Rules Appellate Body—could be made up of members chosen in large part because of a strong background in trade remedy law. This to some extent echoes the US court system, which has specialized courts for consideration of appeals from trade remedy decisions of the US administrators of the applicable laws. Hillman suggests another approach to national trade remedy cases: have initial panel decisions final. She argues persuasively that these cases have already been looked at very carefully in domestic proceedings.

WTO Secretariat Actions to Support Negotiations

- The DG is required to draft a proposed negotiating agenda based on consultations with the Members. (This executive function is the norm at all levels of domestic governance in many countries. The executive proposes and the legislature is to deliberate and establish the rules.)
- The Secretariat is charged with compiling reports for Members on the subjects covered in sub-multilateral agreements (and negotiations), regional and other preferential trade agreements, that may be useful in considering future coverage of multilateral agreements and go beyond the provisions of the WTO, such as covering additional services, environment, health, labor, etc., and which provide models for consideration for formulating multilateral rules.
- The Secretariat is to provide model provisions for sub-multilateral agreements, including regional trade agreements and free trade agreements.
- The Secretariat shall provide to the Members its estimates of subjects which may require changes in existing rules or warranting new rules, drawing upon current trends in world trade and issues anticipated that are derived from foresight exercises, as well as drawing upon its annual World Trade Report and its new individual trade flow anomaly reports.
- The DG would supply suggested negotiating outcomes based in large part on her consultations with Members and on her own responsibility, whenever the DG decided it was productive to do so, or upon the request of Members, at the discretion of the DG.
- The Secretariat would supply the Members annually with a list of issues where dispute settlement panels had probed what the DG assesses to be gaps in the current rules.
- The WTO Secretariat would inform the Members of the results of strategic foresight, indicating where the current rules may need modification or being supplemented.
 - » An example would be, having identified future pandemics as likely, the Secretariat would compile a list of steps to be taken to create a sufficient response to future epidemics: For instance, upon identification of a possible pandemic, The DG would form a cross-divisional Secretariat task force to specify possible responses, working closely with a 10-WTO Member Pandemic Response Group under the chairmanship of a facilitator chosen by the Chair of the General Council for this purpose.
 - » A similar approach could be taken with respect to climate change.

The Secretariat's Role in Administering the Trading System

► Providing trade intelligence

- 1 The Secretariat should be expected *“to fill policy data gaps and analyze the magnitude and incidence of policies affecting competitive conditions on markets—including in areas where WTO rules are weak or missing altogether.”*²²
- 2 The WTO should move in the direction of becoming a central access point for global trade information relevant to the WTO *acquis* (as it stands at present and encompassing likely future subjects for negotiation), including to the extent practical, all government measures that have a substantial effect on trade. This would be accomplished through access to distributed data bases and not generally through substituting for available sources of information.
- 3 Monitoring and analysis should anticipate supply chain vulnerabilities, whatever the causes—geopolitical, climate, natural disasters, health issues and more.
- 4 Members should provide the WTO Secretariat with resources adequate to provide more complete transparency in aid of the above-stated objectives.
- 5 The Secretariat should consult with experts such as Simon Evenett, Bernard Hoekman, and Robert Wolfe on an official and public basis and with current Secretariat experts on how to design a comprehensive data collection and reporting system that would be state-of-the-art.
- 6 A priority for the next DG should be to create the space for the Secretariat to fill policy data gaps and to analyze the magnitude and incidence of policies affecting competitive conditions on markets—including in areas where WTO rules are weak or missing altogether.
- 7 The independence of the process and the Secretariat is to be fully respected. Members shall not interfere with the work product.²³
- 8 The Secretariat, while striving for objectivity and completeness, should not be unduly deterred due to political considerations (Member sensitivities) in collecting and reporting on measures affecting trade, including in Trade Policy Reviews. This needs to be explicitly agreed. The objective is to have the Secretariat free of interference that would impair objectively useful results from being achieved.

22 “Revitalising Multilateralism: Pragmatic Ideas for the New WTO Director-General.” Vox EU/CEPR. November 10, 2020. <https://voxeu.org/content/revitalising-multilateralism-pragmatic-ideas-new-wto-director-general>. In his contribution to *Revitalising Multilateralism: Pragmatic Ideas for the New WTO Director-General*, Bernard Hoekman sums up the role that the WTO Secretariat must assume with respect to monitoring, transparency and analysis in the language quoted above.

23 “The 16th Global Trade Alert Report: The Global Trade Disorder.” Global Trade Alert. November 12, 2014. <https://www.globaltradealert.org/reports/24>. *However, just as turkeys don't vote for Christmas, what is the incentive for the monitored to bolster the monitor?* The final section of this report (pages 87–98) contains a comparison of the methodologies employed by the WTO and the GTA in identifying trade measures following the financial crisis.

