

REINVIGORATING THE WTO FROM THE INSIDE OUT — REVISITING THE ROLE OF THE SECRETARIAT

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ABSTRACT

As it enters its second decade of operation, the World Trade Organization (hereinafter “WTO”) is operating in a vastly different context to that which was present at its creation in 1995. There seems to be a consensus that, although difficult, reform is necessary to reinvigorate the WTO. On the other hand, successful reform to the formal rules of the WTO Agreements has so far been largely elusive. This paper focuses on how to revitalize the WTO in an absence of formal rule change, by focusing on the backbone of the WTO organism — its Secretariat. The paper argues that reinvigorating the Secretariat in terms of its mandate, powers and composition are a comparatively simple but effective mechanism for improving the vitality of the WTO as a whole. In doing so, it offers a new metaphor by which the relationship between members, organization and community could be described, namely one of stewardship. The stewardship model reconceptualizes thought leadership in the WTO as a joint, rather than competitive process, led by the Secretariat, with great potential to revitalize the WTO.

KEYWORDS: *WTO, world trade organization secretariat, director-general, WTO reform*

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I. INTRODUCTION

As it enters its second decade of operation, the World Trade Organization (hereinafter “WTO”) is operating in a vastly different context to that which was present at its creation in 1995. While the Doha Round contemplated an expansion of the WTO’s mandate, real progress has been at best incremental. The Bali Package agreements deliver some important reforms, and were a symbolic victory for the WTO, but ultimately the WTO has delivered quite minor advancements on the Doha Agenda. At the same time, there has been very substantial development in the composition of the WTO’s membership, as well as substantial changes to the broader global dynamic in which the WTO operates.

There seems to be a consensus that, although difficult, reform is necessary to reinvigorate the WTO. There is no consensus, however, on the nature of that reform, although most commentators focus on changes to the dispute settlement process, to the consensus-based decision-making¹ and developed practices such as the “green room”², and even to question continued adherence to the notion of a single undertaking.³ This paper takes a different approach to the question of revitalizing the WTO, by focusing on the backbone of the WTO organism — its Secretariat. The article argues that reinvigorating the Secretariat in terms of its mandate, powers and composition are a comparatively simple but effective mechanism for improving the vitality of the WTO as a whole.

This article provides an overview of the WTO Secretariat, including the legal foundation on which the Secretariat operates, and reviews the major high-level reports that have been undertaken on the question of WTO reform, such as the *Sutherland Report* and the *Future of Trade Report*. It then questions the legitimacy of the often-quoted rhetoric of the “member-driven organization” as a barrier to reform. The article

¹ See generally ANNE O. KRUEGER, *STRUGGLING WITH SUCCESS: CHALLENGES FACING THE INTERNATIONAL ECONOMY* (2012).

² See e.g., Richard Blackhurst, *Reforming WTO Decision – Making: Lessons from Singapore and Seattle*, in *THE WORLD TRADE ORGANIZATION MILLENNIUM ROUND: FREER TRADE IN THE TWENTY FIRST CENTURY* 295 (Klaus Günter Deutsch & Bernhard Speyer eds., 2002); Richard Blackhurst, & David Hartridge, *Improving the Capacity of WTO Institutions to Fulfil Their Mandate*, 7(3) *J. INT’L ECON. L.* 705, 705-716 (2004).

³ See e.g., Robert Wolfe, *The WTO Single Undertaking as Negotiating Technique and Constitutive Metaphor*, 12(4) *J. INT’L ECON. L.* 835, 835-858 (2009); Zhixiong Huang, *Rise and Fall of Trade Multilateralism: A Proposal for ‘WTO À La Carte’ as an Alternative Approach for Trade Negotiations*, 6(1) *Frontiers L. in China* 35, 35-43 (2011); Meredith Kolsky Lewis, *Early Harvests, Variable Geometry and the Single Undertaking*, presented at the 2014 Asia WTO Research Network Annual Conference, Taipei ([June 14, 2014]).

argues instead that it is neither accurate or desirable to view the WTO as a passive entity, nor consistent with practice in other international organizations. While not advocating that the WTO become an organization like the United Nations, which has been criticized for its unwieldy and often inefficient bureaucracy, some comparisons will be drawn as regards the concept of the “member-driven” organization.

The second part of the article examines the Secretariat’s work not from the traditional positivist perspective, but rather from a constructivist, socio-legal viewpoint. What this analysis demonstrates is that the implementation of Secretariat reforms would be rather less radical than they are often portrayed. Put simply, as an international organization, the WTO will project a particular narrative notwithstanding any formal role of the Secretariat, so it serves the members interests that this narrative be more carefully curated than it has been so far.

Finally, the article concludes by offering a new metaphor by which the relationship between members, organization and community could be described, namely one of stewardship. The stewardship model reconceptualises thought leadership in the WTO as a joint, rather than competitive process, one with potential to revitalize the WTO.

