

LL.M. in International Legal Studies



WTO LAW

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Part II – History & Institutions

From the GATT to the WTO

- **1947 GATT**, a **provisional** intl. agreement, signed by 23 contracting parties, to be replaced by the Intl Trade Organisation (ITO)
- Havana Charter 1948, signed by 54 states, but not ratified by US Congress
- Shift from "at the borders" (e.g. tariffs) to "behind the borders" measures (e.g. competition, investment)
- Development of a global regime through **trade rounds** of multilateral negotiations

Trade Rounds

<i>year</i>	<i>name</i>	<i>subjects</i>	<i>countries</i>
• 1947	Geneva	tariffs	23
• 1949	Annecy	tariffs	13
• 1951	Torquay	tariffs	26
• 1956	Geneva	tariffs	26
• 1960-1961	Dillon Round	tariffs	38
• 1964-1967	Kennedy Round	tariffs and anti-dumping measures	62
• 1973-1979	Tokyo Round	tariffs, NTBs , "framework agreements"	102
• 1986-1994	Uruguay Round	tariffs, NTBs , rules, services, IPR, DSU, textiles, agriculture, creation of WTO, etc.	123
• 2001 - ?	Doha Round	environment, development	148

- **1994 WTO** as international organisation
(founded at the end of the Uruguay-Round)

Membership:

- Quasi universal: 157 members
 - Latest accessions: Russia and Vanuatu in August 2012
 - Laos' WTO membership terms agreed – next step: approval by the General Council on 26 October 2012
- Covers 95% of world trade
- The European Communities are members together with the EU member states

WTO Structure

WTO Agreement = umbrella agreement

Three WTO pillars:

- **GATT** – General Agreement on Tariffs and Trade
- **GATS** – General Agreement on Trade in Services
- **TRIPs** – Agreement on Trade-Related Intellectual Property Rights
- -> About 60 agreements, annexes, decisions and understandings, but **6 main parts:**

Main Agreements

<i>Umbrella</i>	AGREEMENT ESTABLISHING WTO		
	Goods	Services	Intellectual property
<i>Basic principles</i>	GATT	GATS	TRIPS
<i>Additional details</i>	Other goods agreements and annexes	Services annexes	
<i>Market access commitments</i>	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
<i>Dispute settlement</i>	DISPUTE SETTLEMENT		
<i>Transparency</i>	TRADE POLICY REVIEWS		

WTO Functions (Art. III)

- Forum for international cooperation on trade-related policies
- Forum for trade negotiations - exchange of trade policy commitments in periodic negotiations
- Administration of WTO agreements
- Forum for trade dispute settlement

GATT/WTO Principles

- Liberalisation
- No quantitative restrictions
- Non-discrimination
 - **Most-favoured nation principle (MFN)** -> non-discrimination between imported foreign products
 - **National treatment** -> non-discrimination between imported foreign and domestic products
- Reciprocity -> equivalent mutual benefits