- 9 Members should, as a new normal practice, provide with respect to any instruction to customs officials that impose or change any trade measure at the border, automatically, simultaneously and electronically, a copy of the instruction to the WTO, with any necessary explanatory material. (The WTO would be added as a “cc:” to every e-mailed instruction.)
- 10 WTO notification requirements should be designed to the extent feasible to include incentives that make compliance more likely through self-interest on the part of Members.^{24,25}
- 11 Incentives should be provided aimed at reducing non-compliance. The Secretariat should list by Member and by agreement all those in non-compliance. The non-compliant should not share in all the benefits of the system, such as access to online refined data provided by the WTO. Other forms of sanctions can be devised for penalizing those with the capacity to comply, those who do not apply for technical assistance, and those who continue to fail to comply. To the extent possible, Secretariat efforts to publish information on measures employed by Members who under-report should be made. For Members who fail to verify information, the Secretariat should publish the best information available. Where non-compliance is due to a lack of capacity, this should be excused from any penalties if technical assistance is sought from the Secretariat.
- 12 When there is a headline in the press of a “trade war” or other act of trade aggression, or of a measure strongly likely to distort trade substantially, the Secretariat should immediately, after seeking an immediate comment from the country imposing the measure, publish the measure on a watch list while awaiting verification.
- 13 Upon verification, the Economic Research and Statistics Division (ERSD) should calculate the commercial impact of the measure and report the result to the General Council. The report would be published within one week thereafter.
- 14 To the extent possible, the ERSD should publish annual estimates of the trade policies and measures of Members. The purpose is primarily to inform stakeholders within countries of the costs and benefits of their government’s trade regime.
- 15 The ERSD should track seismic events (trade anomalies), such as acts of economic coercion, and inform the Monitoring Division so that it can research the probable causes if these are not apparent. A special Trade Monitoring

24 Robert Wolfe. “Is World Trade Organization Information Good Enough? How a Systematic Reflection by Members on Transparency Could Promote Institutional Learning.” Bertelsmann Stiftung High-Level Board of Experts on the Future of Global Trade Governance. 2018. http://aei.pitt.edu/102529/1/MT_Is_World_Trade_Organization_Information_Good_Enough.pdf.

25 The standards notification process works very well because there is mutual benefit to notifying standards in draft for comment by others, as well as a system of filing specific trade concerns. The process defuses likely conflicts, heads off potential litigation, and serves as a very useful tool for regulators applying standards. As important, it often gives government agencies with regulatory responsibility a participatory role. Information provided can be more complete and timelier if the agencies with responsibility as administrators are directly engaged in the process.

Mechanism, as was established under Article 18 of the Protocol of Accession of China, could be established with respect to any problem area that warrants heightened and sustained attention.²⁶

- 16 Special attention of the Monitoring and Economic Research Divisions should be paid to opaque practices which have not been notified and that have the equivalent trade-distorting effect of notified and officially reported measures. Where there are allegations from the private sector of market distortions, depriving market forces of determining competitive outcomes, Secretariat resources should be devoted to forensic analysis.
- 17 WTO data should include a current notation indicating which information is verified by the Member imposing a measure and those which have not been verified (but in which there is a high degree of confidence as to its accuracy).
- 18 All WTO Committees responsible for the oversight of compliance should welcome counter-notifications, as well as less confrontational statements of specific trade concerns as in the TBT Committee. The Secretariat shall keep Committees currently informed of relevant information collected in the monitoring process.
- 19 There should be a biennial review in the TPR Body with recommendations for any improvements that should be made in the collection and dissemination of information. For these purposes, the Secretariat should provide a comparison of all Member reporting, Secretariat reporting and other sources of reports, including the Global Trade Alert, the OECD, the Bank, and the Fund or contract with an outside source to do so.
- 20 The TPR mechanism itself should be reviewed to assure a more hard-eyed view to provide a greater degree of qualitative and quantitative analysis. What is the degree of contribution—positive and negative—to the trading system of each Member subject to review? What trends are discerned? What is the likely impact of trade measures currently in effect and those that are planned? Sugarcoating should be avoided while avoiding to the extent possible being caustic. The nature of trade developments should come through clearly, not just from a summary of Members' views but in the report from the Secretariat.
- 21 Special horizontal TPRs should be conducted for matters of great consequence, such as Members' measures to deal with the pandemic, trade-facilitating, trade-restricting, or otherwise trade-distorting measures. For example, emphasis could be given to heightened monitoring of trade facilitation efforts in the poorest countries to spur the distribution of vaccines. Additional specific subjects could be addressed in horizontal TPRs, such as agricultural support, industrial subsidies, effects on trade of inadequate enforcement of competition policy, the gap between bound and applied tariff rates, etc. A horizontal review of climate policies and measures should be undertaken.

