Overview

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In January 1995, the World Trade Organization (WTO) became the successor to the General Agreement on Tariffs and Trade (GATT). Seven years of intensive negotiations in the Uruguay Round gave birth to an organization with vastly expanded responsibilities for international economic affairs. The WTO is undeniably a major player in the field of global governance, and its rules and processes will profoundly affect the future economic and political orientation of its 138 member countries as well as of the 30 countries in the process of joining.

By many objective criteria the WTO—and the GATT before it—have been remarkably successful at doing what they were mandated to do: liberalize trade and conduct international trade according to multilaterally agreed rules. Nevertheless, questions of a very fundamental nature are being raised about the role of the WTO in international affairs by a wide spectrum of interest groups. The manner in which these questions are addressed in the coming months and years will determine the role of the WTO in global governance. It is not the intention of this Overview to summarize the contents of the following chapters or to draw conclusions. Rather I want to flag some of the principal policy issues that emerge when a selection of prominent people with different perspectives consider the role of the WTO in global governance.
Increased importance of trade rules

The importance of trade rules in both domestic and global affairs has increased dramatically since the creation of GATT. So has the controversy surrounding a number of WTO agreements and dispute settlement rulings. There are a number of reasons for this.

Both the volume of international trade and the number of GATT/WTO member countries have increased greatly over the past half-century. WTO rules now apply not only to the one-fifth of world production that is traded but also to goods and services that may never enter into trade. These rules extend well beyond border measures and reach deep into domestic regulatory structures. Domestic regulations relating to patents, financial services, subsidies, and support measures for agriculture are all subject to WTO disciplines. Some WTO agreements raise ethical questions about the patenting of life forms, the role of precaution in the absence of scientific evidence, compulsory licensing to provide access to essential medicines, and the rewarding of indigenous peoples for pharmaceutical discoveries. Recent disputes have also raised fundamental questions about the appropriateness of standards to protect health, the role of science in risk management, and the conservation of endangered species.

Unlike in the GATT, the WTO dispute settlement process moves forward automatically, with panel and Appellate Body reports adopted unless there is a consensus against them. The rule of negative consensus, backed up by a mechanism providing for compensation and sanctions in the case of non-compliance, has greatly increased the effectiveness of the process and made it very different from the compliance mechanisms of other international agreements. As a consequence, public interest has heightened, particularly in the light of recent high-profile disputes extending into sensitive areas of the environment, corporate tax measures, and public health. The fact that the dispute proceedings are closed to the public has exacerbated the sense of exclusion and the resentment of those outside the process and concerned with the outcome.

The rulings of the WTO Appellate Body have led some to the view that it has extended its authority beyond that granted to it by member governments. The Dispute Settlement Understanding lim-
ited the Appellate Body’s jurisdiction to issues of law covered in panel reports and to legal interpretations developed by panels. It was prohibited from adding to or diminishing the rights and obligations provided in WTO agreements. Some recent Appellate Body reports, however, seem to indicate a new concept of evolutionary policy formulation through litigation; this is very different from consensus decision-taking after a debate by all members in the WTO General Council. Appellate Body rulings—such as the acceptability of *amicus* briefs submitted by non-governmental organizations—have caused considerable controversy among members while raising expectations among those hoping to achieve greater access to the process.

Two-thirds of WTO members are now developing countries, and many of the most successful of them have adopted outward-oriented development strategies. The importance of the WTO, as well as their interest and weight within it, has thus increased considerably. They have, for example, locked in domestic policy reforms through adopting legally binding WTO obligations. They also look to assured market access through bound tariffs and commitments in the services sectors to continue their export-led growth strategies. Their legitimate expectation is that the WTO will provide a forum where their views can be effectively expressed and their concerns adequately dealt with. They are therefore far more active in the WTO than in earlier times and have higher expectations about what the institution can and should do for them.

Another reason for the heightened interest in the WTO is that it came into being against the backdrop of an incredible revolution in the cost and speed of communications. Non-governmental organizations are now linked to one another through broad networks and coalitions that render them more effective and sophisticated than their earlier counterparts. The public image of the WTO is greatly influenced by the information conveyed through these electronic means. While many of these groups are not against trade per se, others are unabatedly protectionist, putting them on an ideological collision course with supporters of an open and liberal trading system. The events at the third Ministerial Meeting in Seattle in 1999, fuelled by coalitions of non-governmental organizations built on the World Wide Web, placed the public for the first time at the centre
of a vital public policy discussion traditionally dominated by governmental representatives in closed meetings.

