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What is the WTO and What Does It Do?

Introduction

The World Trade Organization is an international body that has developed rules its member countries are expected to follow in their trade relations with one another. The basic objective of these rules is to encourage countries to follow open and liberal trade policies. The assumption is that the pursuit of such open policies by all member countries would result in the most efficient use of available world resources thereby increasing employment and the standard of living.

One of the main functions of the WTO is to keep a close watch on all member countries to ensure they comply with its rules in keeping with the legal obligations imposed on them. The organisation provides a forum for consultations when a member country finds that another member is not following the rules. If such consultations fail the matter is brought before the Dispute Settlement Body (DSB), which is comprised of representatives of all member states. The decisions handed down by the DSB are binding on the parties to the dispute.

The WTO also provides a forum for negotiations on further liberalisation of trade in goods and services, to review and make improvements to the existing rules and for developing rules covering new trade-related subject areas. In most cases, these negotiations are held in periodic rounds of negotiations. Decisions to launch such negotiations are taken at ministerial meetings, generally after preparatory work lasting over a few years. The 1994 Marrakesh Agreement establishing the WTO imposes an obligation to hold meetings at ministerial level every two years.

Main Features

The rules-based multilateral trading system that emerged with the establishment of the WTO has evolved over a period of nearly 60 years. In 1947, some 23 countries took the first step towards the adoption of rules applicable to international trade in goods by adopting the General Agreement on Tariffs and Trade (GATT). The establishment of WTO in 1995 resulted in two new main agreements – the General Agreement on Trade in Services (GATS), which lays down rules governing trade in services, and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

With the establishment of the WTO, GATT ceased to be a separate entity. Thus, the multilateral trading system now consists of three main agreements: GATT, GATS and TRIPS. In addition, there are a number of agreements, decisions and understandings that elaborate on the main rules contained in GATT (Box 1).

Box 1: The main legal instruments negotiated in the Uruguay Round along with the Marrakesh Agreement establishing the World Trade Organization

Multilateral Agreements (obligations apply to all WTO members)

A. Trade in goods

- General Agreement on Tariffs and Trade (GATT 1994)

  Associate Agreements

  Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation)

  Agreement on Preshipment Inspection (PSI)

  Agreement on Technical Barriers to Trade (TBT)

  Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)

  Agreement on Customs Valuation

  Agreement on Import Licensing Procedures

  Agreement on Safeguards

  Agreement on Subsidies and Countervailing Measures (SCM)

  Agreement on Anti-dumping Practices (ADP)

  Agreement on Trade-Related Investment Measures (TRIMs)

  Agreement on Textiles and Clothing (ATC)

  Agreement on Agriculture

  Agreement on Rules of Origin

  Understandings and Decisions

  Understanding on Rules and Procedures Governing the Settlement of Disputes

  Understanding on the Interpretation of Article II:1(b) of GATT 1994 (Binding of tariff concessions)

  Decision on Trade and Environment

  Trade Policy Review Mechanism

B. Trade in services

- General Agreement on Trade in Services (GATS)

C. Intellectual property rights (IPRs)

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

D. Settlement of dispute

- Understanding on rules and procedures governing settlement of disputes

E. Plurilateral Agreement (obligations only apply to countries that become its members)

- Agreement on Government Procurement
- Information Technology Agreement

Rules of the GATT

Four basic principles

Even though the detailed rules prescribed by the GATT and its associate agreements may appear to be complex and their legal terminology is often bewildering, the entire framework of this agreement is actually based on just four basic principles. These are:

Protection of domestic industry through tariffs

The GATT rules recognise that member countries may have to protect domestic production against foreign competition. However, it requires countries to provide such protection through tariffs. The use of quantitative restrictions is prohibited except in a limited number of closely defined situations.

Reductions and binding of tariffs

Countries are further urged to reduce, and where possible eliminate, protection to domestic production by reducing tariffs and removing other barriers to trade. Tariffs so reduced are restricted from further increases by being listed in a country's national schedule. Countries may set rates at levels higher than those resulting from reductions made in the negotiations, and rates so set are listed in the schedule of concessions. Each country has a separate schedule and is under an obligation to ensure that tariff rates applied to imported products do not exceed the bound rates shown in its schedule.

Most-favoured-nation (MFN) treatment

This important rule of GATT lays down the principle of non-discrimination. The rule requires that tariffs and other regulations should be applied to imported or exported goods without discrimination among countries. In other words a country should not levy customs duties on imports from one country at a rate higher than it applies to imports from other countries.

