Effective Global Economic Governance by the World Trade Organization

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Abstract

The World Trade Organization (‘WTO’) is the principal international institution for the management and regulation of the process of economic globalisation. Its effectiveness in fulfilling this important task, however, leaves much to be desired. On 4 and 5 February 2005, the Faculty of Law of Maastricht University organised an international research conference entitled ‘In Search of Effective Global Economic Governance: The Case of the World Trade Organization’. This conference brought together academics, WTO officials, government diplomats, national trade officials, representatives of business associations and NGOs to discuss a wide range of issues, including: possible improvements to and alternatives for

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consensus decision-making in the WTO; issues of transparency, democratic legitimacy and the participation of civil society in WTO decision-making; secondary law-making by WTO bodies; and an expanded role for the WTO Secretariat. It is important that legal and political science scholars focus their research efforts on the reforms needed to transform the WTO into an instrument of effective global economic governance. The main objective of the conference was, therefore, to define a comprehensive agenda for research into the institutional reform of the WTO. This article is, above all, a report of the conference and summarises the main arguments made by the participants.

**Keywords:** Global Economic Governance, World Trade Organization, Decision-making, Legitimacy, Civil Society

### 1. Introduction

Few international developments are as desirable but, at the same time, as controversial as economic globalisation. While the potential gains of the process of economic globalisation are considerable, these gains will not be achieved without careful management and regulation of this process. The UN Secretary-General Kofi Annan noted in April 2000, when presenting the United Nations Millennium Report to the UN General Assembly, that:

… the overarching challenge of our times is to make globalization mean more than bigger markets. To make a success of this great upheaval, we must *learn how to govern better, and - above all - how to govern better together*. We need to make our States stronger and more effective at the national level. And we need to get them working together on global issues, all pulling their weight and all having their say.¹ [Emphasis added]

Joseph Stiglitz described, in *Globalization and its Discontents*, the current situation with respect to global economic governance as follows:

… we have a system that might be called *global governance without global government*, one in which a few institutions – the World Bank, the IMF, the WTO – and a few players – the finance, commerce, and trade ministries, closely linked to certain financial and commercial interests – dominate the scene, but in which those affected by their decisions are left almost voiceless. It’s time to
change some of the rules governing the international economic order, to think once again about how decisions get made at the international level – and in whose interests – and to place less emphasis on ideology and to look more at what works.\(^2\)

Several international organisations play a significant role in the effort of managing and regulating economic globalisation. Very prominent among these organisations is the World Trade Organization (‘WTO’), which Marco Bronckers stated in 2001 as having ‘the potential to become a key pillar of global governance’.\(^3\) The WTO is also one of the most controversial international organisations. Critics of economic globalisation argue that the WTO is ‘pathologically secretive, conspiratorial and unaccountable to sovereign states and their electorate’.\(^4\) Traditional proponents of economic globalisation are, however, equally as critical of the WTO. Many of them question whether the WTO is at present sufficiently equipped to fulfill its mission of managing and regulating economic globalisation. After the dramatic collapse of the WTO Ministerial Conference in Seattle in 1999, the then US Trade Representative Charlene Barshefsky noted that ‘the WTO has outgrown the processes appropriate to an earlier time’ and argued for procedures which had a greater degree of internal transparency and inclusion to accommodate a larger and more diverse membership.\(^5\) After the unsuccessful Ministerial Conference in Cancún in September 2003, the then EC Trade Commissioner Pascal Lamy characterised the WTO as ‘a medieval organisation’ and called for careful reflection and consultation on the reform of the institutional structure and procedures of the WTO.\(^6\) In January 2005, the Consultative Board, chaired by former GATT and WTO Director-General Peter Sutherland, released its Report on The Future of the WTO: Addressing Institutional Challenges in the New Millennium (the ‘Sutherland Report’).\(^7\) This Report looks at the state of the WTO as an institution, studies and clarifies the institutional

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\(^1\) UN Press Release SG/SM/7343 GA/9705, 3 April 2000.
\(^5\) See Press briefing, Seattle, 2 December 1999.
\(^6\) See BRIDGES Daily Update No.6, 15 September 2003, [http://www.ictsd.org/ministerial/cancun/wto_daily/ben030915.htm](http://www.ictsd.org/ministerial/cancun/wto_daily/ben030915.htm), visited on 8 February 2004. In January 2004, Commissioner Lamy put forward a first set of proposals for improving the preparation and organisation of the sessions of the WTO Ministerial Conference. For the medium-long term, he called for better access and clearer rules for involvement of parliamentarians and civil society as well as a larger WTO Secretariat and more powers for the WTO Director General.
\(^7\) See [http://www.wto.org/english/thewto_e/10anniv_e/10anniv_e.htm#future](http://www.wto.org/english/thewto_e/10anniv_e/10anniv_e.htm#future), visited on 27 January 2005.
challenges facing the WTO and considers how the organisation could be reformed to meet these challenges.

Given its subject matter, the Sutherland Report was at the core of the discussions at the international research conference, entitled 'In Search of Effective Global Economic Governance: The Case of the World Trade Organization’, organised by the Faculty of Law of Maastricht University on 4 and 5 February 2005. This conference brought together academics, WTO officials, government diplomats, national trade officials, representatives of business associations and NGOs to discuss issues relating to the institutional reforms needed to transform the WTO into a more effective instrument of global economic governance. At the conference, four main issues were discussed: first, the possible improvements to, and alternatives for, consensus decision-making in the WTO; second, transparency, democratic legitimacy and the participation of civil society in WTO decision-making; third, secondary law-making by WTO bodies; and fourth, an expanded role for the WTO Secretariat. This article summarises the main arguments made at the conference.

