



FURTHER PERSPECTIVES ON WTO REFORM

COMMUNICATION FROM THE UNITED STATES

The following communication, dated 20 March 2026, is being circulated at the request of the delegation of the United States.

1 INTRODUCTION

1. In December 2025, the United States submitted a paper at the World Trade Organization (WTO) entitled "On WTO Reform" ("December 2025 Report")([WT/GC/W/984](#)).¹ The December 2025 Report, intended to further long-standing discussions on WTO reform, addressed the three reform topics encompassed within the WTO reform facilitator process—decision-making, special and differential treatment (SDT), and level playing field—and three additional topics not included in the facilitator process that, in the view of the United States, warrant discussion: the application of the Most Favored Nation (MFN) principle, the role of the Secretariat, and essential security. The December 2025 Report also discussed problems affecting international trade that the WTO cannot address, including: imbalances; overcapacity and overconcentration of production; economic security; and supply chain resilience.

2. As United States Trade Representative Jamieson Greer has noted elsewhere, the current global order in international trade, overseen by the WTO, is untenable and unsustainable, and the objective of the United States in submitting the December 2025 Report was to spur candid discussions about the WTO's problems and limitations and to facilitate work with likeminded partners to address these issues.²

3. The United States was gratified that the issuance of the December 2025 Report was not only favorably received, but also prompted other Members to submit papers and other communications that set forth their views on certain of these topics and other related topics. For example:

- On 21 January, the European Union (EU) submitted a communication ([WT/GC/W/986](#)) ("EU Report") that diagnosed the root causes of the crisis at the WTO as the growing mismatch between WTO rules and today's trade environment, geopolitical tensions, the weaponization of trade, far-reaching and impactful State intervention leading to systemic imbalances and overcapacities, and paralyzed decision-making.
- On 6 February, Paraguay submitted a communication ([WT/GC/W/987](#)) stating that reform work should focus on institutional topics such as plurilateral initiatives, SDT, dispute settlement, fairness, the WTO budget, and the Secretariat's external relations.
- On 18 February, China submitted a communication ([WT/GC/W/989](#)) that focused on decision-making, development, and fairness.

¹ See <https://ustr.gov/trade-topics/trade-organizations/world-trade-organization-wto/wto-reform>.

² Jamieson Greer, "Trump's Trade Representative: Why We Remade the Global Order," The New York Times, 7 August 2025, <https://www.nytimes.com/2025/08/07/opinion/trump-trade-tariffs.html>.

- On 26 February, the Least Developed Country (LDC) Group submitted a communication ([WT/GC/W/991](#)) that detailed its views on maintaining trust in negotiations, taking into account LDCs' needs and capabilities in considering their commitments and concessions, and putting transparency and participation at the core of governance reform.
- On 5 March, the African Group submitted a communication ([WT/GC/W/992](#)) that strongly reaffirmed consensus-based decision-making and called for policy space for industrialization as well as a fairness agenda based on symmetry.
- On 6 March, the United Kingdom submitted a communication ([WT/GC/W/993](#)) ("UK Report") that diagnosed the WTO's problems related to fair competition, transparency, dispute settlement, decision-making, and SDT eligibility. The UK Report noted that "[t]he reality is that we live in a world with different economic models with fundamental incompatibilities" and called for a WTO that is more relevant, flexible, and accessible.

4. This exchange of papers shows the strength of a growing Member-driven conversation on reform. Such a conversation is both healthy and necessary if the WTO is to be relevant and meaningfully contribute as the world transitions to a new economic order premised on reciprocity and balance and oriented toward serving concrete national interests. In order to give impetus to this discussion, both at MC14 and after MC14, the United States believes it would be helpful to set forth additional views regarding issues discussed in its December 2025 Report and the various subsequent reports submitted by other Members. For each of these issues, we offer additional context regarding the nature or scope of the issue as well as suggestions for a potential way forward. In doing so, we recognize certain topics have been thoroughly debated for years and are ripe for discussion of solutions, whereas other topics may not be ripe for discussion of solutions but nevertheless would benefit from an open-minded exchange of views among Members.

