A brief review…

Evolution of international legal and institutional structures after WWII

- UN: Political cooperation and peace-keeping
- IMF: Cooperation in monetary (and financial) policy
- World Bank: Reconstruction and development
- ITO/GATT: Liberalization of trade
Overview

I. Institutional Framework of the WTO
   1. History
   2. Objectives and Functions
   3. Organization and Decision-Making

II. Disciplines of the WTO – GATT/GATS
   1. Most-Favored-Nation Treatment
   2. National Treatment

III. Dispute Settlement
   1. Principles
   2. Institutions
   3. Proceedings
1. From GATT to WTO

- Failure of the International Trade Organization (ITO) in 1948
- “Interim Solution”: General Agreement on Tariffs and Trade (GATT 1947)
  - Signed by 23 countries (effective as of January 1, 1948)
  - No formal organizational structure, but de facto operation as such
  - Just goods, no services
  - Continues to have effect as part of the GATT 1994
- Parallel negotiation rounds (1947-1994)

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1. From GATT to WTO

- 1947-94: 8 negotiation rounds → reduction of customs tariffs
- 1962-67: Kennedy round → anti-dumping measures
- 1973-79: Tokyo round → first non-tariff measures
- 1986-94: Uruguay round
  - Services (GATS), intellectual property (TRIPS), investment measures (TRIMS)
  - Creation of WTO, incl. dispute settlement mechanism
1. From GATT to WTO

WTO

- Marrakesh Agreement (signed on April 15, 1994)
- Started operations on January 1, 1995
- International intergovernmental organisation
- Headquarters in Geneva, Switzerland
- Official languages: English, French, Spanish

"Except as otherwise provided under this Agreement or the Multilateral Trade Agreements, the WTO shall be guided by decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947 and the bodies established in the framework of GATT 1947."

Art. XVI:1 Agreement Establishing the World Trade Organization
1. From GATT to WTO

- Past GATT practice has a bearing on (future) WTO conduct
- Adopted GATT Panel Reports are taken into account where relevant (albeit not technically binding)

What changed?

- More effective dispute settlement mechanism
- More integrated structure for administering all trade agreements
- Facilitated cooperation with other international organizations (e.g., IMF)
- Basis for a more viable and durable multilateral trading system
1. From GATT to WTO
Developments from 1995 - 2013

- 1996 Singapore
- 1998 Geneva
- 1999 Seattle
- 2001 Doha
- 2003 Cancún
- 2005 Hong Kong
- 2009 Geneva
- 2011 Geneva
- 2013 Bali (3-6 December)

2. Objectives and Functions
Objectives

“Recognizing that their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, (…).”

Preamble WTO Agreement
2. Objectives and Functions

Objectives

“(..) entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce.”

Preamble GATT 1994

Facilitation of trade by…

• …reducing tariffs and other trade barriers
• …eliminating discriminatory treatment in international trade relations
• …providing a rule-oriented trading environment (predictability)
2. Objectives and Functions

Functions – Art. III WTO Agreement

- Proving a legal framework for international trade relations
- Administering the legal framework (trade agreements)
- Implementing the legal framework
  - Settling of trade disputes between members
  - Review of national trade policies and practices
- Forum for trade negotiations
- Cooperation with IMF and WB
- Technical assistance to developing-country members

National trade policies are of international interest because...

