



International Economic Law

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- Brief History of the WTO law
 - Functioning of the WTO law
 - Membership of the WTO
 - Institutional Structure of the WTO
 - Decision-Making in the WTO

Why Law?

[L]aw and legal norms play the most important part of the institutions which are essential to make markets work. The notion that 'rule of law' or a rule-based system of human institutions is essential to a beneficial operation of markets. (J. Jackson)

- ▶ What are the roles of international trade rules?

What is law?

- ◆ Three (competing) concepts of law (Raymond Wacks, 'Law: A Very Short Introduction')
 - (a) law consists of a set of universal moral principles in accordance with nature;
 - (b) law is nothing more than a collection of valid rules, commands, or norms that may lack any moral content;
 - (c) law as fundamentally a vehicle for the protection of individual rights, the attainment of justice, or economic, political, and sexual equality.
- ◆ Law is interwoven with political, social, moral and economic contexts

The Rule of Law

- ◆ The rule of law is a fundamental element in the formation and significance of society in Western legal tradition, to which the modern Japanese law belongs
- ◆ The rule of law consists of the three principles (A.V. Dicey, *The Law of the Constitution*):
 - (a) the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power;
 - (b) equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts;
 - (c) the law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts

The Functions of Law

◆ Order

- (a) Hobbes: if we are to preserve order and security, law and government are required. We therefore need, by the social contract, to surrender our natural freedom in order to create an orderly society.
- (b) In today's society, it is widely accepted that order is only one part of the functions of law story.

◆ Justice

- (a) Lord Denning: "The law as I see it has two great objects: to preserve order and to do justice: and the two do not always coincide. ... The right solution lies in keeping the proper balance between the two."
- (b) Hart "The Concept of Law": the idea of justice "consists of two parts: a uniform and constant feature, summarized in the precept "treat like cases alike" and a shifting or varying criterion used in determining when, for any given purpose, cases are alike or different.

The Functions of Law

“There are a number of legal theories on what is justice, but from a practical point of view, one thing is clear: Justice is unlikely to be attained by a legal system unless its rules are, as far as possible, reasonable, general, equal, predictable, and certain. This is another function of law – the law establishes a framework within which unavoidable disputes may be resolved. Courts are the principal forum for the resolution of conflict. Almost every legal system includes courts or court-like bodies with the power to adjudicate impartially upon a dispute and, following a recognized procedure, to issue an authoritative judgment based on the law.”



J. Bentham

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Creation of the World Trade Organization (WTO)

[Origin of the GATT]

- ▶ GATT originates in fears of a return to **the 'beggar-thy-neighbour' policy** that led to the Great Depression and the Second World War: increasing recognition of the link between liberal trade and national security
- ▶ The GATT was established on a provisional basis after the Second World War in the wake of the "Bretton Woods" institutions now known as the World Bank and the International Monetary Fund.

Creation of the World Trade Organization (WTO)

- ▶ Geneva Round (1947): set the initial rules for the GATT and principles for trade liberalization
- ▶ The GATT 1947 was to become part of the Havana Charter for an International Trade Organization ('ITO') that was negotiated during the United Nations Conference on Trade and Employment from November 1947 to March 1948.
- ▶ As of 1 January 1948, the GATT 1947 was applied through a Protocol of Provisional Application.



However,

Creation of the World Trade Organization (WTO)

- ▶ The failure of ITO: the Havana Charter never came into force

[Reasons]

- The opposition of the Congress prevented the US from ratifying the Charter
- Due to the prominent position of the US, it was expected that ratifications by other signatories would start after the ratification by the US.
- When the US government announced its intention not to seek Congressional ratification of the Charter, the ITO was effectively dead.



Therefore,

Creation of the World Trade Organization (WTO)

- ▶ The GATT 1947 remained provisionally in force until its provisions became part of the GATT 1994
- ▶ Annecy Round (1949) and Torquay Round (1951)
 - Not much progress in tariff reduction
- ▶ Geneva II Round (1955-9) and Dillon Round (1960-61)
 - Japan became a contracting party to the GATT in 1955
 - The establishment of the European Economic Community ('EEC'), or the Common Market (France, Italy, Luxembourg, the Netherlands, and West Germany) in 1958
 - The emergence of Third World nations (fresh from colonialism) and the establishment of the UNCTAD (1964)
 - From recovery to competition

Creation of the World Trade Organization (WTO)

▶ Kennedy Round (1963-7)

- The first round stagnated by agricultural trade conflict (EEC's Common Agricultural Policy)
- Non-tariff barriers recognised

▶ Tokyo Round (1973-9)

- Era of economic recession - two oil crises, collapse of the dollar and the Bretton Woods system
- Nevertheless, it produced sizable (over \$300 billion) in tariff reductions.
- From a tariff reduction body to a trade management forum addressing broader issues (e.g. government procurement, subsidies and dumping)



Foundation of the WTO, leading to...