5. We summarize our views on the issues here, and address them in greater length below.

- The United States believes WTO Members can take a step toward leveling the playing field by significantly strengthening incentives to comply with existing obligations to submit **notifications**.
 - The United States believes that Members should seek to restore the purpose of **SDT** by agreeing to objective criteria for determining eligibility.
 - The United States believes efforts should focus on finding a more flexible pathway to incorporate **plurilateral agreements** into the WTO architecture.
 - The United States believes Members need to rethink how the **MFN principle** functions in its current form and embark on a frank discussion of the link between MFN and reciprocity, which itself is a bedrock WTO founding principle.
 - The United States believes that Members should address the **role of the Secretariat** and consider issuing guidance or taking other actions to ensure the Secretariat serves the interests of the Members—and not of the institution or any abstract trading "system."
 - With regard to **essential security**, the United States believes that Members should agree to an authoritative interpretation of Article XXI of the GATT 1994, Article XIV *bis* of the GATS, and Article 73 of the TRIPS Agreement, to clarify the understanding of the essential security exception.
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2 STRENGTHENING INCENTIVES TO COMPLY WITH EXISTING OBLIGATIONS TO SUBMIT NOTIFICATIONS

6. The December 2025 Report stated that the "actions of Members with economic systems that are incompatible with the principles of the WTO have tilted the playing field away from free market economies and have eroded trust in the ability of [the WTO] to ensure fair treatment in global trade." The December 2025 Report stated that many of the issues associated with level playing field cannot be adequately addressed at the WTO and require coordinated action by likeminded trading partners outside the WTO. The report also stressed, however, that the WTO can take specific action that would address some level playing field concerns by doing more to ensure Members meet their notification obligations, a basic principle of WTO membership.

7. Members have long recognized that transparency is a fundamental component of fair play and therefore vital to a level playing field, and that fulfilling notification obligations is critical to the negotiating and monitoring functions of the WTO.³ Transparency is a precondition for trust and for negotiating "reciprocal and mutually advantageous arrangements" envisioned in the WTO's founding documents. However, for more than a decade, many Members have recognized the organization has a severe problem with Members fulfilling their notification obligations.

8. The UK Report showed the scale of the problem by highlighting Members' performance in submitting a single, biennial notification on subsidies. As of the final meeting of 2025 of the Committee on Subsidies and Countervailing Measures, 113 Members—more than two-thirds of the Membership—had not submitted their 2025 notification, and about half had not submitted their 2023 or 2021 notifications. Importantly, the UK Report noted that many notifications that have been submitted are incomplete and of very poor quality.

9. For certain Members, this reflects a choice not to be transparent. The EU Report noted that failure of Members to notify their trade measures contributes to a non-level playing field and stated that "the design of the current transparency regime contains too few incentives to notify." The EU Report recommended that "notified measures should enjoy better treatment than non-notified measures."

10. The United States agrees that the WTO does not provide sufficient incentives for Members to submit required notifications. The only incentive for a Member to submit a notification is the normative value that a Member assigns to upholding the obligation; the only disincentive for failing to submit a notification is being named-and-shamed by other Members. The low level of Members' notification compliance since the WTO was established,⁴ and in particular certain Members' chronic refusal to provide transparency, confirms these incentives are too weak. The consequences for the WTO are clear; until this problem is solved, it seems naive to expect any Members to undertake new commitments on more complex issues when other Members have flouted their basic transparency obligations for decades. As U.S. Trade Representative Greer said in a recent speech, "Members consistently don't comply with the most basic obligations on transparency and notifications related to domestic trade laws. If they can't do this, how can they purport to fix bigger problems like overcapacity and development?"⁵

11. The United States has been a leader in calling for notification reform since 2017. However, we recognize that our work with Members across the development spectrum to improve transparency by proposing technical assistance and, where warranted, administrative measures was not welcomed. Decades spent raising concern in WTO committees has not succeeded. It is time to take a different approach.

³ This is evidenced in part by the general transparency principles reflected in Article X of the GATT, Article III of the GATS, and Article 63 of the Agreement on TRIPS as well as by the notification obligations and transparency mechanisms in the WTO agreements.

⁴ "Status of Regular/Periodic and One-Time Only Notifications in the Goods Area (1995-2024)," *Report by the Secretariat*, [G/C/W/859](#), p. 31.

⁵ Jamieson Greer, "Don't Let International Law Get in the Way of Peace and Prosperity," Speech, University of Virginia School of Law, 24 February 2026. Office of the U.S. Trade Representative, <https://ustr.gov/about/policy-offices/press-office/speeches-and-remarks/2026/january/dont-let-international-law-get-way-peace-and-prosperity>.

Way Forward

12. The United States embraces the principle that notified measures should enjoy better treatment than non-notified measures. To ensure that Members have meaningful incentives to submit notifications, the disadvantageous treatment of non-notified measures needs to be concrete and actionable.

13. While the specific disadvantages will likely be agreement-specific and reflect the nature of the measure or practice that was not notified, there are a few high-level principles to this approach that Members should consider across WTO bodies:

- Recognizing that transparency is the objective and not retaliation, a Member that has failed to meet its notification obligation should be given an opportunity to promptly rectify any deficiency identified by another Member before any disadvantage is imposed.
- If a Member fails to meet its notification obligations, even when given an opportunity to rectify the error, the entire Membership must have a recourse.
- Members that experience harm from the non-notified measure or practice should have immediate recourse to protect themselves from the measure or practice.
- Any response by Members should be proportionate to the harm caused by the measure. The mere fact that a Member failed to notify a regulatory change should not give another Member the right to immediately suspend all imports of goods subject to that regulation.

