



# Trading Places

## The Politics of the WTO Director-General Selection and the Implications for the EU Trade Strategy



### Executive Summary

Moments that could become critical junctures in interregional economic integration and that would at the same time be predictable are uncommon in international relations. However, the election of a new Director-General of the World Trade Organisation (WTO) in the midst of the world's response to the COVID-19 pandemic and the subsequent ripples of a latent, yet mounting tide of protectionism in trade policy appears to resemble exactly such a critical juncture.

This policy brief centres around the election of the new Director-General of the WTO and explores its consequences for multilateral global governance of trade policy. Introducing the selection process and building upon a brief stock-taking exercise of relevant primary and secondary sources, the policy brief explores current tensions within the WTO that the new Director-General will face. Furthermore, the policy brief considers the implications such tensions have for the European Union's approach to the election process and trade policy. The policy brief suggests that the European Union should, as an actor touting multilateral approaches and rules-based global governance mechanisms, support the capacities of the WTO Secretariat, focus on securing multilateral buy-in for plurilateral agreements, and make use of the geopoliticisation of trade to support multilateral approaches to trade policy.

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## Introduction

Following the trade-liberalising rounds of the General Agreement on Tariffs and Trade, the World Trade Organisation has been an institutionalised “node of global governance” or “global regulatory networks” for multilateral processes of trade liberalisation since its inception in 1995 (Picciotto, 2011, p. 300). Having completed only one global trade negotiation in 25 years, the negotiation function of the WTO has been struggling to deliver a conclusion to the Doha “Development” Round, which reached a (later revisited) impasse following a collapse of negotiations during a Ministerial Conference in Cancún in 2003 (The Economist, 2020). The function of adjudicating trade disputes has also recently been challenged when the Trump Administration accused the Appellate Body of judicial overreach in February this year (United States Trade Representative, 2020, p. 4). Subsequently, the United States refused to appoint new members of the Appellate Body. This has rendered the Appellate Body defunct, prompting the EU and other WTO members to establish a substitute plurilateral “Multi-party Interim Appeal Arbitration arrangement”, which became operational in August with 20 other WTO member states participating alongside the EU (European Commission, 3 August 2020). The Appellate body crisis shortly preceded the rapid worldwide spread of the new coronavirus,

which prompted many economies to introduce export restrictions, targeting mostly personal protective equipment (PPE) exports (WTO, 29 April 2020, p. 1). The crisis has caught WTO member states off guard, with many notifications of new measures left incomplete. Their surprise was compounded when the last Director-General, Robert Azevêdo announced his intention to step down one year ahead of the end of his mandate so as to decouple preparations for negotiations during the 12th Ministerial Conference from the Director-General selection process (WTO, 14 May). With the Commission for Trade, Valdis Dombrovskis announcing a new trade policy communication of the European Commission to come out in early 2021, the selection of the Director-General will have important consequences for the EU’s new strategic direction on trade policy (European Commission, 21 September 2020).

## The WTO Director-General Selection Process

The decision of the Director-General to step down triggered a selection process defined by a 2002 document detailing the Procedures for the Appointment of Directors-General. The document itself is a result of previous struggles to achieve consensus on a single director general, prompting The Economist to describe the inability to select a new Director-General during the 1999 selection process as “both

tragedy and farce" (The Economist, 1999). The process is spearheaded by the Chairman of the General Council, currently David Walker of New Zealand, who is assisted by the chairs of the Dispute Settlement Body and the Trade Policy Review Body (VanGrasstek, 2013, p. 522). According to the procedures, the nominees (put forward by WTO member states) firstly make themselves known to the General Council where they put forward a brief presentation as well as vision for the WTO (WTO, 2003). Following this initial phase, the facilitators invite each Member State for a "confessional", during which they ascertain each member's preferences, so as to "encourage and facilitate the building of consensus" on a final candidate (Van Grasstek, 2013, p. 522). After each of three consultation rounds, the facilitators winnow out the field of candidates from the initial eight candidates to five and then two candidates before a consensus is reached on which candidate would become the 7th Director-General.