Five years of experience with the WTO and the heightened public interest it has generated have already led to many calls for reform. Reform will not come easily, however, if it means unravelling existing trade agreements or introducing new restrictions on international trade. From a systemic perspective, the pursuit of free trade has been a powerful driving force behind many policy decisions, ranging from the removal of the Corn Laws in England in the early part of the nineteenth century to the adoption of outward-oriented development strategies in developing countries over the past few decades. Those who constructed the WTO are proud of having created what has been described as the greatest ever achievement in institutionalized global economic cooperation. The current trade rules permit world trade in goods and services to be successfully conducted at the rate of close to US$1 billion per hour every hour of the day. This system will not be given up lightly.

In addition, seasoned trade negotiators place less weight on the Seattle demonstrations and the failure to conclude the meeting satisfactorily than do the press and others. Failed meetings are certainly not a new phenomenon at the GATT and the WTO, even at the ministerial level. The Mid Term Ministerial Review of the Uruguay Round in 1988 in Montreal ended in a stalemate, and the 1990 Ministerial Meeting in Brussels, which was to conclude the Uruguay Round, collapsed amidst large-scale violent protests largely led by European farmers. Nevertheless, the Uruguay Round was successfully completed, with all participating countries ratifying the results.

Thus, the central question that needs to be addressed is what wise policy makers ought to do to preserve the strengths of the rules-based trading regime while responding to the pressures on it.

The WTO: A target of criticism

It is sometimes overlooked that the WTO is an intergovernmental organization comprising almost 140 sovereign governments acting on behalf of their constituents in accordance with multilaterally
agreed rules that have been adopted by consensus. If the WTO is accused of acting against public interests, it is this collectivity of governments that is doing so. As far as the WTO’s own processes are concerned, it can be argued that it is a very democratic institution. Once negotiators have agreed to new rules or changes to existing ones, it is up to domestic parliaments to ratify what has been negotiated. Many parliaments have already been active in monitoring WTO negotiations, and others will certainly become more active as public interest in the WTO continues to rise.

Against the backdrop of the diverse criticism levelled at the WTO, an important question is why sovereign states would spend years negotiating agreements that have the sorts of negative effects on their citizens that is claimed. If the answer is that nation states unwittingly erred in joining or creating the WTO, then why do they not leave? No country has ever expressed an interest in leaving either the GATT or the WTO. If WTO agreements mean a loss of national sovereignty, why would 30 sovereign nations be so intent on joining the WTO?

A principal reason for the support by both large and small governments for the WTO is that they see adherence to multilateral rules—rather than political or commercial power—to be in their national interests. Rules bring predictability and stability to the world trading system and, although rule-governed trade may not guarantee peace, it does remove a potent source of conflict. It offers an alternative to unbridled force in the trading relations among states. And, although sovereignty is forgone by being a member of the WTO (as with any significant international agreement), what is gained is the possibility to participate through cooperation in the global economy.

**Developing countries**

Many developing countries voiced their dissatisfaction with their lack of involvement in the decision-making processes in Seattle, but this is a long-standing criticism. In addressing this concern, a number of important considerations have to be taken into account before drawing general conclusions.
First, it is important to distinguish between lack of involvement in meetings and exclusion from them. Small informal groups of countries meet frequently in the WTO because this is the most efficient way to proceed—particularly when drafting texts. Agreement between the most concerned countries can later be extended to those that are less directly concerned. Few would take issue with this process. Problems arise, however, when not all interests are represented in such meetings and the results are not widely and rapidly communicated. In many instances, this has been as much a problem for transition economies and small developed countries as for developing ones. Representation in meetings and the communication of outcomes have been far from perfect in the past and this process needs to be improved.

