



The UN's *Our Common Agenda* as Inspiration for International Organizations

The WTO and its Geneva Package

By Edna Ramirez-Robles

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This policy brief shows how international organizations, also outside the United Nations (UN) system, can progress and reach multilateral agreements by de facto aligning their negotiating and communication strategy with the UN Secretary General's *Our Common Agenda* report (OCA). A case in point is the World Trade Organization (WTO) and its 2022 "Geneva Package". It highlights the challenges the WTO has faced throughout its existence and examines past attempts, recent efforts, and successful practices by WTO Members and its Secretariat to overcome them. As a methodology, this policy brief compares initiatives conducted by the current WTO Secretariat leadership with the OCA areas of action. This analogy shows how the current WTO Secretariat bolstered a sense of purpose for the WTO by emulating the OCA areas of action and enabled its Membership to agree consensually in 2022 on the Geneva Package at the WTO's Twelfth Ministerial Conference (MC12). It concludes that even though the MC12 Outcome Document sets out the importance to strengthen a rules-based, non-discriminatory, open, fair, inclusive, equitable and transparent multilateral trading system with the WTO at its core, Members still need to implement these principles at a domestic level. At a multilateral level, Members should keep the WTO reform focus on how trade matters to "We the peoples" and keep strengthening inclusive multilateralism. As a strategy, it proposes to develop projects to include existing flexible mechanisms for negotiating new substantive rules and a dispute settlement that underpins a rules-based system. Furthermore, due to the lethargic process in revitalizing the WTO adjudicative function, more preventive and accountable actions for Members' that violate WTO law should also be elaborated.

Introduction

From its inception in 1995, the World Trade Organization (WTO) was established to serve as an entity that administers trade agreements, act as a forum for trade negotiations, settle trade disputes, review national trade policies, build the trade capacity of developing economies, and cooperate with other international organizations. However, the WTO's relevance has weakened over time. Many areas of action were deeply affected. First, the negotiation function passed through critical stages. Ministers reached a “July package” of negotiation in 2008 without being able to agree at the Ministerial Meeting in Geneva in 2009. From that July package, Members only have been able to agree on certain decisions, such as the Trade Facilitation Agreement (TFA) and more recently the “Geneva Package” in 2022. Nevertheless, the Geneva Package will make a difference to the lives of people around the world.

In the words of WTO Director-General Ngozi Okonjo-Iweala:

“The outcomes demonstrate that the WTO is, in fact, capable of responding to the emergencies of our time.”¹

Second, the adjudication function still needs to overcome serious challenges. The United States took steps against the Appellate Body (AB), leading to its incapacitation in 2019. Today, there are no AB Members left to hear appeals and therefore, it is defunct. Finally, the WTO Secretariat used to perform a discrete role with a limited mandate in the Organization, despite being highly qualified.

This policy brief highlights the efforts of WTO Members and activities of the Director General (DG) and Secretariat to address the challenges to WTO's functioning. These efforts and activities can be considered as de facto aligned with the vision and approach of the UN Secretary General's *Our Common Agenda* report (OCA), published in September 2021.² Thus, even though the WTO is officially outside of the UN system, it can be seen to progress—all challenges notwithstanding—in a similar direction.

In this context, the policy brief emphasizes a shift towards a more inclusive multilateral trading order. Additionally, this piece shows how despite these efforts and activities, there are several remaining issues for the WTO to become fit for purpose at various levels of international trade. It is evident that for the remaining deadlocked issues the WTO needs a reform even more strongly aligned with the OCA's vision. This would enable it to overcome the previously mentioned issues and contribute more effectively to sustainable development in its three dimensions (social, economic and environmental), the protection of the environment, and human well-being and the full enjoyment of all human rights, for present and future generations.³ Therefore, this policy brief recommends a number of projects to be developed and pursued regarding both substantive rules when negotiating and dispute settlement mechanisms.