II. CONTEXTUALISING SECRETARIAT REFORM

A. *The Nature of the WTO Secretariat*

The secretariat of an international organization is a nearly-invisible entity in traditional studies of international law, and this is particularly so of the Secretariat of the World Trade Organization (hereinafter “the WTO”). As a consequence, scholars tend to overlook the very influential role that the Secretariat and its personnel have on the development of legal rules and norms — far beyond the formal, passive role that is ascribed to it. This oversight is not particularly surprising, given the continued dominance of positivist approaches to the field of international law, and will be discussed further in Part III below.

Viewed from this positivist perspective, the Secretariat’s power to carry out the administration of the WTO is derived from Article VI of the *Marrakech Agreement*. Article VI simply states that there “shall be a Secretariat” and that it must be “exclusively international in character,” in other words, that the Secretariat staff should not be answerable to any national government or any other institution. The language of this section is wholly unremarkable — it strongly echoes the language used

to establish similar bodies in other organizations, such as the establishment of the Office of the Director General of the International Labor Organization in Article 9 of its Constitution, or the Chapter XV of the *Charter of the United Nations*, which establishes the United Nations Secretariat. Comparisons with the United Nations will be returned to in Part III below, in the context of the “member-driven organization” ideology that is often raised in opposition to Secretariat reform — for the United Nations is likewise a member-driven organization by design, and yet possesses a very vibrant and influential Secretariat to steer the organization’s agenda.

The size and operating budget of the WTO is modest, even when compared with the already modest amounts on which other international organisations operate. In 2013, the WTO employed 639 regular staff and the consolidated budget for the WTO and Appellate Body Secretariat as just under 200 million Swiss Francs (approximately USD 220,000,000).⁴ However, it is not easy to draw meaningful comparisons between the size and budget of other international organizations. For example, the Food and Agriculture Organization has a global budget of \$2 billion, and 2000 staff in its Rome Headquarters alone.⁵ UNCTAD, on the other hand, with 400 staff, has an operating budget of \$108 million.⁶ However the WTO is somewhat unique in terms of the broad and demanding mandate that is placed upon the Secretariat, and as the *Sutherland Report* candidly observes, “given its importance, it is probably the worst funded [of international institutions].”⁷

In the WTO’s organizational chart, the Secretariat does not feature as an entity that is part of the WTO *per se*.⁸ In reality, the WTO Secretariat is divided into 22 divisions and institutes, with a separate Secretariat for the Appellate Body to manage the appeals and undertake research and support for Appellate Body members. The Director General is the highest office in the WTO Secretariat, and is the only official appointed by the Ministerial Conference pursuant to Article

⁴ WORLD TRADE ORGANIZATION ANNUAL REPORT 2013 [hereinafter “WTO ANNUAL REPORT 2013”], 132-33 (2013), http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep13_e.pdf.

⁵ STRUCTURE AND FINANCE, FOOD AND AGRICULTURE ORGANIZATION, <http://www.fao.org/about/who-we-are/en> (last visited Sept. 11, 2014).

⁶ UNCTAD’s Programme Budget and Financing of Technical Cooperation Activities, UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, <http://unctad.org/en/Pages/About%20UNCTAD/Programme-Budget.aspx> (last visited Sept. 1, 2014).

⁷ Peter Sutherland et al., *The Future of the WTO: Addressing Institutional Challenges in the New Millennium* [hereinafter “*Sutherland Report*”] 73 (WORLD TRADE ORG., Working Paper, 2004).

⁸ WTO ORGANIZATION CHART, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org2_e.htm (last visited Sept. 6, 2014).

VI(1) of the *Marrakech Agreement*, and in accordance with the procedures adopted by the General Council.⁹ The four Deputy Director Generals are appointed in consultation with the membership. Similarly, in the *Marrakech Agreement*, activities that are clearly carried out by the Secretariat are usually attributed to the organization in a general sense.

Article III of the *Marrakech Agreement* sets out the six functions of the WTO — facilitating trade agreements; providing a forum for negotiations; administering the Dispute Settlement Understanding; administering the Trade Policy Review Mechanism, and cooperating with other international economic organizations. (Van den Bossche notes also the provision of technical assistance as an additional, but significant, function of the WTO.)¹⁰ In reality, the Secretariat carries out a large proportion of all of these functions for “the WTO”, although the passive construction of Article III does not make it clear that this is the case. The Secretariat describes its role in the following terms:

Its main duties are to supply technical and professional support for the various councils and committees, to provide technical assistance for developing countries, to monitor and analyze developments in world trade, to provide information to the public and the media and to organize the ministerial conferences. The Secretariat also provides some forms of legal assistance in the dispute settlement process and advises governments wishing to become Members of the WTO.