There are, however, some exceptions to the rule. Trade among members of regional economic groups, which is permitted on preferential or duty-free rates, is one such exception. The Generalised System of Preferences (GSP) provides another. Under this system, developed countries apply preferential or duty-free rates to imports from developing countries, but apply MFN rates to imports from other countries. These systems are non-reciprocal; the developing countries benefiting from such access are not expected to provide preferred access to imports from the preference-giving developed countries.

The systems also provide for more favourable treatment to all least-developed countries by allowing a substantial proportion of their goods to be imported on a duty free basis. In recent years, some of the developing countries that are at higher stages of development, such as India and Brazil, have adopted systems allowing imports of some of the products from all least-developed countries on a non-reciprocal basis.

National treatment rule

While the MFN rule prohibits countries from discriminating among goods originating in different countries, the national treatment rule prohibits discrimination between imported products and similar domestically generated products. This rule applies to the levy of internal taxes and in the application of internal regulations. Thus, after a product has entered its market on payment of customs duties a country cannot then levy an internal tax (e.g. sales tax or value-added tax) at rates higher than those payable on a product of national or domestic origin. Nor can it apply a mandatory standard to an imported product that is different or more stringent than that applicable to a similar domestic product.

Rules of general application

The four basic principles described above are complemented by rules of general application governing goods entering the customs territory of an importing country. These include rules that countries must follow in determining the dutiable value of imported goods where customs duties are collected on an ad valorem basis (i.e. in proportion to the estimated value of the goods concerned); in applying mandatory product standards (technical regulations), and sanitary and phytosanitary measures to imported products; and in issuing licences for imports. The detailed rules applicable in these and other areas are contained in the relevant associate Agreements. The main features of these rules are described in Box 2.

Box 2: Summary of GATT rules applicable at the border

Determination of dutiable customs values

The Agreement on Customs Valuation protects the interests of importers by stipulating that value for customs purposes should be determined on the basis of the price paid or payable by the importer for the items being cleared by customs. However, the customs agency can reject the declared value where there is reasonable doubt about the truth or accuracy of the declaration. In all such cases, customs must give importers an opportunity to justify their declared value. Where customs is not satisfied with the justification, the Agreement sets out a hierarchy of five alternative yardsticks that may be applied.

Application of mandatory standards

Countries often require imported products to conform to the mandatory standards they have adopted to protect the health and safety of their people. The Agreement on Technical Barriers to Trade provides that such product standards should not be formulated and applied in a way as to cause unnecessary barriers to trade. Towards this end it calls on countries to use international standards as a basis for their technical regulations.

Application of sanitary and phytosanitary measures

Such regulations are applied by countries to protect their plant, animal and human life from the spread of pests or diseases that may be brought into the country by contaminated fruits, vegetables, meat and other food products. The Agreement on the Application of Sanitary and Phytosanitary Measures requires countries to base such regulations on international standards and guidelines in order to ensure that they do not cause barriers to trade. It further requires that where countries specify standards in their sanitary and phytosanitary measures that are higher or different from those laid down by international standards, they should base them on scientific principles.

Import licensing procedures

The Agreement on Import Licensing Procedures sets out guidelines for licensing authorities to follow in issuing import licences with a view to ensuring that the procedures do not have additional trade-restricting effects.

Other rules

In addition to the rules of general application described above, the GATT multilateral system has rules governing the following areas:

The use of subsidies

Governments grant subsidies for the attainment of a variety of policy objectives. Such subsidies could, in practice, distort conditions of competition in international trade. The basic aim of the GATT rules is to prohibit or restrict the use of subsidies that have trade-distorting effects.

The rules governing the use of subsidies are contained in the Agreement on Subsidies and Countervailing Measures (SCM) and apply to both industrial and agricultural

products. The Agreement on Agriculture contains some additional and more specific rules that apply to agricultural products. The SCM Agreement divides subsidies into two broad categories: prohibited and permissible.

Prohibited subsidies include export subsidies and subsidies that encourage the use of domestic rather than imported goods. The Agreement prohibits countries from granting export subsidies on industrial products. The prohibition on the use of such subsidies does not apply to developing countries with per capita income of less than US$1,000.

All subsidies, other than export subsidies are treated as permissible. These are divided into two categories: non-actionable and actionable.

