The Structure and Function of the World Trade Organization

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Introduction

The World Trade Organization (WTO) is an international body, established by governments to provide rules for the commercial interface of national economies. The rules of world trade law apply to government policies that restrict or affect international trade. WTO law has a broad reach, covering international trade in goods and services and some trade-related issues including investment, government subsidies and intellectual property. Issues of private international law, such as the international convention of contracts for the international sale of goods, lie outside the scope of the WTO.

The WTO sponsors intergovernmental negotiations to progressively liberalize international trade and to further the underlying objectives of the multilateral trading system. The current round of comprehensive trade negotiations, known as the Doha Development Agenda, began in 2001 and extensive progress has been made in narrowing differences among governments (Hohmann 2008). Nevertheless, prospects for completing this round in the near future remain low (Pruzin 2010).

Although every international organization has some associated epistemic communities, the WTO seems to attract more passionate critics than many other organizations do (Irwin 2002). In part, this is surely a reflection of the broad reach of WTO law and the organization's perceived effectiveness. However, the animus towards the WTO in some quarters stems from some misconceptions about the role of the WTO vis-à-vis national policymaking and the purpose of world trade law. One of our goals in this chapter is to clarify some of the confusion about the WTO. Of course, fears about the WTO also stem from the way that international trade can affect the labour market. In our view the WTO will be more effective in enhancing economic welfare, while respecting social justice, if governments put

[1] Portions of this chapter are drawn in part from previous writings by each of the authors.

in place appropriate domestic policies to help workers and communities adjust to economic change.

Whether economic policies which are based on market principles are the best approach for maximizing human satisfaction is, of course, controversial (Corden 1974; Jackson 1998; Kenen 1994; Krugman and Obstfeld 1994; Stiglitz 2002). Various alternatives have been much debated and many of those largely rejected, but substantial arguments are made in favour of some sort of mixture of policies, perhaps to temper the perceived negative effects of 'too pure market approaches'. Whatever mixture may appeal to certain societies, it seems reasonably clear that markets can be very beneficial (Sykes 1998). Even when not beneficial, market forces demand respect and can cause great difficulties when not respected.[2]

This chapter provides an overview of the structure and functioning of the WTO. Although the WTO was established in 1995, the roots of the world trading system go back many decades and so the current WTO structure and function reflects learning from a lengthy era of intergovernmental trade cooperation. Yet the WTO also contains many innovative features that were added in 1994 and thus were not present in the pre-WTO trading system. As a result of these 'constitutional' reforms occurring less than a generation ago, the WTO combines some of the most cutting-edge institutional features of any international organization with a jurisprudence and organizational culture going back over half a century.

The WTO is similar to other international organizations in some ways but dissimilar in many others. Like most major international organizations the WTO is founded by a multilateral treaty, has governmental members and contains an independent secretariat. Yet unlike most other international organizations, the WTO has an in-house dispute settlement system with compulsory jurisdiction over complaints by one WTO member against another. Another difference is that the WTO's membership is not limited to states but can also include autonomous customs territories, with Chinese Taipei (Taiwan) being the most notable example. The WTO's treaty is also different from the organic law of other major international organizations since the WTO contains a very detailed set of rules known as world trade law (Wouters and De Meester 2007).

The WTO's rules for trade were written by member governments for governments. Although the legitimacy of world trade law is sometimes questioned, the justification for legitimacy is strong. No government is forced to join the WTO and so when a government chooses to join, it consents to the rules and to the contractual obligation that it acts in accordance with those rules. Moreover, past and current rulemaking in multilateral trade negotiations operates on a consensus basis. Of course, it is also true that many governments have felt pressured to join the WTO and may have wished that they could have ratified the WTO Agreement with reservations concerning particular agreements or rules. Unlike many other treaties, however, the Marrakesh Agreement Establishing the World Trade Organization does not permit reservations.

[2] For an overview of the economic principles which support policies of liberal international trade rules, see Sykes (1998 and Chapters 1 and 2).

Although the rights and obligations of WTO law operate among governments, the beneficiaries of the WTO also include private sector actors. Because of WTO rules, international trade gains more security and predictability and this economic condition benefits producers, consumers, traders and workers (Moore 2001). Perhaps the best example of how a government can reap the benefits of WTO membership has been China, which strengthened its reputation for honouring the rule of law when it joined the WTO in 2001 (Lamy 2010a).

