

## A Survey of the Institutional Framework and Operation of the World Trade Organisation

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### *Abstract*

*Before the end of World War II, an essential element in maintaining the world peace and ensuring future economic prosperity was the establishment of some inter-governmental organizations that would work in concert toward global economic cooperation, progress and advancement of which General Agreement on Tariffs and Trade (GATT) which later became one of the World Trade Organization's (WTO) agreements was formed in place of the negotiated but unsuccessful International Trade Organisation. Over time, the GATT system of multilateral trade agreements was replaced by the newly created WTO in 1995 being the outcome and the result of the Uruguay Round Final Act and the accompanying Agreements Establishing the WTO having been concluded by 125 countries on 15 April 1994 at Marrakesh. Since its inception, the WTO Agreement and its annexes has strengthened existing international trade discipline, extend international trade law rules into new economic sectors, and provide a unified common institutional framework and fulcrum for the conduct of trade relations among its members. Today, the WTO has assumed one of the most powerful international institutions despite its unique structural and operational framework. This paper examines generally the WTO's structure and operations. It concludes with some suggestions that will in the opinion of the author enhance WTO's aims and objectives.*

### 1. Introduction

In the recent decades, most especially since the end of the World War II, trade and economic activities have assumed a new global dimension. This development is not unconnected with the new era of all-round globalisation in the world as a global village. As parts of universal efforts at strengthening global human economic relations and achieving a unified multilateral trading standard, the World Trade

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Organisation (WTO) with its fundamental principles and purposes emerged. Singular among the main innovations of the WTO was that it took a much broader view of trade, and in particular, introduced new and important issues to trade negotiations and globalisation. The WTO has since its inception occupied a strategic position in the drive and regulation of global trading activities, despite notable controversial shortfalls in its principles and implementation.

The objective of this paper is to make an overview of the WTO and its structural framework as well as operations with the intention to providing suggestions on how the organisation could be overhauled to further achieve its all-needed purposes in the modern era of globalisation. In pursuing this, the paper looks at the history of WTO, the fundamental purpose and basic principles of WTO, the structure and management of WTO among other things. Attempt is also made to examine in brief the expansion made to the WTO practices and principles by the Doha Development Round. The paper concludes with recommendations that would improve the organisation.

## 2. History of the World Trade Organisation

The World Trade Organization (WTO) came into being on January 1<sup>st</sup>, 1995 as the legal and institutional foundation of the multilateral trading system.<sup>1</sup> Its establishment was the outcome of the lengthy (between 1986 and 1994) Uruguay round of negotiations.<sup>2</sup> WTO administers the trade agreements negotiated by its members, in particular the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), and the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. The WTO builds on the organizational structure that had developed under GATT auspices as of the early 1990s.<sup>3</sup>

<sup>1</sup> The Encyclopaedia of the Nations “The World Trade Organisation (WTO)-Structure”, [www.nationsencyclopedia.com/united-nations-related-agencies/index.html](http://www.nationsencyclopedia.com/united-nations-related-agencies/index.html), accessed on 07 February, 2010.

<sup>2</sup> Rufus Pollock; ‘Basic Facts about the WTO’ <[www.rufuspollock.org/wto/wto\\_index.htm](http://www.rufuspollock.org/wto/wto_index.htm)>, accessed 07 February 2010.

<sup>3</sup> Bernard Hoekman, ‘The WTO: Functions and Basic Principles’, <http://www.profesores.ucv.cl/mbberthelon/Hoekman%202002.pdf>, accessed on 07 February, 2010.

Historically, GATT came into being due to abortive negotiations to create an International Trade Organization (ITO) following World War II<sup>4</sup>. GATT was created in 1947, one of the post-World War II institutions for international governance. The United Nations, the International Monetary Fund (IMF) and World Bank were the other institutions created in the 1940s, as world leaders at the time believed that if international institutions had existed that were capable of responding to the economic and social crises of the 1930s, it would have been possible to prevent the international climate from deteriorating to the point of war.<sup>5</sup> In the 1930s, many countries had imposed arbitrary and increasingly high and discriminatory trade barriers in an attempt to keep the effects of economic depression out of their countries by keeping domestic industries alive and thus maintain domestic employment.<sup>6</sup> However, in fact this protectionism (protection of domestic producers at the expense of imports and global welfare) caused the economic depression the effect of which accentuated or spread all over the world.<sup>7</sup>

Negotiations on the charter of ITO were concluded successfully in Havana in 1948, but the talks did not lead to the establishment of the ITO because the U.S. Congress did not ratify the agreement. Meanwhile, the GATT was negotiated in 1947 by 23 countries (12 industrial and 11 developing) before the ITO negotiations were concluded.<sup>8</sup> As the ITO never came into being, the GATT was the only concrete result of the negotiations.

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<sup>4</sup> At 1944 Bretton Woods' Conference.

