



Sonja Bugdahn

Reforming the World Trade Organization  
– a Choice between Effectiveness  
and Equity?

FÖV 28  
Discussion Papers

Sonja Bugdahn

Reforming the World Trade Organization  
– a Choice between Effectiveness  
and Equity?

**FÖV** **28**  
**Discussion Papers**

Deutsches Forschungsinstitut für öffentliche Verwaltung Speyer

2006

An earlier version of this essay is published in  
David J. Eaton (ed.), *The End of Sovereignty? – A Transatlantic Perspective*,  
Transatlantic Public Policy Series, Vol. 2 (Münster: LIT Verlag, 2006)

Nicht im Buchhandel erhältlich

Schutzgebühr: € 5,-

Bezug: Deutsches Forschungsinstitut  
für öffentliche Verwaltung Speyer  
Postfach 14 09  
67324 Speyer

<http://www.foev-speyer.de>

**Dr. Sonja Bugdahn**

Sektionsreferentin der Sektion III „Verwaltungshandeln zwischen öffentlichen  
und privaten Akteuren“ und Bearbeiterin des Projekts  
“Die Welthandelsorganisation – Institutionelle Reform und Entwicklung”  
am Deutschen Forschungsinstitut für öffentliche Verwaltung Speyer

## Contents

Introduction .....	1
The World Trade Organization: History, Purpose and Structure ...	1
The Reform Debate .....	7
Conflicts between Effectiveness and Equity .....	13
<i>Competencies of the Secretariat</i> .....	13
<i>Formal and Informal Procedures</i> .....	14
<i>Free Trade versus Environmental and Health Standards</i> .....	17
Conflicts between different Types of Equity .....	20
<i>The negotiation of WTO Agreements on Labor and Environment</i> .....	20
<i>Participation of NGOs</i> .....	22
The Lack of Equity and Effectiveness: A Win-Win Situation? .....	27
Summary .....	29
Adademic Concepts: A Rebalancing of Effectiveness, Equity and Legitimacy .....	30
Organizational Theory: A New Analytical Framework for WTO Reform .....	32
Conclusions .....	37
References .....	38



## **Introduction**

The aim of this paper is to provide an overview of the current reform debate surrounding the World Trade Organization and to present a new analytical framework. It first offers a brief description of the history, current structure and tasks of the World Trade Organization. Effectiveness, equity and legitimacy are identified as three central categories in the reform debate. Reform issues and proposals can be structured along lines of effectiveness and equity: the first type aims at ensuring the effectiveness of the organization, but may compromise equity. The second type of proposals is marked by additional conflicts between different types of equity and finally there are proposals that address a lack of effectiveness and equity. This paper analyzes the academic and political debate on these issues, including the positions by governmental and non-governmental actors. For reasons of analytical simplification, the large and diverse group of WTO member states is collapsed into the three actors the EU, US and developing countries. The position of non-governmental organizations, who have been initiators of reform debates in many cases, is also summarized. Finally, specific academic reform concepts are analyzed with regard to how they achieve a balance between effectiveness and equity and how they link this back to legitimacy.

The political and academic debate on the WTO, however, continues to suffer from various shortcomings, including a lack of thorough rigorous empirical research. In the last section I discuss which analytical framework might be used to guide empirical research on the WTO. Organizational theory is found to offer more useful concepts than traditional approaches from International Relations.

### **The World Trade Organization: History, Purpose and Structure**

The Marrakesh Agreement created the World Trade Organization in 1995 to be a new international organization with legal personality, and endowed it with decision-making processes, an institutional struc-

ture and several distinctive functions.<sup>1</sup> The organization is not a United Nations organ. Although the WTO is comparatively young, it benefits from experience with trade liberalization and dispute settlement under the GATT regime, which was established in 1947. The preamble of the Marrakesh Agreements lists the improvement of living standards and sustainable development as objectives of the new organization; goals, however, the WTO may exclusively pursue through trade liberalization.

The WTO is intended to facilitate the implementation and administration and further the objectives of the Marrakesh and other multilateral trade agreements. In particular, the WTO is to provide a forum for negotiations among its members (Art. III (2) of the Marrakesh Agreement) and administer the Dispute Settlement Mechanism (Art. III (3)) and the Trade Policy Review Mechanism (Art. III (4)).

The vast proportion of GATT/WTO law has been legislated in trade negotiating rounds.<sup>2</sup> The Uruguay Round that marked the transition from GATT to WTO was concluded by the so-called “single undertaking approach”. The Marrakesh Agreement establishing the WTO contained, as integral part, the new General Agreement on Trade and Tariffs GATT 1994 (the GATT 1947 was terminated), the GATS (General Agreement on Trade in Services), the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement and a number of other agreements.<sup>3</sup> Membership of the WTO therefore automatically implies an obligation to uphold all multilateral trade agreements. An exception are the two remaining plurilateral agreements that had a narrower group of signatories, the Agreement on Trade in Civil Aircraft and the Agreement on Government Procurement.<sup>4</sup>

- 
- 1 *M. Matsushita/T. Schoenbaum/P. C. Mavroidis*, *The World Trade Organization: Law, Practice, and Policy* (Oxford: Oxford University Press, 2003), p. 14.
  - 2 *R. Steinberg*, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, *International Organization*, vol. 56, no. 2 (2002), pp. 339-374, p. 350.
  - 3 *Ibid*, p. 360.
  - 4 WTO (World Trade Organization), *Understanding the WTO*, 3rd Edition, September 2003. Online available: [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/understanding\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf), p. 52.

In 1947 the 23 founding GATT members were mostly from industrialized countries, while the accession of developing countries began in the late fifties. Since the birth of the WTO in 1995, membership has grown rapidly and reached 148 member countries in 2004. This is despite the fact that accession to the WTO is a difficult and time-consuming process since countries may join the WTO only after negotiating terms of accession and in practice, a consensus of all members is required.<sup>5</sup> Developing countries now comprise about three quarters of the total WTO membership.<sup>6</sup> The increase in membership at the WTO is largely attributed to an increase in developing country membership and countries such as Brazil and India play an increasingly important role at the WTO.<sup>7</sup> It should be noted that the European Union is a member of the WTO together with all of its member states.

The WTO has two governing bodies, the Ministerial Conference and the General Council. The Ministerial Conference is composed of representatives of all WTO members and meets at least once every two years. Between these meetings, the General Council is the chief decision-making and policy-body.<sup>8</sup> It is characterized as the collective voice of the member governments and is not an independent decision-making institution.<sup>9</sup> The WTO has a secretariat with 550 staff members and a Director General, but officially the secretariat's role is mostly limited to administrative and technical support for other WTO bodies.<sup>10</sup> Generally speaking, the WTO is perceived as a "member-driven" organization with all councils and committees consisting of full membership. Decisions have to be regularly taken through consensus and this promotes the use of informal mechanism for reaching decisions, such as smaller meetings, which may also take place outside the WTO.<sup>11</sup>

---

5 *M. Matsushita/T. Schoenbaum/P. C. Mavroidis* (Fn. 1), p. 11.

6 World Trade Organization (Fn. 4), p. 109.

7 *D. Mc Rae*, What Is the Future of the WTO Dispute Settlement?, *Journal of International Economic Law*, vol. 7, no. 1 (2004), pp. 3-21, p. 15.

8 *M. Matsushita/T. Schoenbaum/P. C. Mavroidis* (Fn. 1), p. 10.

9 *R. Howse*, The Legitimacy of the World Trade Organization, in J.-M. Coicaud/V. Heiskanen (eds.), *The Legitimacy of International Organizations* (Tokyo; New York: United Nations University Press, 2001), pp. 355-407, p. 359.