14. Using these principles as a foundation, Members could explore the different forms of recourse that should be available to Members harmed by a non-notified measure or practice. By focusing attention on how non-notified measures are treated relative to notified measures, the WTO can finally provide sufficient incentives for Members to fulfill their notification obligations, provide greater transparency, and take a small but meaningful step toward a more level playing field.

3 MODERNIZING ELIGIBILITY FOR SPECIAL AND DIFFERENTIAL TREATMENT

15. In the December 2025 Report, the United States stated that SDT eligibility must be reformed for the WTO to remain credible. The United States noted that (i) it is unacceptable for significant players in the trading system to benefit from preferential treatment; (ii) it is untenable for WTO rules to apply to some Members but not to others in perpetuity; and (iii) the efforts of so many Members to avoid the application of WTO rules to their own activities undermine confidence in the wisdom of such rules.

16. The EU Report noted that "the substantial economic development" of key developing countries over the past 30 years had resulted in the "growth of their relative weight in global trade." Despite these great strides, the WTO remains stuck in a binary construct of developed and developing countries that does not reflect the realities of global trade in 2026. The UK Report noted that more than 75 per cent of Members have access to SDT, and "that so many Members, including some of the largest economies of the world, have access to SDT undermines the credibility of the organization. The issue is not what label is applied, but who gets access to SDT and in which circumstances." The UK Report called for an approach that recognizes the complex nature of national economies today.

17. The WTO Agreement does not specify criteria or a process for determining development status. Nor does it establish gradations among developing Members, with one exception—LDCs.⁶ The WTO—unlike other international organizations—does not have an analytic classification system for development status. Lacking formal guideposts, its approach to development status has not varied since the creation of the organization in 1995—any WTO Member can "self-declare" as a developing

⁶ Article XI:2 points to the UN's criteria for recognition in the LDC group.

Member. This allows a self-declared developing Member to assert its ability to benefit from SDT, such as longer implementation timeframes and carve-outs from disciplines.⁷

18. Whether the WTO's approach to using self-declared development status to determine eligibility for SDT was sensible in 1995, it makes no sense today in light of the vast changes in development and increasing heterogeneity among Members, seen in a wide range of economic, social, and other indicators. For example, OECD members and other Members who have made significant gains in development can continue to claim to be developing Members whenever and wherever they see fit, as if the world has stood still for three decades. This reality does not align with the original intent of SDT, which was conceived as a tool to help Members thought to be having the greatest difficulty integrating into the trading system.

19. For almost a decade, the United States has advocated for the establishment of objective criteria for SDT eligibility in WTO agreements. In 2019, the United States introduced a specific proposal to this effect. In this paper, "An Undifferentiated WTO: Self-Declared Development Status Risks Institutional Irrelevance" ([WT/GC/W/757/Rev.1](#)), the United States explained that self-identification had damaged the WTO's negotiating function:

Simply put, self-declaration has severely damaged the negotiating arm of the WTO by making differentiation among Members near impossible. By demanding the same flexibilities as much smaller, poorer Members, export powerhouses and other relatively advanced Members . . . create asymmetries that ensure that ambition levels in WTO negotiations remain far too weak to sustain viable outcomes. Members cannot find mutually agreeable trade-offs or build coalitions when significant players use self-declared development status to avoid making meaningful offers. Self-declaration also dilutes the benefit that the LDCs and other Members with specific needs tailored to the relevant discipline could enjoy if they were the only ones with the flexibility.

20. To address this problem, the United States proposed a draft General Council Decision that would establish four categories of Members who would not avail themselves of SDT across current and future WTO negotiations: an OECD member or applicant; a G20 member; a WTO Member that is designated as a "high income" country by the World Bank; and a WTO Member that accounts for no less than 0.5 per cent of global merchandise trade.⁸ The submission of the U.S. paper was followed by a period of intensive engagement in Washington, at the WTO, and in various capitals. Between March 2019 and March 2020, four WTO Members—Brazil, Singapore, Korea, and Costa Rica—announced that they would forgo SDT provisions in current and future WTO negotiations, yet they maintained their self-declared developing country status. At first glance, China's announcement in September 2025 that it will not seek SDT in current and future WTO negotiations was responsive to the U.S. reform proposal, though a closer examination raises questions about China's pledge.⁹

Way Forward

21. The United States seeks to build on its past reform effort, with an aim to facilitate the full implementation of WTO agreements and to ensure that the benefits of SDT are reserved for Members with the greatest difficulty integrating into the trading system. As part of SDT reform, Members need to discuss and find consensus on objective criteria such that Members that meet those criteria will not avail themselves of SDT in WTO agreements or negotiations. The criteria need not necessarily be the ones proposed by the United States in 2019, but that proposal is indicative of a reasonable, objective approach.