Subsidies are treated as non-actionable by other countries when they do not benefit 'a specific firm, industry or group of industries' and when they are granted on the basis of criteria that are natural, non-discriminatory and horizontal. Such subsidies include inter alia aid for the development of small and medium industries or disadvantaged regions, and subsidies to facilitate the adoption of plants to new environmental regulations.

All subsidies that are specific to a firm or industry are actionable if they create 'adverse effects' on the trade of a member country. Adverse effects could occur where imports of subsidised products cause injury to the domestic industry or cause serious prejudice to the importing country's interest. In cases where subsidised imports cause serious injury to the domestic industry, the importing country may impose countervailing duties (see below). Serous prejudice is defined as existing if the total volume of ad valorem subsidisation of a product exceeds 5 per cent of the cost of the product. The country that suffers such serious prejudice has the right to call for consultations and bring the matter to the WTO for settlement if the subsidy has resulted in the reduction of its exports, significant price undercutting or an increase in the market share of the product in the subsidising country.

These rules relating to the use of subsidies are complemented by additional rules in the Agreement on Agriculture, details of which appear in Chapter 4 on liberalisation of trade in agricultural products.

Contingency protection measures

The GATT rules further recognise that the ability of the member countries to maintain open and liberal trade policies would be enhanced if their industries were assured that the governments could come to their rescue by taking protective measures for a temporary period where they are being hurt or injured by increased imports. These could take the form of safeguard measures and anti-dumping and countervailing measures.

The Agreement on Safeguards (AOS) permits importing countries to restrict imports of a product for a temporary period by either increasing tariffs over bound rates or imposing quantitative restrictions. Governments can resort to such safeguard actions only when it has been established through properly conducted investigations that a sudden increase in imports (both absolute and relative to domestic production) has caused or threatened to cause serious injury to the domestic industry. Safeguard actions cannot be taken if only one or two producers are affected. They are permitted only where it is established that increased imports are causing serious injury to producers of the majority of total domestic production of a product similar to the imported product.

The primary purpose of providing such temporary increased protection is to give the affected industry time to adjust to the increased competition presented by foreign producers, even though it is fair and the foreign suppliers are not engaging in any unfair practices. The Agreement ensures that such restrictions are applied only for temporary periods by stipulating a maximum period of eight years for the imposition of a safeguard measure on a particular product. Even though governments can take the initiative to commence with investigations, in most countries the practice is to initiate such investigations only on the basis of a petition from the affected industry.

Governments may also levy additional duties on imported products where it is alleged that foreign suppliers are resorting to unfair trade practices. The rules deal with two types of unfair practices that can distort conditions of competition in international trade. The first is dumping of goods in foreign markets. The Agreement on Anti-dumping Practices (ADP) lays down strict criteria for the determination of dumping. It stipulates that a product should be treated as being dumped where its export price is less than normal value, i.e. the price at which it is offered for sale in the domestic market of the exporting country. The second type of unfair competition occurs where a foreign supplier is able to charge low export prices as it has received a subsidy from the government.

The ADP authorises importing countries to levy anti-dumping duties on products that are being dumped. Likewise, the Agreement on Subsidies and Countervailing Measures permits importing countries to levy countervailing duties on imported products that have benefited from subsidies.

The levy of such duties is, however, subject to two important conditions. First, the duties cannot be levied simply on the grounds that the product is being dumped or subsidised. It is essential for the importing country to establish, through investigations carried out at national level, that increased imports are causing material injury to the domestic industry. Second, governments can initiate such investigations if a petition is submitted by or on behalf of the domestic industry claiming that dumped or subsidised imports are causing material injury to producers accounting for at least 25 per cent of total domestic production.

It should be noted that the standard for determining injury to industry in safeguard actions is much higher than that required for determining injury for the levy of countervailing duties. For safeguard actions it must be established that the injury to the industry is serious, while for anti-dumping and countervailing measures a lower standard of proof of material injury is adequate. The difference is due to the fact that in the case of the former, the problems of the domestic industry in the importing country are caused by fair foreign competition; in the case of the latter the problems arise from the unfair trade practices of foreign suppliers.

Further, in the case of safeguard measures, the importing country applying such measures is required to make compensatory concessions in the form of reducing tariffs on equivalent trade. The rules do not impose any such obligation in cases of anti-dumping or countervailing duties. The main reason for the difference is that in the case of safeguard measures, the right of exporters to access the market of the importing country is being denied on the basis that the domestic industry is not able to meet the competition, which is fair. In the case of anti-dumping and countervailing duties, the exporters are penalised because they are engaging in unfair trade practices.