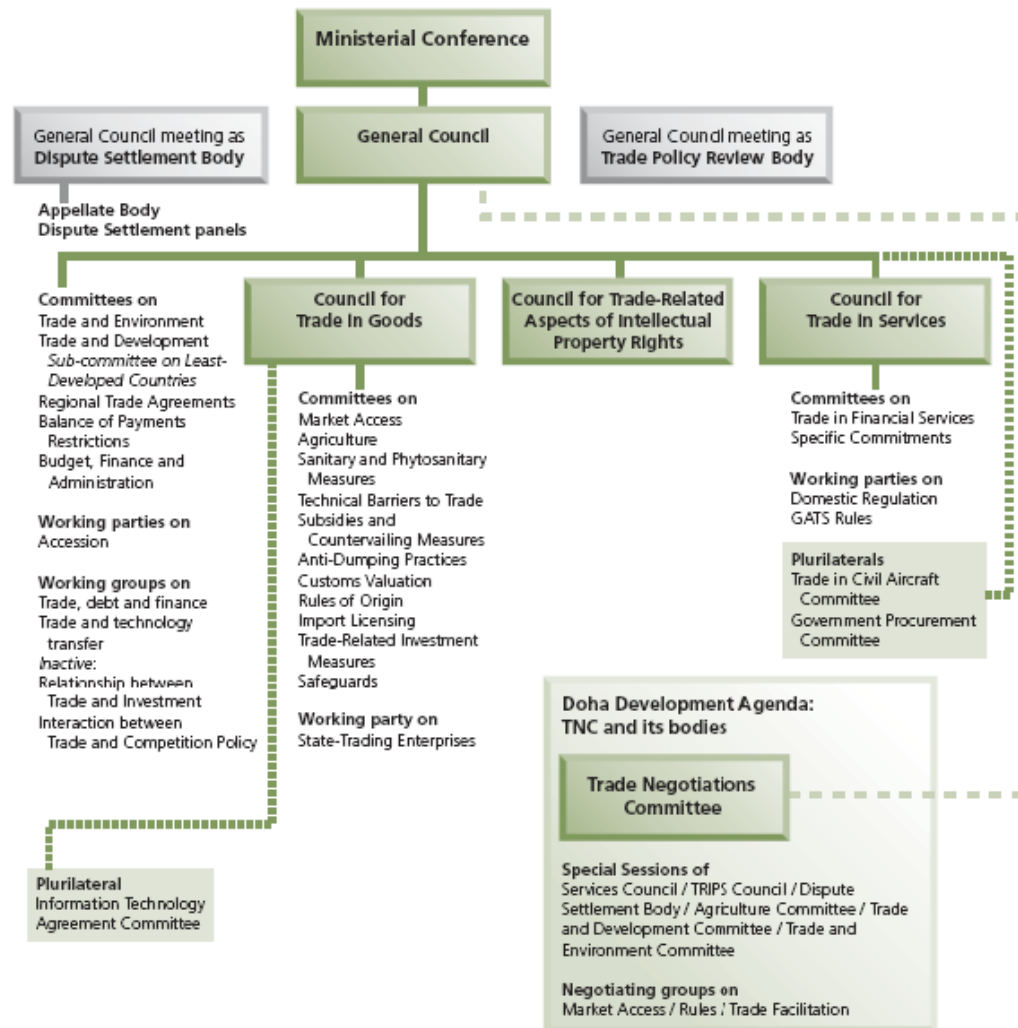
- **Transparency** -> all rules affecting trade must be transparent; publication, notification, discussion, trade policy reviews
- **Injury avoidance** -> safeguards, antidumping, countervailing duties
- **Dispute settlement**: rules-based dispute settlement procedure (DSU)
- Special provisions for **developing countries** -> non-reciprocity, extra time, technical assistance, etc.

WTO Institutions

- **Ministerial Conference** (at least every two years)
- **General Council** in 3 guises:
 - General Council (usually ambassadors)
 - Dispute Settlement Body
 - Trade Policy Review Body (surveillance of member's trade policies)

- **Specific Councils:**
 - Goods Council
 - Services Council
 - TRIPs Council
- **Committees** for each Council, Working Groups
- WTO Secretariat

All WTO members may participate in all councils, committees, etc, except Appellate Body, Dispute Settlement panels, Textiles Monitoring Body, and plurilateral committees.



Key

- Reporting to General Council (or a subsidiary)
- Reporting to Dispute Settlement Body
- - - - - Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members
- - - - - Trade Negotiations Committee reports to General Council

The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

WTO Secretariat

- 629 regular staff, headed by Director-General
- **Main duties:**
 - Supplies technical and professional support for Councils and Committees
 - provides technical assistance for developing countries
 - monitors and analyzes developments in world trade
 - provides information to the public and the media
 - organises the ministerial conferences

WTO Decision-making

- In practice **consensus**, formally one state, one vote
- *Unanimity* for amendments of general **core principles** (such as non-discrimination)
- *Three-quarters majority* for **interpretations** of the multilateral trade agreements and for **waivers** of a member's obligation
- *Two-thirds majority* for **amendments** concerning other than general principles (they only take effect for those members which accept them) and for **admission** of new members

- *Simple majority* for issues not otherwise specified
- Important **informal procedures**, e.g.
 - Green room meetings
 - Appointment of facilitators to assist Chair in Ministerial Conferences in specific small-group consultations