22. We emphasize that Members that meet the criteria, and are therefore ineligible for SDT, would retain their ability to negotiate flexibilities in WTO agreements that would be available to all Members for implementing obligations. In addition, in the context of individual WTO negotiations, Members could set additional objective criteria that make additional Members ineligible for SDT. This could be

⁷ According to the most recent compilation of the WTO Secretariat, there are 157 distinct SDT provisions contained in the WTO agreements. See [WT/COMTD/W/271](#).

⁸ See [WT/GC/W/764/Rev.1](#).

⁹ China made clear in its announcement that its readiness to forgo SDT in current negotiations is conditional and does not apply to certain provisions or understandings. China's SDT announcement embraces a reality that every other Member already knew to be true: there should never be another WTO agreement in which China would be eligible for SDT.

sensible in a negotiation where the dominant producers are classified as lower-middle income. In such a case, additional objective criteria are likely to be necessary because no Member would take on obligations that would not apply to the major producers. The United States believes this hybrid approach—objective criteria for SDT eligibility that apply across all agreements, and agreement-specific objective criteria where necessary—could be a basis for serious deliberation by Members.

23. The United States also believes that Members should give serious thought to ending the mandate of the Committee on Trade and Development in Special Session (CTD-SS) and the Monitoring Mechanism. The CTD-SS mandate has been fulfilled. Across more than two decades, Members reviewed all SDT provisions multiple times "with a view to strengthening them and making them more precise, effective, and operational."¹⁰ Following those reviews, Members achieved what was possible. The past 13 years have also demonstrated there is no need for a Monitoring Mechanism, which Members established in 2013 within the CTD. The purpose of the Mechanism is to review specific SDT provisions and examine developing countries' challenges in utilizing them, with a view to making recommendations to relevant WTO bodies. To date, no Member has sought to discuss any provision in the Mechanism, exactly as predicted on the eve of MC9. The Monitoring Mechanism was a solution in search of a problem, and it is time to end it.

4 FINDING A PATHWAY FOR PLURILATERAL AGREEMENTS

24. There are many aspects to "decision-making," but the aspect that is the most urgent—and most ripe for meaningful reform—is the issue of plurilateral agreements. The United States and nearly all other Members across the development spectrum have long considered plurilateral agreements to be a useful means to foster new ideas, approaches, and innovative disciplines that are responsive to Members' evolving needs and interests. Plurilateral options have become increasingly important as the WTO's negotiating arm has atrophied.

25. The December 2025 Report stated that if the WTO is to have a future as a negotiating forum, it is likely to be for plurilateral negotiations, and that finding a path forward at the WTO for plurilateral agreements that limit their benefits and responsibilities to the contracting parties must be a priority. Such plurilateral agreements would allow those Members that are ready to undertake new commitments to do so in a reciprocal manner, while allowing other Members to join and gain the benefits of those commitments in the future, when they are ready. The December 2025 Report stated that if there is no path for Members to enter into plurilateral agreements at the WTO, we must acknowledge that the WTO is not a viable forum for negotiating. Trade negotiations will continue to happen, but not at the WTO.

26. The UK Report also hailed plurilateral agreements, which "can serve as a route to progress key WTO issues" and "have a long history in WTO and GATT and are a clear way forward when Members want to make progress at a different pace." The UK Report expressed concern that the plurilateral agenda at the WTO is being unjustifiably blocked by a few Members.

27. The WTO permits open and closed plurilateral agreements, and both types are part of the WTO architecture. An open plurilateral, such as the Information Technology Agreement (ITA), extends the full benefits of the agreement to all WTO Members, even those that did not make any reciprocal concessions. Closed plurilaterals, such as the Agreement on Government Procurement (GPA) and the Agreement on Trade in Civil Aircraft, allow parties to extend the benefits only to those that have joined the agreement and made reciprocal concessions.

28. Open plurilaterals like the ITA create a serious free-rider problem because their benefits are extended on an MFN basis. Non-parties that do not make concessions or take on obligations nonetheless benefit as much as the parties that do. This lack of reciprocity is not simply foolish; free riders also breed distrust in the trading system. Closed plurilateral agreements avoid this problem. By denying benefits to non-parties, closed plurilaterals incentivize them to take on reciprocal obligations. The EU Report echoed this view, pointing out that "[r]eform should also consider the paths for plurilaterals and club approaches among likeminded, where benefits are only available to participants, on a reciprocal basis."