2. Improvements to, and alternatives for, consensus decision-making

The general session on ‘Improvements to, and alternatives for, consensus decision-making in the WTO’ was chaired by Dr. Ignacio Garcia Bercero, Head of Division, DG Trade, European Commission, Brussels. The panel for this session consisted of Prof. dr. Niels Blokker, Senior Legal Counsel, Dutch Ministry of Foreign Affairs and Professor of International Institutional Law, University of Leiden; Prof. dr. Thomas Cottier, Managing Director, World Trade Institute, Berne and Professor of Law, University of Berne; Prof. William Davey, Edwin M. Adams Professor of Law, University of Illinois and former Director, Legal Affairs Division, WTO Secretariat, Geneva; Dr. Rashid Kaukab, Programme Coordinator, Work Programme on Trade and Development, South Centre, Geneva; Dr. Edwini Kessie, Counsellor, Council and Trade Negotiations Committee Division, WTO Secretariat, Geneva; and Mr. David Shark, Deputy Permanent Representative, U.S. Mission to the WTO, Geneva. The discussion sessions on this theme were chaired by Prof. dr. Marco Bronckers, Wilmer Cutler Pickering Hale and Dorr and Professor of International and European Trade Law, University of Leiden and Prof. dr. Gerhard Erasmus, Professor of Law, University of Stellenbosch and Senior Research Fellow, Trade Law Centre for Southern Africa (tralac).
2.1. **Consensus decision-making**

The first issue under discussion concerned consensus decision-making in the WTO. As pointed out by one of the panelists, an analysis of decision-making rules and practices of international organisations shows that decision-making by international organisations has evolved over time. In nineteenth and early twentieth century international organisations, most decisions were taken by unanimity. Whilst different variations of the unanimity rule existed, the requirement of unanimity was, in all cases, seen as a consequence of the principle of state sovereignty. For example, the League of Nations, the first universal international organisation with a general mandate, took decisions by unanimity. A striking exception to the general rule of decision-making by unanimity at that time was the International Labour Organization, which could take decisions by majority vote. International organisations established during or shortly after the Second World War often provided for decision-making by majority vote. This development has been explained by the spirit of cooperation prevailing at that time, as well as by the dominant role played by the United States and its traditions of democracy and majority vote at home. However, the practice of decision-making in international organisations soon showed that states were not ready to accept decision-making by majority vote and did, in fact, regularly resort to decision-making by consensus. Subsequently, and in particular in the last three decades, decision-making by consensus has been increasingly included also in formal decision-making rules of international organisations. If a new international organisation is established today, it is likely that its charter will provide for decision-making by consensus, not for decision-making by voting. The most common explanation for this development, according to the panelist, is that in many organisations voting majorities were held by a large number of small and/or weak members that could adopt any decision, including decisions involving considerable costs, which would sooner or later alienate the more powerful members from the organisation.

Article IX of the Marrakesh Agreement provides:

> The WTO shall continue the practice of decision-making by consensus followed under the GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter will be decided by voting. At meetings of the
Ministerial Conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to that number of their member States which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Agreement.

While explicitly provided for in Article IX, recourse to voting is very exceptional in the WTO. In practice, WTO decisions are taken by consensus. Many panelists and discussants pointed to the fact that the consensus requirement/practice makes decision-making in the WTO problematic. While it may work well in a small, rather homogeneous group (such as the Contracting Parties in the early years of the GATT 1947), consensus decision-making in the WTO, an organisation of 148 Members with very different levels of economic development, is obviously difficult and susceptible to paralysis. The increasing involvement of a growing number of developing country Members in WTO negotiations and decision-making has made the problems relating to consensus decision-making ever more acute in recent years. The lack of progress in the Doha Development Round and the small number of important decisions adopted by the Ministerial Conference or General Council since 1995 is seen as clear evidence of the problems related to this form of decision-making.

In spite of these problems, many panelists and participants in the discussion spoke out in defence of decision-making by consensus in the WTO, for they considered it to be a valuable means of ensuring widespread support for decisions and their implementation. Decision-making by consensus gives all Members, regardless of their political and/or economic influence, the ‘possibility’ of blocking a decision by formally objecting to it. This ‘veto right’, no matter how exceptional its actual use may be, in particular gives small Members without economic clout some guarantee that decisions cannot just be imposed on them. If a proposed decision is incompatible with a Member’s vital economic interests, this Member can block this decision. It is clear that a decision which a Member considers to be incompatible with its vital economic interests, but which is nevertheless forced upon it, will give rise to major implementation problems. As one contributor stated, it would be extremely difficult for a Member to implement a decision to which it was strongly opposed. Politically, the government of such a Member would experience major difficulties in explaining to its constituency why a decision which is incompatible with its vital economic interests should be
adhered to and incorporated into national law and policy. This same contributor feared that, in such situations, there would almost inevitably be a serious backlash against the WTO, accusing it of eroding the national sovereignty of WTO Members. Furthermore, the likely non-implementation of decisions would undermine the credibility of the WTO. As stated above, consensus decision-making ensures, in the opinion of many panelists and contributors, widespread support for decisions and their implementation.

Another reason for panelists and participants in the discussion to defend consensus decision-making was the fact that the alternative method of decision-making provided for in Article IX of the WTO Agreement, namely decision-making by majority vote with one vote for each Member, was considered to be dangerously out of touch with economic and political reality. Given the fact that developing country Members account for three-quarters of the membership of the WTO, these Members are likely to prevail on any issue which is submitted to a vote, provided of course that they vote as a bloc. However, developing country Members account for less than 30 per cent of world trade. A method of decision-making that risks alienating a group of developed country Members accounting for more than 70 per cent of world trade seemed, to most panelists and participants in the discussion, as being undesirable.

In the view of one panelist, the reason why decision-making by consensus should remain the major mode for adopting decisions in the WTO is that the WTO system is primarily based on the exchange of concessions; exchanges which should be mutually beneficial. Therefore, WTO Members should retain the right not to enter into obligations unfavourable to them. This panelist characterised WTO obligations as contractual, and emphasised the requirement of an agreement on the side of all parties involved in obligations of this type.

Some panelists and participants in the discussion took an opposite view and supported the idea of replacing current WTO consensus decision-making by decision-making by majority voting. One panelist stressed that the consensus rule reflects the national sovereignty principle, a principle based on the 18th century structure of states and on the assumption that countries are equal, disregarding their size or actual economic or political power. According to this panelist, this assumption is no longer credible and decision-making by consensus is an outdated manner of decision-making that is not required to ensure the legitimacy of decisions taken. This panelist argued that the legitimacy of WTO decisions, and of the WTO itself, is
what needs to be ensured. He expressed strong doubts as to whether decision-making by consensus serves this purpose.

2.2. In search of improvements and alternatives

While many, if not most, panelists and participants in the discussion spoke out in defence of consensus decision-making in the WTO, it was widely accepted that, in view of the problems related to consensus decision-making, more research on possible improvements to, and alternatives for, the current method of decision-making was much needed. Such research should take a long term perspective and – as one panelist observed – should not be restrained by today’s political realities; the world evolves and unforeseen developments happen.