<sup>5</sup> 'The World Trade Organization' Prepared for Human Rights and Peoples' Diplomacy Training, 2nd – 20<sup>th</sup> February 2004, Bangkok, Thailand. See <http://www.law.unsw.edu.au/centres/dtp/about.htm>, accessed on 02 June 2010.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> The founding parties to the GATT (giving the names used at the time) were Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, the Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom, and the United States. Subsequently, China, Lebanon, and Syria withdrew.

Rules for international trade having been seen as a key part of post-war international governance, GATT aimed at introducing predictability, stability and non-discrimination in international trade. GATT's creators believed putting rules in place to ensure that trade was free and predictable was the best way to share the benefits of economic growth from one country to another. Since 1947, the GATT has been the major focal point for industrialised countries seeking to lower trade barriers. Although the GATT was initially largely limited to a tariff agreement, over time, as average tariff levels fell, it increasingly came to concentrate on non-tariff trade policies and domestic policies having an impact on trade.<sup>9</sup> Its success was reflected in a steady expansion in the number of contracting parties. By the end of the Uruguay Round in 1994, 128 countries had joined the GATT.<sup>10</sup> Eight rounds of tariff reductions were negotiated within the GATT. The last of these, known as the "Uruguay Round" resulted in the creation of the WTO. The WTO Agreement incorporated the GATT as one element of its broad mandate. Since the entry into force of the WTO, membership has grown to 153, as of today.<sup>11</sup>

More than five decades of its existence, the GATT system expanded to include many more countries. GATT evolved into a de facto world trade organization, but one that was increasingly fragmented as "side agreements" or codes were negotiated among subsets of countries. It's complex and carefully crafted basic legal text was extended or modified by numerous supplementary provisions,

<sup>9</sup> Hoekman, *op cit.*, note 3.

<sup>10</sup> "The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations", signed by ministers in Marrakesh on 15 April 1994 is 550 pages long and contains legal texts which spell out the results of the negotiations since the Round was launched in Punta del Este, Uruguay, in September 1986. In addition to the texts of the agreements, the Final Act also contains texts of Ministerial Decisions and Declarations which further clarify certain provisions of some of the agreements. [http://www.wto.org/english/docs\\_e/legal\\_e/ursum\\_e.htm#Introduction](http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#Introduction) , accessed on 04 June 2010.

<sup>11</sup> See Members and Observers, WTO official site, [www.wto.org/english.htm](http://www.wto.org/english.htm), accessed on 7 February, 2010.

special arrangements, interpretations, waivers, reports by dispute settlement panels, and council decisions. The GATT's early years were dominated by accession negotiations and by a review session in the mid-1950s that led to modifications to the treaty.<sup>12</sup>

Starting in the mid-1960s, recurring rounds of multi-lateral trade negotiations gradually expanded the scope of the GATT to take in a larger number of non-tariff policies. Until the Uruguay Round, however, no progress was made on agriculture or on textiles and clothing. The deal that finally allowed these sectors to be subjected to multilateral disciplines included the establishment of rules for trade in services and enforcement of intellectual property rights (IPRs), as well as the creation of the WTO.

There are many similarities between the GATT and the WTO, most importantly; the basic principles remain the same. The WTO continues to operate by consensus and to be member driven. There were, however, a number of major changes. Most obviously, the coverage of the WTO is much wider. A change of great importance is that, in contrast to the GATT, the WTO agreement is a "single undertaking" and all its provisions apply to all members who are subject to binding dispute settlement procedures which became much more "automatic" with the adoption of a "negative consensus" rule. (All members must oppose the findings in a dispute settlement to block adoption of reports). This is attractive to groups seeking to introduce multilateral disciplines on a variety of subjects, ranging from the environment and labour standards to competition and investment policies to animal rights. However, it is a source of concern to groups that perceive the (proposed) multilateral rules to be inappropriate or worry that the adoption of specific rules may affect detrimentally the ability of governments to regulate domestic activities and deal with market failures<sup>13</sup>. Under the GATT there was great flexibility for countries to "opt out" of new disciplines, and in practice many developing countries did not sign specific agreements on issues such as customs valuation or subsidies. This is no longer the case, implying

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<sup>12</sup> Hoekman, *op cit.*, note 3.

<sup>13</sup> *Ibid.*

that the WTO is much more important for developing countries than the GATT was.