The Historic Challenge of WTO Negotiations and the OCA's Approach to Areas of Action

The Doha Round Failure

The WTO's Doha Round negotiations started in 2000,⁴ and four years later WTO Members established the Doha Work Programme.⁵ In 2004, the General Council reaffirmed the Ministerial Declarations and Decisions adopted at Doha and the full commitment of all Members to give effect to them. Unfortunately, before the Geneva Package in 2022, 21 years later, Members only agreed on limited issues, such as some Decisions on Intellectual Property (e.g. Doha Declaration on the TRIPS Agreement and Public Health of 2001 and other amendments)⁶ and the Trade Facilitation Agreement adopted in 2013 and ratified by the required Members in 2017.⁷ Thus, it was necessary to change the approach used for Members to negotiate and agree on new and more far-reaching WTO Agreements.

The WTO Members Attempts to Reach Multilateral Agreements

Due to the lack of success of the Doha Round, some Members established clear priorities to include more advanced, 21st century rules in the WTO. For instance, the European Union (EU) considered that negotiations on services, domestic regulation, e-commerce and investment facilitation are essential to make the rules of international trade responsive to the digital transformation of the economy. The EU would also favor an inclusive approach to open, plurilateral agreements (i.e., agreement not joined by all WTO Members) that facilitates participation by developing countries.⁸ China added that it was necessary to rectify the inequity in rules on agriculture and further clarify and improve relevant WTO rules on subsidies, countervailing measures, and anti-dumping measures. China specifically highlighted how crucial it was for Members to work on multilateral rules regarding trade-related aspects of e-commerce, to meet the development needs of business communities, to promote inclusive trade, to enhance the transparency of Members' trade policies, to safeguard the rights of developing Members to special and differential treatment (S&D), and to engage State Owned Enterprises (SOEs) in commercial competition as equal players in the market as other types of enterprises.⁹

WTO Secretariat Efforts to Reach the Geneva Package with the OCA's Areas of Action Approach

Initially, the Twelfth Ministerial Conference of the WTO (MC12) was postponed due the emergence of the Omicron variant of COVID-19 and the opportunity for reaching an Agreement on Fisheries, as well as some other issues (investment facilitation, etc.) was delayed. However, the WTO Secretariat pursued extraordinary efforts to include 21st century rules, which can also be aligned within the OCA's areas of action. Finally, after months of waiting the MC12 was held from June 12-17, 2022, and WTO Members successfully secured multilaterally negotiated outcomes on a series of key trade initiatives. The "Geneva Package" confirms the historical importance of the multilateral trading system and underlines

the important role of the WTO in addressing the world's most pressing issues, especially at a time when global solutions are vital.¹⁰ The package adopted by Members includes the following documents:

1. Outcome document ([WT/MIN\(22\)/W/16/Rev.1](#));
2. Package on WTO response to emergencies, comprising:
 - ▶ Ministerial Declaration on the Emergency Response to Food Insecurity ([WT/MIN\(22\)/W/17/Rev.1](#));
 - ▶ Ministerial Decision on World Food Programme (WFP) Food Purchases Exemptions from Export Prohibitions or Restrictions ([WT/MIN\(22\)/W/18](#));
 - ▶ Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics ([WT/MIN\(22\)/W/13](#)); and
 - ▶ Ministerial Decision on the Agreement on Trade-related Aspects of Intellectual Property Rights ([WT/MIN\(22\)/W/15/Rev.2](#))
3. Decision on the E-commerce Moratorium and Work Programme ([WT/MIN\(22\)/W/23](#))
4. Agreement on Fisheries Subsidies ([WT/MIN\(22\)/W/22](#)).

In addition, Ministers adopted two decisions on the Work Programme on Small Economies ([WT/MIN\(21\)/W/3](#)) and on the TRIPS “non-violation and situation” complaints (which deals with situations where a government may complain that it has been deprived of an expected benefit because of another government’s action, even if no agreement has been violated) ([WT/MIN\(22\)/26](#)) and a Sanitary and Phytosanitary Declaration for the Twelfth WTO Ministerial Conference: Responding to Modern SPS Challenges ([WT/MIN\(22\)/W/3/Rev.3](#)). However, as noted earlier, there are some negotiations from the Doha round that were not yet completed.