26 "Accession of the People's Republic of China WT/L/432." World Trade Organization. November 23, 2001. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/L/432.pdf&Open=True>.

- 22 In response to a crisis, any group of Members or Committee Chairs can ask the Secretariat to recommend all the possible responses—including improvements in monitoring. Cross-divisional Secretariat task forces can be formed to monitor and assess trade measures, as was done in the case of the pandemic.
- 23 A newly created Monitoring Division of the WTO should supply its data to the ERSD for assessments of economic impact.
- 24 With available technology, a global online system of trade measures ought to be always up to date. Summary reports should be updated often, including notifications that come in late. Counter-notifications and specific trade concerns databases, among others, should be both utilized and cross-referenced. A major effort should be made to capture data on subsidies, recognizing that these are more difficult to identify and classify. This should include measures of general support. Every effort should be made to make the system useful not just to governments but to private persons engaged in commerce.
- 25 The efforts of the Monitoring and Economic Research Divisions for these functions should be financially self-supporting and independent of the annual WTO budgeting process.

► **Providing economic analysis**

- 26 The **Office of the Chief Economist in the ERSD** is to have a wide-ranging mandate to fully understand trade flows, their sources and effects, including global value chains, to support the Members in making their own policy decisions, as well as in support of negotiations at the WTO. (An example would be to review carbon pricing to assist in the process of assessing the efficacy and appropriateness of carbon border adjustment mechanisms (CBAMs)).
- 27 The Office shall assess the economic impact of measures identified by the Trade Intelligence Division. This would include trade-restricting and trade-facilitating measures, to the extent possible. Reports of the ERSD shall not include judgments as to the WTO-consistency of any trade measure, a role reserved for the OLC.
- 28 The ERSD will assist developing countries to self-identify as such, based on objective criteria and capacity-building needs, as they do under the Trade Facilitation Agreement, in order to obtain sufficient technical assistance. Self-identification shall be taken into account in non-compliance proceedings. As with other Uruguay Round Agreements, new notification requirements can be phased in for the Least Developed Countries as their economies improve. Every effort should be expended with the help of international financial institutions to assure that there is full technical support to achieve full compliance. Self-designation as a developing country shall not be considered in negotiations of new rules or trade liberalization.
- 29 The ERSD, in cooperation with the Bank, the Fund, and other international organizations shall provide insights into the levels of development of Members and acceding countries.

- 30 Detection of anomalies in trade flows.** Anomalies in trading patterns can indicate the presence of unannounced, unofficial trade measures, whether with respect to exports, imports, or sales in the home market or otherwise, or private conduct in restraint of trade.
- 31** Forensic analysis of significant trade distortions would be undertaken upon the request of Members or on the Office's own motion.
- 32 A watch list** would be constructed jointly by the OLC and ERSD of anomalous trade behavior by product and by Member.

➤ **Providing strategic foresight**

- 33 Office of Strategic Foresight.** A separate office reporting to the DG would be responsible for strategic foresight.

The OECD defines “strategic foresight” as “a structured and systematic way of using ideas about the future to anticipate and better prepare for change. It is about exploring different plausible futures that could arise, and the opportunities and challenges they could present.²⁷ We then use those ideas to make better decisions and act now.” The OECD has a unit engaged in this activity.

Given the likelihood of continuing major challenges to the global trading system, the Secretariat should be required to engage in Strategic Foresight, reporting its conclusions independently, not subject to advance Member review or censorship. Obvious subjects include CBAMs, responses to future pandemics, the effects of climate change on agricultural trade, and more.

➤ **Policy planning**

- 34 An office of policy planning** would be created reporting directly to the DG.

The US experience is informative. “Created in 1947 by George Kennan at the request of Secretary of State George C. Marshall, the Policy Planning Staff (S/P) serves as a source of independent policy analysis and advice for the Secretary of State.”

The WTO DG and Members require this sort of support to take a longer-term, strategic view of global trends and frame recommendations to advance the interests and values inherent in the multilateral trading system, to stimulate and, when necessary, devise basic policies crucial to the conduct of amicable and positive global trade policies, and to develop long-term, strategic plans. This would be accomplished through analysis and coordination across all of the WTO Secretariat's divisions and committee support functions to integrate policy in line with longer-term objectives.

The Office would work closely and regularly with a select network of experts in local missions and capitals to fulfill these goals, stimulating innovation and creativity in the Secretariat and bringing constructive, dissenting, or alternative views on substantive trade policy issues to the DG and senior Secretariat officials.

²⁷ “What is Strategic Foresight?” Organization for Economic Cooperation and Development. <https://www.oecd.org/strategic-foresight/>.



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