Finally, the secretariat acquired much greater transparency and surveillance functions through the creation of the Trade Policy Review Mechanism.<sup>14</sup>

### 3. Fundamental Purpose of the World Trade Organisation

The WTO is a forum for international cooperation on trade-related policies and the creation of codes of conduct for member states. These codes emerge from the exchange of trade policy commitments in periodic negotiations. The WTO can be seen as a market forum in the sense that countries come together to negotiate market access commitments on a reciprocal basis. It is, in fact, a barter market. In contrast to the conventional markets, one finds in city squares, countries do not have access to a medium of exchange: they do not have money with which to buy, and against which to sell, trade policies. Instead, they have to exchange apples for oranges: for example, tariff reductions on iron for foreign market access commitments regarding cloth. This makes the trade policy market less efficient than one in which money can be used, and this is one of the reasons that WTO negotiations can be a tortuous process. One result of the market exchange is the development of codes of conduct. The WTO has a set of specific legal obligations regulating trade policies of member states, and these are embodied in the GATT, the GATS, and the TRIPS agreement.

The rationale behind the establishment of WTO can be inferred from the provisions of Article III of WTO Agreement which spells out the functions.<sup>15</sup>

- i. **Administering WTO trade agreements:** The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral

<sup>14</sup> *Ibid.*

<sup>15</sup> See Marrakesh Agreement Establishing the WTO, part of Uruguay Round Final Act. The descriptions of purpose or functions are taken verbatim from: **Article III: Functions of the WTO**, Marrakesh Agreement Establishing the WTO which is part of Uruguay Round Final Act.

Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.<sup>16</sup>

- ii. **Provision of forum for trade negotiations:** The WTO shall provide the forum for negotiations among its members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.<sup>17</sup>
- iii. **Handling trade disputes:** The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement.<sup>18</sup>
- iv. **Monitoring National trade policies:** The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in Annex 3 to this Agreement<sup>19</sup>.
- v. **Cooperation with other International Organisations:** With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.<sup>20</sup>

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<sup>16</sup> *ibid.*

<sup>17</sup> *ibid*

<sup>18</sup> *ibid*

<sup>19</sup> *ibid*

<sup>20</sup> *Ibid.*

- vi. **Technical assistance and training for developing countries:**<sup>21</sup> Another priority of the WTO is the assistance of developing, least-developed and low-income countries in transition to adjust to WTO rules and disciplines through technical cooperation and training.

#### 4. Panoramic View of World Trade Organization's Principles

The WTO establishes a framework for trade policies; it does not define or specify outcomes. That is, it is concerned with setting the rules of the trade policy game, not with the results of the game. Five principles are of particular importance in understanding both the pre-1994 GATT and the WTO, viz: non-discrimination, reciprocity, enforceable commitments, transparency, and safety valves.

##### i. **Non-Discrimination:**

This has two major components viz: the most favoured nation (MFN) rule, and the national treatment policy.<sup>22</sup> Both are embedded in the main WTO rules on goods, services, and intellectual property, but their precise scope and nature differ across these areas. The MFN rule requires that a WTO member must apply the same conditions on all trade with other WTO members, i.e. a WTO member has to grant the most favorable conditions under which it allows trade in a certain product type to all other WTO members<sup>23</sup>. "Grant someone a special favour, and you have to do the same for all other WTO members."<sup>24</sup>

<sup>21</sup> Note that point '6' was not mentioned in Article III Point '6' is taken from the WTO website page: [What is the WTO?](http://www.wto.org/english.htm), [www.wto.org/english.htm](http://www.wto.org/english.htm), accessed on 7 February, 2010.

<sup>22</sup> These are embodied in Articles I and III of the GATT respectively.

<sup>23</sup> *Ibid.*

<sup>24</sup> The most favoured nation sounds like a contradiction. It suggests special treatment, but in the WTO it actually means non-discrimination — treating virtually everyone equally. This is what happens. Each member treats all the other members equally as "most-favoured" trading partners. If a country improves the benefits that it gives to one trading partner, it has to give the same "best" treatment to all the other WTO members so that they all remain "most-favoured". Most-favoured nation (MFN) status did not always mean equal treatment. The first bilateral MFN treaties set up exclusive clubs



National treatment principle means that both imported and locally-produced goods should be treated equally, at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents.<sup>25</sup> This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements.<sup>26</sup> However, the principle is handled slightly differently in each of these agreements. National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.

## ii. Reciprocity:

Reciprocity is a fundamental element of the negotiating process. It reflects both a desire to limit the scope for free-riding that may arise because of the MFN rule and a desire to obtain “payment” for trade liberalization in the form of better access to foreign markets. A related point is that for a nation to negotiate, it is necessary that the gain from doing so be greater than the gain available from unilateral liberalization; reciprocal concessions intend to ensure that such gains will materialize.<sup>27</sup>

## iii. Binding and enforceable commitments:

Liberalization commitments and agreements to abide by certain rules of the game have little value if they cannot be enforced. The non-discrimination principle, embodied in Articles I (on MFN) and III (on national treatment) of the GATT, is

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among a country’s “most-favoured” trading partners. Under GATT and now the WTO, the MFN club is no longer exclusive. The MFN principle ensures that each country treats its over—140 fellow-members equally.