Fit for Purpose: The Role of the WTO Secretariat to Overcome Institutional and Global Challenges

WTO Institutional Challenges

In 2021, Director-General (DG) of the WTO Roberto Azevêdo announced that he would be stepping down one year before his term expired.¹¹ By resigning earlier, Azevêdo created conditions for a new DG to put their own stamp on MC12 and, therefore, the future of the WTO.¹² On 28 October 2021, General Council Chair David Walker of New Zealand had informed Members that based on consultations with all delegations, Dr Okonjo-Iweala was best positioned to attain consensus of the 164 WTO Members.¹³ The appointment marks the first time the WTO or its predecessor the GATT has been headed by a woman, and the first time it has been headed by an African. In the EU’s view, for WTO reform to work, the DG

needed to be involved proactively and visibly. There may be scope to modernize and further develop the modalities for consulting business and civil society with a view to revitalizing the involvement of these stakeholders in trade debates.¹⁴

WTO Secretariat's Efforts Aligned with OCA's Areas of Action to Overcome Global Challenges

The OCA sets out twelve areas of action: Leave no one behind; protect our planet; promote peace & prevent conflicts; abide by international law & ensure justice; place women & girls at the center; build trust; improve digital cooperation; upgrade the United Nations; ensure sustainable financing; boost partnerships; listen to & work with youth and be prepared. This paper contends that the current WTO Director General and its Secretariat have worked extensively in making the WTO fit for a purpose in the face of current global challenges through activities and initiatives that are aligned with several OCA areas of action as detailed below.

Leave no one behind

One of the core issues that the current WTO Secretariat has been addressing is the idea of inclusivity. Therefore, this principle dovetails the OCA area of action of “leaving no one behind”. In this regard, Deputy Director-General (DDG) Ellard cited the importance of business engagement with the WTO. This is an important and timely initiative that will help further strengthen the dialogue between the WTO and businesses on how business can support the WTO and play a role in its reform.¹⁵ Moreover the WTO recognizes the value of participation of micro, small and medium-sized enterprises (MSMEs) in international trade, noting that “[t]he smaller the company, the greater the challenges faced in participating in international trade.”¹⁶ Additionally, DDG González explained that trade is a source of resilience in times of crisis. The WTO has played a critical role in ensuring the supply of essential medical products and medical equipment.¹⁷ Subsequently, as mentioned in the previous section the Geneva Package contains the Ministerial Decision on the TRIPS Agreement which gives particular consideration to developing country Members.

Protect our planet

The WTO Secretariat has created many initiatives related to the environment. These actions connect with the OCA area of action of “protecting our planet”. For instance, a WTO web-based environmental database (EDB) to provide information to Members and the general public was launched.¹⁸ Finally, DG Ngozi Okonjo-Iweala outlined her views on how climate priorities can be addressed through trade actions which prioritize the specific challenges faced by least developed countries and small island developing states and stated that the WTO can play a key role in providing the support these countries need for a successful green transition.¹⁹

Place women and girls at the center

The WTO Secretariat has developed several gender related initiatives that relate to the OCA area of action of “placing women and girls at the centre.” Examples include the creation of a draft outcome document for MC12 which contains draft recommendations for WTO Members to continue work on increasing women's participation in international trade. Members intend to include women's economic empowerment issues into the regular work of WTO bodies, improve the impact of Aid for Trade (i.e., helping developing countries to enhance their trade capacity and infrastructure enabling them to benefit

better from trade) on women by mainstreaming gender considerations into programs and strategies to increase data collection, and coordinate research. DG Okonjo-Iweala stressed that women must be at the center of trade for a more prosperous future. It has been emphasized that trade must be used as a vehicle for ending the marginalization of women in the global economy amid widening gender inequalities stemming from the COVID-19 crisis.²⁰