10 WTO (Fn. 4), p. 107.

11 *Ibid*, p. 104.

The Dispute Settlement Mechanism provides an institutionalized process for the settlement of disputes between WTO member states. If a member state believes that another member is violating its commitments made under the trade agreements, it can file suit in the WTO with a dispute settlement body (DSB). The DSB establishes ad hoc panels for each case that deliberate in secret. The decision of a dispute settlement panel is binding, but the losing party can file an appeal with a standing Appellate Body. If the decision establishes that a member state has violated its commitments, the defendant is ordered to change its action. If the member state refuses, it faces economic sanctions by the winning party.<sup>12</sup> The Dispute Settlement Mechanism has been identified as an example for how international organizations combine elements of centralization and decentralization. On one hand, the WTO has centralized elements for judging trade disputes. On the other hand, its enforcement is decentralized since the organization cannot impose any sanctions, but it can authorize individual members to punish violations of trade law.<sup>13</sup> Yet, the decentralization of enforcement has not been extended so far as to enable private individuals or corporations to take member states to domestic courts for alleged violation of trade agreements.

While the WTO has no agreement specifically dealing with the environment, trade ministers from participating countries created the Trade and Environment Committee in the WTO at the end of the Uruguay Round. It was designed to study the relationship between trade and the environment and make recommendations about any changes that might be needed in trade agreements.<sup>14</sup>

Trade policies under GATT have almost universally been considered as successful in so far as tariffs were significantly reduced and trade liberalization thereby pushed forward.<sup>15</sup> However, many NGOs fundamentally doubt that trade liberalization alone can achieve sustainable development and raise the standards of living as promised in

---

12 *O. Kirshner*, *Triumph of Globalism: American Trade Politics*, *Political Science Quarterly*, vol. 120, no. 3 (2005), pp. 479-503, p. 496 f.

13 *B. Koremenos/C. Lipson/D. Snidal*, *The Rational Design of International Institutions*, *International Organization*, vol. 55, no. 4 (2001), pp. 761-799, p. 772.

14 WTO (Fn. 4), p. 65.

15 WTO (Fn. 4), p. 17.

the preamble of the Marrakesh Agreement. Trade liberalization is in many respects considered to harm vulnerable groups and the delivery of public goods. Several NGOs believe that a number of the rules developed in the WTO were “against the interests of developing countries and detrimental to the rights of local communities, small farmers, workers, consumers, women, indigenous people, and to the environment”.<sup>16</sup> Environmentalists argue that trade liberalization damages the environment by encouraging economic growth. Moreover the drive for profit encourages a relaxation of environmental protection, leading to a “race to the bottom”.<sup>17</sup>

A common NGO demand is therefore that no new trade liberalization measures should be agreed upon before the social and environmental impact of former trade liberalization rounds have been evaluated carefully under the full consultation of NGOs.<sup>18</sup> Another important objective of NGOs is to eliminate certain topics (such as water, life forms) from WTO coverage that are regarded as closely linked to human rights such as the “basic human right to food security” or the “right to universal access to basic services”.<sup>19</sup> Some groups argue that an international trade organization has to be brought back under the

---

16 The Third World Network, Oxfam International, Public Services International, WWF International, The Center for International Environmental Law, Focus on the Global South, The Institute for Agriculture and Trade Policy, The Africa Trade Network, The International Gender and Trade Network and The Tebtebba International Centre for Indigenous Peoples’ Rights 2003, Memorandum on the Need to Improve Internal Transparency and Participation in the WTO. Online available: <http://www.twinside.org.sg/title/memo2.doc>.

17 R. O’Brien/A.-M. Goetz/J. A. Scholte/M. Williams, *Multilateral Economic Institutions and Global Social Movements* (Cambridge: Cambridge University Press, 2000), p. 147.

18 L. Wallach/M. Sforza (Public Citizen’s Global Trade Watch), *Whose Trade Organization? Corporate Globalization and the Erosion of Democracy. An Assessment of the World Trade Organization* (Washington: Public Citizen Foundation, 1999), p. 218; S. George, *WTO: Demokratie statt Drakula. Für ein gerechtes Welthandelssystem* (Hamburg: VSA, 2002), p. 89; see also C. George/C. Kirkpatrick, *Putting the Doha Principles into Practice: The Role of Sustainability Impact Assessment*, in H. Katrak/R. Strange (eds.), *The WTO and Developing Countries* (Chippenham & Eastbourne: Rowe, 2004), pp. 315-338.

19 L. Wallach/M. Sforza (Fn. 18), p. 216/219 ff.

UN umbrella, and that the scope of its competencies has to “be reduced in favor of more legitimate UN institutions”.<sup>20</sup>

The WTO faces enormous problems in launching and concluding new trade rounds. Dissatisfaction of NGOs became evident in 1999, when negotiations for launching a new trade round failed in Seattle. On that occasion, several thousand demonstrators from over 1,200 NGOs comprising environmental groups and labor unions to human right activists and development lobbies were in the streets. However, views differ on whether the demonstrations were a direct cause of the failure of negotiations. Another reason was the disappointment of developing countries with the results of trade liberalization as agreed to in the Uruguay Round and the unwillingness of industrialized states to listen to their concerns.<sup>21</sup> This led to the adoption of the Doha Development Agenda in 2001 at the Ministerial Conference in Doha. Promises were made that in the new round of negotiations particular attention be paid to the needs and requirements of developing countries.

The next Ministerial Conference in 2003 in Cancún collapsed again without any results. The reason was that developing countries aimed at achieving trade liberalization in agriculture through a substantial reduction in subsidies, to which the EU and the US did not consent. Instead, the EU and the US tried to negotiate new trade-related agreements on the so-called Singapore Issues: competition, investment, procurement and trade facilitation. An interesting development in Cancún was a rally of most NGOs behind developing countries and their agendas.<sup>22</sup> The General Council in Geneva reached a consensus on how to continue with negotiations of the Doha Round in July 2004. WTO member states agreed on a phasing out of all agricultural export subsidies, without, however, fixing a date.

- 
- 20 Greenpeace and Friends of the Earth Europe, Submission to Trade, Foreign Affairs and Environment Ministers, Members of the Committee 133, the European Commission and European Parliament. *After Cancún: The Way Forward* (2003). Online available: <http://www.foeeurope.org/publications/2003/AfterCancun.pdf>.
- 21 *D. K. Das*, *Debacle at Seattle: The Way the Cookie Crumbled*, *Journal of World Trade*, vol. 34, no. 5 (2000), pp. 181-201, p. 188.
- 22 *S. Cho*, *A Bridge Too Far: The Fall of the Fifth WTO Ministerial Conference in Cancún and the Future of Trade Constitution*, *Journal of International Economic Law*, vol. 7, no. 2 (2004), pp. 219-244, p. 235.