<sup>25</sup> See [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact2\\_e.htm#seebox](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#seebox), accessed on 04 June 2010.

<sup>26</sup> See Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS.

<sup>27</sup> Hoekman, *op cit.*, note 3.

important in ensuring that market access commitments are implemented and maintained. Other GATT articles play a supporting role, including Article II (on schedules of concessions). The tariff commitments made by WTO members in a multilateral trade negotiation and on accession are enumerated in schedules (lists) of concessions. These schedules establish “ceiling bindings”: the member concerned cannot raise tariffs above bound levels without negotiating compensation with the principal suppliers of the products concerned.

The MFN rule then ensures that such compensation—usually, reductions in other tariffs—extends to all WTO members, raising the cost of reneging. Once tariff commitments are bound, it is important that there be no resort to other, nontariff, measures that have the effect of nullifying or impairing the value of the tariff concession.<sup>28</sup> The tariff commitments made by WTO members in a multilateral trade negotiation and on accession as enumerated in a schedule (list) of concessions establish “ceiling bindings,” and a country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade. If satisfaction is not obtained, the complaining country may invoke the WTO dispute settlement procedures.<sup>29</sup>

#### iv. Transparency:

Enforcement of commitments requires access to information on the trade regimes that are maintained by members. The agreements administered by the WTO therefore incorporate mechanisms designed to facilitate communication between WTO members on trade-related issues. Numerous specialized

<sup>28</sup> A number of GATT articles attempt to ensure that this does not occur. They include Article VII (customs valuation), Article XI, which prohibits quantitative restrictions on imports and exports, and the Agreement on Subsidies and Countervailing Measures, which outlaws export subsidies for manufactures and allows for the countervailing of production subsidies on imports that materially injure domestic competitors.

<sup>29</sup> Hoekman, *op cit.*, note 3.

committees, working parties, working groups, and councils meet regularly in Geneva. These interactions allow for the exchange of information and views and permit potential conflicts to be defused efficiently.<sup>30</sup>

Transparency is a basic pillar of the WTO, and it is a legal obligation embedded in Article X of the GATT and Article III of the GATS. The WTO members are required to publish their trade regulations, to establish and maintain institutions allowing for the review of administrative decisions affecting trade, to respond to requests for information by other members, and to notify changes in trade policies to the WTO. These internal transparency requirements are supplemented by multilateral surveillance of trade policies by WTO members, facilitated by periodic country-specific reports (trade policy reviews) through Trade Policy Review Mechanism (TPRM) that are prepared by the secretariat and discussed by the WTO General Council.

The WTO system tries also to improve predictability and stability, discouraging the use of quotas and other measures used to set limits on quantities of imports.<sup>31</sup>

**v. Safety valves:**

A final principle embodied in the WTO agreement is that, in specific circumstances, governments should be able to restrict trade. There are three types of provisions in this connection: (a) articles allowing for the use of trade measures to attain noneconomic objectives; (b) articles aimed at ensuring “fair competition”; and (c) provisions permitting intervention in trade for economic reasons. The category (a) includes provisions allowing for policies to protect public health or national security and to protect industries that are seriously injured by competition from imports. The underlying idea in the latter case is that governments should have the right to step

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

in when competition becomes so vigorous as to injure domestic competitors.

Although it is not explicitly mentioned in the relevant WTO agreement, the underlying rationale for intervention is that such competition causes political and social problems associated with the need for the industry to adjust to changes circumstances. Measures in the category (b) include the right to impose countervailing duties on imports that have been subsidized and antidumping duties on imports that have been dumped (sold at a price below that charged in the home market). Finally, under the category (c) there are provisions allowing actions to be taken in case of serious balance of payments difficulties or if a government desires to support an infant industry.<sup>32</sup>

## 5. Structural Framework of the World Trade Organisation

The WTO has as of today not less than 153 members who account for approximately 90% of world trade. Most agreements in the WTO are arrived at by consensus. This means that everybody agrees with no member dissenting. Majority votes are possible to conclude an agreement but none so far have occurred. It is also worth-noting that all the WTO's agreements have been ratified by the member states' parliaments (where such exist) in contrast to the case for GATT.<sup>33</sup> To facilitate effective running of the WTO's activities, the organisational structure is as follows:

### a. Ministerial Conference

The highest WTO authority is the Ministerial Conference.<sup>34</sup> The Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years.

<sup>32</sup> *Ibid.*

<sup>33</sup> See, Hoekman, *op cit.*, note 3. See also, [www.wto.org/english.htm](http://www.wto.org/english.htm), accessed on 7 February 2010.

<sup>34</sup> See Structure - The World Trade Organization (WTO) - area, policy, <http://www.nationsencyclopedia.com/United-Nations-Related-Agencies/The-World-Trade-Organization-WTO-STRUCTURE.html#ixzz0pxkETZw9>, accessed on the 5<sup>th</sup> June 2010.