GATT and developing countries

The GATT rules recognise that developing countries, particularly those that are least developed, may not be able to derive full benefits from the rules-based system unless positive efforts are taken 'to secure' for them a share in growth in international trade that is commensurate with the needs of their economic development. To assist developing counties to derive full benefits from the system in promoting economic development, a number of special provisions have been included in the GATT and GATS.

These provisions can be broadly grouped into the following three categories:

- Granting of preferential access to imports from developing countries by developed countries;
- Special rules included in the Agreements to provide flexibility to developing countries to take measures for promoting economic development;
- Extension of special and differential treatment to developing countries in the application of the rules.

A brief overview of these provisions is provided in Box 3.

Box 3: Special GATT provisions relating to developing countries

Preferential tariff access to imports

In 1979, following the agreements reached in UNCTAD on the Generalised System of Preferences, GATT member countries adopted a Decision permitting developed countries to deviate from the most-favoured-nation rule. This allowed them to apply preferential tariff rates on a 'non-reciprocal and non-discriminatory basis' and, where possible, duty free access to imports of products originating in developing countries. This decision has come to be known as the General Enabling Clause. It permits countries granting such preferential access to extend more favourable preferential treatment to imports from least-developed countries than that extended to developing countries.

In pursuance of these decisions, almost all developed countries have been granting preferential access to imports from developing countries by adopting systems falling under the GSP. The granting of preferential access is, however, unilateral in character, and most of the systems provide for denial of preferential access to imports of products from developing countries that have become competitive on the basis of the criteria specified in the system.

Flexibility for promoting economic development

The GATT rules prohibit countries from increasing tariffs that have been bound in order to provide increased protection to agricultural producers or to domestic industries. However, they recognise that developing countries may have to rely on trade measures to restrict imports in cases where no 'new industries are being established or those which have been established are not able to develop further'.

The special provisions permitting developing countries to extend such protection are contained in Article XVIII on Governmental Assistance to Developing Countries. It provides that developing countries may grant more protection for the development of 'particular industries' by increasing bound rates of tariffs or by imposing quantitative restrictions on imports or by using both measures together. The term 'particular industries' covers development of a new industry or modifications or extension of the existing production with a view to achieving fuller and more efficient use of resources in accordance with the priorities of economic development.

However, Article XVIII also requires the country taking such measures to reach agreement with exporting countries that consider their trade would be adversely affected, with a view to providing them with compensatory concessions for the loss of their trade. Further, in cases where the increased protection from foreign competition is granted through imposition of quantitative restrictions, the rules require WTO member countries to approve the measures taken.

Extension of special and differential treatment in applying the rules

Provisions for extension of special and differential treatment to developing countries are contained in most of the associate agreements. These provisions allow for, inter alia:

- Granting them transitional periods, varying from five to 10 years, to prepare for acceptance of the obligations they impose;
- Longer periods for acceptance of some of the obligations;
- Longer periods for acceptance of the obligations by the least-developed countries than for the acceptance by developing countries; and,
- Extension of technical assistance to developing countries from developed countries, the WTO Secretariat and, where appropriate, other international organisations to assist in building up technical capacities for the application of the rules of the agreements and to abide by their obligations.

Rules of the General Agreement on Trade in Services (GATS)

Main sectors

The term 'services' covers a wide range of economic activities. The WTO has identified the following 12 major categories of services: Business, Communications, Construction and relational engineering, Distribution, Educational, Environmental, Financial, Health and social, Tourism and travel, Recreational, Cultural and sporting, and Transport. (Other services that do not fit into these categories are listed separately.) These 12 sectors are further divided into 155 sub-sectors.

Four modes

One of the main characteristics of services is that they are intangible and invisible; goods, by contrast, are tangible and visible. These differences also influence the modes in which international trade transactions take place. While international trade in goods involves the physical movement of products from one country to another, only relatively few service transactions involve cross-border movements. For most service transactions, proximity between the service provider and the consumer is necessary. Such proximity can be obtained either by establishing a commercial presence in the importing country (e.g. opening a branch) or establishing a subsidiary through the movement of natural persons for a temporary period (e.g. a lawyer or architect moving to another country). In the case of a few service activities, consumers may have to travel to the country of importation to obtain a service (e.g. tourism).