The remainder of this chapter proceeds in five parts. The second part explains the background and history of the world trading system, the third discusses the basic structure and decision-making in the WTO, the fourth provides an overview of WTO dispute settlement and the fifth part addresses the ongoing agenda of the WTO. The final part offers some of our own conclusions about the challenges facing the WTO.

Background and History of the Trading System

The WTO is now the principal institution for international trade but to understand this institution it is necessary also to know something about its predecessor, the General Agreement on Tariffs and Trade (GATT). Indeed, the WTO Charter makes it clear that the GATT history is significant, prescribing in Article XVI that 'the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES [expressed in all caps to signify the Contracting Parties acting jointly under the GATT Agreement] to GATT 1947 and the bodies established in the framework of GATT 1947'.

The 1944 Bretton Woods conference in the United States established the charters for the World Bank and the International Monetary Fund, two pillars of the post-Second World War international economic institutional system. Because the Bretton Woods conference was directed and organized by the financial ministers of the governments concerned, it was not felt appropriate to address the trade questions which generally belonged to other ministries at that time. However, the Bretton Woods conference explicitly recognized the necessity of an international trade organization to complement the responsibilities of the financial organizations. Indeed, in some ways the WTO has at last provided the 'missing leg' of the Bretton Woods system.

The negotiations for an international trade organization were launched in 1946 by the United Nations (UN) Economic and Social Council. Besides the impetus from the Bretton Woods talks, the project to construct a trading system can be traced back to several strands of international cooperation and conflict. One strand was the programme of bilateral trade agreements negotiated by the United States after the enactment of the 1934 Reciprocal Trade Agreements Act championed by the then Secretary of State Cordell Hull. Between 1934 and 1945, the US government entered into 32 bilateral reciprocal trade agreements, many of which had clauses that later became models used in drafting the GATT. Another strand was the

economic cooperation attempted in the League of Nations whereby a multilateral treaty to ban import restrictions had been negotiated in 1927 and subsequently abandoned. A third strand of thinking stemmed from the view that the mistakes made concerning economic policy during the interwar period were a major cause of the disasters that led to the Second World War. In the interwar period, particularly after the damaging 1930 US Tariff Act was signed, many other nations began enacting protectionist measures, including quota-type restrictions, which choked off international trade. Political leaders in the United States and elsewhere made statements about the importance of establishing postwar economic institutions that would prevent these mistakes from happening again.

At the end of the UN drafting conference in Geneva in November 1947, a complete draft of the GATT was readied but the charter for the new trade organization needed more work (Irwin et al. 2008). This added work was scheduled for a conference in Havana in 1948 and at the UN Conference on Trade and Employment, the Charter for an International Trade Organization (ITO) was finalized. The charter, however, became doomed after the Truman Administration was unable to secure sufficient political support for ratification in the US Congress.

Since the GATT, including the various tariff obligations, had already been completed in October 1947 by 23 nations, many negotiators believed that it should be brought into force quickly, even before the anticipated Havana conference. There were several reasons for this. One was a concern that the still-secret substance of the agreed-upon tariff reductions would leak out and that trade patterns could be seriously disrupted as traders waited for new rates to come into force. Another reason for early implementation involved the United States trade agreement implementation authority which was slated to expire in mid-1948. Yet there were political concerns in many countries that bringing the GATT into force through a treaty ratification process might then complicate the process of ratifying the ITO Charter.

The solution agreed upon was the adoption of the Protocol of Provisional Application (PPA) to apply the GATT treaty provisionally on or after 1 January 1948 pending the establishment of the ITO. The PPA was drafted to require that governments only implement the GATT 'to the fullest extent not inconsistent with existing legislative'. By using the PPA with its 'grandfathering' of existing law the negotiators allowed most governments, which would otherwise need to submit to the GATT for legislative approval, to approve the separate PPA by executive or administrative authority without going to their parliament.