A number of participants insisted that research on improvements to, and alternatives for, consensus decision-making should start with an in-depth analysis of the successes and failures of consensus decision-making in the old GATT and the WTO to date. It was argued that there is a lack of theoretical and empirical analysis of decision-making in the GATT and the WTO and, therefore, insufficient understanding of how it actually worked and works. Several panelists and contributors to the debate on decision-making in the WTO expressed the view that there is excessive interest in what goes wrong whilst very little attention is given to some remarkable successes, such as the decision on the accession of China and the decisions taken at the Doha session of the Ministerial Conference. Moreover, it was suggested that some high-profile failures, such as the Seattle and Cancun sessions of the Ministerial Conference, may have been due to fundamental disagreement on substance at least as much, if not more than, due to the decision-making method applied. There was general agreement on the necessity to understand the reasons behind both successes and failures of decision-making in the GATT and the WTO before plunging into research on improvements of, and alternatives for, the current decision-making by consensus. Looking at other international organisations and their decision-making methods was considered to be of importance, too. Many participants in the discussion believed that the WTO could draw valuable lessons from experiences of other international organisations, although some participants in the discussion disagreed on this point. The latter argued that the specific Member-driven character of the WTO and the fact that the WTO system is largely based on the exchange of mutually beneficial concessions, make the WTO and its decision-making methods very different from other international
organisations and their decision-making methods. Whether this is true or not, it was generally agreed that any research on improvements to, and alternatives for, consensus decision-making in the WTO should give careful consideration to the specific character of the WTO and its functions. Moreover, careful consideration should not only be given to the current functions of the WTO. Several participants in the discussion emphasised that the WTO will increasingly be confronted with new issues and may be expected to fulfill new functions. An in-depth assessment of these new issues and new functions is a prerequisite for research into more effective decision-making in the WTO, since new issues and new functions may warrant and/or necessitate new decision-making methods for the WTO. In judging the appropriateness of specific decision-making methods, the very character of the WTO, now and in the future, is thus decisive. As one participant pointed out, it is important in the discussion on decision-making to address the question whether the WTO is to be an organisation balancing the interests of its Members in the area of trade and related spheres, or an instrument of global governance serving global interests.

Most participants to the discussion endorsed the idea that, in the search for possible improvements to, and alternatives for, consensus decision-making in the WTO, it is very important to distinguish between different types of decisions taken in the WTO context. For some types of decisions, recourse to decision-making methods other than consensus may be more acceptable than for other types. Panelists and con participants in the discussion made several suggestions with regard to a possible typology of WTO decisions. One participant distinguished between so-called ‘housekeeping’ decisions (concerned with internal matters of the organisation), ‘day-to-day’ decisions regarding the application and interpretation of existing rules and decisions by which new rules are created. According to this participant, consensus decision-making should remain for the two last mentioned types of decisions, whereas for the first type of decisions, decision-making by voting should be accepted. Another participant distinguished between decisions affecting rights and obligations of Members and decisions with no such effect; only the first category of decisions should be adopted by consensus. Most participants agreed that it is essential to distinguish between decisions concerning substantive issues and decisions on procedural issues and that a categorisation of decisions going beyond the ‘substance-procedure’ distinction might be quite helpful. Several discussants warned, however, that no categorisation of decisions is as straightforward as it might appear and must therefore be given careful attention. One panelist
stressed, for instance, that the very question of whether a decision is of a substantive or of a procedural nature tends to be considered a substantive issue.

Another important area that, according to many participants in the discussion, requires proper consideration and exploration concerns the relationship between WTO decision-making procedures and regional trade arrangements. The Sutherland Report suggests that the proliferation of such arrangements is a result of the difficulties that the WTO has had adopting decisions by consensus. According to some participants, this is an assumption that deserves more careful examination. One participant proposed, furthermore, an analysis of the decision-making procedures of successful regional trade arrangements in order to learn from the positive experiences of these arrangements. This participant also suggested that organising WTO Members into regional groups and looking at decision-making from a regional perspective could possibly mitigate the current problems with consensus decision-making in the WTO. Several participants in the discussion, however, expressed doubts as to the usefulness of an examination of decision-making procedures applied by regional trade arrangements. These arrangements are of a very different character than the multilateral, quasi-universal WTO. Furthermore, one participant noted that, in the context of some informal groupings within the WTO (such as the African group, for example), which do not correspond with regional trade arrangements, Members coordinate their positions within the WTO and thereby facilitate WTO decision-making. However, in the context of some successful regional trade arrangements (such as NAFTA, for example), Members do not consult each other on WTO matters and therefore do not facilitate WTO decision-making.

To facilitate decision-making in the WTO, various techniques have been developed to reduce the number of Members that actively participate in deliberations. One such mechanism is the infamous ‘green room meetings’. Other mechanisms are ‘mini-ministerials’ and the ‘chair’s own responsibility’ or ‘chair’s text’ technique (combined with a chair-driven reverse consensus). These techniques have been criticised, especially by developing country Members, as they tend to exclude the majority of these Members from the decision-making process. Intense consultations among WTO Members on this issue in 2000 did not result in any significant changes. However, the debate continues. As suggested by several participants, any research on WTO decision-making would have to examine carefully these and other techniques. The main challenge is to balance the interests of inclusiveness with the interests of flexibility, efficiency and progress.
Another means to facilitate decision-making within the WTO is to abandon, in specific cases, the ambition to conclude a multilateral agreement (involving all Members) and aim for a plurilateral agreement (involving only a group of Members). The Sutherland Report makes a suggestion along these lines. Many participants in the discussion considered this plurilateral approach to decision-making to be worthy of further examination. More frequent use of plurilateral agreements might provide for a solution in situations where no consensus of all WTO Members can be reached.

Several panelists and many participants in the discussion referred to the recommendation in the Sutherland Report to require a Member considering blocking a measure which has broad support among other Members, to declare that the matter at hand is of vital national interest to it. Such a ‘consensus blocking declaration’ would need to be given in writing and would have to include reasons. Some participants supported this proposal, stating that such a mechanism would increase the political ‘cost’ of blocking consensus and discipline the substance of the objection by forcing the opposing Member to state substantive reasons. Other participants feared that this suggestion is politically not acceptable to most WTO Members.