The current estimated date of announcement of the selected candidate is November 7th (Financial Times, 18 September 2020). The date follows shortly after the US election and signals the cooccurrence of geopolitically significant executive appointments. The role of the Director-General is notable because of an absence of a "job description" (Blackhurst, 2012, p. 142). The performance of the function of the Director-General therefore depends

significantly on the "charisma, professional strengths, ability to interpret governmental trends and interests, and personal relationship with the accredited ambassadors" (Lacarte, quoted in VanGrasstek, 2013, p. 518). Trade practitioners and delegation officials' preferences reported by Fiorini et al. suggest that a high degree of experience in managing organisations, political experience, economic training and WTO experience are the most desirable attributes, as are close connections to large capitals, business and international organisations. (Fiorini et al., 2020, pp. 2-6).

## **The Politics of the Director-General Selection Process**

While each Director-General "carves out their role" throughout their term, due to the "member-driven" nature and consensus-based decision making of the WTO, there are political conditions for selection linked to the issues directly facing the WTO today. While according to Fiorini et al. trade practitioners agree that "making the Appellate Body operational again" and reforming dispute settlement are the highest priorities for institutional reform of the WTO, the consensus decision on the new Director-General is bound to result in a candidate that will be favourable to the concerns of the US, China, the EU as well as to developing countries' concerns (Fiorini et al., 2020, pp. 7-8).

Since the EU also places fixing the dispute settlement system and a “profound reform of the organisation” high on the list of its priorities, and has also been a target of many formal WTO disputes, the winning candidate can be expected to make reforming the organisation a leading priority (European Commission, 21 September 2020). At the same time, the candidate cannot alienate the rest of the 164 WTO Member States by being too acquiescing of the major trade powers’ demands for reform. This is because Directors-General have so far played the role of an “honest broker” between the members’ interests, brokering compromise and occasionally offering starting points for negotiations. An illustration of this is the 2008 “Lamy Draft”, which served as a starting point for negotiations (VanGrasstek, 2013, p. 526). A more recent example of how a Director-General can use soft power to directly influence the success of a negotiation is the conclusion of a Trade Facilitation Agreement during the Ministerial Conference in Bali in 2013. Aware of the negotiating member states’ red-lines, Director-General Azevêdo was able to present a compromise text at a moment when time was running out on a draft agreement that was in its 17th iteration after 10 years of trade facilitation negotiations (World Economic Forum, 2020).

The role of an honest broker, however, creates a potential for tension should the Director-General also be supposed to act as a “guardian of the system” alongside the WTO Secretariat,

since this approach is bound to require the Director-General to contravene some Member States’ negotiating positions or interests (Blackhurst, 2012, pp. 157-159). The divisive issue of the Director-General’s appropriate responsibilities is accompanied by a relative structural stagnation of the WTO secretariat, which saw the number of staffers involved in negotiations increasingly outnumbered by the number of WTO Member State representatives (Elsig, 2010, pp. 504, 508). Whilst the WTO staff is highly qualified, the WTO has long maintained one of the smallest secretariats of any international economic organisation, with an approximate number of 650 employees compared to the World Bank’s 10,000 employees and the IMF’s 2,400 (Blackhurst, 2012, p.146).

In addition to bureaucratic, resource and legal-political constraints, similarly challenging appear the structural and latent substantive issues facing the WTO. One such issue is a recent resurgence of protectionist measures. The covid-19 pandemic as well as the “Phase-I deal” between the US and China ratified in January 2020 have both limited the impact of the high-profile trade dispute between the US and China, as both focus on economic recovery. Nevertheless, the fundamental domestic as well as institutional reasons for the pursuit of a protectionist trade policy and demands of WTO reform on the part of the US remain present. To illustrate, the US saw between a third and 60%

of its trade remedies between 2002 and 2019 challenged through a formal WTO dispute (Bown, 2020). With worsening economic prospects following the fallout of the pandemic, which has already seen merchandise trade volumes fall by 14.3% in the second quarter of 2020, protectionist tendencies are likely to increase in their intensity (WTO, 23 September 2020).

While staying far beneath the severity of protectionist measures following the Great Depression, the number of protectionist measures imposed by G20 economies following the 2007-2009 Great Recession has quadrupled between 2009 and 2016 (Evenett and Fritz, 2016, p. 34). Fuelled by political concerns about competitiveness of domestic exporters, employment losses due to off-shoring, and unequal distribution of gains from trade liberalisation, the Trump administration's escalation of a trade war with China and threat thereof towards the EU further signal an important departure from viewing the WTO as the nexus for resolving trade disputes (Autor, Dorn and Hanson, 2015, p. 624). The move indicates that if the EU wishes to maintain the WTO as the centre of multilateral trade negotiations and trade dispute settlement, it needs to secure buy-in from developing countries and the US alike.