## The Reform Debate

Many political actors now regard procedural and structural reforms of the WTO as necessary to ensure the functioning of the WTO. The then Trade Commissioner Pascal Lamy – who became Director General of the WTO in September 2005 – concluded, after the collapse of the Ministerial Conference in Cancún, that the structures and decision-making procedures at the WTO had to be reformed if trade negotiations were to be successful in future.<sup>23</sup>

Any reform of the WTO that requires the amendment of agreements on which the organization is based are difficult: Some central provisions of the Marrakesh Agreement can be only amended unanimously (Art. X (2)). The same applies to the Understanding on Rules and Procedures governing the Settlement of Disputes (Art. X(8)). Other amendments to the Marrakesh Agreement have to be agreed to by two thirds of the members (Article X (3) and (4)). If the amendments were to alter the rights and obligations of members they may only take effect for those members who have accepted them. With a three-fourth vote the Ministerial Conference can decide that all members must accept an amendment. Recalcitrant members must either withdraw from the WTO or remain a member with the consent of the Ministerial Conference.<sup>24</sup>

Currently, reform efforts at the WTO are made at two levels: First, the 1994 Marrakesh Ministerial Conference mandated WTO member governments to conduct a review of the Dispute Settlement Understanding by 1999. However, this first attempt to reform the Dispute Settlement Mechanism failed because member state governments, while aiming at improvements, could not agree on reforms. The Doha Declaration 2001 mandated negotiations on reforming the Dispute Settlement with the aim of concluding an agreement by May 2003. Negotiations have been based on the work done so far and on new proposals by Member States<sup>25</sup>, but as of yet an agreement could not

---

23 See S. Cho (Fn. 22), p. 233; for the EU view see P. Lamy, *The Future of WTO*. Speech Delivered to the European Parliament Kangaroo Group, (27 January 2004). Online available: [http://europa.eu.int/comm/archives/commission\\_1999\\_2004/lamy/speeches\\_articles/spla207\\_en.htm](http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/spla207_en.htm).

24 M. Matsushita/Schoenbaum/P. C. Mavroidis (Fn. 1), p. 14.

25 WTO (Fn. 4), p. 87.

be reached. Second, the former WTO Director General Supachai set up a Consultative Board of eight “eminent persons” in June 2002 who delivered the so-called “Sutherland report” on institutional reform of the WTO at the end of 2004.<sup>26</sup>

Academic analysts often use the lack of legitimacy of the World Trade Organization as a starting point.<sup>27</sup> The concept of legitimacy is situated on the border between empirical and normative social science:<sup>28</sup> distinctions are made between “moral” and “empirical legitimacy”<sup>29</sup>, “formal (positivistic)” and “social legitimacy”<sup>30</sup>, “prescriptive” and “descriptive” approaches<sup>31</sup> or “normative” and “descriptive” perspectives on legitimacy.<sup>32</sup>

From a normative point of view, legitimacy can be defined as a form of “moral power to author legal, institutional or conventional rights and duties, powers and liabilities”.<sup>33</sup> Following Max Weber, much contemporary social science uses the term legitimacy in its empirical sense. It then refers to the “beliefs of persons about the proper exer-

- 
- 26 Sutherland report, Consultative Board, *The Future of the WTO: Addressing Institutional Challenges in the New Millennium*. Report by the Consultative Board to the Director General Supachai Panitchpakdi, Authored by *P. Sutherland/J. Bhagwati/K. Botchwey/N. FitzGerald/K. Hamada/J. H. Jackson/C. Lafer/T. de Montbrial*, World Trade Organization (2004).
- 27 *Howse* (Fn. 9). *D. Esty*, *The World Trade Organization’s Legitimacy Crisis*, *World Trade Review*, vol. 1, no. 1 (2002), pp. 7-22.
- 28 *J. Steffek*, *The Legitimation of International Governance: A Discourse Approach*, *European Journal of International Relations*, vol. 9, no. 2 (2003), pp. 249-275, p. 251.
- 29 *A. I. Applbaum*, *Culture, Identity and Legitimacy*, in *J. S. Nye/J. D. Donahue* (eds.), *Governance in a Globalizing World* (Washington: Brookings Institution Press, 2000), pp. 319-329, p. 324.
- 30 *R. Howse* (Fn. 9), p. 361; *R. Howse*, *Adjudicative Legitimacy and Treaty Interpretation in International Trade Law: The Early Years of WTO Jurisprudence*, in *J. H. H. Weiler* (ed.), *The EU, the WTO and the NAFTA: Towards a Common Law of International Trade?* (Oxford: Oxford University Press, 2000), pp. 35-69, p. 37.
- 31 *J. Steffek* (Fn. 28), p. 252.
- 32 *M. Zürn*, *Global Governance and Legitimacy Problems*, *Government and Opposition*, vol. 39, no. 2 (2004), pp. 260-287, p. 260.
- 33 *A. I. Applbaum* (Fn. 29), p. 327.

cise of authority”.<sup>34</sup> Legitimacy in a normative and empirical sense can be based on two elements: input (procedural) legitimacy and output (substantive) legitimacy.<sup>35</sup>

There is no agreement among scholars as to whether the legitimacy of international organizations in general and the legitimacy of the WTO in particular is based on a solid normative foundation. Traditionally, the legitimacy of international organizations has been based on the consent of sovereign states.<sup>36</sup> Following Howse, the law of the WTO has formal legitimacy in so far as it has been ratified according to the internal constitutional arrangements of WTO member countries. Such choices might not have been based on informed democratic debate and deliberation, but it could be argued that these were matters related only to internal problems for WTO members and not for the WTO system itself.<sup>37</sup> However, Zürn argues that there is “broad agreement” that the functioning of international institutions such as the WTO or the UN fails to meet democratic standards, due to the lack of identifiable decision-makers directly accountable for wrong decisions and the lack of transparency.<sup>38</sup> Others stress that the use of measures such as “democratic deficit” based on domestic analogy is not appropriate for judging the democratic legitimacy of international organizations and that appropriate normative theory for judging global institutions has yet to be developed.<sup>39</sup>

As regards legitimacy from an empirical perspective, it is clear that a variety of international organizations including the WTO now experience the consequences of the empirical lack of legitimacy in form of – sometimes violent – protest and also opposition in domestic parlia-

---

34 *Ibid*, p. 325.

35 R. O. Keohane/J. S. Nye, Introduction, in J. S. Nye/J. D. Donahue (eds.), *Governance in a Globalizing World* (Washington: Brookings Institution Press, 2000), pp. 1-41, p. 34.

36 J.-M. Coicaud, Reflections on International Organisations and International Legitimacy: Constraints, Pathologies, and Possibilities, *International Social Science Journal*, vol. 53, no. 170 (2001), pp. 523-536. p. 523; Howse (Fn. 9), p. 356.

37 R. Howse (Fn. 30), p. 37.

38 M. Zürn (Fn. 32), p. 260.

39 R. O. Keohane/J. S. Nye (Fn. 35), p. 35.

ments.<sup>40</sup> Establishing a new base for social legitimacy of the dispute settlement mechanism has been characterized as an urgent task.<sup>41</sup>

The following discussion draws on Porter, who analyzed reforms of the global trading system under the headings efficiency, equity and legitimacy. Porter portrays the three issues as neatly separate items, based on the narrow conception of efficiency as referring only to substantive outcomes and of legitimacy as referring only to procedural issues. Concerns with equity may assume three different forms: There is a concern with equity between nations, equity within nations and equity between economic and non-economic objectives.<sup>42</sup> The first and the third concerns seem particularly relevant in the context of the global trading system. There is a feeling on the part of many developing nations that they are receiving a disproportionately small share of the benefits of a more liberal global trading system. Moreover, the tension between economic and non-economic objectives has clearly grown. The effects of trade agreements on environment and labor standards and the potential of trade agreements to enforce these standards continue to be discussed intensively.<sup>43</sup>

The approach developed by Porter offers a useful starting point for an analysis of WTO reform issues, although some adaptations are necessary: First, it seems more appropriate to replace efficiency with effectiveness. While effectiveness consists in the achievement of intended objectives, efficiency is concerned with the resource input required to achieve these objectives.<sup>44</sup> The WTO, however, has a comparatively small budget and has not yet been criticized for wasting resources. Therefore, a focus on effectiveness seems better suited. Second, it is necessary to adopt a broader understanding of effectiveness, equity and legitimacy as all referring to procedure and substance. Fi-

---

40 *M. Zürn* (Fn. 32), p. 261.