Creation of the World Trade Organization (WTO)

▶ Uruguay Round (1986-1994)

- The most successful round of GATT negotiations
- Trade in services, IP rights, trade-related investment measures, export subsidies, anti-dumping, government procurement, safeguards, sanitary and phytosanitary measures, and technical barriers to trade were incorporated within the trading system



Most importantly,

- The creation of the WTO, incorporating all elements of the Uruguay Round Agreement and the GATT

Functions of WTO



1. Providing rules governing policies on:

(a) Trade in goods

(b) Trade in services

(c) Protection of IP rights

2. Providing a forum for administering the rules, dispute resolution, and pursuing negotiations for strengthen and extend the multilateral rules for trade liberalization

Functions of WTO

► WTO Rules

Agreement Establishing WTO (Marrakesh Agreement)

Goods	Services	Intellectual Property
GATT	GATS	TRIPS
Agreements and annexes dealing with specific issues (e.g. SPS, TBT, TRIMS, ROO, Safeguards)	Annexes dealing with specific issues (Movement of natural persons, Air transport, Shipping, Telecom)	
Market Access – countries' schedules of commitments	Market Access – countries' schedules of commitments and MFN exemptions	
Dispute Settlement		
Transparency – Trade Policy Reviews		

Legal Status of the WTO

Article VIII of the Marrakesh Agreement

‘The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions.’

- ▶ A fully independent international organization

Membership of the WTO



Source: <http://www.eurasiareview.com/29042013-malaise-in-the-wto-analysis/>

- 164 members (since 29 July 2016)
- State members and Customs Territory members

Membership of the WTO



Developed-country members and developing-country members

- ▶ 3/4 of the 164 members are developing countries
- ▶ 36 least-developed countries



- ▶ Preferential and differentiated treatment for developing-country members

Membership of the WTO

Developed-country members and developing-country members

Preamble to the WTO Agreement

'**Recognizing** further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development'

 The 'positive efforts' in favour of developing countries

Membership of the WTO

Developed-country members and developing-country members

'Special and differential treatment' for developing-country members

The special provisions include:

- ▶ Longer time periods for implementation,
- ▶ Measures to increase trading opportunities
- ▶ Requirement of safeguard of the trade interests of developing countries,
- ▶ Capacity building (carrying out WTO work, handling disputes, implementing technical standards),
- ▶ Provisions related to LDC Members

Membership of the WTO

Developed-country members and developing-country members

An example:

Article XV: 4 of the WTO Agreement provides that:

4. Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

However, pursuant to Article IX: 3 of the WTO Agreement

3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three fourths of the Members unless otherwise provided for in this paragraph.

Membership of the WTO

Developed-country members and developing-country members

Compulsory licensing for essential medicines

Monitoring Mechanism

- The Bali Ministerial Conference (December 2013) established a mechanism to review and analyse the implementation of special and differential treatment provisions.

Membership of the WTO

Groups, coalitions and alliances of members

E.g.

- ▶ The ASEAN
- ▶ The Group of Latin America and Caribbean Countries (GRULAC)
- ▶ The African, Caribbean and Pacific Group (ACP)
- ▶ G-20
- ▶ G-90

Membership of the WTO

Becoming a member of the WTO

Two ways of becoming a WTO Member

1. 'Original membership'

(a) Art XI:1 of the Marrakesh Agreement

1. The contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Specific Commitments are annexed to GATS shall become original Members of the WTO.

(b) 123 members are such original members.