Accession to the WTO

- Accession to the WTO = process of **negotiation**
- **Article XII** WTO Agreement: accession to the WTO will be “on terms to be agreed” between the acceding government and the WTO
- Accession Working Parties - decide by consensus
- Who can apply? “Any **state** or **customs territory** having **full autonomy** in the conduct of its trade policies is eligible to accede to the WTO on terms agreed between it and WTO Members” (Article XII WTO Agreement)

Art. XII WTO-Agreement

- „1. Any **State** or **separate customs territory** possessing **full autonomy** in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements **may accede** to this Agreement, on **terms to be agreed between it and the WTO**. Such accession shall apply to this Agreement and the **Multilateral Trade Agreements** annexed thereto.
- 2. Decisions on accession shall be taken by the **Ministerial Conference**. The Ministerial Conference shall approve the agreement on the terms of accession by a **two-thirds majority** of the Members of the WTO.“

Accession process

- Submission of a formal written **request for accession** by the applicant government
- Request is considered by the General Council which establishes a Working Party
- **Working Party** examines the accession request and submits its findings to the General Council for approval

- Submission of a **memorandum on the foreign trade regime**: applicant government presents a memorandum covering all aspects of its trade and legal regime to the Working Party
- Terms and conditions of entry for the applicant government - include **commitments** to observe WTO rules and transitional periods where necessary to implement these commitments

- Bilateral negotiations with interested Working Party members at the same time
- results of these bilateral negotiations are consolidated into a document which is part of the final “**accession package**”
- “Accession package” consists of
 - Report of the Working Party containing a summary of proceedings and conditions of entry
 - Protocol of Accession
 - Schedules of market access commitments in goods and services

Approval and ratification

- “**Accession package**” is **adopted** at a final formal meeting of the Working Party
- Documents are presented to General Council or Ministerial Conference for adoption
- Applicant signs the **Protocol of Accession** stating that it accepts the approved “accessions package” subject to ratification in its national parliament
- Thirty days after the applicant government notifies the WTO Secretariat that it has completed its **ratification procedures**, it becomes a full Member of the WTO

Example: Cape Verde

1. **Application Received** 11 November 1999
2. **Working Party Established** 17 July 2000 (*see next slide*)
3. **Memorandum** 1 July 2003
4. **Questions and Replies** 10 February 2004
5. **Meetings of the Working Party** 26 March 2004, 8 December 2004, 14 July 2005, 28 June 2007, 26 October 2007, 6 December 2007
6. **Market Access Negotiations**
 - Goods Offer (a) initial 2 November 2004
(b) latest 21 September 2007
 - Services Offer (a) initial 1 November 2004
(b) latest 18 October 2007
 - **Draft Working Party Report** 8 November 2005
latest revision 22 November 2007

- **WORKING PARTY ON THE ACCESSION OF CAPE VERDE**
- Chairperson: Mr. David Shark (United States)
- Membership:
The Membership is open to all WTO Members indicating their wish to serve on the Working Party.
- Terms of Reference:
To examine the application of the Government of Cape Verde to accede to the World Trade Organization under Article XII and to submit to the General Council recommendations which may include a draft Protocol of Accession.

- 18 December 2007: the General Council approved Cape Verde's accession package which spelled out its terms of accession
- Cape Verde had until 30 June to ratify its accession package
- 23 June 2008: Cape Verde informed the WTO it had accepted its membership package
- Cape Verde's membership will be effective 30 days after the acceptance of its membership terms -> Cape Verde will become the WTO's 153rd member on 23 July 2008

Developing countries in the WTO

- GATT was signed in 1947 by 23 contracting parties – 11 of them were developing countries
- When the GATT entered into force in 1948, it did not contain any provisions taking into account the special situation of developing countries
- In the course of the years a number of provisions foreseeing the possibility of a “**special and differential treatment**” (SDT) of developing countries were included into the GATT and later into the legal framework of the newly founded WTO
- Especially the “**Enabling Clause**”, which was adopted at the end of the Tokyo Round in 1979, represented a significant step in that respect

Development exceptions

- **Art. XVIII GATT** (allows governmental assistance to economic development)
- **Part IV GATT** "Trade and Development,, (best endeavour clauses) 1966, e.g. **nonreciprocity** possible
- **Enabling Clause** 1979 (Decision on "Differential and More Favourable Treatment, Reciprocity and Full Participation of Developing Countries"), e.g. basis of **GSP**
- Lower obligations, more time, waivers, etc.