The inability to conclude the Doha Development Round negotiations indicates a

divergence of the Member States' preferences for trade negotiations. The latest Ministerial Conference in Buenos Aires presented a shift from a single undertaking approach emerging from complex negotiations between all members towards variable geometry (Hannah et al., 2018, p. 2594). The disagreement concerning issues beyond tariff liberalisation, concerning micro, small and medium-sized enterprises or investment facilitation for development, has prompted the EU to support plurilateral agreements, such as the Agreement on Government Procurement, or to pursue the issues bilaterally through Free Trade Agreements. To illustrate, Horn Mavroidis and Sapir indicated as early as 2010 that the EU's preferential trade agreements featured "almost four times as many instances" of provisions "going beyond the current WTO mandate altogether" than US agreements (Horn, Mavroidis and Sapir, 2010 p. 1586). The clauses beyond the WTO mandate concern among others competition or labour standards issues.

Whilst such "beyond-the-border" issues touch upon politically sensitive issues, such as subsidies or forced transfer of technologies, it is also necessary to address the existing "knowledge trap", whereby the "limited analytic capacity of developing countries both in Geneva and their capitals" could facilitate a departure from technical discussions towards politically loaded exchanges. (Wolfe, 2008, pp. 298, 343). To illustrate, Elsig notes that in 2006,

17 Member States still lacked a permanent representation in Geneva and 80 missions had fewer than five trade diplomats (Elsig, 2010, pp. 504-505). In comparison, the European Commission and its Member States had a total of 146 trade diplomats at the time. This inequality in analytical capacity creates a propitious moment for supporting an expansion of the WTO secretariat to support a better representation of nationals of developing countries in its ranks.

That such divergences and the increasing complexity of the international trade regime will be on the top of the new Director-General's agenda is clear from the resignation speech of Director-General Azevêdo. His speech indicates that the new Director-General will shape the strategic direction of preparations for the upcoming 12th Ministerial Conference, which should tackle an "ambitious and transformative" set of goals set by the members, including matters of WTO reform (WTO, 31 August 2020).

After the first round of winnowing, five candidates remained. The next round of "confessionals" was concluded on October 6th. Whilst references to the chances of the two remaining candidates are conditioned upon the negotiation strategies of individual WTO Member States, Reinsch expected that the highest chances to become the next Director-General lay with Amina Mohamed of Kenya, Yoo Myung-Hee of South Korea and Ngozi Okonjo-

lweala of Nigeria (Reinsch, 2020). The EU has decided to throw its weight behind Dr. Ngozi Okonjo-lweala and Ms Yoo Myung-Hee (Bloomberg, 2020). On October 8th, the WTO announced that Ngozi Okonjo-lweala and Yoo Myung-Hee were indeed the final two candidates considered following the second round of consultations (WTO, 8 October 2020). It is thus likely that the next Director-General could be a representative of a developing country. The proposition of the two final candidates also concurs with the findings of Fiorini et al., who find that respondents from to their survey who are underrepresented at the WTO assigned the highest priority to regional diversity (Fiorini et al., 2020, p. 4).

## Challenges for the EU

From the remarks of the Executive Vice President of the European Commission, Valdis Dombrovskis, it is clear that the EU continues to support the WTO and ranks "fixing the dispute settlement system", "reinitiating global trade negotiations" and "addressing the current challenges of international trade" as its three main priorities for WTO reform (European Commission, 21 September 2020). To this end, the EU also supports the selection of a Director-General that would "enjoy the trust of WTO membership" and "present balanced views that reflect the diverse nature of the WTO Membership".

The challenge facing the EU is that of ensuring that other countries across levels of development and regional groups make the same institutional choice in global commerce. Jupille et al. consider states as making a boundedly-rational choice when deciding to “use, select, change, and create” (Jupille et al. 2013, pp. 40-49). The latest EU trade strategy considers the WTO rulebook as “the foundation of the world trading order” and a “cornerstone” of EU trade policy (European Commission, 2015, p. 27). It is therefore a crucial challenge for the EU to ensure that all actors maintain their belief in changing the WTO, rather than in creating an alternative organisation. At the same time, states, as well as the EU, will be under ever closer public scrutiny. This is illustrated by that fact that as many as 360 representatives from 170 civil society organisations from 52 countries attended the most recent Ministerial Conference in Buenos Aires (Hannah et al., 2018, pp. 2592-2593).