Build trust

The WTO Secretariat has conducted transparency related initiatives which align with the OCA area of action of “building trust.” In this regard, DDG Ellard underlined that consensus is “the heart and soul” of the WTO, when she was asked about the structure and effectiveness of the WTO. The WTO is based on its 164 Members, and any changes in the decision-making process has to emanate from them, stressing further that the Organization is able to function only when there is trust among its Members.²¹

Improve digital cooperation

Many initiatives regarding the use of technology have been created. These activities can be seen as aligned with the OCA area of action of “improving digital cooperation.” An example is the Trade4MSMEs platform, a tool aimed at helping small companies find trade-related information that improves their ability to trade internationally. It aims to assess the export potential of the markets they are targeting and their readiness to export.²²

Upgrade the United Nations (and the WTO)

While the OCA calls for “upgrading the United Nations,” there have also been efforts to similarly upgrade the WTO. The key element permeating discussions in the WTO today is that the Organization needs reform.²³ As part of the MC12 outcomes, ministers agreed to address the challenges that the WTO is facing and to ensure the WTO’s proper functioning. They committed to work towards necessary reform of the WTO with the aim of improving all its functions. The work will be carried out through the WTO’s General Council and its subsidiary bodies, with decisions to be submitted to the next Ministerial Conference.²⁴

Be prepared

The WTO Secretariat has developed important initiatives related to the preparedness to face global pandemics, such as COVID-19. These activities can be categorized in the OCA area of action of “being prepared.” For instance, the WTO cooperated with the International Monetary Fund (IMF) to create the WTO-IMF COVID-19 Vaccine Trade Tracker, a new database aimed at providing greater transparency on the cross-border flow of COVID-19 vaccines.²⁵ Another example is the discussion on how to improve access to COVID vaccines between the heads of the IMF, World Bank Group, World Health Organization (WHO), and WTO.²⁶ In addition, the WTO, WHO, World Intellectual Property Organization (WIPO) held a workshop on access, use of pandemic-related information resources, which provided an overview of COVID-19-related information resources.²⁷ Besides these initiatives, as previously noted at the MC12, trade ministers adopted the Ministerial Decision on the TRIPS Agreement, which gives members greater scope to take direct action to diversify production of COVID-19 vaccines and to override the exclusive effect of patents through a targeted waiver over the next five years.²⁸ However, this decision has attracted some critique, for instance the International Federation of Pharmaceutical Manufacturers and Associations (IFPMA) expressed deep disappointment with the decision which, they said, “sends a dangerous signal not only to the pharmaceutical industry but to all innovative sectors” and would dismantle “the very framework that has brought solutions to tackle COVID-19.”²⁹

Listen to and work with youth

The WTO Secretariat has developed a number of initiatives relating to the academic development of youth, which can be assigned to the OCA area of action of “listening and working with youth.” These include the Young Professionals Programme Launched in 2016, which provides an opportunity for qualified young professionals from developing and least developed country Members of the WTO to enhance their knowledge regarding the WTO and international trade issues.³⁰ In addition, the WTO Secretariat maintains a variety of internship programs for post-graduate students. While opportunities for direct youth input within the WTO may be limited, there exist summits and events that actively encourage youth participation, with the Public Forum being a noteworthy example. In its 2019 edition, DG Azevêdo noted that “the WTO is in listening mode to learn what young people are proposing with regards to basic societal needs such as the preservation of the environment, education and community engagement.”³¹

In addition to the mentioned initiatives by the WTO to adapt to institutional and global challenges, another critical concern that demands attention is the functioning of the Dispute Settlement mechanism and the methods for ensuring members’ accountability in cases of practices that contravene WTO agreements, these issues will be analyzed in the following section.