41 *R. Howse* (Fn. 30), p. 40.

42 *R. B. Porter*, *Efficiency, Equity and Legitimacy: The Global Trading System in the Twenty-First Century*, in *R. B. Porter/P. Sauvé/A. Subramanian/A. Beviglia Zampetti* (eds.), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium* (Washington D.C.: Brookings Institution Press, 2001), pp. 3-15, p. 8 f.

43 *Ibid.*

44 *H. Heinelt*, *Civic Perspectives on a Democratic Transformation of the EU*, in *J. R. Grote/B. Gbikpi*, (eds.), *Participatory Governance: Political and Societal Implications* (Opladen: Leske + Budrich, 2002), pp. 97-120, p. 113.

nally, attention should be focussed on possible conflicts and linkages between effectiveness, equity and legitimacy.

Legitimacy understood from an empirical perspective can be derived from effectiveness and/or from equity, with different constituencies likely to place more emphasis on the one versus the other. Similarly, Kahler<sup>45</sup> identifies two perspectives on the relative importance of input and output for establishing the legitimacy of global economic multilateral institutions: For those who view these institutions as “centerpieces in an emerging global polity”, principles and processes – in particular the participation of stakeholders – are of central importance. By contrast, those who conceptualize the WTO as a type of specialized regulatory agency having powers that have been delegated to it, view the effectiveness of these organizations in advancing interests of governments as a central criterion for judging its legitimacy.<sup>46</sup> However, it is misleading to analyze the reform debate on the WTO by juxtaposing actors that derive legitimacy from input (procedures) with actors that derive legitimacy from output. Those who support the increased participation of NGOs and a better representation of developing countries are unlikely to pursue this as an end in itself. Rather, they expect increased participation to create outputs in terms of substantive decisions, which better reflect equity (for instance developing country, environmental or social) concerns. Equity thus becomes a matter of procedure and of substance. The more an organization is associated with initiatives perceived as favoring one clientele over another, the more the legitimacy of its policies is under stress.<sup>47</sup>

While both effectiveness and equity can be linked to legitimacy, the associated requirements are not necessarily harmonious. This has been generally discussed with regard to participatory structures and procedures. Robert Dahl has characterized the conflictual relationship between citizen participation and system effectiveness as the “democratic dilemma”.<sup>48</sup> From this perspective, governability both at the in-

---

45 *M. Kahler*, *Defining Accountability Up: The Global Economic Multilaterals, Government and Opposition*, vol. 39, no. 2 (2004), pp. 132-158, p. 136.

46 *M. Kahler* (Fn. 45), p. 135 f.

47 *J.-M. Coicaud* (Fn. 36), p. 527.

48 *R. A. Dahl*, *A Democratic Dilemma. System Effectiveness Versus Citizen Participation*, *Political Science Quarterly*, vol. 10, no. 1 (1994), pp. 23-34; *Y.-C. Xu/P. Weller*, *The Governance of World Trade: International Civil Ser-*

ternational level and within society is secured either at the cost of abandoning citizen participation or by dramatically reducing it. Others such as Lindblom<sup>49</sup> have argued that citizen participation confers legitimacy on outcomes which is a precondition for effective governance. Policies viewed as illegitimate are not complied with.<sup>50</sup>

WTO reform issues are best grouped into three different areas; the first one is marked by conflicts between effectiveness and equity. In the second area additional conflicts exist between different types of equity. In a third reform area, a combined lack of effectiveness and equity offers opportunities for reform.

The first type of practices or reform proposals aims at ensuring the effectiveness of the organization. For instance, informal procedures can guarantee that decisions are reached and the Dispute Settlement Mechanism might favor free trade over environmental agreements. Equity could, however, be compromised if certain WTO members or certain interests other than free trade are excluded. Similarly, fears exist with regard to certain reform proposals: If the role of the Secretariat is strengthened with the aim of increasing the effectiveness of the WTO, equity in terms of developing countries' interests might be compromised.

The second type of reform issues is also marked by conflicts between effectiveness and equity, but in addition there are conflicts between different types of equity. Scholars and practitioners dispute whether the WTO is able to enforce environmental and labor standards and whether this new task would compromise the enforcement of trade liberalization. Similarly, it is unclear whether enhanced NGO participation would further undermine the effectiveness of WTO decision-making. Also, the conclusion of WTO Agreements on Environment and Labour and the increased participation of NGOs might increase one type of equity at the expense of another: While it might privilege environmental and labour interests, the interests of developing countries might be set at a further disadvantage.

---

vants and the GATT/WTO (Cheltenham; Northampton: Edward Elgar, 2004), p. 7.

49 C. Lindblom, *The Intelligence of Democracy. Decision Making through Mutual Adjustments* (New York: 1965).

50 H. Heinelt (Fn. 44), p. 97.

Some reform proposals address a combined lack of equity and effectiveness. It is argued that the developing countries in contrast to industrialized countries have not been able to participate effectively in WTO negotiations and to implement WTO agreements. Moreover, their access to the Dispute Settlement Mechanism has been impeded by the fact that this offers too few benefits and too many costs for them. Since the lack of equal participation in these cases simultaneously damages the effectiveness of the WTO, it should be easier to reach conclusions in this area. The agreement reached in Doha on capacity-building points in that direction.

## **Conflicts between Effectiveness and Equity**

### *Competencies of the Secretariat*

A central institution of the WTO is the so-called Secretariat, which compared to other international organizations disposes of few powers and few resources.<sup>51</sup> The WTO is considered a member-driven organization and all decisions are to be taken by members. After the Seattle failure, the EU argued that the role of the WTO Secretariat should be strengthened and that its resources should be increased.<sup>52</sup> Following the failure of Cancún, the EU reemphasized this point. The then EU Trade Commissioner, Lamy, raised the question as to whether the Secretariat should remain “basically a note taker” or be given “a mandate required for some thinking and initiatives independent from member states”. In other words, the EU suggested that the WTO Secretariat be given the right to co-initiation. The WTO would thereby become more of a supranational and less of a member-driven organization. Lamy also portrayed the strengthening of the Director General’s powers as inevitable given the large increase in WTO membership.<sup>53</sup>

---

51 R. Blackhurst, *The Capacity of the WTO to Fulfill Its Mandate*, in A. Krueger (ed.) *The WTO as International Organization* (Chicago: Chicago University Press, 2000), pp. 31-47, p. 41.

52 S. Rudisch, *Die institutionelle Struktur der Welthandelsorganisation (WTO): Reformüberlegungen*, in *Arbeitspapiere aus dem Institut für Wirtschaftsrecht*, Martin-Luther-Universität Halle Wittenberg, 2002, p. 19 ff.

53 P. Lamy (Fn. 23).

This proposal is unlikely to find much favor among developing countries and those NGOs that support them. NGOs insist that the WTO Secretariat should maintain a position of strict neutrality.<sup>54</sup> Even now the “alleged neutrality” of the WTO Secretariat is viewed with some suspicion, because the WTO Secretariat is staffed primarily with civil servants from industrialized countries. Therefore the Secretariat is suspected of supporting the interests of industrialized countries at the cost of developing countries.