¹⁰ World Trade Organization. "Doha 4th Ministerial: Ministerial Declaration", [WT/MIN\(01\)/DEC/1](https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm), 20 November 2001.

Way Forward

29. Efforts to persuade a few holdout Members to stop blocking plurilateral agreements that would not damage those Members economically have not succeeded. Efforts to encourage "responsible consensus" have not led to discernible change.

30. To open a viable pathway to incorporate closed plurilateral agreements into Annex 4, Members should explore new concepts for developing plurilateral WTO agreements. These might include "interim plurilaterals"—voluntary and temporary agreements among a subset of Members to move forward on specific issues without needing full consensus. Parties to the interim plurilateral agreements would not pursue incorporation into the broader WTO framework for a specified number of years (e.g., five years). During that period, the parties would implement the agreement and monitor compliance. The interim period would afford the parties and non-parties—and, importantly, their stakeholders—an opportunity to observe the agreement, its impact, and the benefits it creates.

31. At the end of the interim period, the Membership could deliberate and decide whether to incorporate the interim agreement into Annex 4. This process could lead to negotiations to revise the agreement or for additional Members to join as parties. If the parties want to incorporate the interim agreement into Annex 4, but any non-party still objects, the parties may have a strong interest in ensuring that the agreement survives and be willing to make it a non-WTO plurilateral agreement.

32. Another concept that Members could consider is a "critical mass" test, perhaps in conjunction with the "interim plurilaterals." If, after the five-year period, the participants account for at least "x" per cent of trade in the products covered by the plurilateral agreement, the agreement would be incorporated into the WTO Agreement. Members would negotiate "x" at the outset of the negotiation.

33. While some may not view these outcomes as optimal, the parties would not be blocked from finalizing an agreement they find beneficial, and the WTO will have played an incubator role in improving the trading system.

5 RETHINKING THE UNCONDITIONAL MOST FAVORED NATION (MFN) PRINCIPLE

34. In the December 2025 Report, the United States stated that the MFN principle, in its current form, "was designed for an era of deepening convergence among trading partners" when "countries were expected to adopt open, market-oriented trade policies." The report noted that this expectation was naive and that we are no longer in an "era of deepening convergence." Many large trading nations maintain bound tariff rates substantially higher than the rates maintained by the United States or impose non-tariff barriers that can impede trade as significantly as high tariff rates. Moreover, many large trading nations maintain economic systems that are fundamentally incompatible with WTO principles.

35. The EU Report likewise raised questions about the applicability of the MFN principle in today's trading environment. It called for a broader debate on the fundamentals underpinning the current balance of rights and commitments. The EU stated that the debate should include "reflections on the role of the MFN principle in today's context, its link to reciprocity and Members' respective levels of openness, as well as possible new links between commitments taken and the level of tariffs."

36. Certain Members and commentators, however, appear to take the position that unconditional MFN treatment should be considered sacrosanct as a bedrock principle of the multilateral trading system. However, even a brief review of the history of the MFN principle demonstrates that it is not always general and unconditional. Historically, countries often negotiated conditional MFN commitments in their treaties and sometimes departed from the principle to best serve their interests amid particular economic and political conditions. Indeed, for most of its history, the United States did not extend MFN treatment to the majority of its trading partners. Even in the GATT/WTO era, there have always been numerous exceptions to MFN. Finally, a maximalist MFN practice in the current global economic circumstances does not advance, and in fact hinders, national interests.

History of "Conditional" and "Unconditional" MFN Principle

37. In 1778, the United States and France signed the Treaty of Amity and Commerce, which contained the first U.S. conditional MFN clause. As this clause was understood by the United States, a trade privilege granted by the United States to a third country in return for a concession would be extended to France only if France granted the same concession to the United States. Conditional MFN was attractive precisely because it allowed for reciprocal, negotiated trade benefits. As John Jay, Secretary for the U.S. Department of Foreign Affairs, noted in 1787 in regard to the conditional MFN provision set out in a treaty with the Netherlands, "it would certainly be inconsistent with the most obvious principles of justice and fair construction, that because France purchases, at a great price, a privilege of the United States, that therefore the Dutch shall immediately insist, not on having the like privileges at the like price, but without any price at all."¹¹

38. As some analysts have noted, during the twentieth century, MFN treatment evolved through distinct phases, with war and depression serving as key inflection points. A change in economic and political conditions eventually led the United States to shift its approach from conditional to unconditional MFN in 1923. While the United States pressed for an open and unconditional MFN commitment in the GATT, the commitment did not require the elimination of certain continuing preferences.¹² Since 1947, the principle of unconditional MFN has been steadily weakened, including through the negotiation of GATT Article XXIV (which permits Members to provide more favorable treatment to customs union or free trade area partners in certain circumstances) in 1958 and the Generalized System of Preferences in 1971. Furthermore, because of increasing concerns among industrialized countries about the "free rider" problem, several codes negotiated during the Tokyo Round were negotiated as "plurilateral" agreements, applying only to the GATT members that signed them. Indeed, subsequent multilateral and bilateral trade negotiations confirm that the rigid application of an unconditional MFN obligation is not a steadfast rule of multilateral trade.