When the ITO did not come into force, the GATT found its role changing dramatically as nations turned it into the forum in which an increasing number of problems of their trading relations could be handled. More countries became contracting parties to the GATT and a second round of tariff reductions was undertaken in 1949. Although the GATT was technically not an organization, it gradually stepped into the role of an organization. Committees and working parties were slowly set up and in 1960 the GATT parties established the GATT Council to provide governance. The Interim Commission for the ITO provided secretariat services to the GATT on a 'leased' basis and this makeshift procedure

worked to enable the GATT Secretariat to function. Since the GATT operated in some ways like a members' club, the spontaneous lawmaking that can occur in small communities transpired in the GATT

The GATT should be praised for its considerable success, certainly beyond what would have been predicted following its flawed origins. By 1970 the GATT had overseen six major trade negotiations and succeeded in bringing about dramatic reductions in tariffs, at least for manufactured products imported into advanced industrial countries. As the GATT looked forward to its seventh round of negotiations, known as the Tokyo Round (1973–9), the focus expanded to include new regulations on non-tariff barriers. The Tokyo Round negotiators did not seek to change the GATT itself, but rather adopted a series of separate codes, each of which was a standalone treaty that a GATT party could choose to join or not. These codes addressed a number of troublesome non-tariff barriers that distorted trade flows, such as autarkic government procurement regulations and product standards that had the effect of thwarting imports.

The eighth and last trade round under the GATT umbrella was the Uruguay Round launched in Punta del Este, Uruguay in 1986 and which finally concluded at a ministerial-level negotiating conference in Marrakesh, Morocco in April 1994. The Uruguay Round was clearly the most ambitious of all of the GATT rounds and surely the largest and most complex completed economic multilateral treaty negotiation in history. A key achievement of the round was the establishment of the WTO itself. Setting up a new multilateral organization was not included in the agenda agreed to at Punta del Este and only rose to a high priority late in the negotiation. This turn of attention came about partly as a result of the views of the negotiators, who began to see that the Uruguay Round results were so extensive that a new institutional structure would be essential for the successful implementation of the new agreements. Happily, some GATT experts in governments and academia had been thinking about what institutional reforms were needed (Jackson 1990).

WTO Basic Institutional Structure and Decision-making Procedures

The WTO was established on 1 January 1995 when the massive treaty agreed to in the Uruguay Round came into force (Jackson 2006). The beginning portion of that 26,000-page treaty is a brief 14-page text that establishes the WTO as a proper (no longer provisional) organization. Although this text is often referred to as the WTO's Constitution or Charter, the WTO Agreement is technically a single undertaking, including four annexes and numerous sub-annexes, which contains the legal rules and bindings agreed to in the negotiations. Annex I contains the multilateral rules for goods, services and trade-related intellectual property. Annex 2 contains the rules for dispute settlement. Annex 3 governs the operation of the

Trade Policy Review Mechanism. Annex 4 contains the plurilateral agreements that bind only the WTO members who join them.

Within Annex I, Annex I A provides the rules on goods. The centrepiece of Annex I A is the GATT 1994 which is a new agreement based on the original GATT negotiated in 1947, the amendments to the GATT that occurred between 1947 and 1994 and six negotiated 'Understandings' of particular GATT provisions. The most extensive part of the GATT is the tariff schedules for each WTO member that set maximum tariff commitments. Annex I also contains 12 specialized agreements on trade in goods. They cover: agriculture, antidumping, import licensing, investment measures that are trade-related, pre-shipment inspection, rules of origin, safeguards, sanitary and phytosanitary standards, subsidies and countervailing measures, technical barriers to trade, textiles and clothing (now expired), and valuation. Since the GATT provisions were not renegotiated during the Uruguay Round, some GATT provisions are clearly superseded by these specialized covered agreements. A brief text at the end of the WTO Charter stipulates that if there is a conflict between GATT 1994 and one of these covered agreements, the latter shall prevail.

Annex I B provides the rules on services. The centrepiece is the General Agreement on Trade in Services (GATS) which is among the most creative lawmaking that emerged from the Uruguay Round in defining how services are provided in international trade and in applying trade law principles to this previously ungoverned means of international trade (Sauvé and Stern 2000). The GATS also contains subject specific annexes covering air transport services, financial services, maritime transport services and telecommunications. In addition, like the GATT, there are also detailed annexes providing country-specific negotiated commitments.