Although most panelists and participants in the discussion did not see a shift from consensus decision-making to decision-making by vote as an actual possibility for the near future of the WTO, they agreed that alternative methods of decision-making should be examined. Particular attention should, in this respect, go to decision-making by weighted vote. As already stated above, a voting system in which each Member has one vote is out of touch with political and economic reality. It is therefore not acceptable. One panelist presented the results of research on the factors that could be taken into account in determining the weight to be given to the vote of a Member in WTO decision-making. These factors include a Member's share of world trade, its market openness and the size of its population. For the adoption of a decision, a qualified majority or double majority may be required. It is important that any future voting rules take into account the stake that major trading entities have in the WTO system, but at the same time do not allow them to block single-handedly the adoption of decisions. Several participants addressed the use of particular factors to determine the weight of votes, but further discussion focused especially on the general issues of legitimacy and efficacy of decision-making by vote. With regard to legitimacy, one participant referred to the current difficulties of the IMF and the World Bank and their decreasing ‘popularity’ caused,
according to that participant, mostly by improper and unfair use of the weighted majority voting system which often forced Members to implement decisions which they are strongly opposed to. As to efficacy, several participants noted that decision-making by vote undoubtedly leads to the more efficient adoption of decisions. This view was, however, not shared by others, who emphasised the core advantage of consensus decision-making, already referred to above, namely ensuring the widest possible support for the decisions so adopted. By definition, such a degree of support would be missing from decisions adopted by majority vote. A number of participants stressed that the efficacy of decision-making must not be judged (primarily) on the basis of the swiftness with which decisions are adopted, but on the basis of the actual implementation of these decisions after adoption. Whilst it is quite controversial, in the discussion on decision-making by vote, specific attention should also be paid to the legal consequences of a decision for a Member which voted against it. Should such decision be binding upon that Member? It is obvious that the non-application of decisions on Members that were opposed to their adoption is likely to result in a fragmentation of the WTO system, undermining its efficacy.

While many panelists and participants in the discussion expressed strong reservations with regard to decision-making by vote within the WTO, there was broad support in the discussion for the view that the so-called 'shadow of voting' might enhance efficacy of the WTO decision-making considerably. Many participants agreed that the mere possibility of calling for a vote - and the threat of being outvoted - would stimulate the readiness of participants in the decision-making process to make concessions and reach consensus. As observed above, this ‘threat’ of decision-making by vote is currently already provided for in Article IX of the WTO Agreement. The question is, however, how to make this ‘threat’ credible.

3. Transparency, democratic legitimacy and participation of civil society

The general session on ‘Issues of Transparency, Democratic Control and the Participation of Civil Society in WTO Decision-Making’ was chaired by Prof. dr. Jan Wouters, Director, Institute for International Law; Professor of International Law and the Law of International Organizations, Catholic University of Leuven. The panel for this session consisted of Prof. dr. Dukgeun Ahn, Director, WTO & Trade Strategy Centre and Associate Professor of
The WTO is portrayed, by many, as a secretive organisation in which the governments (of a few major trading nations), unsupervised by parliaments or civil society, set the agenda and push through rules that affect the welfare of people worldwide. While the WTO has made significant efforts in recent years to become more transparent, democratic and open to civil society, most panelists and participants in the discussion agreed that much remains to be done. A number of panelists and participants expressed grave concern regarding the level of distrust and misunderstanding of the WTO and its activities, not only in the general public but also, quite distressingly, among leaders and officials of WTO Members. One panelist forcefully argued that the WTO was, more than ever, losing the battle for the hearts and minds of the people and expressed worries for the very existence of the WTO in the future. These worries were not generally shared. Most participants agreed, however, that civil society’s lack of knowledge of the WTO and its activities needs to be addressed and that the WTO itself, as well as the Member governments, have an important role to play in this respect. It was said that the WTO should adopt a much more proactive, even aggressive, approach to its own promotion and the promotion of the multilateral trading system than it has adopted to date. Furthermore, it is important for the WTO to engage in a critical examination of its ‘culture’, its customs and its practices, some aspects of which are directly related to the high levels of distrust and misunderstanding of the WTO. As one panelist stated, the WTO has taken over much of the ‘culture’, the customs and the practices of the GATT and reminds some of ‘an old man in new clothing’. According to this panelist, the WTO must ‘rejuvenate’ itself and develop a ‘culture’, customs and practices corresponding to the demands of the international community of the 21st century. These demands and the appropriate responses to them should
be the subject-matter of future research. More generally, it was agreed that any research on decision-making in the WTO would need to give considerable attention to the issues of transparency, democratic legitimacy and the participation of civil society.

Problems regarding transparency, democratic legitimacy, democratic control, accountability and the participation of civil society were said to be very much interrelated, yet not identical. Several participants expressed the view that, before any substantial research on these issues might begin, the above mentioned terms ought to be defined in order to provide researchers with a common conceptual framework. Although some participants in the discussion pointed to the fact that much research had already been done, especially by political scientists, other participants emphasised the need for specific legal definitions of the terms at issue. This will, however, be a complicated task; as several participants emphasised, concepts such as ‘democracy’ and ‘transparency’ often hold different meanings for different WTO Members due to a range of historical, political and cultural factors.

3.1. Transparency

With regard to transparency, several participants emphasised that the level of distrust and misunderstanding of the WTO – one participant used the term ‘paranoia’ in this context – is, to an important extent, due to the lack of transparency in the WTO. In fairness, it should be noted that the WTO has made efforts to increase transparency. In July 1996, the General Council adopted the Decision on De-restriction. This introduced the principle of immediate, unrestricted, circulation of WTO documents. Unfortunately this principle was, at the time, still subject to important exceptions. Minutes of WTO meetings and WTO Secretariat background papers were only de-restricted, and thus made available to the public, after eight to nine months. An important step forward was taken in 2002 when WTO Members, after years of discussion, finally agreed to accelerate the de-restriction of official WTO documents. Pursuant to the Decision of the General Council of 14 May 2002 on Procedures for the Circulation and De-restriction of WTO Documents, most WTO documents are now immediately available to the public. Those documents that are initially restricted are de-restricted much faster than before. Under the new rules, the time-period for de-restriction has been reduced to an average of six to twelve weeks (compared with the previous time-period of eight to nine months). Also, the WTO
website has received much praise. In its Global Accountability Report 2003, the One World Trust, a British NGO, described the information on the WTO’s activities available online as ‘excellent’. Most participants in the discussion agreed that the WTO has already ‘come a long way’ with regard to transparency. However, many important documents never attain the status of ‘official’ documents and therefore do not fall under the de-restriction rules. Furthermore, and even more importantly, all meetings of WTO bodies remain closed to the public. The need to open the doors and windows of the WTO is, according to most participants urgent. This would result in a better understanding of the WTO and would reduce fears and confusion. Research should identify what further steps need to be undertaken as well as their possible impact on the operation of the WTO. Several participants were of the opinion that transparency is not an objective in itself, but rather a means to take the best decision for all parties concerned. Therefore attention must also be paid to legitimate interests of WTO Members and officials in maintaining confidentiality. Cultural differences with respect to transparency were noted, too. For example, while the presence of cameras in court rooms in the United States is common, in Europe cameras are mostly banned. In identifying appropriate and broadly acceptable means of enhancing transparency in the WTO, cultural and other differences between Members may not be disregarded.