It is clear that one of the major changes in the WTO as it enters its second decade is the increasingly heterogeneous nature of its membership. As has been previously asserted, the expansion of the WTO membership brings not merely the dilemma of “herding cats” — the coordination of negotiations between 160 parties, although this is on its own a great challenge. However, in addition there is a diversity of political, economic, and legal cultures at a level of diversity that was present neither in the General Agreement on Tariffs and Trade (hereinafter “GATT”) nor in the early period of the WTO.¹¹ The

⁹ See generally General Council of World Trade Organization, *Procedures for the Appointment of Directors-General*, WT/L509 (Jan. 20, 2003).

¹⁰ PETER VAN DEN BOSSCHE, *THE LAW AND POLICY OF THE WORLD TRADE ORGANIZATION: TEXT, CASES AND MATERIALS* 88-89 (2005).

¹¹ See generally Colin Picker & Lisa Toohey, *The Role of Legal Culture in an Increasingly Heterogeneous WTO* (forthcoming 2014) (on file with authors and publications details TBA in

struggle to finalise the Doha Round amidst such divergent interests, and the role played by the BRIC countries in Bali are illustrative of the dilemma facing the WTO.¹² In response, the WTO has commissioned two major reports over the past decade to explore the possibility of reform and reinvigoration of the organization.

III. A DECADE OF REFORM PROPOSALS

A. *The Future of the WTO Report (2005)*

On the 10th anniversary of the World Trade Organisation in 2005, a distinguished Consultative Board presented the WTO Director General, then Supachai Panitchpakdi, with a ninety page report entitled, *The Future of the WTO: Addressing Institutional Challenges in the New Millennium*. Known colloquially as the “*Sutherland Report*”, after the Chair of the Consultative Board and founding WTO Director-General, Peter Sutherland, the report presented a total of 37 recommendations, generally directed towards decision-making processes, but also addressed the question of coherence between the WTO and other pillars of the international economic system, such as the World Bank.

As the introduction to the Report notes, it contains two areas of focus. The first is to address aspects of the international trading system that are, in the words of Peter Sutherland, “greatly understood or misrepresented,”¹³ such as the Chapter 1 rejoinder to critics of globalization, the focus in Chapter 2 of the threat presented by preferential trade arrangements to the multilateral system, and in Chapter 3 attempting to address misconceptions about the WTO’s threat to state sovereignty. Chapters 4 & 5 both making tempered suggestions for greater engagement with external stakeholders of the WTO, both international organisations and NGOs. Chapters 6-8 address reforms to the decision-making processes, not just in relation to dispute settlement (Chapter 6), but also in rules negotiations (Chapter 7), and in the process for engagement with Member State’s officials and ministers (Chapter 8).

The Consultative Board was a distinctly conservative one. The Consultative Board comprised six men — Peter Sutherland, Kwesi

final draft). See also Lisa Toohey, *Barriers to Universal Membership of the World Trade Organisation* 19 AUSTL. INT’L L. J. 97(2012).

¹² Shawn Donnan, *Bali talks set to showcase WTO’s changing dynamics*, FINANCIAL TIMES (Nov. 28, 2013, 1:38 pm), <http://www.ft.com/cms/s/0/15581650-582b-11e3-82fc-00144feabdc0.html#axzz3CXQQOAdL>.

¹³ *Sutherland Report*, at 5.

Bothwey, Jagdish Bhagwati, Niall FitzGerald, Koichi Hamada, John Jackson, Celso Lafer, and Thierry de Montbrial. While at first glance there is a geographical diversity amongst the group — with delegates from Europe, the United States, Brazil, Japan, India and Ghana — these represent primarily the largest trading powers and the BRICS countries, with only one developing country representative. Secondly, the Board's members were from either public sector (Sutherland, Hamada, Botchwey, Lafer) or business backgrounds (Sutherland, FitzGerald), and academics in North American (Bhagwati, Botchwey, Hamada, Jackson) or other major international universities (Lafer, Montbrial). In other words, there was no representation from the NGO sector, and a particular degree of uniformity in terms of the backgrounds of the group. As Bogandy and Wagner observe, the selected group was a knowledgeable but conservative choice, one “particularly close to the current institution; it include[d] no scholar, intellectual, or politician who has voiced substantial and serious criticism [of the WTO].”¹⁴

Nonetheless, the Report advocates some fairly substantial reforms. Firstly, the committee of experts clearly favours a return to the earlier, more activist role of the Secretariat in steering the direction of the WTO, lamenting “at a practical level the Secretariat has always had the capacity to inject creative proposals into the negotiating processes of the GATT and the WTO. Sadly, it is a capacity that sometimes appears less welcome now than before.”¹⁵

An area of emphasis for the *Sutherland Report* is the reform of the role of the Director General. The report's writers lament that the Director General tends to provide “marketing” for the free trade agenda, in contrast to the GATT directors who “were sometimes regarded as virtually as spiritual leaders of the system. Their words were given considerable weight in the substantive business and the direction of the institution.”¹⁶ Instead, the report suggests, the Director General should be regarded as the “institutional memory and authority of the WTO, [and] delegations should not shrink from turning to the Director-General as an ‘honest broker’ as well as for advice on procedure and precedent.”¹⁷

Finally, the Report also draws attention to the capacity constraints of the Secretariat, pointing out repeatedly that the WTO system would

¹⁴ Armin Von Bogdandy & Markus Wagner, *The ‘Sutherland Report’ on WTO Reform — a Critical Appraisal*, 4(3) WORLD TRADE REV. 439, 439 (2005).