Dispute Settlement and Accountability Crisis, Attempts and Proposals for a Reform

Lack of Compliance with the Rule of Law, Accountability, and Functioning of the Dispute Settlement System

The increasing trade protective measures imposed worldwide have demonstrated that WTO Members are not accountable enough for their WTO-inconsistent trade practices. Members at the adjudicative stage will need to make serious commitments as the WTO dispute settlement is in the midst of a serious crisis. This crisis was triggered by the United States, which has blocked since 2017 the process of (re-)appointment of Members of the AB. As a result of this blockade, the number of AB Members dropped below the minimum of three needed to hear and decide new appeals from first instance panel reports.³² This has led to most panel reports being appealed “into the void,” thus leaving several disputes unresolved. As a result, it is extremely difficult now for WTO Members to enforce WTO obligations through complaints against measures they believe are in violation.³³

Attempts and Members’ Positions to Reform the WTO Dispute Settlement Mechanism

There have been various attempts and recommendations to reform the adjudicative function of the WTO. An example are the Walker Principles in November 2019, named after New Zealand’s permanent representative to the WTO. They require “the AB to make its decisions in ninety days...to treat facts as facts (not subject to appeal)...to address only issues raised by parties and only to the extent necessary to resolve the dispute at hand so that its opinions are not advisory, to take previous AB or panel reports into

account only to the extent they are relevant and not as precedent, and to ensure that its rulings do not add to the obligations or take away any rights of the parties as contained in the WTO rules.”³⁴ In addition, in April 2020, a group of 47 WTO members notified the organization of the creation of a new Multi-Party Interim Appeal Arbitration Arrangement (MPIA) which currently has been utilized to arbitrate ten WTO disputes among themselves, which would otherwise have been appealed to the non-functional WTO AB.³⁵

Furthermore, a number of Members have expressed their ideas for WTO reform, especially regarding the adjudicative function. Three of the most vocal ones are the EU, China, and the United States. According to the EU, the most urgent of the WTO reforms is finding an agreed basis to restore a functioning dispute settlement system and to proceed to the appointment of the Members of the AB.³⁶ According to the United States, the WTO’s dispute settlement system is also a must on the reform agenda as serious concerns about “the overreach” of the AB rulings have been raised for more than 15 years. According to China, the appointment process of AB Members should be initiated without delay so as to ensure the effective functioning of the dispute settlement mechanism.³⁷

Remaining Issues to Make the WTO Fit for Purpose

Despite the efforts to improve the WTO, which are to a significant extent in line with the OCA’s approach, there remain challenges to overcome. These are persistent, seeing that in the past, attempts and efforts have fallen short.

Political Decision-Making Processes Still Untouched

The WTO needs an effective decision-making system capable of resolving diverging interests. Although the WTO Agreements foresee aspects where consensus is not required for decisions to be taken, it dominates this decision-making process. Although the consensus practice generally has worked,³⁸ nevertheless, it has created deadlocks, such as in the Doha Round, and the AB new members nominations.

Deficient Cooperation and Trust Among Members

During the COVID-19 pandemic, large trade powers did not play a leadership role in using the WTO as a platform to cooperate in boosting global production and distribution of medical products.³⁹ The multilateral trading system depends almost entirely on Members voluntarily living up to their commitments. International trade would largely cease if inconsistent trade-restrictive measures are put into place with the rules as a regular matter and only removed prospectively through lengthy litigation. According to DDG Woolf, if expectations that a resulting agreement would be lived up to by its signatories remained low, no negotiations would occur in the first place with a view to either increased market access through trade liberalization or the formulation of rules. As Woolf stresses, “[f]or the WTO, trust is a perishable commodity.”⁴⁰