Annex 1 C provides the rules on intellectual property via the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). In TRIPS, each government agreed to grant the included rights to the nationals of other members and to provide a means of enforcement of these rights under its own domestic law. TRIPS extends broad coverage to intellectual property, including copyrights, trademarks, geographic indications, patents and several others. For some of these areas, TRIPS incorporates by reference the provisions of major multilateral treaties on intellectual property.

Unlike the GATT, the WTO Charter establishes an international organization, endows it with legal personality and supports it with the traditional organizational clauses regarding 'privileges and immunities', a Secretariat, a Director-General (DG), budgetary measures and explicit authority to develop relations with other intergovernmental organizations and nongovernmental organizations (NGOs). The Charter prohibits staff of the Secretariat from seeking or accepting instructions from any government 'or any other authority external to the WTO'. The WTO has benefited from the leadership of several DGs, each of whom has brought unique talents and capacities to a very demanding job.

The governing structure of the WTO follows some of the GATT-era model, but it also departs from it substantially. At the top there is a 'Ministerial Conference',

which is directed to meet not less than every two years. Below that are four additional councils. The General Council has overall supervisory authority, including responsibility for carrying out many of the functions of the Ministerial Conference between those conference sessions. In addition, there is a Council for each of the Annex I agreements, that is for goods, services, and intellectual property. Each of these Councils is open to membership for any WTO member who chooses to take it on.

When the General Council convenes to discharge responsibilities for dispute settlement, the Council transmogrifies into the Dispute Settlement Body (DSB) with identical membership (that is, all WTO members), but a different chairman. The role of the DSB in administering the WTO Dispute Settlement Understanding (DSU) will be addressed in the fourth part of this chapter.

The rules in the WTO Charter for decision-making are formally complex but simple in practice. They are complex because there are distinct voting requirements for each particular type of decision. The current practice of consensus decision-making (other than for dispute settlement decisions) makes the topic simpler, however. Article IX:1 of the WTO Charter states that 'The WTO shall continue the practice of decision-making by consensus followed under GATT 1947'. But this provision further states that 'Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting'. This clear language leaves the door open to non-consensus decision-making in the future.

The default voting rule under the WTO Charter is majority rules wherein each WTO member receives one vote. Yet decision-making by a simple majority of the votes cast does not apply when the WTO Charter specifies a higher requirement as it does for almost all areas of decision-making. An action by the Ministerial Conference or the General Council to adopt an 'interpretation' of the WTO Agreement requires a three-quarter majority of the members. (No interpretations have been adopted.) An action by the Ministerial Conference to grant a WTO member government a waiver requires three-quarter of the members, but certain obligations can only be waived by consensus.

The voting rule for amending the WTO Agreement depends on what provision is to be amended. Some provisions can be amended by two-thirds of the members, others by a three-quarter majority and some by universal acceptance. Some amendments only take effect for a member when that member accepts it while others are notionally effective without individual member acceptance.

Even in that case there is provision for a hold-out member to withdraw from the organization or negotiate a special dispensation. Since withdrawal by certain key members of the WTO would probably end the WTO's effectiveness, such key members probably effectively have a 'veto' regarding amendments.

Only one amendment to the WTO has been approved by the Ministerial Conference and that was on the topic of compulsory licensing of pharmaceuticals. This amendment has not been accepted by a sufficient number of WTO member countries to come into force. The substantive rulemaking in the amendment had been previously accomplished through a waiver that remains in effect.

The WTO Dispute Settlement System and its Important Achievements

The WTO's dispute settlement system (DSS) is unique in international law and institutions both at present and historically. This dispute settlement system embraces mandatory exclusive jurisdiction and virtually automatic adoption of dispute system reports. It has been described as the most important and most powerful of any international law tribunals, although some observers reserve that primary place to the World Court (International Court of Justice). Even some experienced World Court advocates, however, have been willing to concede that primacy under some criteria to the DSS.

Some statistics will aid understanding of the role of the DSS. During just over 15 years of existence (1 January 1995 to July 2010), the DSS has adopted over 158 reports. The approximate total number of pages of this 'adopted' jurisprudence is 60,000 pages, or the rough equivalent of 150 400-page volumes. The reports are carefully crafted, extremely analytical and very well reasoned, compared to the outputs of other excellent court systems – national and international.