¹⁵ *Sutherland Report*, at 69.

¹⁶ *Id.* at 74.

¹⁷ *Id.*

be better served by the Secretariat having a greater policy role, “to avoid the tendency for other international institutions to fill the intellectual and expertise gap . . . in a manner that does not always serve the WTO system well.”¹⁸ This idea of an undesirable gap-filling role undertaken by other international institutions is not explained by the report’s authors, but rather left somewhat to the reader’s imagination. The alternative view of the Secretariat that the Sutherland Report wishes to promote is that of the Secretariat as the “Guardian of the Treaties,” with an obligation to act in the interests of the membership as a whole.¹⁹ This article argues below that rather than merely guardian of the treaties, the Secretariat should be viewed, together with the membership, as a steward of the organization.

Following the release of the Sutherland Report, there was a spate of analyses and responses, from academics, national officials, former WTO officials and appellate body members.²⁰ However, within two years of the report’s release, the conversation about reform had dwindled significantly, and by 2011, scarcely a published piece includes analysis of the Sutherland Report’s reform suggestions.²¹

B. Defining the Future of Trade (2013)

The Panel on the Future of Trade was established by the then Director-General, Pascal Lamy, in 2012, and delivered its report a year later. The composition of the Panel on Defining the Future of Trade was notably different to that of the committee for the Sutherland Report. The 12 panel members were distinctly more diverse having regard to nationality, gender, background, and worldview. Chaired by Mr Talal Abu-Ghazaleh, Vice-Chair of the UN Global Compact Board, Deputy Chair of the Evian Group, and member of the Jordanian Parliament. Fellow panel members included other NGO representatives, such as Pradeep Sinh Mehta of Indian NGO CUTS international, Sharan Burrow, the Secretary-General of the International Trade Union Confederation, Thomas J. Donohue, President and CEO, US Chamber of Commerce, and Josette Sheeran, Vice Chair of the World Economic Forum. The panel also included CEOs from major multinationals from

¹⁸ *Id.* at 40 & 78-79.

¹⁹ *Id.* at 73.

²⁰ See, for example, editions 8(2) and 8(3) of the *Journal of International Economic Law*, which focused on the Sutherland Report and contained commentary from, amongst others, Robert Wolfe, Mitsuo Matsushita, and Donald McRae, and Ernst-Ulrich Petersmann.

²¹ For the rare exceptions, see generally Sonia E. Rolland, *Redesigning the Negotiation Process at the WTO*, 13(1) *J. INT’L ECON. L.* 65 (2010).

Brazil (Embraer), and Japan (LIXIL Group), and former government officials from Botswana, Singapore and New Zealand. This group stands in quite strong contrast to the explicitly pro-trade panel assembled by the WTO to produce the *Sutherland Report*, and the explicit inclusion of delegates from a range of other international organizations suggests a move by the WTO towards deeper engagement with the rest of the international community. Another feature of the consultation process was that the Panel engaged internationally in public consultation, through the establishment of a website to receive submissions.²²

It is interesting that despite a dramatically different panel, many of the recommendations made in the *Future of Trade Report* are quite similar to those made in the *Sutherland Report*. For example, chapters 1 of the report is aimed at demonstrating the case for trade liberalization, although the *Future of Trade Report* presents a more central emphasis on social and environmental dimensions, rather than seeing them as a side effect of economic growth. Chapter 2 of the report uses the theme of “convergence” to examine how social and technological and production changes have transformed the global reality of trade, and “the challenges that must be core in informing our actions now and in the future.”²³

Chapter 3 of the report contains the key recommendations of the panel. It commences with some observations about the centrality of the principle of non-discrimination and the difficulties of preferential trade agreements. It also emphasises the desirability of “convergence of public policy design” in a range of “trade and” areas, such as competition law, monetary policy, labour rules, climate change, corruption, and trade finance, while cautioning that “respect for differing social preferences [must remain] paramount.”²⁴ The clear focus of the panel is the reform of procedural rules, in terms of how the WTO sets its negotiation agenda and derives consensus.

Central to the procedural reforms envisaged in the *Future of Trade Report* is a reform of the Secretariat’s role. Once again, there are strong similarities with the *Sutherland Report* suggestions, although the justification is somewhat different. The 2013 report suggests that the Secretariat have a role in rules reform, not just in an information-

²² *The Future of Trade: The Challenges of Convergence Report of the Panel on Defining the Future of Trade*, WORLD TRADE ORGANIZATION 1, 1 (2013), http://www.wto.org/english/thewto_e/dg_e/dft_panel_e/future_of_trade_report_e.pdf.