The General Agreement on Trade in Services, which was negotiated in the Uruguay Round, has created a framework for bringing this trade under international discipline. GATS provisions apply to all the modes in which international trade in services takes place. These are as follows:

- Cross-border movement of service products (Mode 1);
- The movement of consumers to the country of export or consumption abroad (Mode 2);
- The establishment of a commercial presence in the country where the service is provided (Mode 3); and
- Temporary movement of natural persons to another country to provide a service there (Mode 4).

Main provisions

The GATS consists of a framework text specifying the general principles that apply to measures affecting trade in services, and specific liberalisation commitments that apply to the service industries and sub-industries listed in each country's schedule.

MFN and national treatment

These two basic principles of trade in goods now also apply to trade in services. However, they have been modified to take into account the special characteristics of trade in services. Thus the Agreement requires countries to apply MFN treatment by not discriminating between service products and service providers of different countries.

The national treatment principle envisages that countries should not treat non-national service products and service providers less favourably than their own service products and service providers. The Agreement, however, does not impose this as an obligation to be applied across the board in all service sectors as in the case of trade in goods. Rather, it requires countries to indicate in their schedules of concessions the sectors in which and the conditions subject to which such treatment would be extended. Box 4 explains the reasons for the differences in the approaches adopted in the application of the national treatment principle to trade in goods and to trade in services.

Box 4: Why the national treatment principle is not applied across the board in GATS

The GATT national treatment rule that applies to trade in goods prohibits countries from applying higher internal taxes or more rigorous domestic regulations to imported products than those that are applied to similar domestic products. The rule is intended to ensure that, in practice, the domestically produced product does not obtain more protection than that resulting from the levy of tariffs and other charges payable at the border.

Since services are invisible protection to the domestic service industry is provided not through tariffs but through national regulations. These regulations include the conditions under which the foreign suppliers could export their services products and provide services to, or establish branches in, other countries. If the national treatment rule was to be applied to trade in services countries would have to apply the same regulations to domestic and foreign services industries, resulting in the total elimination of protection in the service sector. The GATS rules, therefore, provide that countries should be free to indicate in the negotiations the sectors or sub-sectors and the terms on which they would be willing to extend such treatment to service products and suppliers from overseas.

Liberalisation commitments

Each country assumes specific liberalisation commitments, as contained in its schedule of concessions. These commitments indicate, on a sector-by-sector basis and for each of the four modes in which trade in services takes place, the conditions subject to which countries have agreed to improve market access treatment by eliminating or reducing discriminatory treatment extended to foreign suppliers.

The Agreement further imposes on countries the obligation to refrain from applying restrictions on international transfers and payments in sectors where they have made specific liberalisation commitments (except when they are in balance-of-payments difficulties).

Special and differential treatment to developing countries

The rules provide that in negotiations in the area of trade in services, as in the case of trade in goods, contributions that developing countries could make should be determined taking into account the level of development of the participating countries. Towards this end, the developing countries participating in the negotiations should be given flexibility to open fewer sectors and to liberalise fewer transactions.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

What is intellectual property?

The Agreement on TRIPS together with the multilateral agreements on trade in goods and trade in services, form the tripod of the WTO legal system. The objects of intellectual property are the creations of the human mind. The rights of creators of innovative or artistic work are known as intellectual property rights (IPRs). They include copyright (which protects the rights of authors of books and other artistic creations), patents (which protect the rights of inventors) and industrial designs (which protect rights to ornamental designs). They also cover trademarks and other signs that traders use to distinguish their products from those of others in order to build consumer loyalty and goodwill for their logos or brand names.

Main provisions of the TRIPS Agreement

The Agreement on TRIPS complements agreements on the protection of intellectual property rights developed by the World Intellectual Property Organization (WIPO). In particular, TRIPS prescribes minimum standards and periods for which protection should be granted to different intellectual property rights. In doing so it takes on board the standards laid down in the WIPO conventions and adds some more, particularly in the area of patents. Countries are further required not to discriminate among foreign nationals and between foreign and their own nationals in the acquisition, scope and maintenance of IPRs (extension of MFN and national treatment). An important feature of the TRIPS Agreement is that the mandatory standards of protection established in the WIPO conventions have been made legally enforceable.