Exceptions to Unconditional MFN

39. In negotiating the GATT, Contracting Parties (now referred to as WTO Members) recognized the limits of unconditional MFN and provided for a number of exceptions. For example, GATT 1994 Article XIV permits discrimination in the application of quantitative restrictions based on balance-of-payment difficulties. Similarly, GATT 1994 Article XX enumerates certain general exceptions, while GATT 1994 Article XXI allows for deviations based on essential security interests.¹³ Members thus specifically incorporated into the GATT multiple exceptions to the unconditional MFN obligation to permit flexibility and prohibit the strict application of this principle. Members also created a pathway to obtain a waiver from the MFN principle in GATT 1994 Article XXV:5.

40. Members soon sought more significant exemptions from MFN. In 1979, they agreed to the GATT decision on "Differential and More Favorable Treatment, Reciprocity, and Fuller Participation of Developing Countries," also called the "Enabling Clause." The Enabling Clause effectively carves out developing countries—most of the Membership—from the MFN principle in key respects. Among others, it allows developed Members to grant preferences to developing Members in accordance with the Generalized System of Preferences without having to extend those benefits to all Members. In addition, it allows developing Members to conclude regional trade agreements with other developing countries that provide tariff reductions without having to provide the same treatment to other WTO Members.

41. Members further sought and found other means to *de facto* avoid MFN. One example is SDT, which permits self-declared developing Members to seek access to more favorable treatment in negotiations than what is available to other Members. A second example is certain Members' refusal to be transparent, thereby hiding their discriminatory treatment of other Members. A third example is many Members' pattern of avoiding or simply ignoring scrutiny of their adherence to the MFN exception found in GATT Article XXIV.

¹¹ Samuel B. Crandell, *The American Construction of the Most-Favored-Nation Clause*, 7 AM. J. Int'l L. 708, 709 (1913) (quoting Secretary John Jay).

¹² GATT, Articles I:2 and I:3.

¹³ See John H. Jackson, *World Trade and the Law of GATT* 264-272 (1969). Article VI, which allows for the imposition of countervailing and antidumping duties in certain situations, also can be considered an exception to unconditional MFN.

42. GATT Article XXIV specifically allows Members to form customs unions or free trade areas whenever two conditions are met. First, within the customs union or free trade area, tariffs and other barriers to trade must be eliminated with respect to "substantially all the trade." Second, the tariffs and other barriers to trade applied to countries outside the customs union or free trade area must not be higher or more restrictive than they were prior to agreement that formed the customs union or free trade area. Over the course of many years, however, Members across the development spectrum refused to notify their applicable trade agreements to the Committee on Regional Trade Agreements (CRTA), depriving the United States and other Members of an opportunity to review those agreements and assess whether they eliminated tariffs and other restrictive regulations of commerce on "substantially all the trade" and therefore were exempt from extending such benefits to the United States as well under the MFN principle. When the United States repeatedly raised concern about this practice, other Members would simply ignore those comments or assert the agreements complied with their obligations. The United States also repeatedly raised concern with carveouts and poor product coverage in many agreements, and these concerns were also ignored. It is a fair conclusion, therefore, that many Members walked away from the "substantially all the trade" requirement long ago. Indeed, perhaps the worst kept secret in Geneva is that MFN as a core principle of the global trading system is largely honored in the breach. The unconditional MFN principle has already yielded to economic reality, and consideration of alternative approaches is warranted.

Limitations on Unconditional MFN in Its Current Form

43. The unconditional MFN principle, in its current form, needs to be reconsidered not only because most Members avoid it, but also because of its limitations. For example, as we explained previously, the MFN principle prevents countries from optimizing their trade relationships in ways that would benefit each party in that relationship and impedes welfare-enhancing liberalization or trade measures. It pushes Members to engage in one venue—the WTO—and attempts to develop a one-size-fits-all approach that serves neither the trading partners nor the long-term interests of the WTO.

44. Perhaps more fundamentally, the MFN principle fails to promote reciprocity and balance within today's trading system. Defenders of the principle often posit that it seeks to prevent discriminatory trade practices and promote equal treatment to equal products among trading partners. Some further contend that the MFN principle ensures that a country's goods and services can compete on a level playing field in international markets without being targeted with unfair tariffs or other barriers.