Secondly, it would be wrong to draw the overall conclusion that there has been a lack of presence of all developing countries in negotiations and that they have had little influence in GATT and WTO negotiations. Latin American countries were major contributors both to the stalemate at the Montreal Ministerial Meeting (because of the treatment of agriculture) and to the relaunching of the Uruguay Round some months later. Brazil, India, Argentina, Egypt, Columbia, and other developing countries all played a big role in their own way in the creation of the General Agreement on Trade in Services. There are numerous such examples. In reality, a considerable number of developing countries are always present when their national interests are involved and have been very effective at shaping agreements to take their interests into account. Many of these countries have invested a great deal in building a national capacity to service the WTO negotiations and their representatives expect to be present at all key meetings. It was perhaps the lack of involvement of officials from some of these countries that created the strongest reactions in Seattle.

Nevertheless, there is certainly a problem relating to the systematic absence of many developing countries (particularly those that are small) from both informal and formal meetings in the WTO. Most small delegations from developing countries do not have the appropriate resources either in Geneva or at home to service the increasingly frequent, complex, and resource-intensive negotiation
process at the WTO. Full participation can come about only with a strengthening of their human and institutional capacities. As many of them do not have the resources or expertise to build this capacity themselves, they have to turn to technical assistance programmes offered by others. There is a pressing need for a considerable increase in the inadequate resources currently available to them through the regular WTO channels.

However, knowledge and resources are not enough for all countries to be effective in WTO negotiations. An important reality is that the WTO rules do not entirely remove the inequality in the power of nations. It remains the case that countries with big markets have a greater ability than countries with small markets to secure market access and deter actions against their exporters. As noted, some developing countries have been effective in past negotiations, but this has not been the case for all. With their new weight of numbers in the WTO, although the diversity of their circumstances and commercial interests will not necessarily permit common negotiating positions to be adopted, developing countries now have it in their power to make common cause for their collective good by ensuring that development considerations are taken fully into account in WTO agreements.

In this respect, it is important for developing countries to make known their concerns with respect to their existing commitments and their priorities for future negotiations. Of the almost 250 proposals that were submitted to the WTO General Council in preparation for the Seattle meeting, over half were submitted by developing countries. Developing countries adopted the positive approach advocated by the Secretary-General of UNCTAD and focussed on what they wanted instead of passively objecting to what they did not want. A large number of these proposals were characterized by the sentiment that the results of the Uruguay Round were asymmetrical, tilting the balance of multilateral rights and obligations against developing countries. On the part of least developed countries, new initiatives and improved market access were called for in order for them not just to halt the decline in their share of world trade, but to increase it.

The proposals were principally aimed at adjusting the anti-dumping disciplines and at modifying certain provisions of the Subsidies
Agreement and the Trade-Related Intellectual Property Rights (TRIPs) Agreement. The proposals also called for a fundamental reassessment of special and differential treatment provisions in a number of agreements and for making “best endeavour” provisions for technical assistance and the transfer of technology mandatory in nature. In addition, they looked to the reduction of tariffs and tariff peaks in developed country markets; improved market access in agriculture; the simplification of rules of origin; and an acceleration in the opening up of textile and clothing markets in developed countries.

In this context, it is relevant to ask whether or not these proposals would be best advanced in a new round of negotiations. The débâcle in Seattle was the result not of the unwillingness of developing countries to negotiate or of the protests in the streets, but of the failure of developed countries to agree on the conditions and substance of a new round of negotiations. In the event of a new round, developing countries would certainly benefit from the wider opening of markets and from the clarification and development of trade rules. To engage them in a new round, however, they must first be convinced that their development concerns will be taken fully into account.

There are those who would argue that, in any new round of negotiations, there should be greater emphasis on the goal of sustainable development, as acknowledged in the Agreement Establishing the WTO. Many consider it to be important for the WTO to have a broader criterion against which the success of the multilateral trading system can be evaluated. For those actively concerned with human rights, for example, this would involve a realization that a truly rules-based international system would recognize that human rights are inextricably linked with the international economic system and provide the common moral and legal underpinnings for the global economy. Integrating human rights standards into all aspects of economic policy-making would help to ensure that markets are not only open and efficient, but also fair and just.