After seven years of existence, the WTO Secretariat has not changed much from the old GATT days, when it clearly catered to the needs of the developed countries and was dubbed the “rich man’s club”.<sup>55</sup>

Some experiences with the WTO Secretariat seem to support this view. For example, the former Director General Michael Moore openly supported negotiation of the Singapore issues even though a majority of WTO Member States – in particular developing countries – was clearly opposed to it.<sup>56</sup>

The Sutherland report 2004 argued that there should be a “clearer – though always careful – lead on policy issues”, which should emerge from the Secretariat. More resources would be needed in the future. The General Council was supposed to spell out the “powers and duties” of the Director General to provide it with a defined role independently of political moods of the member states.<sup>57</sup>

### *Formal and Informal Procedures*

In principle, as mentioned above, all decisions at the WTO are made under the consensus of all member states. Consensus was common

---

54 Third World Network et al. (Fn. 16); Institute for Agriculture and Trade Policy (IATP), WTO Decision-Making: A Broken Process. WTO Cancun Series Paper No. 4 (2003). Online available <http://www.tradeobservatory.org/library.cfm?RefID=25941>.

55 *F. Jawara/A. Kwa*, Behind the Scenes at the WTO: The Real World of International Trade Negotiations (London, New York: Zed Books in association with Focus on the Global South, 2003), p. 215.

56 *Ibid*, p. 274. Third World Network et al. (Fn. 16).

57 Sutherland report (Fn. 26), p. 74 ff.

practice under GATT, but when discussions about the design of the WTO started, the initial US government position considered consensus decision-making in an organization with an expected membership of more than 120 too cumbersome. Instead the US proposed making decisions under a majority rule or creating an Executive Committee composed of the eighteen largest trading nations. However, the EU persuaded the US to concede to maintaining the consensus rule. One of the arguments was that legislative outcomes achieved in a consensus-based system might enjoy more legitimacy than those from a weighted or majority voting system.<sup>58</sup>

The informal decision-making procedures at the WTO were not as inclusive as the formal consensus-rule suggested. Issues of equity became increasingly prominent at the Ministerial Conference in Seattle in 1999. At that time, a number of developing countries voiced their concerns about being excluded from the decision-making procedure of the WTO. The impression in Seattle was that a selected number of industrialized countries and a number of “cherry-picked developing countries” had been called together in an exclusive Green Room meeting to pull together a declaration that all members would be asked to accept on the next day.<sup>59</sup>

Since Seattle, more attention has been paid to procedures operating at the WTO, and a number of problematic practices have been identified. In 2002, a group of 15 developing countries issued a paper with proposals on how to manage the preparation and negotiations of the Ministerial conferences. However, a group of industrialized countries, including Mexico and China, insisted that the process remain more flexible and that no reforms be introduced before Cancún.<sup>60</sup>

Many NGOs support the claim of developing countries for reforming WTO negotiation procedures. In the run-up to Cancún, NGOs such as Oxfam funded studies on WTO decision-making<sup>61</sup> and signed memoranda analyzing the prevailing negotiation practices and asserting a number of demands, the most important one being that in the preparation of a Ministerial Conference all meetings should be official

---

58 *R. Steinberg* (Fn. 2), p. 365.

59 *D. K. Das* (Fn. 21), p. 191.

60 Institute for Agriculture and Trade Policy (Fn. 54).

61 *F. Jawara/A. Kwa* (Fn. 55).

and open to all members.<sup>62</sup> Lack of effectiveness at the WTO was linked to a lack of equity, since slow progress of trade negotiations after Doha was found to be “in large part linked to the non-transparent and undemocratic decision-making processes in the WTO”.<sup>63</sup>

US Trade Representative Zoellick’s answer to the failure of Cancún clearly went into the opposite direction: He proposed more informal negotiations in the member states capitals.<sup>64</sup> By contrast, the EU suggested the possible creation of a Consultative Group with representatives reflecting the diverse membership of the WTO. It recognized the failure of the standard mixture of formal sessions punctuated by informal restricted negotiating sessions (“Green Rooms”) to provide an effective negotiating environment. A Consultative Group was characterized “as a good middle way between formal meetings of 148 delegations and the informal Green Room processes”.<sup>65</sup>

The 2004 Sutherland report endorsed the idea of a Consultative Group. It proposed that a senior officials’ consultative body chaired and convened by the Director General “without executive powers and with a broad agenda” meet on a quarterly or six-monthly basis and prior to Ministerial meetings. While some major trading nations would become permanent members, the majority of seats “would be filled on a rotating basis”.<sup>66</sup>

Developing countries driven by a concern for equity are unlikely to endorse any move in the direction of creating a Consultative Group unless it could represent the diversity of the developing countries and their majority in the WTO.<sup>67</sup> However, the compromise of the General Council in July 2004 might be an indicator that the WTO is moving in the direction of a Consultative Group: It was negotiated between the EU, US, Australia, Brazil and India, and although smaller developing

---

62 Institute for Agriculture and Trade Policy (Fn. 54).

63 Third World Network (Fn. 16).

64 Robert Zoellick’s Letter To WTO Member Nations, January 11, 2004. Online available: <http://www.truthabouttrade.org/article.asp?id=1221>.

65 *P. Lamy* (Fn. 23).

66 Sutherland report (Fn. 26), p. 71.

67 International Centre for Trade and Sustainable Development (ICTSD), *The Future of the WTO* (2003). Online available: <http://www.ictsd.org/monthly/bridges/BRIDGES7-7.pdf>.

countries were not represented, the compromise was accepted by the other WTO member states.

Participation of private interest parties in the Dispute Settlement Mechanism provides another example for the importance of informal procedures at the WTO. While formally only states are admitted as parties, business is known to participate indirectly in disputes, if important interests are at stake. One of the best-known instances is the “Kodak-Fuji” case, which officially involved a complaint of the United States against Japan. In practice, Kodak served as a quasi-claimant and Fuji as a quasi-respondent. In these cases, business representatives advise respective governments in the preparation of factual claims and legal arguments.<sup>68</sup>

### *Free Trade versus Environmental and Health Standards*

Several WTO agreements (in particular the SPS – “Application of Sanitary and Phytosanitary Measures” – and TBT – “Technical Barriers to Trade” – Agreements) limit the use of domestic rules that regulate sanitary or environmental risks. The WTO dispute settlement bodies had to decide in a number of cases whether such measures represented unlawful barriers to trade. The so-called Tuna-Dolphin case, decided under GATT in 1992, and the Shrimps-Turtle case, decided in 1998, both concerned US import bans designed to influence the environmental practices of foreign nations. Although the WTO panel ruled in the Shrimps-Turtle case that the import ban imposed by the United States on shrimps was unjustifiable, the Appellate Body applied a different logic. It did not explicitly reject import bans, but argued that this particular ban was flawed because it was applied in an arbitrary and unjustified manner.<sup>69</sup>

---

68 *E. Hernández-Lopez*, Recent Trends and Perspectives for Non-State Actor Participation in World Trade Organization Disputes, *Journal of World Trade*, vol. 35, no. 3 (2001), pp. 469-498, p. 483 ff.; *G. C. Shaffer*, *Defending Interests: Public-Private Partnerships in WTO Litigation* (Washington: Brookings Institution Press, 2003).

69 *G. Hoberg*, Trade, Harmonization and Domestic Autonomy in Environmental Policy, *Journal of Comparative Policy Analysis: Research and Practice*, vol. 3 (2001), pp. 191-217, p. 201 ff.