Membership of the WTO

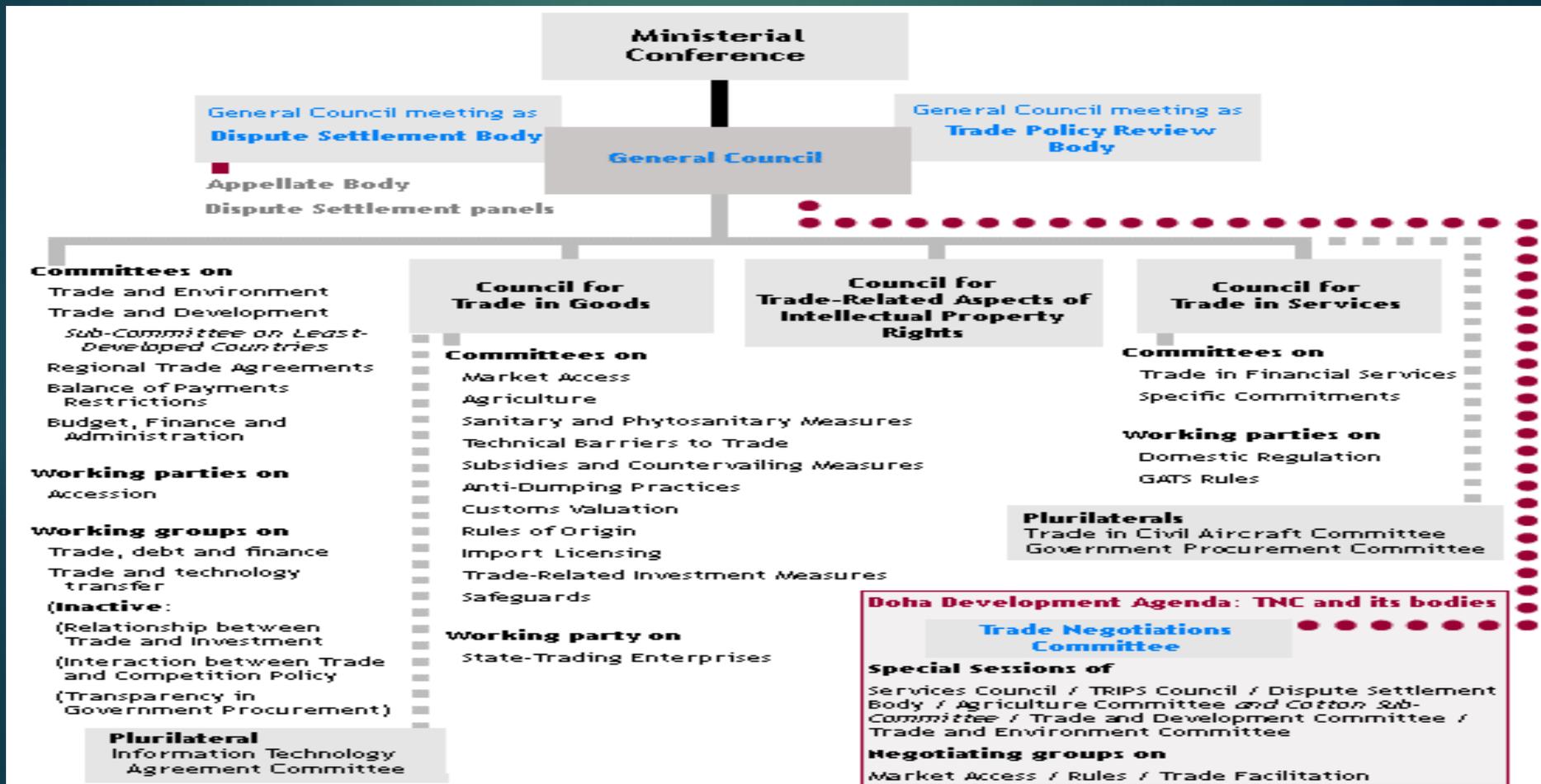
2. Through accession

Accession Process (Article XII of the Marrakesh Agreement)

- (1) Report on all aspects of its trade and economic policies that are relevant to the obligations under the WTO
- (2) Bilateral negotiations on market access between the applicant and members
- (3) (Negotiation successful) - the terms of accession finalized and submitted to the Ministerial Conference or the General Council
- (4) Decision on the application for membership
- (5) Positive decision the candidate accedes to the WTO thirty days after it has deposited its instrument of ratification of the protocol of accession.

Institutional Structure of the WTO

WTO Organization Chart (www.wto.org)



Institutional Structure of the WTO

I. The Ministerial Conference

Article IV: 1 of the Marrakesh Agreement

1. There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.

- ◆ The supreme body of the WTO
- ◆ Composed of minister-level representatives from all members
- ◆ Decision-making powers on all matters under any of the multilateral WTO Agreements
- ◆ Its decisions are binding on all members

Institutional Structure of the WTO

II. General Council, Dispute Settlement Body (DSB) and Trade Policy Review Body (TPRB)

Article IV: 2 of the Marrakesh Agreement

2. There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the Committees provided for in paragraph 7.

- ◆ Composed of ambassador-level diplomats
- ◆ Responsible for the day-to-day management
- ◆ The General Council, DSB, TPRM are the same body (Article IV:3 of the Marrakesh Agreement).

Institutional Structure of the WTO

Specialised Councils

- ◆ Article IV: 5 of the WTO Agreement
- ◆ Three specialised councils:
 1. The Council for Trade in Goods (CTG)
 2. The Council for trade in Services (CTS)
 3. Council for TRIPS

Committees

E.g. The Committee on Trade and Environment (CTE), the Committee on Trade and Development (CTD), and the Committee on Regional Trade Agreements (CRTA)

Institutional Structure of the WTO

Judicial, Quasi-Judicial and Other Non-political bodies

- ◆ Panels
- ◆ Appellate Body

WTO Secretariat

- ▶ The main duties of the WTO secretariat are:
 - (1) Providing technical, secretarial and professional support
 - (2) Providing technical assistance to developing-country Members;
 - (3) Monitoring/analysing developments in world trade;
 - (4) Providing information to the public/media.

Institutional Structure of the WTO

The Director-General

Article VI: 4 of the Marrakesh Agreement

4. The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.

- ▶ Head of the WTO Secretariat, appointed by the Ministerial Conference

Decision-Making in the WTO

Article IX: 1 of the Marrakesh Agreement

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

- ▶ Principle: decisions by consensus.
- ▶ Article IX: 1 provides for voting (simple majority).
- ▶ Certain special procedures
- ▶ In practice, it is very exceptional for bodies to vote.

Decision-Making in the WTO

Participation in decision-making in the WTO

- ▶ 'Green room meeting'
 - (a) Informal meeting between selected members
 - (b) Advantage: efficiency
 - (c) Disadvantage: concern over lack of democracy

Need for...



Balance between inclusiveness, transparency and efficiency