This body of jurisprudence reflects the difficult issues confronting the WTO. A major part of these difficulties is directly related to the constant tension between the claims of authority and allocation of power by nation-state and other WTO members on the one hand, and the assertions of the WTO as an international legitimate authority requiring control of some issues in order to carry out its responsibilities on the other. This tension is manifested repeatedly in the vast jurisprudence of the DSS. The characterization 'boiler-room of international relations', used by one of us in a previous publication about GATT (Jackson 1995), is surely appropriate. This jurisprudence contains many lessons with many 'classical dilemma situations' that should instruct all participants and observers of international law in particular, and international relations in general (Sacerdoti et al. 2006).

The GATT had a well-functioning DSS, but its operation depended on the good-will of governments which sometimes was not present. For example, setting up a panel and approving its report both required a consensus of GATT Contracting parties. Another problem was that if a panel reached a decision that embodied legal error, there was no way to get it corrected short of blocking adoption of the panel report.

The new WTO Dispute Settlement Understanding vastly improves the dispute procedures:

1. It established a unified dispute settlement system for all parts of the GATT/WTO system, including the new subjects of services and intellectual property.
2. It clarified that all parts of the Uruguay Round legal text relevant to the matter in issue and argued by the parties can be considered in a particular dispute case.
3. It reaffirmed and clarified the right of a complaining government to have a panel process initiated, preventing blocking at that stage.

4. It established a 'reverse consensus' rule for adoption of a panel report, which results in almost automatic adoption with no chance for 'blocking'. However, an appeal can be made before adoption.
5. It established a creative new appellate procedure which will substitute for some of the former procedures of Council approval of a panel report. An appellate body of seven members acting independently of governments is constituted and three of these members act to provide conclusions, which are binding. The opportunity of a losing party to block adoption of a panel report is no longer available.
6. It established new procedures for setting a reasonable period of time for implementation, for adjudicating whether measures taken to comply do, in fact, constitute compliance, and for determining the amount of suspension of concessions or other obligations (SCOO) that can be imposed on a scofflaw country that fails to comply (Bown and Pauwelyn 2010).

The relationship of international law generally to the WTO has been commented on for a number of years under the GATT and was very prominently addressed at the very beginning of the existence of the WTO Appellate Body. The question in GATT times was sometimes stated to be whether the GATT was a 'separate legal regime' from international law, so that general international law norms would not necessarily be relevant or pervade the work of the GATT. In the very first case that the Appellate Body handed down, it addressed the question of the relationship of international law to the WTO and emphatically pronounced that, with respect to treaty interpretation, general principles of customary international law were binding on members of the WTO. The Appellate Body also noticed that many countries deemed the text of the Vienna Convention on the law of treaties to appropriately articulate the customary international law of treaty interpretation and the Appellate Body quoted Articles 31 and 32 of the Vienna Convention extensively.

Another important jurisprudence concept is the use of 'precedent'. Too often some observers and commentators ('publicists') have tended to discuss the use of precedent in judicial decision-making as involving a dichotomous choice between *stare decisis* and not relying upon precedent.[3] As with many dichotomous analyses, this is deeply flawed. The underlying problem is the question of how much influence a prior decision of a judicial body should have when considering new cases. In the WTO (like the GATT before it) we can detect a fairly strong use of precedent. Moreover, the Appellate Body has made it clear that panels are expected to adhere to judgments of the Appellate Body on the same subject matter.

One of the most important, indeed, perhaps the single most important, case of WTO jurisprudence so far, in the sense of fundamental and 'constitutional' concepts, is the *Shrimp Turtle* case (WTO 1998b). This case touches on a number of the concepts relating to interpreting the WTO constitution. The case was brought by

[3] Stare decisis is a Latin term meaning 'to stand by decisions and not disturb the undisturbed'.

four developing country members of the WTO against the United States, arguing that the US regulator was violating the WTO in prohibiting the importation of shrimp from particular countries. The rationale for the US action was that the harvesting of shrimp in certain ways tends to kill sea turtles, almost all of which are endangered species. Consequently, the United States effectively required the exporting nation-state to take measures to ensure that turtle excluder devices, or other means to prevent harming the turtles, were utilized in the gathering of shrimp. The first-level Panel ruled with quite strong language against the United States, partly based on its view that the unilateral measures were inappropriate in a multilateral organization. The Appellate Body dramatically modified the language of the first-level Panel, but nevertheless concluded that, as applied, the US measures were not consistent with its obligations. After this report, the United States was able to change its practices by administrative changes (without seeking legislation from the Congress) and argued successfully that those changes brought its programme into consistency with the WTO.