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.<sup>35</sup>

**b. General Council**

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.<sup>36</sup>

**c. Multitude of Committees, Bodies and Councils**

These may take different forms as provided in the WTO Agreement. For example: Dispute Settlement Body (DSU), Councils for Trade in Goods, Trade in Services and for TRIPS etc<sup>37</sup>.

## **7. Decision-Making in World Trade Organisation**

Trade globalization creates a demand for international rule-making, and the WTO remains the forum for creating binding and enforceable international trade rules. The WTO therefore needs an effective decision-making system capable of resolving diverging interests.<sup>38</sup> WTO carries out its two basic functions, serving

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<sup>35</sup> Article IV (1), Marrakesh Agreement Establishing the WTO.

<sup>36</sup> *Ibid.*, Article IV (2).

<sup>37</sup> *Ibid.*, Article IV(5)

<sup>38</sup> Claus-Dieter Ehlermann and Lothar Ehring; “Decision-Making in the World Trade Organization-Is the Consensus Practice of the World Trade Organization Adequate for Making, Revising and Implementing Rules on

as a negotiating forum and providing a dispute resolution system, through what we could label a legislative branch permanently represented by the General Council; a judicial branch represented by the Dispute Settlement Body and the Appellate Body; and, by a form of constitutional conventions that meet every few other years, which is known as “rounds.”<sup>39</sup>

Although the **WTO** Agreement foresees votes where consensus cannot be reached, the practice of consensus dominates the process of **decision-making**.<sup>40</sup> Most decision-making in the WTO follows GATT practices which are based on consultation and consensus. The consensus practice is of value to smaller countries, as it enhances their negotiating leverage in the informal consultations and bargaining that precede decision making, especially if they are able to form coalitions. Although recourse to voting may be had if a consensus cannot be reached, in practice voting occurs very rarely. If a vote is needed, it is based on the principle of “one member, one vote.” Unanimity is required for amendments, however relating to general principles such as MFN or national treatment.<sup>41</sup> Interpretation of the provisions of the WTO agreements and decisions on waivers of a member’s obligations require approval by a three-quarters majority vote. A two-thirds majority vote is sufficient for amendments relating to issues other than the general principles mentioned above.<sup>42</sup>

Where there is no provision and consensus cannot be reached, a simple majority vote is in principle sufficient. In practice, voting does not occur. Indeed, in 1995 WTO members decided not to apply provisions allowing for a vote in the case of accessions and requests for waivers but to continue to proceed on the basis of consensus.<sup>43</sup>

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International Trade?”<http://jiel.oxfordjournals.org/cgi/content/short/8/1/51>, accessed on the 5th June 2010.

<sup>39</sup> See Luis F. de la Calle; The Functioning of the World Trade Organisation, [www.wto.org/english/tratop\\_e/dda\\_e/paper\\_luis\\_de\\_la\\_calle.doc](http://www.wto.org/english/tratop_e/dda_e/paper_luis_de_la_calle.doc), accessed on the 5th June 2010.

<sup>40</sup> See Claus-Dieter Ehlermann and Lothar Ehring, *op cit.*, note 39.

<sup>41</sup> Hoekman, *op cit.*, note 3.

<sup>42</sup> *Ibid.*

<sup>43</sup> See WT/L/93.

Legislative amendments are also likely to be quite rare, as, in practice, changes to the various agreements occur as part of broader multilateral rounds.

### 8. Management of the World Trade Organisation's Secretariat

Unlike the World Bank and the IMF, the WTO does not have an executive body or a board comprising a subset of members some of whom represent a number of countries. Such executive boards facilitate decision-making by concentrating discussions within a smaller but representative group of members.<sup>44</sup>

The closest the GATT ever came to such a forum was the Consultative Group of Eighteen (CG18), established in 1975. It ceased meeting in 1985 and never substituted for the GATT Council of Representatives.<sup>45</sup>

As of today, the WTO has a membership of not less than 153. Achieving consensus among such a large number of members is not a simple effort, and mechanisms have therefore been developed over the years to reduce the number of members that are active participants in WTO deliberations.

The first and most important device is to involve only "principals," at least initially. To some extent this is a natural process; a country that has no agricultural sector is unlikely to be interested in discussions centring on the reduction of agricultural trade barriers. In general the "Quad" economies; Canada, the European Union, Japan, and the United States are part of any group that forms to discuss any topic. They are supplemented by countries that have a principal supplying interest in a product and by the major (potential) importers whose policies are the subject of interest.<sup>46</sup>

Finally, a number of countries that have established a reputation as spokespersons tend to be involved in most major meetings. Historically, such countries have included *Egypt, India, and Yugoslavia*. During the Tokyo and Uruguay Rounds, contentious issues as to which deals had to be struck were often thrashed out in the

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<sup>44</sup> Hoekman, *op cit.*, note 3.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

“green room,” a conference room adjacent to the Director-General’s offices.<sup>47</sup>

Green-room meetings were part of a consultative process through which the major countries and a representative set of developing countries, a total of about 20 delegations tried to prepare the outlines of acceptable proposals or negotiating agenda. Such meetings generally involved the active participation and input of the Director-General.

