

THE UNITED NATIONS AND THE EMERGING SYSTEM OF GOVERNANCE IN INTERNATIONAL TRADE

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The establishment of the World Trade Organization (WTO) is arguably the most important outcome of the eight-year Uruguay Round of multilateral trade negotiations that concluded in April 1994.² It is a major step towards the consolidation of a rule-based multilateral trading system, where agreed disciplines are backed by a strengthened dispute settlement mechanism. For the weak partners in international trade – notably the developing countries – the creation of the WTO promises a measure of predictability and of protection against potential unilateral actions by the strong trading partners.³

The WTO, however, is not a specialized agency of the United Nations. Until the Uruguay Round, the UN – and in particular the United Nations Conference on Trade and Development, UNCTAD – had been the universal forum for debate on international trade issues and policies. The question is therefore legitimately being asked as to what role, if any, the United Nations will now have in relation to international trade. In order to answer it, a review is first needed of the mandate of the WTO and of current thinking among member governments about its role and functions.

THE FUNCTIONS OF THE WTO

The WTO provides the institutional framework for the implementation of the multilateral trade agreements negotiated in the Uruguay Round. These include the General Agreement on Tariffs and Trade

(GATT) 1994 with its related instruments, as well as the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPs). The main functions of the WTO are to facilitate the implementation, administration and operation of the Uruguay Round agreements; to administer the system for the settlement of disputes that might arise in connection with the disciplines introduced by the agreements; and to provide a forum for negotiations of further multilateral rules and disciplines in trade-related areas as may be agreed by its members.

The dispute settlement function is a particularly important feature of the WTO in that it links, through an integrated mechanism, the system of rights and obligations governing trade in goods with the rights and obligations negotiated in the fields of trade in services and intellectual property rights. In this way, a selected set of specific matters concerning services, investment and technology were brought under the scope of trade disciplines.

This feature is related to a broader characteristic of the WTO. Unlike the Havana Charter of 1948, which laid down the legal regime of the stillborn International Trade Organization, the **Agreement Establishing the World Trade Organization** is a purely institutional and procedural instrument. Other than general references in its preambular paragraphs, it does not contain any substantive rules or disciplines, or any principles on the relation between

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² The **Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations** was signed at the Ministerial Meeting of the Trade Negotiations Committee of GATT on 15 April 1994 in Marrakesh, Morocco. It comprises first the **Agreement Establishing the World Trade Organization**, to which four sets of substantive agreements and understandings are annexed. These include **Multilateral Agreements on Trade in Goods** (the GATT 1994 and related sectoral and special agreements), the **General Agreement on Trade in Services**, the **Agreement on Trade-Related Aspects of Intellectual Property Rights**, the

Understanding on Rules and Procedures Governing the Settlement of Disputes, the **Trade Policy Review Mechanism**, and **Plurilateral Trade Agreement**. It further comprises 25 **Ministerial Declarations and Decisions**; and the **Understanding on Commitments in Financial Services**. The expression 'Uruguay Round Agreements' refers to the totality of these documents.

³ One should remember, however, that the sanction for violation by one partner of its WTO obligations is the authorization to the injured partner to introduce compensatory 'suspension of concessions'. The commercial power of countries remains thus the ultimate factor in international trade relations. Nevertheless, it is expected that powerful trading partners will be swayed by the moral weight of decisions of the WTO dispute settlement mechanism to a larger extent than they were by the largely ineffective GATT procedures.

trade and other aspects of the world economy or of national economic policy, such as employment or commodities. What it does is establish a set of institutional arrangements by which specific aspects of international or national policy can be made the subject of contractual obligations which could eventually be enforced through recourse to trade sanctions.⁴

The more precise scope of the functions of the WTO is still a matter of some controversy, and the situation will no doubt evolve as the organization becomes increasingly consolidated.⁵ However, a majority of governments seem to subscribe to the view that the WTO is essentially a mechanism to service the contractual arrangements entered into in the Uruguay Round and subsequent contractual obligations that governments might decide to undertake. To that extent, it is essentially no different from GATT, except in that it covers a wider range of trade agreements. Inter-governmental debate in the WTO, in this view, should focus on the implementation of existing multilateral agreements or the negotiations of new ones. Broad debate of policy issues is not encouraged, as it might prejudice subsequent negotiations positions.