This case is extraordinarily complex and nuanced and cannot be thoroughly reported here, but a few broad, brief ideas about the case can be set forth.

One such idea is the explicit invocation of the Appellate Body of an 'evolutionary' principle of interpretation, particularly relating to language speaking of 'exhaustible natural resources' as an exception under Article XX (g) of GATT. The basic question there was whether a living animal could be considered an exhaustible natural resource and the Appellate Body rendered its opinion that it could be, even though, at the time of the origin of this language, that term was considered to apply to minerals and other non-renewable resources.[4] The Appellate Body opinion was partly based on the idea that WTO member governments had accepted programmes to save endangered species.

Another feature of the *Shrimp Turtle* case is the idea that non-trade policies must be considered in connection with the trade policies of the WTO. The Appellate Body gave a number of reasons for including environmental policies as part of the policy landscape of the WTO, particularly when interpreting language of GATT Article XX 'Chapeau' (the preamble to Article XX).

The Appellate Body, in this, its first *Shrimp Turtle* opinion, reversed the panel conclusion that 'unilateral' measures were clear violations of the WTO treaty. The Appellate Body view was much more complex. In its consideration of interpretation of 'unilateral' measures, it found a series of specific problems in the United States measure, as those would be considered in the interpretation of the Article XX Chapeau language, relating to 'unjustifiable discrimination' and 'arbitrary discrimination'. The Appellate Body felt that it had to do this in a way that would take account of the environmental policies and thus had to develop a balancing approach between competing norms (Vranes 2009). The opposite approach, to be totally textual and not balance any non-trade policies, could ultimately lead to the

[4] The Appellate Body appeared not to consider elements of the GATT negotiating history that showed references to animal life as exhaustible natural resources.

inability of the organization to maintain a degree of legitimacy that would enable it to carry out its broader objectives relating to trade liberalization.

In summing up the general conclusions about the WTO Appellate Body jurisprudence it is easy to see that treaty interpretation is, at times, much more complicated than thought by many of the individuals who are involved in the process. It is extraordinarily varied and it touches on a number of different institutional or 'constitutional' policies, as well as challenging the older 'consent' theory notions of Westphalian 'sovereignty'. In many ways, treaty interpretation illustrates important implications of detailed aspects of modern tensions between 'sovereignty' and 'international institutionalism.'

WTO Policy and Administrative Activities

Although the long-delayed WTO Doha Round negotiations have received considerable attention in the press and from scholars, the other achievements of the WTO do not receive as much attention even though they are important. The inability of WTO member governments to complete the Doha Round has put greater pressure on the dispute settlement system to clarify and fill the gaps in incomplete WTO rules. To be sure, the failure of the Doha Round so far shows a dysfunction in the WTO's legislative branch. Nevertheless, it is important not to assume that the exclusive legislative output of the WTO is completed trade rounds. The WTO Councils and Committees and the Secretariat have, over the past 16 years, accomplished a great deal that has furthered the interest of the trading system.

The most significant expansion in the reach of the WTO has been the accession process whereby 25 new member governments have joined the WTO. Accession negotiations are conducted between the applicant government and the WTO, which means that all incumbent WTO members must be satisfied with the negotiated terms of admission to the WTO. Over the past decade, these accession negotiations have become more drawn out with WTO members demanding that applicant governments provide a plan for bringing any WTO-inconsistent domestic measures into compliance with WTO rules. Sometimes bilateral trade concerns are also injected into the accession negotiation as, for example, between WTO member Georgia and the then applicant Russian Federation. When large economies apply for membership as, for example, China and Vietnam, they have been asked by the WTO to agree to country-specific rules that apply only to them and not to incumbent WTO membership. Such applicant WTO-plus obligations are unusual in international organizations (Charnovitz 2008). Applicant governments will also be asked to submit a schedule of commitments on goods and services. A government joining the WTO today will need to make more extensive commitments on trade in services than the same country would have needed to do if it had been an original member of the WTO in 1995.