The Shrimps-Turtle and Tuna-Dolphin decisions provoked significant NGO criticism in industrialized countries, fostering the belief that trade agreements and economic integration more generally undermined the ability of governments to take action to protect environment and health. These arguments became a central component of the rhetoric displayed in Seattle.<sup>70</sup>

The WTO dispute settlement bodies have been reticent to apply international treaty and customary law<sup>71</sup>, which might be in conflict with WTO agreements. This is problematic given that over 20 of the 200 Multilateral Environmental Agreements incorporate trade measures involving substances or products.<sup>72</sup> The US-based Public Citizen Group called for a stop on WTO challenges to domestic laws, including those that implement international commitments.<sup>73</sup>

A more recent case that also raises concerns among NGOs is the Genetically Modified Organism Case that the US brought against the EU.<sup>74</sup> Friends of the Earth International responded to the GMO case by mounting the “Bite-Back – WTO Hands off our Food” campaign. The organization drafted a manifesto signed by more than 120,000 citizens and over 680 organizations around the world. The group argued that it was “not up to the WTO to decide what we eat and how we farm our crops” and that decisions concerning regulation of international trade in GMOs should not be taken by the World Trade Organization. Furthermore, the WTO should respect the UN Biosafety Protocol.<sup>75</sup>

---

70 *Ibid*, p. 191.

71 *L. Boisson de Chazournes/M. M. Mbengue*, GMOs and Trade: Issues at Stake in the EC Biotech Dispute, *Review of European Community and International Environmental Law (RECIEL)*, vol. 13, no. 3 (2004), pp. 289-305, p. 299.

72 *J. M. Figueres Olsen/J.-M. Salazar-Xirinachs/M. Araya*, Trade and Environment at the World Trade Organization, in G. P. Sampson (ed.), *The Role of the World Trade Organization in Global Governance* (Tokyo; New York: United Nations University, 2001), pp. 155-181, p. 173.

73 *L. Wallach/M. Sforza* (Fn. 18), p. 218.

74 For details see *L. Boisson de Chazournes/M. M. Mbengue* (Fn. 71).

75 Friends of the Earth International, *Citizen’s Objection: Bite Back – WTO Hands Off Our Food* (2004). Online available: <http://www.bite-back.org/objection/index.php>.

Trade lawyers sometimes display a lack of comprehension for the indignation that the previous WTO rulings create among NGOs. Thus, Hoberg argues that WTO jurisprudence was a great deal more permissive than environmental critics of the global trade regime would have us believe.<sup>76</sup> He notes a lack of stringency with regard to the views expressed by NGOs. Environmentalists routinely expressed opposition to harmonization and restrictions on domestic autonomy, but a closer look revealed that they were only concerned about these two issues when environmental protection measures came under threat.<sup>77</sup>

However, the European Union now seems to align itself with the NGO argument that domestic democratic choices, termed “collective preferences”, should not be overridden by decisions taken by an international institution. The then EU Trade Commissioner Lamy described international trade in 2004 as the point, at which

different collective preference systems intersect. These systems reflect the values of a given society, and in the EU’s case they have been democratically defined in consultation with civil society and parliaments, giving them a solid legitimacy.<sup>78</sup>

Lamy conceded that there was a danger that collective preferences might give rise to protectionism and thereby undermine a system of trade rules. However, according to Lamy, cases of exclusive concern with collective preferences could easily be distinguished from attempts to protect uncompetitive markets by identifying who profits from the measure.<sup>79</sup>

---

76 *G. Hoberg* (Fn. 69), p. 208.

77 *G. Hoberg* (Fn. 69), p. 193.

78 *P. Lamy*, *Co-Existence between Public Policy and Free Trade: Can We Achieve Good Protectionism?*, Conference of the Greens/European Free Alliance at the European Parliament, Brussels, 5 March 2004, Online available: [http://europa.eu.int/comm/archives/commission\\_1999\\_2004/lamy/speeches\\_articles/spla211\\_en.htm](http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/spla211_en.htm).

79 *Ibid.*

## Conflicts between different Types of Equity

### *The negotiation of WTO Agreements on Labor and Environment*

The United States used to play a leading role in the integration of WTO negotiations with labor standards.<sup>80</sup> The US raised the issue of workers' rights during the Uruguay Round, but it was unsuccessful. US-based NGOs argued that Americans corporations had learned long ago how to pit states against each other in "a race to the bottom", in order to profit from states offering lower wages, pollution standards and taxes. The WTO now enabled multinational corporations to play this game at the global level.<sup>81</sup> At the left end of the American political spectrum activists therefore proposed that trade agreements be amended to incorporate enforceable provisions for labor rights and environment. A country's access to the US market (and in principle to all markets) could be made dependent on its adherence to either the exporting country's own meaningful labor regulations or to the kinds of labor rights developed at the International Labor Organization. The same principle could be applied to environmental standards.<sup>82</sup>

The first Ministerial Meeting of the newly established WTO in Singapore in 1996 discussed the issue of labor standards, and as a result, the Singapore Ministerial Declaration contained the commitment of all WTO Members to protect core labor standards. However, the Declaration identified the ILO (International Labor Organization) as the body most appropriate for setting and dealing with those standards. This did not hinder the US to propose the initiation of negotiations on introducing minimum labor standards into the WTO agreements at the Seattle Ministerial in 1999. Still, a majority of developing countries remained clearly opposed to the US proposal.<sup>83</sup> The European Commission's commitment to labor issues had never been as strong con-

---

80 *E. Hernández-López* (Fn. 68), p. 474.

81 *L. Wallach/M. Sforza* (Fn. 18), p. xi.

82 *A. Tonelson*, *The Race to the Bottom: Why a Worldwide Worker Surplus and Uncontrolled Free Trade Are Sinking American Living Standards* (Boulder: Westview Press, 2000), p. 150.

83 *R. Wilkinson*, *The WTO in Crisis: Exploring the Dimensions of Institutional Inertia*, *Journal of World Trade*, vol. 35, no. 3 (2001), pp. 397-419, pp. 411 ff.

sidering that domestic pressure in the EU did not go as far as pushing for trade sanctions against countries that did not respect social and labor standards. There was a consensus in the EU to focus on positive incentives rather than sanctions.<sup>84</sup>

By contrast, the European Union played the most active role in the field of environmental standards, pursuing the objective of negotiating clearer rules on balancing of free trade with environmental protection standards. However, as the European Commission acknowledged, this was very much a fight of the “EU against the rest of the world”, since both the developing countries and the US had failed to support this objective.<sup>85</sup> Developing countries viewed high environmental protection standards as a threat to their interests. The United States’ lack of enthusiasm for environmental issues on the WTO agenda might be explained by an increasing general reluctance of the US Government to engage in international agreements.<sup>86</sup> Furthermore, the United States was against having the Multilateral Environmental Agreements trump WTO law as a result of the EU approach. The EU could achieve only a limited success as negotiations in the Doha Round are still to be held on clarification of the relationship between WTO and Multilateral Environmental Agreements.<sup>87</sup>

It may seem surprising that many NGOs fail to support the negotiation of WTO agreements on social and environmental standards. Bronckers relates this to a fear that these agreements would be interpreted “with a liberal trade bias”.<sup>88</sup>

There is no agreement in the academic debate on the potential effectiveness of the WTO in tackling issues other than trade. Some support the negotiation of new WTO agreements on public health and the environment given the organization’s potential for striking package deals and its comparatively effective record in dispute settlement. The political negotiation of new WTO agreements that oblige member sta-

---

84 European Commission, Trade Policy in the Prodi Commission 1999-2004. An Assessment, (2004), p. 39. Online available: [http://trade-info.cec.eu.int/doclib/docs/2004/november/tradoc\\_120087.pdf](http://trade-info.cec.eu.int/doclib/docs/2004/november/tradoc_120087.pdf).

85 *Ibid*, p. 38.

86 M. C. E. J. Bronckers, More Power to the WTO?, *Journal of International Economic Law*, vol. 4, no. 1 (2001), pp. 41-65, p. 43.