The convention now is to call such meetings green-room gatherings, no matter where they are held. The green-room process became a contentious issue during the Seattle ministerial meeting; many developing countries that were excluded from critical green-room meetings, where attempts were being made to negotiate compromise texts of a draft agenda for a new multilateral trade negotiation, felt that they were not being kept informed of developments and were not being granted the opportunity to defend their views. Proposals have been made periodically to formalize the green-room process by creating an executive committee to manage the WTO agenda, based on shares in world trade. To date, no progress in this direction has proved possible in the WTO.

## 9. Accession and Membership Process of World Trade Organisation

The process of becoming a WTO member is unique to each applicant country, and the terms of accession are dependent upon the country's stage of economic development and current trade regime. The process takes about five years, on average, but it can last more if the country is less than fully committed to the process or if political issues interfere.<sup>48</sup> As is typical of WTO procedures, an offer of accession is only given once consensus is reached among interested parties.

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<sup>47</sup> *Ibid.*

<sup>48</sup> The shortest accession negotiation was that of the Kyrgyz Republic, while the longest was that of the People's Republic of China (P. Farah, *Five Years of China's WTO Membership*, 263-304). Russia, having first applied to join GATT in 1993, is still in negotiations for membership. Recently, it secured a bilateral trade agreement with the EU and US (Accessions: Russian Federation, World Trade Organization; Factsheet on U.S. – Russia WTO



Any country wishing to accede to the WTO is required to submit an application to the General Council, and must describe all aspects of its trade and economic policies that have a bearing on WTO agreements. The application is submitted to the WTO in a memorandum which is examined by a working party open to all interested WTO Members.<sup>49</sup>

After all necessary background information has been acquired; the working party focuses on issues of discrepancy between the WTO rules and the applicant's international and domestic trade policies and laws. The working party determines the terms and conditions of entry into the WTO for the applicant nation, and may consider transitional periods to allow countries some leeway in complying with the WTO rules.<sup>50</sup>

The final phase of accession involves bilateral negotiations between the applicant nation and other working party members regarding the concessions and commitments on tariff levels and market access for goods and services. The new member's commitments are to apply equally to all WTO members under normal non-discrimination rules, even though they are negotiated bilaterally.<sup>51</sup>

When the bilateral talks are concluded, the working party sends to the General council or Ministerial conference an accession package, which includes a summary of all the working party meetings, the Protocol of Accession (a draft membership treaty), and lists ("schedules") of the member-to-be's commitments. Once the General council or Ministerial conference approves of the terms of accession,

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Bilateral Market Access Agreement, Office of the United States Trade Representative; Russia - WTO: EU-Russia Deal Brings Russia a Step Closer to WTO Membership, European Commission). Moldova and Georgia are the remaining two nations that Russia must make agreements with to enter the WTO (A. Aslund, Russia's WTO Accession; V. Novostei, USA OKs Russia's Entry into WTO, Pravda. Ru).

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*

the applicant's parliament must ratify the Protocol of Accession before it can become a member.<sup>52</sup>

### 10. An Overview of WTO Doha Development Round<sup>53</sup>

Transforming the international trading system from a system controlled by a provisional agreement to one that is regulated by an international organization, in the aftermath of the Uruguay Round (between 1986-1994), was a great leap.<sup>54</sup> The Round left developing countries exhausted after seven years of long and tedious negotiations that overwhelmed them with new commitments for liberalization and adapting their domestic legislation to their new international commitments. Unlike the seven preceding rounds, the Uruguay Round talks were not confined to trade in goods and tariff reduction, but exceeded it to trade in services, trade-related intellectual property rights, and trade-related investment measures.<sup>55</sup> Although the Contracting Parties in GATT had the choice of joining an agreement and not the other, such a luxury was not granted in the World Trade Organization, as it was mandatory for its member states to join all the negotiated agreements in the framework of what became to be known as the “Single Undertaking.”<sup>56</sup>

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<sup>52</sup> See How to Become a Member of the WTO, World Trade Organization, [www.wto.org/english.htm](http://www.wto.org/english.htm), accessed on 7 February 2010.

<sup>53</sup> This section on explanations on Doha Declaration was substantially gathered from WTO website, [http://www.wto.org/english/tratop\\_e/dda\\_e/dohaexplained\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dohaexplained_e.htm), accessed on 6th June 2010.