Despite the difficulties of joining the WTO by accession, 29 governments are waiting to do so. The near-universal interest of governments to be part of the WTO

is indicative of the fact that governments want a seat at the table in the WTO. Indeed, the importance for governments to fully participate in international law mechanisms has modernized the traditional meaning of the term 'sovereignty'.

Another important policy achievement is the Information Technology Products Agreement (ITA) negotiated by 29 WTO member governments at the Singapore Ministerial Conference in December 1996. The number of governments participating has now grown to 70, representing about 97 per cent of world trade in information technology products. The ITA provides for participants to completely eliminate duties on Information Technology products covered by the Agreement. In a recent complaint against the European Communities, a WTO panel ruled that concessions made pursuant to the Agreement apply to continuing product evolutions.

Review of national trade policies by the WTO's Trade Policy Review Mechanism (TPRM) is another important ongoing activity. This review is not specifically aimed at examining compliance with WTO obligations, but rather to range broadly over all issues relevant to a member's international trade measures and policies. The review is based on a combination of self-reporting by the subject government, a review by the WTO Secretariat and discussion by governments' representatives. All of these documents are promptly published on the WTO website and have become an important resource for those researching national trade policies.

The WTO has established cooperative relations with the international organizations most closely related to its work, such as the World Customs Organization, the World Intellectual Property Organization and other international organizations including some of the specialized bodies of the UN. Most of these activities occur within the pertinent WTO bodies or are carried out by the WTO Secretariat. For example, in 2009 the WTO and United Nations Environment Programme issued a joint report on international trade and climate change. The WTO Secretariat has also issued a report on how the WTO contributes to the UN Millennium Development Goals.

A decision made at the Singapore Ministerial Conference in 1996 led the WTO to take up the issue of trade facilitation, that is, the practical problems of the management of cross-border trade and the improvement of infrastructure for the delivery of goods (see Chapter 7). The WTO works with the UN Conference on Trade and Development and the UN Centre for Trade Facilitation and Electronic Business to address these problems. Some questions of trade facilitation are also being addressed in the Doha Round in parallel to steps being taken regionally in negotiations for free trade agreements.

The WTO has stepped up its training and capacity building for government trade officials. The WTO Committee on Trade and Development (CTD) oversees these activities, many of which are carried out by the Secretariat. For example, in 2009 the CTD devoted two sessions to the problems of small, vulnerable economies. The WTO also participates in the Enhanced Integrated Framework for Least Developed Countries (LDCs) which is a joint programme of the World Bank, the International Monetary Fund, the WTO and several other international organizations. Projects are supported through a trust fund. For example, 35 developing countries recently prepared Diagnostic Trade Integration Studies aimed at identifying bottlenecks and

other problems handicapping trade expansion. The WTO also carries out training workshops in Geneva and in numerous regional locations. Some of these workshops are conducted in partnership with other organizations such as the International Development Law Organization. One recent creative initiative sponsored by the WTO and the Organisation for Economic Cooperation and Development (OECD) has sought case story write-ups on the success of aid-for-trade initiatives. The WTO Secretariat has also sponsored a WTO Chairs programme that supports trade-related research and teaching in 14 universities around the world.

Several WTO committees have engaged in what might be called administrative rulemaking. For example, in 2000 the WTO's Committee on Sanitary and Phytosanitary Standards (SPS) adopted 'Guidelines to Further the Practical Implementation of Article 5.5' (WTO 2000), a provision of the SPS Agreement regarding the consistency of national measures. In 1999 the Council for Trade in Services adopted 'Disciplines on Domestic Regulation in the Accountancy Sector' (WTO 1998a).