87 European Commission (Fn. 84), p. 38.

88 M. C. E. J. Bronckers (Fn. 86), p. 46.

tes to take precautionary measures are seen as an option that is preferable to a situation in which litigators argue over important public policies as exceptions to the WTO trade liberalization agreements.<sup>89</sup>

Other scholars remain strictly opposed to enhancing the scope of the WTO because the inclusion of environmental and labor standards could empower protectionist domestic groups<sup>90</sup> and thereby damage the effectiveness of the WTO. If exporters experienced that the WTO was imposing standards on their products, they might withdraw support for the WTO regime.<sup>91</sup> Moreover, the use of trade sanctions and the Dispute Settlement Mechanism for the enforcement of labor standards would inevitably reduce its effect on trade liberalization.<sup>92</sup> Finally, the technical ability of the WTO to use trade sanctions for the enforcement of environment and labor standards and its political legitimacy in doing so is disputed. The unilateral enforcement of environmental and social standards according to which one country is empowered to reject a specific import from another was found to be unsuitable for cases dealing with issues of “deep sovereignty, differences of taste and process method”.<sup>93</sup>

### *Participation of NGOs*

The concept of internal transparency refers to all questions concerning equal access of all WTO members to and the use of negotiation and the dispute settlement procedures. By contrast, the concept of external transparency refers to participation of non-state actors in these

---

89 *M. C. E. J. Bronckers* (Fn. 86), p. 54; A. T. Guzman, *Global Governance and the WTO*, *Harvard International Law Journal*, vol. 45, no. 2 (2004), pp. 303-351, p. 305.

90 *J. Rollo/A. L. Winters*, *Subsidiarity and Governance Challenges for the WTO: Environmental and Labour Standards*, *The World Economy*, vol. 23 (2000), pp. 561-576, p. 570.

91 *J. O. McGinnis/M. L. Movesian*, *Against Global Governance in the WTO*, *Harvard International Law Journal*, vol. 45, no. 2 (2004), pp. 353-365.

92 *J. Rollo/A. L. Winters* (Fn. 90), p. 569.

93 *Ibid.*

procedures.<sup>94</sup> In 1996 the WTO decided to accredit NGOs with Ministerial Conferences<sup>95</sup>, but it failed to develop a policy for permanent accreditation of NGOs. The Marrakesh Agreement contains a provision in Article 5 (2) stating that the General Council might make “appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO. In July 1996, the Council approved “Guidelines for Arrangements on Relations with Non-Governmental Organizations”, establishing cooperation with NGOs on a voluntary basis. An External Relations Division in the WTO Secretariat was charged with developing relations with civil society groups, international intergovernmental organizations and national legislative representatives. This division organizes briefings for NGOs on the work of WTO committees and working groups.<sup>96</sup>

However, any direct involvement of NGOs in the work of the WTO or its meetings remains excluded. This does not compare favorably with the intergovernmental policy-making bodies of the UN system of organizations and conferences: NGOs participate in the meetings of most of these bodies. They are excluded from voting and negotiating, since they may not exercise direct influence on the precise texts being negotiated, but in practice NGOs have exerted influence by persuading state delegates to sponsor texts on behalf of the NGO.<sup>97</sup>

Following the WTO Guidelines, NGOs should be more closely involved through appropriate procedures at the national level<sup>98</sup>, thereby resisting the global governance trend of admitting NGO arguments. NGOs have used their influence with the US government and other G7

---

94 S. *Charnovitz*, *Opening the WTO to Non-Governmental Interests*, in S. Charnovitz (ed.), *Trade Law and Global Governance* (London: Cameron May, 2002), pp. 495-532, p. 513.

95 N. *Woods/A. Narlikar*, *Governance and the Limits of Accountability: The WTO, the IMF and the World Bank*, *International Social Science Journal*, vol. 53, no. 4 (2001), pp. 569-583, p. 580; S. *Charnovitz* (Fn. 94), p. 502.

96 M. *Mason*, *Representing Transnational Environmental Interests: New Opportunities for Non-Governmental Organization Access within the World Trade Organization*, *Environmental Politics*, vol. 13, no. 3 (2004), pp. 566-589, p. 570.

97 B. *Reinalda*, *Private in Form, Public in Purpose: NGOs in International Relations Theory*, in B. Arts, M. Noortmann/B. Reinalda (eds.), *Non-State Actors in International Relations* (Aldershot: Ashgate, 2001), pp. 11-40, p. 26 f.

98 S. *Charnovitz* (Fn. 94), p. 500.

governments to effectively campaign for greater transparency and document disclosure.<sup>99</sup> While the United States supported increased NGO participation<sup>100</sup> under the Clinton administration, it changed its position under the Bush administration.<sup>101</sup> The EU has remained broadly supportive of increased NGO participation.<sup>102</sup> By contrast, developing countries have shown themselves consistently opposed to more NGO participation.<sup>103</sup> They are driven by the fear that an increase in the consultation of NGOs – which are often based in powerful industrialized countries – would further reduce opportunities for smaller countries to provide input.<sup>104</sup> Furthermore, the environmental agenda advanced by NGOs is viewed by most developing countries as counter to their development agenda.<sup>105</sup>

External transparency has made some progress. The 2002 General Council decision to derestrict official WTO documents earlier is considered to be a major breakthrough in terms of information availability. All non-restricted official documents are made available via the WTO website once they have been translated.<sup>106</sup> NGOs now rate transparency at the WTO relative to other international organizations to be well developed.<sup>107</sup> And yet, external actors appear overburdened with

---

99 *R. O'Brien et al.* (Fn. 17), p. 150; *N. Woods/A. Narlikar* (Fn. 95), p. 581.

100 *F. Loy*, *Public Participation in the World Trade Organization*, in G. P. Sampson (ed.), *The Role of the World Trade Organization in Global Governance* (Tokyo; New York: United Nations University, 2001), pp. 113-135, p. 121; *S. Charnovitz* (Fn. 94), p. 510.

101 *M. Mason* (Fn. 96), p. 580.

102 European Commission, *The EU and the WTO: Improving the Functioning of the WTO System*. EU Paper on WTO Activities, (2000). Online available: [http://europa.eu.int/comm/trade/issues/newround/eu\\_wto/legis/ifwtos.htm](http://europa.eu.int/comm/trade/issues/newround/eu_wto/legis/ifwtos.htm); see also Lamy (En 23).

103 *M. Mason* (Fn. 96), p. 575.

104 *N. Woods/A. Narlikar* (Fn. 95), p. 582.

105 *F. Loy* (Fn. 100), p. 124.

106 *J. Wouters/C. Ryngaert*, *Good Governance: Lessons from International Organizations*, in D. Curtin/R. A. Wessel (eds.), *Good Governance and the European Union: Reflections on Concepts, Institutions and Substance* (Antwerp – Oxford – New York: Intersentia, 2005), pp. 69-104, p. 98.

107 *H. Kovach/C. Neligan/S. Burall*, *The Global Accountability Report 1/2003: Power without Accountability?* (2003). Online available: <http://www.oneworldtrust.org/documents/GAP20031.pdf>.