<sup>54</sup> Magda Shahin, ‘Doha Development Agenda of Trade Negotiations’ [www.egypttrade.org/trac/Doha\\_Agenda.doc](http://www.egypttrade.org/trac/Doha_Agenda.doc), accessed on 28 August 2010.

<sup>55</sup> *Ibid.*

<sup>56</sup> The Uruguay agreements were signed as a “Single Undertaking” on the 15th of April 1995 in Marrakech. This notion was used for the purpose of preserving the cohesion of the agreements as a whole and to ensure that countries, 120 at the time of negotiations, will not sign agreements that only suit their interests and leave out other agreements that might not be of interest to them. This ensured that all countries, after signing in Marrakesh and the ratification of parliaments, would adhere to the package as a whole. The system of the organization is different from that of the GATT 1947

The establishing agreement of the WTO, known as the “Marrakech Agreement,” is a sort of an umbrella covering all the Uruguay Round results. The annexes to the so-called cover-agreement include 22 international agreements, including the GATT,<sup>57</sup> in addition to 6 Understandings.<sup>58</sup> All of these agreements, decisions, and understandings are brought into one single document of 558 pages, entitled: “The Results of the Uruguay Round of Multilateral Trade Negotiations-Legal Texts,” or briefly referred to as “The Final Document.” Occupying thousands of pages, the “Commitment Tables” of all member countries were also attached to the Agreement, which were no longer called “Contracting Parties” but member states.<sup>59</sup>

The idea of launching a new round of trade negotiations just five years after concluding the Uruguay Round was not agreeable to most developing countries having barely had the chance to catch their breath. The gap persisted between developed countries allied with some major developing agricultural countries, on one hand, and other developing countries, including Egypt, India, Pakistan, Malaysia, and a number of African countries, on the other. The latter objected to a

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where countries had the option to refuse joining an agreement if it did not serve their interest.

<sup>57</sup> The GATT became an agreement amongst the agreements of the Uruguay Round. And in order to distinguish it from the old GATT, it is referred to as ‘GATT 1994’. The main difference between them is that GATT 1947 is the original agreement made up of 38 articles, whereas GATT 1994 includes the amendments and adjustments that came into force in 1995.

<sup>58</sup> The difference between Agreement and Understanding is that the former is an international agreement that establishes rights and obligations, whereas the latter is merely an interpretation that mainly aims at elucidating the provisions of the international agreement. Excluded from that is the understanding regarding the rules and regulations of the dispute settlement, which includes rights and commitments going beyond the GATT or for that matter any other international agreement. (Said El Naggar: “The Basic Rights of Developing Countries under the GATT and the WTO”- The Economic and Social Commission for West Asia United Nations, NY, 1999)

<sup>59</sup> Shahin, *op cit.*, note 54.

new round of trade negotiations, arguing that the term “Round” implicitly means accepting to address new issues as well as agreeing to a comprehensive framework of new obligations and more concessions with a view to reaching a single undertaking, similar to that of the Uruguay Round.

At the end, however, countries advocating a comprehensive round of negotiations had the lead. Developing agricultural countries were hoping to instigate a new round of negotiations to get the EU to offer additional concessions for further liberalization of their trade in agriculture. The Fourth Ministerial Conference, held on 9-13 November 2001 in Doha (Qatar),<sup>60</sup> which came right after the September 11 attacks, succeeded in launching a new round of trade negotiations, called “The Doha Development Agenda.” The American Administration had a vested interest in making the Doha Ministerial a success to help mobilize the support of the international community in its war against terrorism.<sup>61</sup> Given the name “Development Round,” developed countries should have paid more attention to the developmental needs and problems of developing countries.<sup>62</sup>

The November 2001 declaration of the Fourth Ministerial Conference in Doha, Qatar, provides the mandate for negotiations on a range of subjects, and other work including issues concerning the implementation of the present agreements. The negotiations take place

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<sup>60</sup> Paragraph 1 of Article 4 of the Agreement establishing the WTO entitled “the Structure of the WTO” states that ministerial conferences are to be held at least once every two years. The following are the ministerial conferences held in the framework of the WTO: The first ministerial conference held from the 9<sup>th</sup> to the 13<sup>th</sup> of December 1996 in Singapore; The second ministerial Conference held from the 18<sup>th</sup> to the 20<sup>th</sup> of May 1998 in Geneva; The third ministerial conference held from the 30<sup>th</sup> of November to the 3<sup>rd</sup> of December 1999 in Seattle, United States; The fourth ministerial conference held from the 9<sup>th</sup> to the 13<sup>th</sup> of November 2001 in Doha, Qatar; The fifth ministerial conference held from the 10<sup>th</sup> to the 14<sup>th</sup> of September 2003 in Cancun, Mexico; The sixth ministerial conference held in December 2005 in Hong Kong, China.

<sup>61</sup> Shahin, *op cit.*, note 54.