Furthermore, according to this view the contractual nature of the WTO requires that the secretariat should essentially be responsive to the requirements and demands of the contracting parties, rather than have a proactive role of initiating independent analysis and proposing policy approaches.⁶

If the above is the case, an appropriate structure of international governance in the field of trade requires an additional set of arrangements for the performance of functions not covered by the WTO, as well to complement some of the functions of the latter. It is there that the United Nations has a role to play.

THE UNITED NATIONS AND INTERNATIONAL TRADE IN THE NEW INSTITUTIONAL CONTEXT

International trade policy and rule making

In the broadest sense, there is still need for a universal forum where international trade policy can be discussed, and set in the context of its complex relationships with the other areas of the world economy. The WTO agreement states that the organization should cooperate with the World Bank and the International Monetary Fund with a view to achieving greater coherence in global economic policy making, but this is, again, generally understood to refer to the implementation of the contractual obligations that the WTO is responsible for.

By contrast, the United Nations has a broad mandate to deal in an integrated manner with development and interrelated issues in the areas of trade, finance, technology, investment, services and sustainable development; UNCTAD has been designated as the most appropriate focal point, within the United Nations proper, for such integrated treatment.⁷ In turn, the eighth UNCTAD in 1992 agreed

⁴ A list of possible areas for such treatment was contained in the Concluding Remarks of the Chairman of the Marrakesh Ministerial Conference. It includes the following:

the relationship between the trading system and internationally recognized labour standards; the relationship between immigration policies and international trade; trade and competition policy, including rules on export financing and restrictive business practices; trade and investment; regionalism; the interaction between trade policies and policies relating to financial and monetary matters, including debt, and commodity markets; international trade and company law; the establishment of a mechanism for compensation for the erosion of preferences; the link between trade, development, political stability and the alleviation of poverty; and unilateral or extraterritorial trade measures.

(GATT Doc. MTN.TNC/MIN(94)/6)

⁵ The view has been put forward that the WTO is the 'missing pillar' of the Bretton Woods system, the successor of the International Trade Organization and endowed with broad policy functions in the international trade field. See address by Peter Sutherland, then Director-General of GATT, to the World Economic Forum, Davos Switzerland, 28 January 1994 (News of the

Uruguay Round of Multilateral Trade Negotiations, NUR 092, p.6). This viewpoint derives some support from the provision of the WTO Agreement that charges the WTO with cooperating, as appropriate, with the IMF and the World Bank in order to achieve greater coherence in global economic policy making. However, this provision is also being interpreted restrictively by most member governments. See below.

⁶ This position has been most clearly articulated by the United States Government. In a communication addressed to US Senators and Congressmen by the United States Trade Representative Mr Mickey Kantor, dates 28 April 1994, the point is made as follows: 'As is the practice under the GATT, the WTO Secretariat will be available to provide support on various issues solely at the request of Members' (Addendum II, Responses to Concerns Raised about the WTO and Dispute Settlement Provisions, p.2) In the same vein, the United States implementing legislation states in the Statement of Administrative Action that 'the new World Trade Organization will operate in much the same manner as the General Agreement on Tariffs and Trade, which it will replace'.

⁷ General Assembly Resolutions 47/183 of 22 December 1992 and 49/99 of 19 December 1994.

in general that where other institutions are vested with powers of decision or rule making, UNCTAD should aim at providing constructive approaches, as well as viewpoints, and at generating political impulses on matters within its purview, to be considered by these institutions in accordance with their decision making powers.⁸

These general principles establish a basis for complementarity between the United Nations and the WTO in the field of international trade. A first important expression of that complementarity arises in connection with the need to define the areas that can be brought under the scope of trade disciplines – the ‘frontiers’ of the WTO regime. The issue is becoming increasingly prominent in international debates, as the progress in the globalization of markets and production and in trade liberalization has focused attention on differences in national policies which are seen as potential distortions of free competition. The result is pressure for the harmonization of policy measures among countries and for the extension of multilateral trade disciplines into new areas in order to achieve a ‘level playing field’.⁹

This, however, depends on the willingness of member states to open themselves to the possibility of trade sanctions because of domestic policy choices. The difficulties involved are well exemplified by the issue of trade and labour standards, which has evoked fears among developing countries about disguised protectionism and about additional conditionalities. A similar concern has been raised in connection with the effort at bringing environmental considerations into multilateral trade disciplines. The general question has therefore come up of what are the limits to the inclusion in international trade disciplines of policy areas other than trade itself, and conversely, what issues are best dealt with through instruments other than international trade disciplines. The United Nations can offer a universal forum in which the question can be debated and consensus built both on general principles and on specific cases.