The norm-generating capacity of the WTO has been remarkable, especially given how weak the WTO's legislative branch has been due to the stalemate in the Doha Round. Let us give a few examples. In the recent financial crisis, there were strong protectionist pressures in many countries, some of which were succumbed to, but many of which were headed off by the constraining authority of WTO law. In November 2008 the G-20 countries made a commitment that 'we will refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports' (G-20 2008). Unfortunately, those commitments were broken and at the next summit (G-20 2009) the governments pledged 'to rectify promptly any such measures', and also called 'on the WTO, together with other international bodies … to monitor and report publicly on our adherence to these undertakings on a quarterly basis'. Indeed, the WTO Secretariat had begun such monitoring a few months earlier. DG Pascal Lamy (Lamy 2009) explained in February 2009 that 'we have set up a radar tracking trade and trade-related measures taken in the context of the current crisis'. Thus the G-20 statement served to confirm the WTO's self-initiated role to monitor protectionist acts and to reinforce the norm that WTO rules were to be respected even during an economic crisis.

In the past decade the WTO has worked successfully to begin addressing the problem of distance between the WTO and the public. For most of the GATT era, the GATT had little direct contact with the public. This insular attitude had begun to change in the last years of the GATT system and has been transformed considerably in the WTO. To be sure, transparency has improved across the board in international organizations over the past decade in part because of the technology available for organizational websites. The WTO, however, embraced Internet access earlier and more comprehensively than other economic organizations. Today, the WTO website is among the most informative and interactive of any international organization.

The WTO has also carried out many other activities to improve transparency and public access. For example, the WTO holds a public forum each year where NGOs and business groups are given an opportunity to organize panel sessions in the presence of government delegates and Secretariat officials, among others. The WTO Secretariat has also participated in intergovernmental parliamentary activities considering trade issues such as those organized by the Inter-Parliamentary Union. Of course, WTO officials still cherish the idea that the WTO is a member-driven institution and therefore opportunities offered to NGOs to participate in the WTO have been circumscribed.

Conclusions

In a recent thoughtful article, WTO scholar Jeffrey L. Dunoff (2009) analysed the role of constitutional discourse regarding the WTO and called into question the suggestions that the WTO Agreement has constitutional dimensions. Professor Dunoff argues that there has been little WTO jurisprudence to mandate an internal separation of powers or to uphold fundamental rights of individuals and little evidence that WTO judicial decisions play a norm-generating role. Although we commend Professor Dunoff's exacting analysis and agree that there are no simple analogies between the international plane and national constitutions, we see many emerging features of the WTO and its relationship to national law, other international organizations and the world economy that reflect a constitutional structure. We also note that Dunoff's article is careful enough to state that 'To claim that the WTO today should not be understood as a constitutionalized entity is not to say that it could never be understood as such' (2009).

The WTO has a very difficult role to play because it must address issues that are being generated in the world, with particular reference to economic issues which constantly change, and involve problems over which governments and the international organization have relatively little control. So the WTO's task is the unenviable one of assisting governments to achieve a better solution for managing the problems of globalization and interdependence than could be achieved without the coordination techniques that can be carried out under the umbrella of a WTO. In many ways, the organization deserves recognition for its achievements in its very short history, more than it deserves criticism of its shortcomings. Nevertheless, the shortcomings exist and they certainly merit attention. Indeed, DG Pascal Lamy (2010b) says publicly that 'multilateral trade rules are still unbalanced in favour of developed countries'.

A number of trade experts (Ismail 2009; Kotera et al. 2009; Steger 2010) have called for a 'reform' of WTO rules and practices. The areas sometimes pointed to for reform are:

1. The WTO's flat governance structure in contrast to some other international organizations which have an elected governing body.

2. The perceived need to conduct decision-making with less than a consensus of WTO members in instances where a few governments engage in foot dragging.
3. A willingness to abandon the idea that each negotiation has to be conducted in a round leading to a single undertaking and instead to engage in more frequent lawmaking on particular issues.
4. Changes to the DSS to promote compliance and to prevent governments from using the time-consuming DSS as a three-year free pass to violate WTO law. So far, there is no widespread agreement as to how or whether any of these changes should be made.

In conclusion, the WTO provides a degree of governance for the world economy and in particular of the way that trade and domestic policies of one country can affect other countries. The success of the WTO so far can be attributed both to its remarkable structure and its function. The WTO's governance structure allows it to take legislative, judicial and executive/administrative actions. The WTO's multiple functions are increasingly important in an era of economic and cultural globalization.

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