45. However, this is simply not the case, and has not been for decades. The global trading system, embodied in the WTO, is profoundly unlevel and rife with unfair and non-reciprocal treatment of U.S. goods and services. For decades, while the United States kept its tariffs low and its economy open, our trading partners imposed egregious tariff and non-tariff barriers on U.S. exports. The MFN principle has consistently failed to prevent discriminatory trade practices and promote equal treatment. As the Office of the U.S. Trade Representative chronicles each year in its National Trade Estimate Report on Foreign Trade Barriers, U.S. goods and services exporters face unfair and discriminatory foreign trade measures in the form of licensing requirements, unreasonable regulatory standards, customs barriers, technical barriers to trade, sanitary and phytosanitary measures, inadequate protection and enforcement of intellectual property rights, barriers to cross-border data flows, investment barriers, unfair subsidies, anticompetitive practices, preferences for domestic state-owned enterprises, lax labor and environmental standards, and bribery and corruption. These practices have injected profound instability and uncertainty into the international trade environment.

46. Unqualified adherence to the unconditional MFN principle—particularly given actions of trading partners inconsistent with the principle—precludes Members from differentiating among trading partners that should be treated differently. Time and again, when Members have gathered to chronicle the damage wrought on their industries by these practices, common-sense ideas on how to address the root problem are stifled by concerns about inconsistency with MFN, at least in its current form. This experience should compel Members to ask several questions, such as: Should an open and unconditional MFN obligation remain at the core of the multilateral trading system if it has become a vehicle for preserving unfair practices? Should WTO Members remain beholden to a status quo that tolerates such distorted results?

Way Forward

47. Writing in the *Financial Times* in January, the EU Commissioner for Trade and Economic Security, Maroš Šefčovič, described the world as it is, not as we wish it would be:

"Over the past three decades, several WTO members have dramatically expanded their share of global trade while keeping their markets largely closed. At the same time, state support for industries and other non-market policies have multiplied, distorting competition on a global scale. The result has been structural trade imbalances and chronic overcapacities, with damaging effects on both developed and developing economies."¹⁴

48. We strongly agree that, as part of the reform process, Members need to rethink how the MFN principle functions in its current form, and whether it genuinely fosters openness and a level playing field or whether "it has become a straightjacket that cements the status quo and enables free riding."¹⁵

49. We also strongly agree that Members need to embark on a frank conversation on the link between MFN and reciprocity; consider how MFN status may be adjusted or made conditional based on various factors, including but not limited to market openness and a commitment to fair, market-oriented competition and transparency; and explore whether the WTO Agreement could be amended or interpreted to achieve these results.

50. In a well-functioning trade environment, chronic surpluses and persistent imbalances would not exist, as U.S. Trade Representative Greer explained in a speech in January: "In most circumstances, a country's persistent global trade surplus is very strong evidence that it is pursuing economic growth at the expense of its trade partners. In other words, a country that is structurally exporting more than it is importing likely is harming the rest of the world to fuel its own growth. It is not producing to meet its needs or trade for import: it is trying to have a short cut to growth at others' expense."¹⁶ If unconditional MFN is the "rule" that led to where we are, Members harmed by the chronic surpluses and persistent imbalances of the current trading system must question the utility of the rule. In sum, Members need to explore options so that they can more easily adjust their tariffs in response to threats to their economies, including from countries that run persistent and large surpluses or drive imbalances by building and maintaining overcapacity.

51. These frank conversations should take place among interested Members, not through a top-down, facilitator-led process.

6 DETERMINING THE APPROPRIATE ROLE OF THE SECRETARIAT

52. The December 2025 Report stated that the United States has long valued the work of the Secretariat as it seeks to serve Members and their work at the WTO. However, for well over a decade, the Secretariat has been moving away from its Member-driven moorings to pursue its own agenda, at times acting without regard to Members' views and the impact that such activities may be having on Members' interests, trust in the Secretariat, and budget contributions.

53. The Secretariat is not an independent body with a mandate to drive policies, set agendas, or communicate on Members' behalf. It fundamentally is an administrative body to organize the Members' work. Members have previously identified—again, for well over a decade—several concerns that require deliberation and potential action:

- **Lack of Transparency.** The Secretariat does not adequately coordinate with relevant WTO bodies on its external activities or inform Members—and seek their approval, when appropriate—before drafting and issuing reports relevant to Members' work at the WTO. The Secretariat does not provide adequate transparency as to whether Members' budget contributions are used to fund activities and research not approved by Members.

¹⁴ Maroš Šefčovič, "The WTO Needs an Overhaul," *Financial Times*, 21 January 2026.

¹⁵ Šefčovič, "The WTO Needs an Overhaul."

¹⁶ Jamieson Greer, "From Hamilton to Today: Trade and U.S. Economic Strategy," Speech, Davos USA House, 20 January 2026. Office of the U.S. Trade Representative, <https://ustr.gov/about/policy-offices/press-office/speeches-and-remarks/2026/hamilton-today-trade-and-us-economic-strategy>.