A second area in which the United Nations can be complementary to the WTO has to do with the groundwork needed to prepare the negotiation of further international trade agreements. While the

WTO will clearly be the forum where most of such negotiations will take place, the United Nations can carry out the identification and analytical exploration of the issues and policy options, as well as the building of consensus on the basic parameters of possible international agreements. With the comprehensiveness of its scope and its wide range of expertise – covering economic, social, political and environmental issues and embracing global, regional and national dimensions – the United Nations system as a whole can contribute to a common understanding of the issues involved and thus make essential contributions to the maturing of inter-governmental consideration of trade-related issues to the point where they can be fruitfully negotiated in the WTO. For the industrialized countries, this groundwork and consensus building function is performed by the OECD; developing countries and countries in transition do not have a corresponding forum and must rely on the United Nations for these purposes. The UN can further be the forum for the negotiation of guidelines and principles in areas where specific legally binding instruments are not regarded as appropriate.

This leads us to a third element of complementarity of the role of the WTO and the United Nations in the emerging system of international governance in trade. The United Nations has a specific role to play in providing a development perspective to international trade debates and negotiations. The Uruguay Round represented something of a reversal of the tendency in GATT to introduce a development orientation which had begun in the 1960s with the adoption of Part IV of the Agreement, dealing with trade and development, and had progressed through the creation of the Committee on Trade and Development, and the acceptance in the Tokyo Round of the principle of differential and more favourable treatment for developing countries. The WTO has removed a great deal of the flexibility previously enjoyed by developing countries, and reduced differential treatment essentially to longer time spans for the full implementation of the obligations agreed in the Uruguay Round. There is need, therefore, for a forum for the identification of the development aspects of major trade issues with a view to improving the understanding of member countries, particularly developing countries, and for the promotion of development objectives in current and future

⁸ UNCTAD, *A New Partnership for Development: The Cartagena Commitment*, Doc. TD(VII)/Misc.4, Geneva, 1992, paragraph 59.

⁹ UNCTAD, *New and Emerging Issues on the International Trade Agenda*, Doc. TD/B/EX(10)/CRP.1, Geneva, 21 April 1995.

negotiations. The United Nations can provide such a forum.

Technical assistance in the trade field

The United Nations, and UNCTAD in particular, can also contribute to international trade governance through providing technical assistance to developing countries and countries in transition to facilitate their integration in the international trading system, and to help them respond to the challenges stemming from the Uruguay Round as well as take advantage of the trading opportunities opened by it. This includes assistance to participate meaningfully in further negotiations, and more generally to design and implement appropriate international trade policies.

In this connection, UNCTAD has been active in such areas as human resource development and training; national capacity building and institutional infrastructure for trade competitiveness; trade efficiency; development of the services sector; formulation of national legislation and regulations for the implementation of the Uruguay Round agreements; and the provision of assistance for accession to the WTO. This work is carried out in close contact, and in some cases, in cooperation, with the WTO and the International Trade Centre, a joint UN/GATT organization.

A specific area of technical cooperation in which the United Nations can be particularly useful has to do with the expansion of regional trade and integration arrangements. UNCTAD has been requested by a large number of developing countries and countries in transition to assist them in defining their trade policies and strategies in this context, i.e. looking both at multilateral and regional options, and with the technical aspects of regional negotiations.

COMPLEMENTARITY AT WORK: TRADE AND THE ENVIRONMENT

A good example of the complementary nature of the functions of the United Nations at the WTO along the lines suggested above is in the field of trade and the environment.