Several participants in the discussion, furthermore, emphasised that, when deciding on the appropriate means of enhancing transparency in the WTO, it is important to take into account the differences in the nature of the activities conducted. The issue of transparency of negotiations on new rules is different from the issue of transparency of dispute settlement proceedings. Hence, the appropriate level and means of transparency in dispute settlement may well differ from those in decision-making.

Finally, several participants stressed the importance of transparency at the national level. According to them, transparency in the WTO has to be complemented by transparency at the national level. Therefore, the actual situation in the WTO Members States should be investigated, too.

3.2. Democratic legitimacy
With regard to the issue of democratic legitimacy, one panelist offered an analysis of the (un)suitability/(in)compatibility of the traditional model of democratic legitimacy of international law and decisions of international organisations to effective global governance. As the panelist explained, this traditional model is based on two elements: first, it is based on parliamentary consent to international treaties; secondly, it is based on accountability and parliamentary control of government and its officials. According to the panelist, this traditional model is insufficient for effective global governance because of the problems caused by the ‘interconnectedness’ of national and international regulation, dissolution of the ‘seat of responsibility’ and incongruence of the governed and the governors. As stated by this panellist, the so-called ‘legitimacy chain’, the chain between those making decisions and those affected by the decisions, is too long and not transparent. In reality, there is in almost all WTO Members States little national parliamentary involvement in, or meaningful control of, the WTO rule-making process, while the rules agreed on extend deeply into the national economic and social order and are legally binding and enforceable. As a result, there is a gap of democratic legitimacy in global economic governance that needs to be closed. The panelist outlined some possible solutions to this situation. Of these possible solutions, he did not support the 'turning back the clock' by the re-nationalisation of economic governance or the internationalization of parliamentary control (which is much in vogue at present). Instead, he proposed 'a radical-democratic approach', consisting of the parliamentarisation of foreign and trade policy. He advocated challenging the traditional executive dominance of foreign and trade policy, arguing that law-making at the international level needs to be as much ‘parliamentary law-making’ as at the national level.

Many participants in the discussion agreed with the panelist that the efficiency of an international organisation such as the WTO requires democratic legitimacy. Most of these participants agreed that the increased involvement of national parliaments would indeed lead to enhanced democratic legitimacy. One participant noted, however, that the question whether the government officials of Members are indeed ‘representatives’ of their own citizens is ‘taboo’ in the WTO. Some participants suggested that the democratic legitimacy of the WTO could also be enhanced by increasing the participation of civil society, particularly non-governmental organisations, in the WTO. This suggestion was, however, controversial. According to one participant, NGOs are not an expression of democracy. Although many NGOs perform useful activities, they are, themselves, neither ‘representative’ nor ‘accountable’ and they are thus unable to fill the democratic legitimacy gap.
3.3. Participation of civil society

Over the last decade, NGOs have demanded a greater role in WTO decision-making. Article V:2 of the WTO Agreement empowers the General Council to:

… make appropriate arrangements for consultations and cooperation with non-governmental organizations concerned with matters related to those of the WTO.

On 18 July 1996, the General Council adopted a set of guidelines clarifying the framework for relations with NGOs. In these guidelines, the General Council:

… recognize[s] the role NGOs can play to increase the awareness of the public in respect of WTO activities …

It is important for the WTO to maintain a positive dialogue with the various components of civil society. To date, ‘cooperation’ with NGOs has essentially focused on the attendance by NGOs at sessions of the Ministerial Conference, symposia for NGOs on specific issues, regular briefings for NGOs on the work of WTO committees and working groups and the day-to-day contact between the WTO Secretariat and NGOs. The WTO Secretariat also regularly forwards to WTO Members a list of documents, position papers and newsletters submitted by NGOs. This list is made available on a special section of the WTO Website, devoted to NGOs’ issues and WTO activities organised for the benefit of NGOs.

The degree of involvement of civil society in the activities of the WTO achieved to date was generally welcomed. For most participants in the discussions at the conference, however, the issue is now how much further this involvement could and/or should go. Could and/or should NGOs be involved in the decision-making of the WTO? As pointed out by one panelist, the attitude of WTO Members with regard to this matter differs considerably. Some Members have a ‘tradition’ of involving NGOs in national decision-making processes. These Members have no difficulty with involving NGOs to some extent in WTO decision-making. Other Members, however, do not include NGOs in national decision-making processes at all. They are therefore very hesitant to do so at the international level. Developing country Members are
often thought to be more reluctant to allow NGO involvement in WTO decision-making than developed country Members are. One panelist expressed fears that, in practice, the outcome of ‘including a civil society variable in the WTO function’ was more likely to be biased towards interests of developed country Members. Several participants agreed that mostly developing country Members opposed the greater involvement of NGOs in WTO activities. However, it was also noted that the attitude of these Members vis-à-vis NGOs has gradually changed over the last few years as more NGOs have ‘embraced’ developing country concerns and have become more active in giving technical advice and in capacity building on WTO issues in these Member States. Furthermore, it appeared to some participants that, although the attitude of most developed country Members towards involvement of civil society and NGOs had traditionally been positive, these countries currently seemed hesitant to take any further steps towards more participation in WTO decision-making.

Several participants in the discussion pointed out that, as a preliminary issue, that any future research on the participation of civil society in WTO decision-making should look into the scope of the concept of ‘civil society’. It was argued that civil society does not only include ‘typical' non-governmental organisations such as Greenpeace, WWF, Oxfam and Amnesty International. It also includes rent-seeking professional organisations, such as trade unions and industry associations. Nevertheless, the question of participation of civil society in the activities of international organisations is often narrowed to the participation of ‘typical’ NGOs.

There was broad agreement that future research into the participation of civil society in WTO decision-making should carefully identify and analyse the reasons for, and benefits of, such participation. Does such participation enhance the quality of WTO decision-making by injecting expert knowledge, information, arguments and perspectives that Member governments do not, or cannot, bring forward? Does such participation increase the legitimacy of the WTO and public confidence in the WTO? Does such participation allow the WTO to hear about transnational interests and concerns that may not be adequately represented by any national government? Does such participation compensate for the fact that NGOs are not always and everywhere heard at the national level? While some panelists and participants in the discussion answered each of these questions unreservedly in the affirmative, others were more ambivalent. These and other questions regarding the participation of civil society in WTO decision-making clearly deserve further examination.
Several participants in the discussion stressed the need to clarify the kind of involvement in WTO decision-making that NGOs actually seek. Some NGOs seem to plead for actual participation in policy debates. Others desire a consultative function. Yet more request observer status. The involvement sought is likely to be related to the character of the NGO concerned and the means at its disposal. For that reason, it is important to draw up a typology of NGOs, differentiating between ‘typical’ NGOs and ‘rent-seeking’ NGOs, between national and international NGOs, between ‘single issue’ NGOs and NGOs with a broader agenda, between developing country NGOs and developed country NGOs. It is clear that developing country NGOs are likely to have different needs, ambitions and possibilities than NGOs from developed countries; ‘typical’ NGOs, such as Oxfam, are probably seeking a different kind of involvement than ‘rent-seeking’ NGOs such as the European Chemical Industry Council. Some discussants feared, however, that any such classification effort might be perceived as being politically motivated and aimed at separating 'politically correct' NGOs from others.