Secretariat staff time is an important part of the WTO budget, and its time spent on any activities should be carefully considered.

- Lack of Neutrality. Secretariat staff make substantive assessments of Members' trade policies outside of the Trade Policy Review process, including by categorizing Members' trade measures using flawed and pejorative terms that erroneously impute the intent behind a measure. The Secretariat participates in an enormous number of discussion panels, purporting to be experts on trade and advocating particular policy preferences. This is not a neutral, Member-driven activity. At times, Secretariat panelists do not state that their comments do not represent the views of the WTO or WTO Members.
- Oversight of Secretariat Activities and Communications. Secretariat staff are too often drafting WTO communications that advance a particular narrative that is not shared or authorized by Members. Likewise, the Secretariat has conducted research and created substantive databases, including for outside use, that were not requested by, previously discussed with, or approved by Members.

Way Forward

54. The United States sees a need for Members to provide clear expectations on the role of the Secretariat.¹⁷ As part of this effort, Members should give serious consideration to how best to return the Secretariat's focus to carrying out its basic administrative role to support Members' work. The Secretariat should be guided by what is best for Members and their economies, not its view on what is best for "the system." We cannot endorse a Secretariat that presses any agenda other than dutifully serving Members in their work.

55. To address the lack of transparency, Members should consider requiring the Secretariat to provide Members with basic and timely information on its activities, and their budget impact, at a much more detailed level than today. This may involve periodic reporting requirements that provide visibility on Secretariat activities, including issuing reports. For example, what share of reports in a period were approved by Members in WTO bodies? What share of reports were written at the Secretariat's direction? How many reports were drafted for or in coordination with external organizations? What budgetary resources were used to draft such reports (*e.g.*, research, staff hours, communications, and travel)?

56. To ensure Secretariat neutrality, Members should consider how to end the practice of the Secretariat drafting reports that make substantive assessments of Members' policies, or that push certain policy preferences, without Members' approval. Regarding the Secretariat's external communications (*e.g.*, press, social media, and the WTO website), Members should consider whether Secretariat staff should be given specific guidance to avoid making substantive judgments or interpreting or pronouncing on Members' obligations. Members should also consider providing formal guidance that Secretariat staff should always establish that any views they express—whether as panelists, drafters, or in social media—do not represent the views of the WTO or WTO Members.

7 PROTECTING ESSENTIAL SECURITY INTERESTS

57. The December 2025 Report stated that for more than 70 years, the United States has been clear in its view that each country has the sovereign right and responsibility to take action necessary to protect its essential security interests. The United States is not alone in this view; many Members have expressed similar views through previous decades at the GATT and WTO when their own security measures were questioned.

58. The United States firmly believes that litigating matters of essential security at the WTO undermines the foundations of the WTO by dragging the Organization into debating and litigating

¹⁷ Article VI:2 of the Marrakesh Agreement states that "[t]he Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and term of office of the Director-General." Article VI:3 states that "[t]he Director-General shall appoint members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference." Members should consider adopting such regulations where they do not exist or amending existing regulations where necessary.

inherently political matters. Adjudicating questions of national security in the WTO is incompatible with the purpose of the WTO, a trade organization, and damages the viability of the WTO as a forum for discussion and negotiation.

59. The WTO Agreement reflects an understanding among trading partners that judgments on matters of essential security are to be left to governments, not adjudicators. Numerous bilateral and regional trade agreements reflect the same understanding between many Members, even when those Members are close political or security allies.

60. Members need to recognize that litigating matters of essential security is futile. Dispute settlement findings will not alter a Member's views on the fundamental importance of an essential security measure.

61. This approach properly reflects the balance of rights and obligations agreed to by the Members, and reflects the reality that no Member would or should be expected to withdraw a measure that it considers to be necessary to protect its essential security interests.

Way Forward

62. Pursuant to Article IX of the WTO, Members should agree to an authoritative interpretation of Article XXI of the GATT 1994, Article XIV *bis* of the GATS, and Article 73 of the TRIPS Agreement, to clarify the understanding of the essential security exception. The authoritative interpretation should state that each Member determines for itself whether an action it takes is necessary to protect its essential security interests and whether one of the required circumstances in the sub-paragraphs is present. In any dispute in which a Member invokes the essential security exception, a WTO adjudicator would not review that invocation and would instead limit its report to the Dispute Settlement Body to note the invocation.

8 CONCLUSION

63. The United States welcomes opportunities to speak candidly about the WTO's problems and areas where reform is necessary. We intend to be constructive and cooperative as Members prepare for a new and more Member-driven phase of the reform effort. The United States looks forward to further discussions on the above issues and to working with Members to address them.