Desirable as this goal may be, the important question that has to be confronted is what mechanism would enable the integration of human rights and other social norms into the WTO. It is clear is
that writing social standards into WTO rules would greatly change the nature of the organization and would be strongly resisted by many WTO members. Although all members agreed to the preamble of the Agreement Establishing the WTO, and thus the importance of sustainable development, the concept receives no further recognition in any of the legally binding agreements. Nevertheless, respect for social standards must be a priority at the global level. One potential solution lies in a strengthening of the enforcement mechanisms of institutions dealing with the environment, labour standards, and human rights rather than a broadening of the responsibilities—and therefore influence—of the WTO.

It is also argued that, because large global companies are beneficiaries of economic liberalization, they should share in the responsibility for dealing with its social and environmental consequences. With the aim of encouraging the private sector to act in accordance with internationally accepted principles in the areas of human rights, labour standards, and the environment, the Secretary-General of the United Nations has proposed a Global Compact between business and the United Nations. The vision of the Global Compact is that, by advocating effective global governance mechanisms, corporations will be doing their part to ensure that the global economic system meets the needs of all people.

Representation in the process

Why is it that some interest groups have such a different perception of the value of the WTO from that of their democratically elected governments? The answer is not simple. Much of the criticism is due to a lack of understanding of the WTO and how it operates. This is not surprising. The WTO agreements and processes are complex and the GATT was far from transparent in its activities. For more than 50 years, access to information on trade negotiations has been difficult for all those outside the process. If it is hard to find out what the WTO is doing, the critics say, the organization must have something to hide. The WTO inherited GATT traditions and, notwithstanding considerable effort on the part of the secretariat to
increase the public awareness of the WTO, it is still paying the price in the form of a misunderstanding of its functions and criticism of its lack of transparency.

What will not be removed through a better understanding of the WTO is the resentment on the part of well-informed groups whose narrow preferences have been passed over by governments acting in what they perceive to be their overall national interests. This raises fundamental questions about representation, advocacy, and the legitimacy of a state acting on behalf of its citizens. Unlike a number of other international organizations, the WTO permits only representatives of governments and selected intergovernmental organizations to participate in or observe the processes of its regular activities. This has led to claims that the WTO is not accountable or responsive to public concerns, and to proposals for comprehensive agendas for increased transparency and public participation in the WTO and its dispute settlement process.

Overall support for these proposals has been marginal at best and in certain instances hostile. WTO members justify their reluctance on the grounds that the WTO is both a legally binding instrument and a forum for negotiations, which makes it very different from other multilateral organizations that provide for public participation. The argument continues that national representatives must on occasion subordinate certain national interests in order to achieve marginally acceptable or sub-optimal compromises that, by definition, require trade-offs. Doubt is expressed whether such a system could continue to work effectively if these trade-offs were open to scrutiny by precisely those special interest groups that would have opposed them. It is also argued that, even in intergovernmental organizations that provide for public participation, final decisions are taken in closed meetings with the real trade-offs frequently never known outside the closed sessions.

Further, developing countries do not consider developed country non-governmental organizations to be natural allies for many of their causes (see below). They view the demands for opening the WTO as leaving themselves grossly under-resourced, to face both powerful governments of developed countries and their non-governmental organizations, and as tilting the negotiating balance further
to their disadvantage. Some would also question whether many non-governmental organizations can rightfully claim a presence when they themselves are not necessarily democratic, accountable, or on occasions even broadly representative of the interests they claim to represent.

Notwithstanding the difficulties with respect to increasing transparency and participation, there remain a number of practical ways of meeting many of the concerns without upsetting the established rights and obligations of members or otherwise negatively influencing the negotiating processes. In the run-up to the Seattle meeting, all negotiating proposals were posted on the WTO website with no apparent ill effects. This would have been considered unthinkable to many delegations even in the recent past. Similarly, symposia organized by the WTO secretariat where groups and individuals outside the negotiating process can make their views known to government officials have met with success. So too have regional seminars organized by the WTO secretariat in developing countries on contentious issues such as trade and the environment. Imaginative proposals have also been made with respect to access to dispute settlement proceedings. One such proposal is that a mechanism should be established where disputes of particular concern to environmentalists could be dealt with outside the WTO through a consultative process in which relevant facts could be put on the table by all interested parties, from governments, non-governmental organizations, industry, academia, and local communities.