A number of participants in the discussion insisted that any involvement of NGOs in WTO activities should be conditional upon an investigation of their ‘representativeness’, accountability and the origins of their funding, in order to distinguish between ‘serious’ NGOs and others. One participant stressed the need to draw up a code of conduct for NGOs. It was noted that the Sutherland Report rejected the need for an accreditation system for NGOs. However, a number of participants took issue with this conclusion, pointing out that many other international organisations had developed such a system and reportedly benefited from it. Although some participants were of the opinion that the WTO differs from other international organisations to such an extent that the experience of these organisations with the accreditation of NGOs is not relevant to the WTO, other participants strongly disagreed and supported the call for comparative research. In a more general sense, the experiences of international organisations (and the European Union) with NGOs and, in particular, the effects of enhanced participation of NGOs on the functioning of these organisations were considered very interesting and worth looking into in more detail. The appraisal of the current state of affairs and the recommendations of the Sutherland Report were considered by many participants as insufficient. In the words of one panelist, the WTO’s relationship with NGOs needs to be updated and rationalised, but the Sutherland Report does not provide a good basis for this. The Report fails to address the governance issues behind the changing scope of the WTO and the nature and role of NGOs in policy-making processes. It defers problems onto Members, without setting any compulsion for them to address these issues.
4. **Secondary law-making by WTO bodies**

The session on ‘Secondary Law-making by WTO Bodies’ was chaired by Prof. dr. Ramses A. Wessel, Professor of the Law of the EU and Other International Organizations, Centre for European Studies, University of Twente. The discussion panel for this session consisted of Ms. Mary Footer, Deputy Director, Amsterdam Centre for International Law and Senior Lecturer, University of Amsterdam; and Dr. Pieter Jan Kuijper, Principal Legal Adviser for External Relations, Legal Service, European Commission and former Director, Legal Affairs Division, WTO Secretariat.

In his introductory remarks, the chair of this session noted that the most decisive element distinguishing international conferences from international organisations is that the latter have a procedure allowing for the adoption of decisions. While international conferences result, in general and if successful, in the conclusion of an international agreement, international organisations are forums where decisions can be, and are, adopted not only by the Members of the organisation concerned but also by its institutional bodies. According to the chair, the remarkably small volume of secondary rule-making in the WTO compared to the volume of rule-making in other international organisations raises questions regarding the true nature of the WTO.

In response, one of the panelists noted, however, that the volume of secondary rule-making in the WTO is not as exceptional as it might seem. The panelist subsequently offered an analysis of the legal basis for such rule-making in the WTO and presented some problems related to it. According to the panelist, WTO secondary rule-making may be based on either expressed or implied authority. Expressed authority to adopt decisions is provided for in two manners. First, by treaty provisions of the WTO agreements (for example, Article 4 of the *SPS Agreement* or Article VI:4 of the GATS). In such cases, one speaks about *autonomous rule-making*. Secondly, expressed authority for secondary rule-making by WTO bodies may be given by reference in treaty provisions to binding or non-binding rules and standards in another treaty or developed by formal or informal institutions outside the WTO; the so-called *rule-referencing*. An example of rule-referencing can be found in the SPS Agreement
referring to standards of the Codex Alimentarius Commission, an FAO/WHO body. Implied authority for secondary rule-making in the WTO covers, first, rules developed by WTO bodies regulating procedural matters (procedural rule-making), such as rules of procedure of WTO bodies, rules establishing subsidiary WTO bodies, financial regulations, and WTO staff rules and regulations; and, secondly, rules and standards developed by WTO panels and the Appellate Body (judicial rule-making), for example, the rules on the burden of proof and the principles of due process and good faith.

As emphasised by the panelist, secondary law-making is, in general, an under-explored area requiring a substantive legal study. This is the case not only in the WTO but also in other international organisations. In the context of the WTO, research should be undertaken in order to analyse secondary law-making, and to investigate its role in the organisation as well as its contribution (or non-contribution) to the normative development of the organisation. The extent to which the WTO bodies exercise secondary law-making capacity and rule referencing offer possible research questions. With regard to rule-referencing, the panelist identified three main problems that call for clarification. First, the extent to which the incorporation into WTO law of ‘referenced’ rules and standards of other international organisations takes place, as well as the effect of these rules in the WTO legal order. Second, the influence of the WTO on the development of ‘referenced’ rules and standards. Third, the possibility of direct effect of ‘referenced’ rules.

Some participants in the discussion suggested that the concept of secondary law-making should be further clarified before any substantive research is undertaken. Unlike the panelist, who included rule-referencing into this concept, they considered that rule-referencing falls outside the scope of this concept and should be studied separately. Some participants also argued that any future research into secondary rule-making should give appropriate attention to issues such as the principle of attribution of powers and the notion of implied powers, soft-law issues including institutional questions as well as questions of the legal effects of soft law rules.

The second panelist emphasised the need for an appropriate comparative analysis of the WTO with other international organisations with respect to secondary rule-making. According to this panelist, comparative issues are being unjustifiably neglected in the WTO as a result of the unreasonable conviction, held by many WTO Members, that the WTO is different from
other international organisations due to its 'Member-driven' character. This was also said to be one of the reasons for the (comparatively) rather primitive institutional structure of the WTO. Further reasons identified by the panelist were the ‘last minute creation’ of the organisation and the restrictive nature of the negotiation mandates given by the future WTO Members to their representatives/negotiators. As a result, the WTO is something between an international conference and an international organisation, an entity the legal character of which needs further clarification. If the WTO is to be an international organisation and an instrument of effective global governance, it needs to obtain more independence from its Members rather than to be 'Member-driven'. As the WTO is a dynamic entity, it must be able to respond to new challenges and transform itself. According to the panelist, academia can play an important role in this process by carefully analysing the current situation and suggesting possible alternatives.