²³ *Id.* at 27.

²⁴ *Id.* at 29.

providing role but also by tabling its own proposals. While decision-making power would remain with the Membership, the Report considered that this would be a way of facilitating consensus.

The experts also suggested that the Secretariat have a proactive rather than reactive role in notifications, expanding significantly upon the *Decision on Notification Procedures*.²⁵ Specifically, the report recommends that the Secretariat actively monitor and collect rather than simply receive notifications, such as those required in relation to regional trade agreements, subsidies and countervailing measures, SPS measures, or any of the twenty other provisions annexed to the Decision.

Given the strong support, at least in theory, for Secretariat reform, it seems quite remarkable that so little progress has been made. The following part of this article examines the obstacles to reform, and possible responses.

IV. OVERCOMING OBSTACLES: AN ACADEMIC CONTRIBUTION

One of the key obstacles that features in any discussion of expanding the role of the Secretariat is the idea of the WTO as a “member-driven organization.” The concept is usually used to justify the Secretariat having a passive role, and referred to by Jackson as one of the “mantras” of the WTO, “phrases [that] are used to avoid thinking certain issues through,”²⁶ and in Jackson’s opinion, troubling as “a totally member-driven organization is, in many cases, counterproductive, and most certainly inefficient.”²⁷ Weiler is similarly blunt, labelling it “a comforting nonsense” that appeals to a past vision of the organisation as a diplomatic rather than legally-based one.²⁸ Similarly, the *Sutherland Report* is deeply critical of the idea of the member-driven organization, commenting, “the deeper problem appears to be a view that, in a “member-driven organization”, the Secretariat’s role must be solely one of support, not of initiative or even of institutional defence of the WTO system. As we have been moved to comment . . . the principal losers from this attitude are the WTO Members themselves.”²⁹

²⁵ See generally *Decision on Notification Procedures*, WORLD TRADE ORGANIZATION, http://www.wto.org/english/docs_e/legal_e/33-dnotf.pdf.

²⁶ John H Jackson, *The WTO “Constitution” and Proposed Reforms: Seven “Mantras” Revisited*, 4 J. INT’L ECO. L. 67, 71(2001).

²⁷ *Id.* 72.

²⁸ J. H. H. Weiler, *The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement*, 35(2) J. WORLD TRADE 191, 205 (2001).

²⁹ *Sutherland Report*, at 73.

Underpinning the Members' concern is a particularly positivist conception of international organisations — that in the absence of a specific provision enabling an “executive function” of the organization, that it does not and should not exist. This view is epitomised by Oesch's statement that “As regards the executive, the WTO has no organ with truly executive function and power. The secretariat is neither intended, nor vested with [this power].”³⁰ There are two ways in which academics can help allay this concern — one is to view the WTO from a sociolegal, constructivist perspective, the other is to view the WTO in a comparative perspective. Both of these approaches can serve to allay concerns that an expanded Secretariat mandate is in any way unconventional, and not in fact new.³¹

The first is the constructivist understanding that international organizations are never merely “empty shells or impersonal machinery to be manipulated by other actors,”³² but rather active and multi-dimensional entities that play a key role in generating narratives about the behaviour of states in the international trade system. The Secretariat is part of the “social context” of WTO Member states, most conspicuously in dispute settlement³³ and in accession,³⁴ but across virtually all of the WTO's activities. To put the point bluntly, the Secretariat disseminates signals about the WTO whether the Membership wishes it to or not, merely by its existence. The choice is therefore not *whether* this should occur, but actually whether it should occur in a planned way, such as through the dissemination of research and thought leadership, or more ad hoc (as presently occurs) and less audibly than other voices in the international system.

A comparative approach to the Secretariat reinforces this view. The United Nations is also an explicitly member-driven organization, and there is little credible suggestion that this is compromised by its very large and dynamic Secretariat that explicitly takes a thought-leadership role across a wide range of topics.³⁵ The activism of the UN Secretariat

³⁰ MATTHIA OESCH, STANDARDS OF REVIEW IN WTO DISPUTE RESOLUTION 23 (2003).

³¹ A more detailed explanation of a constructivist approach can be seen, for example, *see generally* Manfred Elsig, *Principal – agent theory and the World Trade Organization: Complex agency and ‘missing delegation’*, 20(10) EUR. J. INT'L REL. 495 (2011); Lisa Toohey, *Accession as Dialogue: Epistemic Communities and the World Trade Organization*, 27(2) LEIDEN J. INT'L L. 397, 409-410 (2014).

³² *See generally* Michael N. Barnett & Martha Finnemore, *The Politics, Power, and Pathologies of International Organizations*, 53 INT'L ORG. 699 (1999).