Rules governing negotiations

In addition to providing a legal framework for the conduct of international trade, the multilateral trading system urges its member countries to hold periodic rounds of negotiations. The primary objective behind holding these rounds is to promote further liberalisation of trade by securing more reductions in tariffs and the removal of non-tariff measures. They also present an opportunity for securing improvements in the existing rules as well as for developing rules covering new subject areas.

The decision to launch negotiations is generally taken at a Ministerial Conference. Any such decision is usually preceded by two to three years of preparatory work during which countries decide on the subject areas that could be taken up for negotiations.

Ten rounds of multilateral trade negotiations have been held in the period between the establishment of the GATT in 1947 and the founding of the WTO in 1995 (Table 1). The first four rounds dealt almost exclusively with tariffs. Starting with the Kennedy Round (1964–67) attention began to shift towards addressing non-tariff measures, which, with gradual reductions in tariffs, were considered to be increasingly providing more serious barriers than tariffs for the development of trade.

Table 1: The GATT Trade Rounds

Year	Place/Name	Subjects Covered	Number of Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960–1961	Geneva (Dillon Round)	Tariffs	26
1964–1967	Geneva (Kennedy Round)	Tariffs and anti-dumping measures	62
1973–1979	Geneva (Tokyo round)	Tariffs, non-tariff measures, and adoption of decision on General Enabling Clause	102
1989–1994	Geneva (Uruguay Round)	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO	123

Most of these barriers arise as a result of differences in applying the basic rules of GATT to imported products. In order to ensure uniformity in the practices followed, the Kennedy Round adopted agreements that stipulated the broad principles and rules countries should follow in determining the value of imported goods for levy of customs duties and in applying anti-dumping measures. These agreements were reviewed in the Tokyo Round and new ones adopted in such areas as subsidies and countervailing measures, technical barriers to trade, government procurement and import licensing procedures. The round also adopted commodity agreements covering meat and dairy products.

In the Uruguay Round all these agreements (except the commodity agreements) were reviewed and modified taking into account the experience of their application since they were adopted. In addition, a new agreement on safeguard measures elaborating on the provisions in the GATT for dealing with emergency safeguard measures was adopted.

The Uruguay Round brought about one far-reaching change in relation to these agreements. Prior to the round membership of these agreements was voluntary. This had resulted in a large number of developing countries choosing not to become members on the basis that they would be unable to accept the additional procedural and other obligations imposed. The Marrakesh Agreement establishing the WTO changed this situation as it provided that all except four of the remaining agreements were multilateral and as such all countries that were members of GATT, automatically became their members and were bound by their obligations.

What Does the WTO Do?

Main functions

The WTO's numerous functions are related to the legal framework of rights and obligations created by the multilateral trading system, as described above. Briefly, it is responsible for overseeing the operations of the multilateral trade agreements, administration of the dispute settlement mechanism, surveillance of the trade policies of member countries, and the launch and conduct of negotiations.

How the work is organised

The main responsibility for overseeing the work lies with the Ministerial Conference. The Marrakesh Agreement establishing the WTO provides that member countries must meet at the ministerial level at least every second year to review the work undertaken during the previous two years and to adopt a programme of work for the next two. Between meetings of the Ministerial Conference, the General Council is responsible for carrying out the functions of the WTO. The Dispute Settlement Body considers disputes and the Trade Policy Review Body reviews the trade policies of different countries. Three subsidiary councils for trade in goods, trade-related aspects of intellectual property and trade in services operate under the guidance of the General Council. There are also a number of permanent committees like those on trade and development, agriculture and market access that report directly to the General Council. The committees that monitor the implementation of agreements – such as those on customs valuation, technical barriers of trade, sanitary and phytosanitary measures and anti-dumping practices – report to the Council of Trade in Goods, which, in turn, reports to the General Council.

In addition, working groups are often established for study and analysis in specific subject areas like trade and finance or trade and investment. Some 40 councils, committees, sub-committees and working groups function under the auspices of the WTO. The membership of these bodies is open ended and as such all WTO members can attend meetings.

Ambassadors generally attend the meetings of the General Council and of the other councils and most of the main committees, like the Committee on Trade and Development. Elections are held each year to select the ambassadors who will chair these bodies. The meetings of the committees that are established under the various agreements to ensure that actions taken by member countries are in full compliance with their rules tend to be highly technical. Officials from the missions who have developed expertise in the field take part in these meetings. Some countries, particularly the developed countries and some of the developing countries that are at a higher stage of development, often bring in their experts from capitals to attend these meetings. Senior officials from the missions, with expertise in the relevant fields, generally chair these meetings.