Three intergovernmental bodies of the United Nations proper are concerned with the issue; they are the Commission on Sustainable Development, the Trade and Development Board of UNCTAD and the Governing Council of the United Nations Environment Programme, UNEP. The Commission on Sustainable Development has held three sessions, in all of which the relationship between trade and environment policies in the promotion of sustainable development has featured prominently. More specifically, the Commission has discussed product measures and market access, process standards and competitiveness, internalization of environmental externalities and trade, multilateral environmental agreements and trade policy, environmental factors as trading opportunities, and trade policies and the environment. As stated in the corresponding Decision of the Commission, 'each of these issues involves conceptual and empirical as well as policy questions. Ongoing work in different international organizations aims at clarifying these issues, through policy analysis and debate, and at deriving policy conclusions therefrom'.¹⁰

The Trade and Development Board has established an Ad Hoc Working Group on Trade, Environment and Development to examine, with a view to promoting sustainable development, the interlinkages between trade, environment and development and related policies, paying particular attention to the problems and special circumstances of the developing countries, including the least developed among them. The Group has explored market opportunities for environmentally friendly products, the effects of environmental policies, standards and regulations on market access and competitiveness, and trade, environment and development aspects of establishing and operating eco-labelling programmes.

Trade and environment issues are also considered by UNCTAD's Standing Committee on Commodities, including means by which the competitiveness of natural products with environmental advantages can be improved, and the manner in which prices of natural products and their synthetic competitors could reflect environmental costs. The Trade and Development Board itself has held deliberations

¹⁰ Commission on Sustainable Development, Third Session, 28 April 1995, Item 6, *General Discussion on Progress in the Implementation of Agenda 21 Focusing on Cross-Sectoral Issues and the Critical Elements of Sustainability*, Decision, Chapter 2, Trade, environment and sustainable development, paragraph 2.

on the impact of environment related policies on export competitiveness and market access.

UNEP's work in this area has covered legal, scientific and economic aspects of trade and environment links. This included analysis of multilateral environmental agreements and their relationship to trade rules; the relationship between environmental risk assessment and trade policy; the role of scientific evidence in trade-environment issues; the harmonization of assessment procedures; environmental reviews of trade policy disputes avoidance regimes; international environmental agreements and trade policy standards equivalency in relation to eco-labelling; and other areas. UNCTAD and UNEP, with the support of the United Nations Development Programme, UNDP, are carrying out a joint project on ten issues related to trade, environment and sustainable development.¹¹

Among the specialized agencies of the United Nations, FAO pursues trade, environment and sustainable development issues in the context of the work of its Intergovernmental Groups. Outside the United Nations, the Organization for Economic Cooperation and Development, OECD, has a wide-ranging work programme on trade and environment with a view to promoting fuller integration of trade and environmental policy making in national capitals; bridge gaps in understanding and communication between the trade and environmental communities; and contribute analysis and perspectives in support of related work carried out by other international organizations.¹²

Coordination of the work of the United Nations and its specialized agencies takes place through the Inter-Agency Committee on Sustainable Development. The UNCTAD secretariat is the Task Manager for Sustainable Development and Trade Issues and is in charge of preparing the regular reports of the United Nations Secretary-General to the Commission on Sustainable Development.

The work summarized above is both complementary and supplementary to that of the WTO. Following the decision on Trade and Environment adopted at the conclusion of the Uruguay Round negotiations in Marrakesh, the WTO established a Committee on Trade and Environment with a mandate to: (a) identify the relationship between trade measures and environmental measures in order to promote sustainable development; and (b) make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system.¹³ The United Nations, together with other organizations, has a role in dealing with environmental issues that have trade implications but which, in the view of governments, are best approached outside the disciplines of the international trade regime. The UN can also prepare the ground for the negotiation of trade and environment agreements in the WTO when governments are ready for it; and it can help developing countries and countries in transition design and implement policies in which trade and environment objectives are compatible and mutually reinforcing.

¹¹ They are: internalization; environmental standards; emerging trends in environmental policy making; eco-labelling and certification; the role of science; indicators of sustainable development; multilateral environmental agreements; additional financing and technology transfer; positive incentives to build compatibility between trade and environment; and capacity building. See United Nations Doc. E/CN.17/1994/CRP.2.

¹² United Nations Doc. E/CN.17/1995/12.

¹³ *Ibid.*