³³ For an explication of how this occurs in dispute settlement, *see generally* Weiler, *supra* note 28.

³⁴ For a more comprehensive explanation of the role of the Secretariat in accession, *see generally* Toohey, *supra* note 31.

³⁵ *See generally* RALPH ZACKLIN, THE UNITED NATIONS SECRETARIAT AND THE USE OF FORCE IN A UNIPOLAR WORLD. POWER V. PRINCIPLE (2010).

significantly enhances the legitimacy of the UN's work and global respect for international law.

Finally, it is worth noting that at a practical level, more is done by the Secretariat than is often noted. For example, while the Secretariat seldom (and regrettably) undertakes policy work in its own right, it has a track record of successfully collaborating to produce policy documents with other international organisations, including a 2009 report on Climate Change and Trade with the United Nations Environment Programme,³⁶ a 2007 report with the International Labor Organisation on trade and labor challenges,³⁷ and a 2002 joint study with the World Health Organisation on WTO Agreements and Public Health. In each case, the WTO Secretariat was able to make important and significant policy statements, simply by adding the disclaimer that opinions contained in the publication should not be taken as those of the WTO's Members.

What might be required of the Secretariat to fulfil this more active role? There are naturally budgetary considerations, which would need to be approved by the membership, and achieving such approval is a substantial challenge as the members resolutely and against all appeals to the contrary retain tight control over the budgeting of the organisation.³⁸ However, as described earlier in this article, the WTO is a comparatively lean international organization, and the potential gains of the multilateral trading system are large, offering a convincing cost-benefit analysis.

In formal terms, no legal reform is necessary. Article VI states that the Secretariat should be international in character, and should be independent from both the Members and, in the Words of Article VI, from "other authorities external to the WTO". An expanded Secretariat with a mandate to provide greater research and policy direction is in no way inconsistent with Article VI. However, Article VI is reinforced by the *Standards of Conduct in the World Trade Organization*, and Paragraphs 20 to 26 of those standards attempt to delineate the nature of the Secretariat's independence within a member-driven organization. Paragraph 25 offers some explanation of the relationship between the Members and the Secretariat, relevantly providing — "the WTO is composed of its Members, and the Secretariat is there to provide

³⁶ See generally *Trade and Climate Change — A report by the United Nations Environment Programme and the World Trade Organization* (WTO & UNEP, Working Paper, 2009).

³⁷ See generally *Trade and employment: challenges for policy research* (INT'L LAB. OFFICE & WTO, 2007).

³⁸ Debra P. Steger, *The Culture of the WTO: Why It Needs to Change*, 10(3) J. INT'L ECON. L. 483, 486 (2007).

services to the WTO, not to determine its policies.”³⁹ There is, however, a substantial difference between determining and guiding policy, and thought leadership by the Secretariat in no way diminishes the capacity of the WTO’s membership to determine its own direction. Similarly, there would be no change to the role of the Director-General.

A third and final requirement of an expanded Secretariat role relates to human capital. As set out below, there are both practical and symbolic benefits to a diversified Secretariat that is more professionally diverse, and more representative of the WTO membership. Currently, there are 639 regular staff, with not even half of the Member states having their nationals represented amongst the Secretariat staff (77 out of 159).⁴⁰ Enhanced Secretariat diversity is vitally important for both symbolic and practical reasons, as discussed below.

While it is no surprise that the vast majority of Secretariat staff are European, and overwhelmingly from EU Member States, it is interesting to note that this represents six times more representation within the Secretariat proportionate to the population of the region. Some but not all of this overrepresentation can be explained by the fact that around a third of all Secretariat staff are in the Administrative and General Services division or the Languages, Documentation and Information Management division, and these would be expected to be largely staffed by European language-speakers given the Eurocentric bias to language in the WTO. Oceania (specifically Australia and New Zealand) are also strongly overrepresented, with nationals from those two countries holding over three times the Secretariat positions than would be expected having regard to population size. Conversely, the Secretariat records no staff from the small island developing states of the Pacific. The Asian region is dramatically underrepresented, with over 57% of the world’s population represented in the Secretariat by just under 10% of the Secretariat staff, followed by Africa and the Middle East. Similarly, BRICS⁴¹ nationals — represent 43% of the world’s population and 18% of global GDP — but only 4.9% of Secretariat staff.⁴² Diversity within the Secretariat is no panacea, nor is recruitment of qualified individuals straightforward. However, the

³⁹ World Trade Organization, *Conditions of Service Applicable to the Staff of the WTO Secretariat, Decision Adopted by the General Council and the ICITO Executive Committee*, WT/L/282 Annex B (1998).

⁴⁰ See generally WTO ANNUAL REPORT 2013.

⁴¹ The term BRICS is generally considered to have been coined by Goldman Sachs Head of Global Economic Research Jim O’Neill in 2001. See generally Jim O’Neill, *The World Needs Better Economic BRICs* (GOLDMAN SACHS GLOBAL ECON. WEBSITE, Working Paper No. 66, 2001).