With regard to secondary rule-making, the panelist emphasised that future research should examine the secondary rule-making processes in (other) international organisations: what are the similarities and differences with the WTO system, and which ‘models’ that have shown to be successful, could possibly be applied in the WTO? It is important in this context to bear in mind the specific characteristics of these organisations. In this respect, the panelist criticised the Sutherland Report, arguing that several of the Report’s references to models and practices of international organisations are incorrect since they are not based on a proper analysis and understanding of the regimes of these organisations. For example, the Sutherland Report proposes that the Secretariat should become a 'guardian of the treaty', just like the European Commission is in the European Communities, yet this fails to take into account the overall position and competences of the European Commission which are not comparable at all to those of the WTO Secretariat.

A number of participants in the discussion noted that any research on secondary rule-making must address the relationship between international organisations and the increasing links among them. Three issues were said to be of particular interest. The first issue of interest is the proliferation of international organisations and the possible fragmentation of international law as a result. The second issue is the ‘mutual interconnection’ of laws of international organisations by rule-referencing and the ability of international organisations to influence rule-making in the areas of their action. The third issue of interest relates very much to the
second one; it concerns the application of the principles of due process and good governance in cases of rule-referencing.

5. **Expanded role for the WTO Secretariat**

The session on an ‘Expanded Role for the WTO Secretariat in Decision-making’ was chaired by Mr. Eric White, Legal Advisor, Legal Service, European Commission. The panel for this session consisted of Mr. Otto Genée, Director, Policy Coherence Unit, Dutch Ministry of Foreign Affairs; Mr. Bernard Kuiten, Counsellor, External Relations Division, WTO Secretariat, Geneva; and Prof. Gregory Shaffer, Professor of Law, University of Wisconsin; Director, UW European Union Centre and Co-Director, UW Centre on World Affairs and the Global Economy (WAGE).

The WTO is commonly described as a ‘Member-driven’ organisation. The Members - and not the WTO Director-General or the Secretariat - set the agenda and take decisions. Neither the Director-General nor the Secretariat has any decision-making powers. The Director-General and the Secretariat act primarily as a ‘facilitator’ of the decision-making processes within the WTO. They seldom act as initiators of proposals for action or reform. In other international economic organisations, the chief international official and/or the secretariat play a significantly more important role. This is the case, for example, for the World Bank, the IMF and the OECD. It has been suggested that the effectiveness of the decision-making process would benefit from a larger role and more powers for the Director-General and the WTO Secretariat. The Sutherland Report devotes a whole section to the role of the Director-General and the WTO Secretariat. According to the Report, the problem rests in the commonly-held view that, in a ‘Member-driven organisation’, the Secretariat’s role must be solely one of support, not of initiative or even of the institutional defence of the WTO system. The Report notes that the principal losers from this attitude are the WTO Members themselves. The panelists, as well as most participants in the discussion, supported this critical view of the Sutherland Report. It was said that the Member-driven character of the organisation sometimes leads to extremes and then, as stated in the Sutherland Report, the WTO often reminds one of a vehicle with 'a proliferation of back-seat drivers, each seeking a different
destination, with no map and no intention of asking the way'. It is necessary for the organisation to get a strong institutional voice of its own.

Several participants in the discussion suggested that any research on the possibility of an enhanced role for the WTO Secretariat must be preceded by an in-depth analysis of the Secretariat’s current situation. With respect to this situation, one panelist noted the marked decline of the mutual confidence between the Members' delegations and the WTO Secretariat, resulting in much greater passivity and timidity on the part of the Secretariat than in the past. The panelist also detected the change in the position of the Director-General who has become – in the words of the Sutherland Report - a 'spokesperson and marketing executive' for the WTO rather than the spiritual leader of the organisation. According to this panelist, several reasons for these changes can be identified, including: the increased membership; the much larger scope of the WTO’s activities; the legally binding nature of WTO obligations, now enforced through the strong dispute settlement mechanism; the challenges by civil society to the legitimacy of the WTO and its rules; and the ‘awakening’ of developing country Members, demanding more internal transparency and attention for their specific needs.

Another panelist in particular emphasised the lack of a cooperative attitude of most Members towards the WTO Secretariat and their continuous accentuation of the limitations of the Secretariat's powers. In the view of this panelist, the WTO has become a ‘Member-dominated’ rather than a ‘Member-driven’ organisation. This has, indeed, resulted in a greater passivity and diffidence on the part of the Secretariat. Participants suggested that deficient management within the Secretariat, an inappropriate recruitment policy and the lack of a proper personnel policy are also reasons for the limited contribution of the Secretariat to the more effective functioning of the WTO. The proposals of the Sutherland Report concerning an enlargement of the staff of the Secretariat and an increase of its budget were welcomed. However, as stated by a panelist, without a sea-change in the attitude of Members towards the Secretariat, and without better management within the Secretariat, an enhanced role for the Secretariat would not have any positive effect on the overall functioning of the WTO.

One panelist offered an explanation why different Members might reject the idea of a stronger Secretariat. This panelist argued that the largest Members might feel that they can exercise more leverage over the staff when the Secretariat is small and that a larger Secretariat would be harder to oversee, and thus more difficult to control, in order to assure the safeguarding
and advancement of its own interests. Another fear of larger Members could be that an
expanded Secretariat would make the WTO become as inefficient as the United Nations. As
the panelist pointed out, the fact that the Secretariat is under-resourced indicates that those
who contribute most to the WTO budget do not see it as in their interest to increase
significantly the size of the Secretariat. On the other hand, the panelist presumed that small
developed country Members would be very positive about the idea of a stronger Secretariat
with more resources and the ability to defend the multilateral trading system. With regard to
developing country Members, the panelist stated that one would also expect them to be in
favour of a larger and more active Secretariat, for such a Secretariat could help them to
preserve their rights and meet their obligations. However, many developing country Members
tend to distrust the Secretariat and do not support enhancing its role in the WTO. As the
panelist explained, the negative feeling of developing country Members may be due to the
fact that these Members consider that the Secretariat and, in particular, the Director-General,
tends to favour the larger players during negotiations, in order that an agreement is reached.
They also criticise the way in which technical assistance and capacity building is provided by
the Secretariat, stressing that the Secretariat, instead of helping developing country Members
to acquire the necessary expertise, seems more aimed at transforming their negotiating
positions. However, as the panelist concluded, there are strong arguments in favor of a larger
and stronger WTO Secretariat, especially from efficiency and equity perspectives. There is a
need for more technical assistance and capacity building; a need for support, facilitation and
help to broker agreements and forge consensus; a need for better interaction with the media
and civil society to respond to demands for external transparency and, more generally, the
advancement of the organisation’s interests. These needs can, however, only be met with a
larger, more independent Secretariat.