Enabling Clause

- Notwithstanding the provisions of Article I of the GATT (= MFN-clause), contracting parties may accord **differential and more favourable treatment to developing countries**, without according such treatment to other contracting parties.
- Applies to:
- (a) **Preferential tariff treatment** accorded by developed contracting parties to products originating in developing countries in accordance with the **Generalized System of Preferences**
- (b) Differential and more favourable treatment concerning **non-tariff measures**
- (c) **Regional or global arrangements** entered into **amongst less-developed contracting parties** for the mutual reduction or elimination of tariffs and for the mutual reduction or elimination of non-tariff measures
- (d) Special treatment on the **least developed** among the developing countries

- In practice many of the provisions guaranteeing a special and differential treatment of developing countries did not prove to be very successful.
- Main reason for the often **lacking efficiency** of many of those provisions = their non-coercive nature.
- Moreover, developing countries usually do not have enough economic and political power to make effectively use of their rights.
- Hope -> **Doha Development Round** (review)
- **Doha Ministerial Declaration 2001**: "... all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational."

Doha Development Round

- WTO membership: **increasing number** of developing countries
- Perception that industrialized countries had gained more from the Uruguay Round than developing countries (e.g. Africa's share of world trade halved 1980-1999)
- -> **rectify imbalances**
- „Unfinished business" through **in-built agendas** (Agreements like GATS or TRIPs have to be revised at regular intervals - agriculture & services start in 2000)
- -> EU interest in launching new round to reach package deal trading agricultural concessions

Orig. Doha Development Agenda

- Agriculture
- Services
- Non-agricultural market access (NAMA = all products not covered by the Agreement on Agriculture)
- Development dimension (e.g. special and differential treatment SDT)
- Intellectual property (access to medicines, geographical indications)
- Trade and environment
- WTO rules (dispute settlement mechanism, anti-dumping, subsidies, RTAs)
- 1996 "Singapore issues" (competition policy, investment protection, trade facilitation, transparency in government procurement)

Development issues

- Strengthen **SDT** (e.g. non-reciprocity in market access, exemptions from certain rules and disciplines, more time for implementation)
- Duty and quota free access for all **LDC** (= least developed countries) exports
- **Technical assistance** (e.g. to handle disputes, implement technical standards)
- **Implementation** of existing agreements adapted to particularities of these countries
- **-> the development dimension pervaded all negotiation topics**

Cancun Sept 2003: setback

- Ministerial Conference broke up without decision
- Serious divergences on agriculture and Singapore issues
- Emergence of vocal developing country groupings such as
 - G20 (large-middle income developing countries with offensive agenda on agriculture) and
 - G90 (LDCs, ACP and African Group)

July 2004 agreement: back on track

- Agriculture -> more liberalization, cuts in trade-distorting subsidies
- Industrial products -> more tariff cuts
- Services -> improved offers by May 2005
- "Singapore issues" -> 3 dropped except for
- Trade facilitation -> guidelines for negotiation
- Development dimension -> strengthening of SDT & technical assistance ("aid for trade")
- TRIPS waiver on access to medicines (agreed in August 2003)

Hong Kong Dec 2005: some progress

- Elimination of all export subsidies in agriculture by 2013, for cotton even by the end of 2006
- Clarification of modalities and new deadlines for agriculture, NAMA and services
- Duty-free and quota-free access (US and Japan 97%) for LDCs
- Step up "aid for trade" (e.g EU offers €2bn as of 2010)
- TRIPs Agreement amended to facilitate access to cheaper medicines for poor countries

July 2006: suspension

- Disagreement (EU, US, Japan, Brazil, India, Australia) on agricultural tariffs, agricultural (domestic) subsidies and industrial tariffs
- Polarized positions on extent of liberalization (agriculture vs. NAMA = Non-Agricultural Market Access)
- **Resumption in early 2007**
- **Geneva 2008**: most recent attempt to agree on a mutually acceptable solution - **failed** in July 2008, mainly due to divergent views on **agricultural import rules**