⁴² See Appendix 1 to this paper.

current system, in which only half the membership has its nationals involved in the Secretariat risks projecting an undesirable image, adding fuel to the fire of WTO critics such as Jawara and Kwa, who lament the lack of developing country voice and the lack of genuine development focus in the WTO's day-to-day work.⁴³ There is no reason to suggest that diversity demands quotas, or a form of proportionate representation, and these have long been considered undesirable in the international civil service.⁴⁴ But it remains an important step in increasing the sense that the Secretariat at least aspires to be inclusive of the very diverse existing membership. As VanGrasstek observes, "A small circle of developed countries called the shots in the GATT period, but economic influence and political power are much more broadly distributed in the WTO period."⁴⁵

There are many reasons why greater Secretariat diversity would help to reinvigorate the WTO from the inside out. Symbolically, and regardless of the actual role of the Secretariat, its composition sends a message about the image of the organisation. The significance of diversity is recognised by the membership when it comes to the appointment of public roles such as the Director-General or the members of the Appellate Body, and a ground for vigorous debate,⁴⁶ but is seldom mentioned in regard to the Secretariat itself. Just as the WTO carefully curates other aspects of its image because of the message that it sends (for example the tone of its communications, its use of multiple languages, or even the artwork in its buildings), so too the composition of the Secretariat's staff sends a message to observers, rightly or wrongly, about the focus and lived experience of the organisation. Professional diversity, not just in nationality but also in background would better allow the WTO to maintain its independence from other international organisations, rather than relying on other international agencies to be the primary voices in the policy space. Additionally, as Bown has argued, diversification would better support the dispute settlement process⁴⁷ may give a greater sense to the Members that it

⁴³ FATOUMATA JAWARA & AILEEN KWA, *BEHIND THE SCENES AT THE WTO: THE REAL WORLD OF INTERNATIONAL TRADE NEGOTIATIONS/LESSONS OF CANCUN 200* (2004).

⁴⁴ HENRY G. SCHERMERS & NIELS M. BLOKKER, *INTERNATIONAL INSTITUTIONAL LAW: UNITY WITHIN DIVERSITY*, FIFTH REVISED EDITION 357-58 (2011).

⁴⁵ CRAIG VANGRASSTEK, *THE HISTORY AND FUTURE OF THE WORLD TRADE ORGANIZATION* xi (2013).

⁴⁶ See e.g., Bernard Hoekman & Petros Mavroidis, *Introduction: The Choice of A New WTO Director-General*, in *RACE FOR THE WTO DIRECTOR-GENERAL JOB: SEVEN CANDIDATES SPEAK* 9, 9 & 14-15, (Bernard Hoekman & Petros Mavroidis eds., 2013).

⁴⁷ See generally Chad P. Bown, *The WTO Secretariat and the Role of Economics in DSU Panels and Arbitrations* (WORLD BANK, DEV. RESEARCH GROUP, 2008).

understands their needs, even if the role of its staff is to act as impartial international officers.

In other words, reinvigorating the WTO through an expanded role for the Secretariat is a modest but achievable goal for the organization. While it requires the appropriate allocation of resources, the potential gains for the multilateral trade system would be substantial.

V. CONCLUSION: A STEWARDSHIP MODEL FOR THE WTO

Those who have worked with and within the WTO are fairly sanguine about the need for reform, including not just Peter Sutherland, but also Debra Steger,⁴⁸ the inaugural Director of the Appellate Body Secretariat, and Talal Abu-Ghazaleh, member of the WTO Panel on Defining the Future of Trade.⁴⁹ There is a sense in many quarters that reform needs to occur within the WTO, if progress is to be made. However, as Steger observes, “despite the relevant and pragmatic conclusions of [reform proposals], the Members of the WTO have to date shown no appetite for institutional reform of the Organization.”⁵⁰

Of course, the reasons for these paradoxes are themselves complex. States are inherently vested with their own self-interest, and in the present, complex negotiating environment, institutional reform is a comparatively low priority.

As Weller and Xu point out, there is delicate balance that those on the “inside” of the WTO need to strike in discussing Secretariat reform — that to raise these issues for debate would jeopardise the powers that the Secretariat quietly exercise. To quote one of their interviewees, “on one side there is an interesting story; on the other side, it is better not to say it; it might destroy the authority.”⁵¹

What is needed, I argue, is to change the image of the Secretariat, to portray it as a steward of the world trade system. Stewardship is a term that is used in a variety of contexts — environmental protection,

⁴⁸ See generally Debra Steger & Natalia Shpilkovskaya, *Internal Management of the WTO: Room for Improvement*, in REDESIGNING THE WORLD TRADE ORGANIZATION FOR THE TWENTY-FIRST CENTURY 129 (Debra P. Steger ed., 2010).