One panelist addressed in some detail the possibilities of enhancing the role of the Director
General and the staff of the WTO Secretariat in the various activities of the WTO:
negotiations; implementation of WTO agreements, including technical assistance; dispute
settlement; and research and communication. In the area of negotiations, the panelist agreed
with the suggestion, made in the Sutherland Report, to clarify the mandate of the Director-
General and to spell out his functions. The panelist proposed to make more and better use of
the Director General as an ‘honest broker’ in negotiations on particularly delicate issues and
to use the Deputy Directors General in support of the facilitators during sessions of the
Ministerial Conference. The panelist also proposed a stronger role for the Secretariat, dealing
with the asymmetry in analytical, negotiating and information capacities among WTO Members. Of course, the impartiality of the Secretariat must at all times be maintained. The requirement of impartiality does not, however, prevent the Secretariat from facilitating negotiations by pursuing activities such as the making of an objective analysis of how proposals and their development impacts on different countries and groups; an objective assessment of the implementation costs; or a cost-benefit analysis for different (groups of) countries.

In the area of implementation of WTO agreements including technical assistance, the panelist suggested enhancing the role of the Secretariat by, for example, monitoring implementation of notification obligations by Members and by taking action in default, such as 'naming and shaming' in regular reports to Committees. He also advocated a mandate for the WTO Secretariat for independent action to prepare studies on relevant topics without prior approval by Members; and a mandate to make first assessments of notified regional trade agreements. The panelist emphasised that the role of the Secretariat should include an independent policy advice on best practice and gaps in the system. The trade policy review reports could be a very useful source of ‘inspiration’ for such independent policy advice on best practice and gaps in the system. With regard to technical assistance and capacity building, the panelist expressed the opinion that the WTO should not become a development organisation and that the role of the WTO Secretariat would change if poorer WTO Members had a contractual 'right' to technical assistance to implement (new) WTO obligations.

In the area of dispute settlement, the role of the WTO Secretariat should be clarified and demystified. According to the panelist, this could be achieved by, for example, separating clearly the role of the Secretariat in servicing panels from its role in servicing negotiations and assisting in implementation of agreements. Eventually, these distinct roles should be assigned to clearly separated entities, and the role of servicing panels could be assigned to the Secretariat of the Permanent Panel Body (if and when such a Body will be established). The WTO Secretariat currently prepares background documents on the issues arising in a particular dispute for panels. According to the panelist, making these background documents public would bring transparency to the supportive role of the WTO Secretariat. Least developed country Members should make more use of the good offices of the WTO Director-General under Article 5 of the DSU and Article 24.2 of the DSU. There is, according to this panelist, no further need for legal assistance to Members in disputes in view of the existence
of the Advisory Center on WTO Law. However, the Center does require more funding from all OECD countries.

In the area of research and communication, there should also be more room for manoeuvre for the Director-General and the research division of the Secretariat to undertake and publish policy studies on topical issues. Since research does not affect the rights of Members; they should, according to the panelist, ‘be less uptight’ about this. The same holds true for communications to a wider audience, in particular outreach to civil society and industry in developing countries, and acting as advocate for the multilateral trading system.

The panelist emphasised that some proposals for institutional improvements should be taken up immediately because of the need for progress in the Doha Development Round. A transparent and ‘democratic’ selection process for the appointment of the new Director-General, selected on merit and not geography, was said to be a good starting point to build on, if mistakes in the past are not to be repeated. The need to avoiding the politicisation of the Secretariat was stressed as well. However, the panelist was of an opinion that not much research in this area was necessary, since an enhanced role of the WTO Secretariat was more a matter of a political decision being taken by the WTO Members.

Most participants to the discussion did not question the potential and/or the need for an enhanced role of the Secretariat, although they were critical with respect to the suggestion of the Sutherland Report that the Secretariat should become a ‘guardian of the treaties’. One participant commented that the European Commission model is not applicable to the WTO because of the non-existence of a treaty to be guarded. According to that participant, WTO Members often regard WTO agreements as unfair and wish their modification rather than their protection. In the view of most participants, any discussion on enhancing the role of the Secretariat must be preceded by a serious scrutiny of the functioning and the internal management of the Secretariat. Several participants also emphasised that any enhancement of the role of the Secretariat must be accompanied by guarantees of its independence and impartiality. One participant expressed serious doubts about the independence of certain WTO staff members at present. He pointed to experiences with some WTO officials having strong personal convictions and feared the negative influence of such persons, for example, on the negotiation or advisory activities of the Secretariat. An independent agency entrusted with initiative and consulting functions appeared, to this participant, to be a better alternative. This
participant stressed, furthermore, that the composition of the Secretariat should reflect better the composition of the WTO membership and should thus include more nationals of developing country Members.

Other participants also emphasised the requirements of independence and impartiality of the WTO Secretariat. One participant quoted, in this regard, words that an international organisation must 'belong to all member states and to none of them' and suggested that future research would investigate whether this is the state of affairs in the WTO. Another participant stressed the connection between independence and accountability of international bureaucracies and between accountability and transparency. He expressed the view that, without greater transparency of the WTO Secretariat, it would not be feasible to enhance its role and to charge it with new tasks. It was also said that any independence and transparency of the Secretariat is dependent on the approach of the WTO Members towards the staff of the organisation and their confidence in it.

With regard to the Director-General, most participants in the discussion agreed with the Sutherland Report that his mandate should, indeed, be clarified, although one participant noted that a clarification of the mandate of the Director-General will not suffice to ensure that the Director-General plays a more effective and influential role. The participant believed that the personality of the Director-General is of a greater importance. Doubts were also expressed with regard to the recommendations of the Sutherland Report that the Director-General would play a more proactive role in the negotiations as well as play the role of an honest broker in the negotiations. According to one participant, these two tasks are mutually exclusive and a choice between them will, therefore, have to be made.

In conclusion, most participants in the discussion agreed that the WTO Secretariat needs to be better equipped not to ‘drive’, but to facilitate the functioning of, the WTO. An analysis of the current situation, and an examination of possible changes and their consequences, are therefore of significant interest and must be added to the research agenda.

6. Conclusion
As stated above, the objective of the research conference entitled ‘In Search of Effective Global Economic Governance: The Case of the World Trade Organization’ was to define a comprehensive agenda for research into the institutional reform of the WTO. It is important that legal and political science scholars focus their research efforts on the reforms needed to transform the WTO into an instrument of effective global economic governance. The discussions at the conference, as summarised in this article, highlight the complexity of the issues to be addressed and confirm the need for further research.
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