- ...they may affect foreign producers, exporters and consumers
- ...they may be destructive for national prosperity
- ...they may produce (short-term) economic advantage at the expense of other economies (threat of beggar-thy-neighbor policies)
2. Objectives and Functions

National Trade Policy Instruments

- Tariffs (on imports and exports)
- Non-tariff barriers
  - Quantitative restrictions (bans, quotas, import licenses)
  - “Voluntary Export Restraints”
  - Administrative measures (e.g., rules of origin, customs formalities)
  - Subsidies (for production and export)
- Abuse of trade remedies (e.g., anti-dumping and countervailing measures)
- Discriminatory internal taxation or treatment
2. Objectives and Functions

Scope of WTO – GATT, GATS, TRIPS

- GATT
  - Trade in goods
- GATS
  - Trade in services
- TRIPS
  - Trade-related aspects of intellectual property rights

Scope of WTO – Trade in Goods

- General Agreement on Tariffs and Trade (GATT)
- Agreement on Agriculture (AoA)
- Agreement on Customs Valuation Methods
- Agreement on Preshipment Inspection
- Anti-Dumping Agreement
- Agreement on Import Licensing Procedures
- Sanitary and Phytosanitary Measures (SPS) Agreement
- Technical Barriers to Trade (TBT) Agreement
- Agreement on Safeguards
- Agreement on Rules of Origin
- Agreement on Trade-Related Investment Measures (TRIMs)
- Agreement on Subsidies and Countervailing Measures
2. Objectives and Functions

Trade in Goods – Commercial Relevance

- Main part of international trade at the time of GATT formation
- Still highest percentage in trade movements
- Tariff reductions as the GATT’s major success
- Cause for most dispute settlement proceedings

Scope of WTO – Trade in Services

- General Agreement on Trade in Services (GATS)
- Special service sectors (Annexes)
  - Financial services
  - Telecommunications
  - Transport services
2. Objectives and Functions
Trade in Services – Commercial Relevance

- GATS entered into force in January 1995
- Services make a large share of world GDP…
- …but a relatively modest share of world trade

2. Objectives and Functions
Scope of WTO – Intellectual Property Rights

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), including…
  - Patents
  - Trademarks
  - Designs
  - Copyrights
  - Business secrets
- Minimum level of harmonized IP protection
3. Organization and Decision-Making

Legal Status

• Art. VIII WTO Agreement
  – Legal personality, Art. VIII:1
  – Privileges and immunities similar to those applicable to specialized UN agencies, Art. VIII:4 (WTO ≠ specialized UN agency)

• Headquarters agreement with CH

Membership

• Quasi-universal: 159 members (accounting for approx. 95% of world trade)
  – "Original membership", Art XI WTO Agreement (until March 1997)
  – Acceded membership, Art. XII WTO Agreement

• All major trading powers and most developing countries
• Not only States, but also separate customs territories
• Can a member be expelled from the WTO?
3. Organization and Decision-Making
Membership – Equal treatment of all members?

“Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development, (…).”

Preamble WTO Agreement
3. Organization and Decision-Making
Membership – Accession process

- "Price of accession" (tariff concessions, other commitments)
- Mandatory acceptance of all multilateral agreements (Annexes 1-3 WTO Agreement) → "single undertaking"
- Voluntary acceptance of plurilateral agreements (Annex 4 WTO Agreement)
- Consistency of national trade regime with WTO framework (at present and in the future)
3. Organization and Decision-Making

- Ministerial Conference
- General Council
- Dispute Settlement Body
- Trade Policy Review Body
- Specialized Councils
  - Council for Trade in Goods (GATT)
  - Council for Trade in Services (GATS)
  - Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- Committees, Working Parties, Trade Negotiations Committee
- Secretariat, Director-General
3. Organization and Decision-Making

Decision-Making – Rule and Exception

• Rule: Decision-making by consensus (continued from GATT 1947)
  – No formal objection
  – Each member has veto power

• Exception: Decision-making by majority vote
  – Each member has one vote

• Voting power is independent of a member’s contribution to international trade or the WTO budget

3. Organization and Decision-Making

Decision-Making – Special Procedures

• Authoritative interpretations (Art. IX:2 WTO Agreement)
• Granting of waivers (Art. IX:3 WTO Agreement)
• Amendments (Art. X WTO Agreement)
• Accession of new members (Art. XII:2 WTO Agreement)
• Annual budget and financial regulations (Art. VII:3 WTO Agreement)