Framework for periodic negotiations

Since the GATT years it has been the practice to establish a separate institutional framework to oversee the work on negotiations, whenever a decision is taken to launch a new round. The declarations launching the negotiations generally provide for the establishment of the Trade Negotiations Committee, which guides and supervises progress. The WTO Director General has chaired this leading body since the Uruguay Round. Separate negotiating groups are constituted for negotiations in subject areas included in the agenda for negotiations. In the Doha Round (ongoing at time of writing), separate negotiating groups have been established for negotiations on agricultural products, non-agricultural products and trade facilitation, and in rules-based areas. Ambassadors, who are chosen on the basis of their knowledge and expertise of the issues under negotiations, chair these negotiating groups.

Decisions by consensus

All decisions in the WTO are taken by consensus – from the level of the committees and working groups to that of the councils and General Council, and at the Ministerial Conference. Consensus does not mean that unanimity is required for decisions to be taken. In fact, consensus is reached when there appears to be broad support among members for a decision and those who are not in favour agree not to express their opposition when it is being adopted. To arrive at consensus, consultations and negotiations are held, first on a bilateral and plurilateral basis and later on a multilateral basis. Such consultations are not only for taking decisions on major issues, such as the launching of a new round of negotiations or including a new subject for rule making in the agenda for negotiations. They also relate to discussions in the various councils and committees seeking solutions to the practical problems that member countries encounter in implementing the various legal instruments at national level. Thus, the WTO is a forum where, on most of its working days, negotiations are taking place on one issue or the other with a view to developing a consensus.

Consultations in 'green room' meetings

The procedures adopted for arriving at consensus acknowledge that it would be almost impossible to reach consensus if consultations are arranged in formal meetings of the councils and committees, which, as a rule, extend membership to all WTO member countries (153 as of 23 July 2008). From the early days of the GATT it was recognised that in order to prepare for arriving at consensus, meetings might have to be arranged among key delegations with differing views on the subject under discussion. These meetings were initially held in the conference room of the director general, which has green wallpaper. They therefore came to be called 'green room' meetings, a term that has stuck even though they are not always held there and are convened not only by the director general but also by the chairman of the particular council or committee seeking consensus, or outside Geneva during a ministerial conference.

The procedures followed to develop consensus through consultations on a limited country basis, have been a matter of criticism and controversy in recent years, as membership of the WTO has expanded. A large number of developing counties considered that in most cases only the developed countries and a few developing countries at higher stages of development, like Argentina, Brazil and India, were being invited to these meetings. They also considered that decisions taken in such meetings were brought to councils or committees for approval and endorsement by the whole membership, without allowing any serious discussions to take place. The matter came to a head at the Seattle Ministerial meeting, which was held in November 1999 to launch a new round of negotiations. The ministers from a number of developing countries in Africa, Asia and Latin America found they had to wait outside the conference room or stay in their hotels for most of the conference days as they were not invited to the so-called green room meetings even though the consultations were on whether or not the new subjects (trade and investment, trade and competition policy, transparency in government procurement and trade facilitation), to which they were opposed, should be included in the agenda for the proposed new round. The resentment this created led to the failure of the entire Ministerial meeting.

Considerable efforts have been made since then to improve the procedures that are adopted for arranging such meetings. It is now agreed that in order to ensure attendance is representative of developing countries belonging to different regions, at least 30 to 40 countries must be invited to these meetings. Further, in order to ensure fair and equitable representation of developing countries, the chairpersons of the regional groups of developing countries which have come into existence in Geneva (like the ACP, African countries and least-developed countries) should be invited to nominate two or three of their members, who have expertise in the subjects and issues to be discussed, to take part in the meeting.

Advantages and disadvantages of the consensus rule

It is important to note that the Marrakesh Agreement establishing the WTO, which contains rules on how decisions should be taken, provides that a majority vote can be taken in cases where it appears that decisions cannot be reached by consensus. In such cases each member country has one vole. Resorting to voting procedures is obligatory for certain types of decisions where the rules require a majority of two-thirds or three-quarters. For instance, a majority of three-quarters is required for interpretation of the provisions of WTO and for waivers from WTO disciplines while amendments that do not alter the rights and obligations of countries could be adopted by a two-thirds majority.