Many of the specific challenges to tackle concern the threat of paralysing politicisation of the organisation stemming from “growing membership, broadened mandate in sensitive areas and rising public profile” (Reich, 2005, p. 813). Echoes of this politicisation resonate through recent criticism raised by the United States Trade Representative (USTR) Robert Lighthizer, whose recent proposals aim to rectify the WTO impasse by imposing limitations on special and differential treatment

(SDT) for developing countries as well as reforming the stalling dispute settlement system. The latter in the USTR’s view inhibits the incentive of countries to negotiate new trade agreements, shifting the focus exclusively on the WTO’s dispute settlement function (Lighthizer, 2020). Limits on SDT would mainly concern newly industrialised countries, namely China and India.

## Policy Recommendations

Maintaining proactive leadership within the multilateral trade order will be key for maintaining the EU’s ability to steer the governance of global trade. To this end, the EU should seek to support the new Director-General in their tasks to overcome stagnation of the organisation that could lead to further disintegration and prompt states to create alternative fora for managing trade. To this end, the EU can use its diffuse powers, established bilateral relations and ongoing trade negotiations to raise the issue of support for the WTO. Ahead of the European Commission’s publication of a new trade policy communication in early January next year, the Commission should consider the following concrete steps, some of which reflect the conclusions of the 2004 Sutherland Report on the reform of the WTO (Sutherland et al., 2004).

### 1) Empower the Director-General

Should either of the two candidates identified above take the seat of the Director-General, it would provide a unique opportunity for the EU to earn credit amongst WTO Members for supporting a Director-General coming from a region traditionally underrepresented in global commerce. Empowering the Director-General by actively encouraging proposals for WTO reform could thus establish a cascading momentum necessary for structural reform.

**a. Raise the issue of expanding the WTO Secretariat**

Europeans currently occupy over 380 out of the 650 positions within the WTO Secretariat. The ascendancy of a new Director-General provides a unique opportunity to expand the WTO Secretariat and to delegate more analytical and assessment functions to the Secretariat. The presence of a Director-General from a region less represented within the WTO bureaucracy could earn sufficient trust of WTO Members with limited analytical or staffing capacity to expand the WTO Secretariat. This expansion would allow them to better “exercise extra-legal political and normative pressure” (Shaffer, 2005, p. 433). Additionally, an expanded secretariat under the new Director-General could also expand

technical assistance provision to assist smaller countries with technical challenges concerning information gathering ahead of launching disputes while maintaining neutrality.

**b. Support alleviation of WTO resource constraints**

The annual budget of the WTO saw almost no change in its nominal value since 2009. Whilst this development tracks stagnating merchandise trade volume, the EU should consider supporting a fundraising campaign following the new Director-General’s assumption of the office in order to alleviate resource constraints of the WTO Secretariat and to provide the Director-General with discretion over the additional spending (cf. Hall and Woods, 2018, pp. 875-876). The EU should also support secondments from other international organisations for technical assistance programmes, such as the World Bank and UNCTAD to reduce tension between the role of the secretariat as a guardian of the system and as an honest broker in trade negotiations.

**2) Multilateralise plurilateral agreements where possible**

Ensuring that more countries subscribe to future and existing plurilateral agreements would increase opportunity costs for the



United States and other vacillating WTO Members, whose active presence is crucial to the functioning of global commercial governance at the WTO. This would make it more difficult for states to opt for the “creation” of new institutions, maintaining the WTO as the focal point for engagement and reform. The multilateralization of such agreements could be facilitated by adopting a variable geometry approach (Vickers, 2013, p. 1).

### **3) Make use of the geopoliticisation of trade to support multilateralism**

The EU’s trade and investment policy is increasingly becoming an “essential tool of geopolitics” (Meunier and Nicolaidis, 2019, p. 106). With trade agreements being interspersed with non-trade clauses and objectives, the EU should consider using increased support for the multilateral regime as a condition for the conduct of its bilateral trade policy.

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