<sup>62</sup> *Ibid.*

in the Trade Negotiations Committee and its subsidiaries. Other work under the work programme takes place in other WTO councils and committees. Most of these involve negotiations; other work includes actions under “implementation”, analysis and monitoring.

Implementation” is short-hand for problems raised particularly by developing countries about the implementation of the current WTO Agreements, i.e. the agreements arising from the Uruguay Round negotiations. In Doha this important question was handled in two ways. First, ministers agreed to adopt around 50 decisions clarifying the obligations of developing country member governments with respect to issues including agriculture, subsidies, textiles and clothing, technical barriers to trade, trade-related investment measures and rules of origin.

Agreement on these points required hard bargaining between negotiators over the course of nearly three years. However, many other implementation issues of concern to developing countries have not been settled. For these issues, Ministers agreed in Doha on a future work programme for addressing these matters.

In paragraph 12 of the Ministerial Declaration,<sup>63</sup> ministers underscored that they had taken a decision on the 50 or so measures in a separate ministerial document<sup>64</sup> and pointed out that “negotiations on outstanding implementation issues shall be an integral part of the Work Programme” in the coming years. The ministers established a two-track approach. Those issues for which there was an agreed negotiating mandate in the declaration would be dealt with under the terms of that mandate. Those implementation issues where there is no mandate to negotiate, were to be taken up as “a matter of priority” by relevant WTO councils and committees. These bodies were asked to report on their progress to the Trade Negotiations Committee by the end of 2002 for “appropriate action”. It is however painful to remark that not much have been achieved in the agenda since the launch of Doha Development Round.

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<sup>63</sup> Doha Ministerial Declaration 2001. See [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm), accessed 10 July 2010.

<sup>64</sup> See the 14 November 2001 decision on “Implementation-Related Issues and Concerns.”

## 12. Conclusion

This paper has established that over the years since the end of the World War II, the world trade dimensions and activities have called for multilateral system. Following this need and development, GATT system of multilateral trade agreements was adopted in 1947, which was finally replaced by the newly created WTO in 1995 being the outcome and the result of the Uruguay Round *Final Act* and the accompanying Agreements establishing the WTO having been concluded by 125 countries on 15 April 1994 at Marrakesh. It has also been seen that, since its inception, the WTO Agreement and its annexes strengthen existing international trade discipline, extend international trade law rules into new economic sectors, and provide a unified common institutional framework and pillar for the conduct of trade relations among its members.

Today, the WTO is among the most powerful, and useful international bodies on earth. Based on its economic related activities, it is rapidly assuming the role of global government, as over 150 nation-states, including the world economic giant like U.S. and China have ceded to its vast authority and powers. Evident from its structural framework, operational system, fundamental purpose as well as its principles, no doubt, the WTO represents the rules-based regime of the policy of economic globalization despite some notable shortfalls.

From the discussion so far in this discourse, it could be concluded that the Uruguay Round and the establishment of the WTO changed the character of the trading system, though, there are challenges that are paramount to the efficiency of the organisation if its aims and objectives must be achieved.

To start with, the Doha agenda having laid a good foundation for development must be pursued to logical conclusion as it will go a long way at solving the problems posed by the WTO agreements. Multilateral trade must be development-driven toward global economic integration in our global village.

As of today, the WTO has a membership of not less than 153 sovereign countries. While it is admissible that achieving consensus among such a large number of members is not a simple effort, democratic principles which is the acceptable norm of decision-

making and governance in the contemporary global village must be the guiding principle to avoid undue imposition of idea and decision by the stronger economies on a number of weaker economy-members that are actively involved in WTO deliberations. It is on this note that this paper suggests that the current regime of decision-making of the 'Quad economies' of the US, EU, Japan and Canada which always participate at the expense of others should be replaced with an open-door system that will give every independent sovereign nation who is a member equal rights of participation in decision-making.

The age-long proposal for creation of an executive committee to manage the WTO programme or agenda should be considered with the necessary approval. This will save a lot of unwarranted disagreement among members of WTO. A typical example of which was the green-room process which became a contentious issue during the Seattle ministerial meeting when many developing economies that were excluded from critical green-room meetings, where attempts were being made to negotiate compromise texts of a draft agenda for a new multilateral trade negotiation, felt that they were not being kept informed of developments and were not being granted the opportunity to defend their views.

Finally, the pathetic conditions of the developing economies, many of which were fruits of colonialism cannot be over-emphasised. On that note trade liberalisation rule of the WTO should be applied with particular leniency for the developing economies. To the weaker economies, trade liberalisation should not be carried out or pursued overnight. It should rather be systematic and gradual. Other factors such as the strengthening of local, industries, enterprises and farms, human resource and technological development, as well as the build up of export capacity and markets should be given priority consideration in the application of the rules for trade liberalisation. This will rescue these weaker economies from untimely economic disasters, which often accompany such unguided trade transition.