⁴⁹ For the composition of the panel, see *Panel on Defining the Future of Trade*, WORLD TRADE ORGANIZATION, http://www.wto.org/english/thewto_e/dg_e/dft_panel_e/dft_e.htm (last visited Sept. 11, 2014).

⁵⁰ Steger & Shpilkovskaya, *supra* note 48, at 129-164.

⁵¹ Interviewee quoted in YI-CHONG XU & PATRICK MORAY WELLER, THE GOVERNANCE OF WORLD TRADE: INTERNATIONAL CIVIL SERVANTS AND THE GATT/WTO 4 (2004).

management practice,⁵² and even theology,⁵³ to connote someone charged with the care and maintenance of the property of another. While this aptly captures the essence of the WTO being the design and ownership of the Members, it recognizes also that the Secretariat needs to be interventionist when necessary to protect the coherence and stability of the system. It resonates strongly with the idea of the Secretariat as the “guardian of the treaties” that the *Sutherland Report* promotes. The US Environmental Protection Agency describes the idea of stewardship as placing responsibility not just on the users of a system, but “responsibility . . . shared by all those whose actions affect the environment.”⁵⁴ Thus, stewardship provides scope not just for the Secretariat to work with the members, but also to engage more closely with other NGOs.

At the end of the day, the difficulty of formal reform does not mean that incremental reforms should be avoided. Rather, as this paper has sought to argue, Secretariat reform is one of the least radical departures from the current status quo. It is, as Finnemore says of international organizations generally, a “teacher of norms”,⁵⁵ and will continue to be so regardless of the size of its budget and its formally allocated role. It therefore stands to reason that a planned and purposive approach to norm-teaching is preferable to unstructured dissemination that serves to relegate the WTO to the periphery of international organizations. And when compared with the ultimate international purveyor of norms, the United Nations, it becomes clear that placing the Secretariat at the heart of the organization is in no way inconsistent with its “member-led” nature.

A more vibrant and active Secretariat, funded appropriately, would provide more than just continuity within the WTO system, it would provide thought leadership, a sense of direction for the Doha Round and a custodial role for the WTO Agreements. Each of these would contribute directly to the revitalisation of the WTO, helping to ensure that the organisation remains relevant to the current global context and supportive of the entirety of the WTO’s constituent membership.

⁵² See generally James H. Davis et al., *Toward a Stewardship Theory of Management*, 22(1) ACADEMIC MANAGEMENT REV. 20 (1997).

⁵³ See generally Dieter Helm, *The Assessment: Environmental Policy Objectives, Instruments, and Institutions*, 14(4) OXFORD REV. ECON. POL’Y 1 (1998).

⁵⁴ *Environmental Stewardship*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <http://www.epa.gov/stewardship> (last visited Sept. 11, 2014)

⁵⁵ Martha Finnemore, *International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy*, 47(4) INT’L ORG. 565, 565-597 (1993).

APPENDIX 1

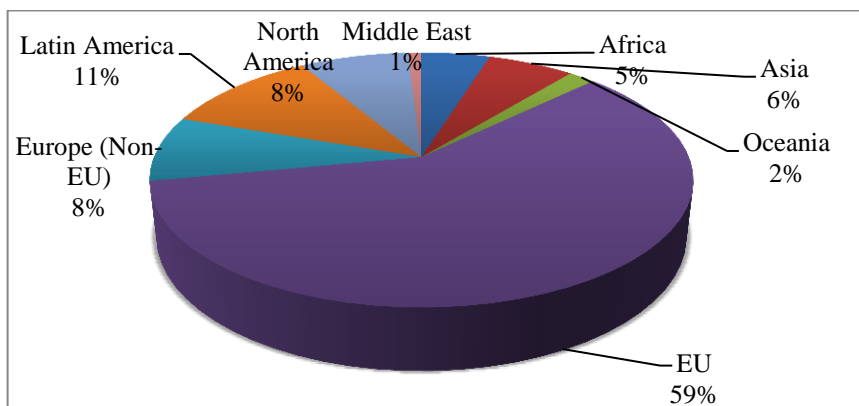


Chart 1: Composition of the Secretariat by Nationality (2013)⁵⁶

Region	As % of Global Population	As % of Secretariat Staff	Proportionate over/under representation
Africa	14.9%	5%	Underrepresented by a factor of 2.9
Asia	57.8%	9%	Underrepresented by a factor of 6.3
Europe (EU/non-EU)	10.7%	67%	Overrepresented by a factor of 6.2
Latin America	5.63%	11%	Overrepresented by a factor of 2.0
Middle East	2.78%	1%	Underrepresented by a factor of 2.8
North America	7.69%	8%	Proportionately represented
Oceania	0.53%	2%	Overrepresented by a factor of 3.8

Chart 2: WTO Secretariat Regional Representation as a Percentage of Global Population (2013)⁵⁷

⁵⁶ Data compiled by the author from the WTO Annual Report 2013.

⁵⁷ *Id.*

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