Standards: Labour, environment, and health

To minimize unwanted encroachment on national sovereignty, non-discrimination is generally interpreted in the WTO to mean that products that are physically the same (i.e. like products) cannot be discriminated against in world trade solely on the grounds of how they were produced. Thus, goods produced in an environmentally unfriendly manner are like environmentally friendly ones, just as imported goods produced without respecting core labour standards are no different from others. In short, preferred standards for pro-
duction processes in the importing country cannot be imposed on exporting countries through trade restrictions.

Denying the possibility to discriminate in trade in this manner, and thus preventing powerful governments from riding roughshod over less powerful ones, holds a special attraction for many developing countries. They consider any discussion of minimum environmental and labour standards to be an assault on their national sovereignty. Even if such standards reflect the priorities of well-meaning groups in wealthy countries, they may well be inappropriate for developing countries’ levels of development. Of equal importance is the view that the desire to impose standards is nothing more than a thin disguise for protectionist forces representing producer interests unable to compete with developing country exports. For this reason, developing countries frequently find themselves in opposition to non-governmental organizations and governments in developed countries when it comes to discussing environment and labour standards. The enforcement of preferred standards through trade restrictions appeals to environmental groups or those wishing to enforce core labour standards. That this option is denied them by the WTO is a clear source of friction.

Within their own borders, however, governments have a sovereign right to adopt whatever standards they consider “appropriate” to enforce labour standards or to protect the local environment and the health of their citizens. With growing awareness and concerns over health, coupled with more sophisticated products and production processes, the complexity of regulations has increased, as has the opportunity for these measures to be used for protectionist purposes. When standards differ between countries, they have the potential seriously to impede trade. Thus, a particularly important consideration for the maintenance of an open trading system is determining when national standards affecting trade are responding to “legitimate” concerns and when are they unnecessary barriers to trade. From a policy perspective, the important question is who has the responsibility for dealing with the issues of appropriateness and legitimacy.

One issue is determining the minimum degree of scientific validation that is necessary for an exporter to be obliged to accept a stan-
dard in an importing country as being legitimate rather than an unnecessary barrier to trade. This then begs the question of the role of “precaution” when there is insufficient scientific evidence to establish the existence of a serious risk, but there are substantial potential negative consequences. Who has the burden of proof in demonstrating that there is—or is not—a real risk? What if there is agreement in both the importing and the exporting countries on the scientific evidence, but there are different preferences about how the risk should be managed?

Although the WTO should avoid being the arbiter in controversies over the legitimacy of trade measures based on societal preferences rather than scientific evidence, this appears inevitable. It will be most surprising if matters relating to risk assessment and risk management do not become increasingly important in WTO legal proceedings and, as a consequence, in the agreements that deal with them. There have already been serious trade disagreements, for example, over appropriate standards for meat treated with hormones or antibiotics. The trade in genetically modified organisms and products derived from them involves even greater commercial, health, social, and ethical considerations. Regulatory differences between countries in Europe and North America with respect to these products largely reflect societal preferences about risk management—not disagreement over scientific evidence.

Future directions

The WTO is too important an institution for anyone to ignore, but there is also no consensus on where it should go. Its fiercest critics want it closed down. Others want its powers curtailed. On the other hand, there are those who seek to strengthen the WTO and extend its reach to new areas. If the WTO were to have responsibility for new and significant multilateral agreements on investment and competition policy, its importance in global affairs would increase massively, as was the case with the negotiation of the General Agreement on Trade in Services in the Uruguay Round. This diversity of views means there are very different poli-
cy prescriptions for the future direction of the WTO and its role in global governance.

There does seem to be agreement, however, that the WTO is only one part of a system of global governance that now requires refurbishment. The functions of the existing multilateral institutions need to be clearly defined, and policy-making at both the national and the international levels calls for greater coherence. There is less agreement on the respective roles of the various institutions.5

One view is that the multilateral trading system should not be called upon to deal with such non-trade issues as human rights, labour standards, and environmental protection. To do so would expose it to even greater strain at a time when it is already overburdened. In any event, this is not where its mandate or expertise lies. This school of thought sees merit in addressing these issues in existing institutions. Given that the United Nations and its specialized agencies are charged with advancing the causes of development, the environment, human rights, and labour, they should be strengthened and provided with the necessary resources to carry out their tasks successfully. The WTO could then go ahead and deal with a narrower agenda than it now seems to be acquiring.