Countries Trade Distorting Policies

The United States under former President Trump decided that its best negotiating strategy was to deal with other states on a bilateral or plurilateral basis, rather than on the basis of multilateral rules. Trump publicly criticized international institutions and their rules, and disparaged multilateral trade and security agreements and wrecked WTO tariff and most-favored nation (MFN) disciplines. He availed himself of the legal loophole of ‘national security’ to justify his imposition of tariffs on U.S. steel and aluminum imports. Over the years, trade officials and policy makers have warned repeatedly against the dangers of abuse of national security exceptions for the protection of domestic industry and have acknowledged that such abuse constitutes a serious threat to the global trading system.⁴¹ Furthermore, when other states retaliated with new tariffs, he rapidly and selectively escalated the tariff war, focusing on China.⁴² So far, President Biden has largely embraced the Trump policy of unilateralism and protectionism in trade.⁴³ In addition the United States, the EU, and Japan expressed serious concerns about the impacts of State Owned Enterprises (SOEs) activities on “the proper functioning of international trade”. Many of the contemporary challenges in international trade regulation have much to do with China’s state capitalism.⁴⁴

Recommendations

It is necessary to negotiate the remaining issues that have not yet been agreed upon. Mainly, this concerns a functioning dispute settlement mechanism that guaranties enforcement. In addition, the WTO should keep adjusting to find how it can contribute better to improving human lives. In this regard, the Secretariat should continue strengthening initiatives aligned with the OCA’s vision for the UN, by following parameters for an inclusive multilateralism such as space for all voices, diverse set of states, parliaments, international institutions, including international financial institutions, civil society, cities, private sector,⁴⁵ and create partnerships with international organizations to coordinate efforts and add expertise. Therefore, it is necessary to institutionalize Multilateral Agency Dialogues twice a year. For instance, the heads of the WTO, IMF, European Bank for Reconstruction and Development (EBRD), and the ASIAN Development Bank (ADB) held a session at the Aid for Trade Global Review, outlining and discussing the roles they play in supporting sustainable development and helping developing economies respond to the COVID-19 pandemic, the war against Ukraine, and climate and energy-related crises.⁴⁶ It is essential to keep having these dialogues on a case-by-case basis according to the specific needs of the addressed challenge and use the institutional initiatives as future negotiation topics. In addition to the changes expressed before, there also needs to be a firm commitment and progress by each and every WTO Member to contribute to these reforms at a domestic level. An effective communication strategy of a national campaign could be useful to publicize how, through trade, global challenges can be addressed.

Projects for a Strategy for a WTO Reform

Some of the following projects can be developed to complement efforts of existing proposals:

- ▶ At the national level WTO Members have to develop road maps to implement the “Geneva Package” agreed in the MC12, involving all relevant national institutions. An important focal

point is to coordinate and design implementation plans for these principles in each National Committee on Trade Facilitation (NCTF).

- ▶ The MC12 Outcome Document sets out a strategy to strengthen the rules-based, non-discriminatory, open, fair, inclusive, equitable, and transparent multilateral trading system with the WTO at its core, these principles should be embedded in every WTO Member's national development plans.
- ▶ A flexible approach and mechanisms can be considered for upcoming rules to overcome the remaining challenges. For instance, Members should aim to reformulate the single undertaking principle in WTO negotiations (i.e., where nothing is agreed until everything is agreed) and decision making based on consensus.
- ▶ A dispute settlement mechanism for all WTO Members with flexible rules as stated in the Walker principles should receive serious consideration in order to leave the current, persistent deadlock.

Conclusion

After the success of the WTO DG, the Secretariat and the WTO Membership in booking some progress with WTO negotiations and agreement, which to a large extent aligns with the vision and areas of action of the UN's OCA, the WTO needs to keep working on its reform with this focus and spirit. Adding flexible and inclusive solutions can facilitate further Agreements. Additionally, Members need to be responsible for implementing the recent Geneva Package thoroughly at a national level, and the immediate space for doing it are its respective NCTFs. It has become clear that the OCA's vision reverberates beyond the UN system. Therefore, even as the UN's Summit of the Future in September 2024 will focus on overcoming the many challenges facing the UN, we should also keep our eye on the WTO and other parts of the multilateral system to carry the torch of that vision forward.

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