WTO members have consistently refused to resort to voting and have relied on consensus rule in taking major decisions. Even in the cases mentioned above, where more than a simple majority is required, efforts are made to develop a consensus and the votes are taken after such consensus is developed in order to comply with the legal requirements.

The consensus rule often leads to delays in decisions being taken. For instance, it was possible to develop consensus to launch the Uruguay Round of negotiations in 1989 only after difficult and tortuous negotiations lasting nearly five years, while the ongoing Doha Round of negotiations was launched in 2001 after prolonged discussions and negotiations lasting nearly four years.

Whatever may be the limitations of the system, the consensus rule is seen as protecting the interests of countries that are at a lower stage of development and as such have no political or economic strengths to influence decisions. They can refuse to join in the consensus where they consider that the proposed decision does not take into account their trade and development interests or the issue on which a decision is to be taken is not ripe for further rule making. However, those who criticise the system hold the view that it gives a few countries the right to almost veto a decision, even when the decision is acceptable to the majority.

The Secretariat

The WTO Secretariat is headed by the director general, who is elected for a term of four years by the member countries. The director general selects four deputy director generals from different regions on the basis of their experience, knowledge and expertise of WTO law and practice. The Secretariat is divided into divisions headed by directors.

The role of the Secretariat is limited, however, as compared to that of other international organisations like the International Monetary Fund (IMF) and World Bank. Its primary role is to provide members with technical and logistical support. This includes organising meetings of governing bodies, and preparing background papers

that are requested by the committees and councils and reports on the discussions in the meetings. It has very little formal authority to take initiatives. For instance, it cannot prepare research papers providing broad policy advice without the specific authorisation of member countries. Secretariat officials generally refrain from expressing opinions on the issues under discussion and in negotiation and if requested to do so they provide only factual information on the differing views expressed by the participants. Neither they nor the director general have any authority to suggest a new subject be taken up for discussions, or that a particular case be brought before the WTO Dispute Settlement Body for examination even where, in their view, a country is in blatant breach of the rules. Unlike the World Bank and the IMF, where heads and senior staff members have the right to take initiatives, the WTO director general and his senior staff have no such right. All such decisions have to be taken by the member countries. Because of this WTO is considered to be a member-driven organisation while the World Bank and the IMF are considered to be more secretariat-driven organisations.

Participation in WTO v. Other International Organisations

Discussions on trade and development at international level take place in addition to WTO in a number of other international and regional organisations. Important among these are the UNCTAD, World Bank and IMF. Like WTO, both the World Bank and the IMF emphasise the need for countries to follow open and liberal trade policies and to avoid protectionism. UNCTAD's role is somewhat different. It was established to address the trade and development problems of developing countries and today plays an important role in providing these countries with policy guidance through research and analytical work.

There are important differences between these organisations and the WTO in the way policy discussions take place and in relation to decisions taken. The discussions in UNCTAD, the World Bank and IMF take place at conceptual levels and often result in the adoption of resolutions containing recommendations that the governments are 'urged' to follow. However, these recommendations have no binding force. In WTO, on the other hand, most of the work is directed towards negotiations for liberalisation of trade on a legally binding basis.

Participation in WTO discussions and negotiations requires wider co-operation and interaction with other ministries, and involves more intensive research and analytical work than that required for participation in the World Bank and the IMF. The highly legal and technical nature of WTO work has led developed countries to ensure that they are represented at both ambassadorial and official levels by 'technocrats' – that is, experts in the field of WTO law and practice with working experience at national level of dealing with WTO related issues. Some of the developing countries that are at a higher stage of development have now, like developed countries, adopted well-

functioning institutional frameworks for preparatory work for participation in WTO activities. These countries are also ensuring that their official representatives, at all levels, are persons with experience working on WTO matters.

A large number of developing countries at the middle and lower stages of development, or that fall under the category of least-developed countries or small and vulnerable economies, have not been able to establish effective mechanisms at national level for undertaking preparatory work. Some countries find that even though they have established a framework for preparatory work, they often do not have officials with the necessary expertise in the subjects under discussions and negotiations. The result is that representatives of these countries often find themselves without a briefing from the governments on the policy approach to adopt. The problems are compounded when, more often than not, ambassadors and other officials do not possess past experience of work on WTO matters, and often have only a passing knowledge of the rules of the system and of the issues under discussions and negotiations. Thus, many of these developing countries turn to the international organisations for technical assistance to prepare for effective participation.

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