An opposing view is that the vacuum in global governance could be at least partially filled by the WTO taking on even more responsibilities. The argument at its most fundamental level is that the strong multilateral rules-based trade regime, attained through the WTO, is essential to developing a system of governance of the global market. The trading system cannot act in isolation when there exists a wide variety of issues—including environmental protection, access to essential medicines, and respect of core labour standards and human rights—that belong on the international agenda and that are directly affected by trade itself or the rules that govern it. Proponents of this school of thought argue that the WTO must be given a mandate to take development goals and social and environmental issues fully into account in future trade-liberalizing negotiations as well as in existing or future trade rules.

The fact of the matter is that there is no world government to determine the appropriate division of labour among existing multilateral institutions or to decide when new organizations need to be
created or existing ones closed down. Without such a supranational body, it has been suggested that there is a need for a global process with concerted, broad, and high-level political leadership. Thus, a summit meeting of heads of state—a Globalization Summit—has also been proposed to address the global problems that require global solutions.

Given these very different views of the role of the WTO in global governance, a modest but potentially important proposal is that a group of eminent persons with a practical understanding of the multilateral trading system and the issues it now confronts be established to explore—outside the context of negotiations—what trade policies are required for a better future and to advance proposals for action. In more than half a century of experience with the rules-based multilateral trading system, there has been only one such group—the Leutwiler Group. This group addressed a number of systemic issues (within the context of GATT) prior to the launching of the Uruguay Round and issued an influential report entitled *Trade Policies for a Better Future; Proposals for Action*. Few would deny the important contribution of this report to the Uruguay Round negotiations in terms of new policy orientations. It may well be timely to consider the convening of such a group today.

**Conclusion**

The WTO has extended its reach far beyond that of GATT, and its importance in international economic and political affairs has increased dramatically. As the chapters in this volume indicate, there is broad support for maintaining the rules-based trading system and the benefits it bestows. However, there are very different perceptions of the responsibilities of the WTO in the realm of global governance and what they should be in the future.

Current criticisms of the WTO are in large measure linked to these different perceptions. Some say it is not living up to its responsibilities, while others say it is meddling in their affairs. Achieving a common understanding of the role of the WTO is an absolute priority for the international community if the enormous contribution
that the multilateral rules-based trading system has made to world economic growth and stability over the past 50 years is to continue for the next half-century and beyond.

The failure to launch a new round of negotiations in Seattle has provided a breathing space for reflection, which should be used constructively. A number of proposals are advanced in this book that provide a basis for discussion and eventual policy action. The coming months and years will test whether there is the requisite political will to address and resolve some of the key systemic issues now facing the international community in terms of global governance.

Notes

1. In what follows, these 138 member governments will be referred to as the WTO members. While the 15 countries of the European Union are individual members, they are represented at WTO meetings (with the exception of the WTO Budget Committee) by the European Commission, which speaks on their behalf.

2. This chapter does not enter into the question of what constitutes governance, but for present purposes it can be described as the sum of the many ways that individuals and institutions—public and private—manage their common affairs. There are many actors on the stage of governance at the global level; these certainly include international institutions such as the WTO. See Commission on Global Governance, Our Global Neighbourhood: The Report of the Commission on Global Governance, Oxford: Oxford University Press, 1995, p. 2.

3. GATT had an original membership of 23 countries. The volume of world trade increased 19-fold between 1950 and 1998 and 36-fold for manufactured goods.

4. Unlike the Preamble to the GATT, the Preamble to the Agreement Establishing the World Trade Organization acknowledges the importance of sustainable development. Members recognize "that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development." The texts of all the WTO agreements can be found in WTO, The Results of the Uruguay Round Negotiations: The Legal Texts, Geneva, 1995.

5. A similar conclusion was drawn during the Uruguay Round with respect to policies and institutions relating to trade, money, and finance. A negotiating group was created to examine ways to bring greater coherence to global economic policy-making. The Functioning of the GATT System Group produced a "Ministerial Declaration on the Contribution of the World Trade
Organization to Achieving Greater Coherence in Global Economic Policy-making.” Ministers recognized that “difficulties, the origins of which lie outside the trade field can not be redressed through measures taken in the trade field alone.”