“minutes of countless WTO meetings and records of complex decision processes” that are more likely to create an information overload than facilitate accountability.<sup>108</sup>

Participation of NGOs and private interest groups has also been controversial with regard to the Dispute Settlement Mechanism. In stark contrast to the participation of private economic actors in the Dispute Settlement Mechanism, the WTO failed to offer informal channels for NGO participation. In response, NGOs have used so-called *amicus curiae* submissions as a vehicle to express legal, social, and public concerns not articulated by parties to the dispute in various international courts. Yet, the legal basis for the Dispute Settlement Mechanism – the “Understanding on the WTO Dispute Settlement Mechanism” – had failed to mention *amicus curiae* participation and the result was that there was significant room for interpretations by panels and the Appellate Body on whether or not such submissions should be admissible. Finally, the Appellate Body found that it was within its own discretion to decide whether or not to take *amicus curiae* letters into consideration. Many developing countries and Japan objected to the ruling, and argued that a panel had no power to accept *amicus curiae* briefs.<sup>109</sup>

There is no agreement on the effect of increased NGO participation a) on the increased effectiveness of WTO decision-making and b) on equity concerns. Some argue that increased NGO participation would decrease the effectiveness of WTO decision-making if hard pressed negotiators also had to deal with non-governmental organizations having large budgets and huge capacity.<sup>110</sup> Cumbersome WTO decision-making procedures could be slowed down further if NGOs were granted the right to participate in them.<sup>111</sup> Even some developed countries feel that *amicus* submissions and public observers would delay proceedings.<sup>112</sup> In a worst case scenario, allowing the public into the ne-

---

108 *P. Nanz/J. Steffek*, *Global Governance, Participation and the Public Sphere, Government and Opposition*, vol. 39, no. 2 (2004), pp. 314-335, p. 328.

109 *E. Hernández-López* (Fn. 80), p. 487 ff.

110 Sutherland report (Fn. 26), p. 44 f.

111 *M. Kahler* (Fn. 45), p. 152.

112 *F. Loy* (Fn. 100), p. 130.

gotiation rooms is portrayed as threatening the survival of the trade system.<sup>113</sup>

The effect of increased NGO participation on equity is not only contested by developing countries' opposition; it also raises more general concerns about the legitimacy, representativeness, and accountability of NGOs.<sup>114</sup> The Sutherland report mentions that there was a serious imbalance in the capacities of NGOs from developed and from developing countries.<sup>115</sup> Some academics characterize a model of the functional representation of stakeholder interests as flawed in comparison to territorial representation, since it could not guarantee that all interests were represented.<sup>116</sup> Others argue that it was not the function of NGOs to formally represent a segment of the population. Rather, NGOs should be viewed as policy entrepreneurs, able of contributing valuable ideas. To the extent, that their arguments have merits, it should not matter whether they are representative or electorally accountable.<sup>117</sup> Others imagine an important role for international civil society in monitoring negotiating agents to ensure that they represent the interests of those they claim to represent.<sup>118</sup>

Given the conflict between different types of equity and the uncertainty surrounding the question of effectiveness, the 2004 Sutherland report was hesitant to recommend a significant improvement of NGO participation opportunities at the WTO. Instead, it re-stated that the primary responsibility for engaging civil society rests with the member states. While the Secretariat could select civil society organizations with which it could develop more systematic relations, it was under no obligation to engage with groups "whose express objective was to un-

---

113 *Y.-C. Xu/P. Weller* (Fn. 48), p. 10.

114 See *F. Loy* (Fn. 100), p. 118; see *M. Kahler* (Fn. 45), p. 153, *J. A. Scholte*, *Civil Society and Democratically Accountable Global Governance, Government and Opposition*, vol. 39, no. 2 (2004), pp. 211-231, p. 230 ff.; *A. van Rooy*, *The Global Legitimacy Game: Civil Society, Globalization and Protest* (Houndsmill, Basingstoke; New York: Palgrave Macmillan, 2004).

115 Sutherland report (Fn. 26), p. 47; see also *M. Kahler* (Fn. 45), p. 153 f.

116 *M. Krajewski*, *Democratic Legitimacy and Constitutional Perspectives of WTO Law*, *Journal of World Trade*, vol. 35, no. 1 (2001), pp. 167-186, p. 185 f.

117 *S. Charnovitz* (Fn. 94), p. 527.

118 *R. Howse* (Fn. 9), p. 362.

dermine or destroy the WTO". Furthermore, the Sutherland report recommended that the Secretariat should work with NGOs from poor countries.<sup>119</sup>

### **The Lack of Equity and Effectiveness: A Win-Win Situation?**

Finally, there are some institutional problems linked to the role of developing countries at the WTO that may be seen as creating a deficit in equity and effectiveness. This type of problem might be easier to address than the above analyzed problems where the solution may involve trade-offs between effectiveness and equity.

Developing countries face major problems in participating effectively in the negotiation and implementation of new agreements. A lack of resources impedes the poorest developing countries from having a permanent representation in Geneva.<sup>120</sup> Furthermore, developing countries have difficulties implementing many of the agreements that were agreed upon in the Uruguay Round, despite the fact that they were granted longer deadlines. As a solution to implementation problems, improvements in so-called "trade-related assistance" have been proposed. Even prior to the Doha Round, a multitude of initiatives came from the World Bank, UNCTAD, donor countries such as the United Kingdom, and finally, the WTO Secretariat.<sup>121</sup> Since the Doha Ministerial Conference, the role of the WTO Secretariat in capacity-building has been strengthened.<sup>122</sup>

At first glance enhancing the trade-related capacity of poor countries seems uncontroversial. However, a recent study by Shaffer shows that capacity building programs can be controversial depending on who defines the purpose of technical assistance and capacity building.

---

119 Sutherland report (Fn. 26), p. 47 f.

120 *P. Nanz/J. Steffek* (Fn. 108), p. 331.

121 *C. Short*, *Making the Development Round a Reality*, in G. P. Sampson (ed.), *The Role of the World Trade Organization in Global Governance* (Tokyo; New York: United Nations University, 2001), pp. 59-80, p. 72 ff.

122 *G. C. Shaffer*, *Can WTO Technical Assistance and Capacity Building Serve Developing Countries?*, in E.-U. Petersmann (ed.), *Reforming the World Trading System: Legitimacy, Efficiency and Democratic Governance* (Oxford: Oxford University Press, 2005), pp. 245-274.

The question is whether WTO rules should be viewed as fundamental and constitutional, or as contingent in time and subject to debate and modification.<sup>123</sup> Clearly, it would be more the first type of capacity-building that increases effectiveness, while the second type of capacity-building might decrease effectiveness if the substance of WTO Agreements is put into question. While a number of other organizations continues to be involved in capacity-building, many developing countries view the WTO secretariat's provision of technical assistance with circumspection because it could advance the interests of those who oversee the WTO budget – the donors.<sup>124</sup> The Sutherland report suggested that it might be advantageous to move all official WTO-related technical assistance out of the respective secretariats of multilateral organizations into a semi-independent agency.<sup>125</sup>

The lack of developing countries' participation has also become an issue with regard to the use of the Dispute Settlement Mechanism. The United States and the European Union remain by far the predominant users of the system. US and EC participation rates in WTO litigation are much higher than their respective percentages of global trade. Use of the WTO dispute settlement by developing against developed countries is considerably less than their share of developed country trade.<sup>126</sup> A general explanation for the passive role of the developing countries is that bringing a complaint is costly and promises few benefits for them. This can be broken down into a number of procedural issues that disadvantage developing countries, with the nature of remedies being a very important point. In the event that a developing country has won a dispute against a developed country, which however, refuses to comply with the ruling, the developing country's scope for action is limited. Compensations will only be made when the losing party agrees to them. Alternatively, retaliation may be used in form of trade sanctions imposed by the winning party against the losing party. However, retaliation is usually not an effective action for developing countries given their smaller markets and their dependence

---

123 *Ibid*, p. 248.

124 *Ibid*, p. 258.

125 Sutherland report (Fn. 26), p. 78.

126 G. C. Shaffer, Recognizing Public Goods in WTO Dispute Settlement: Who Participates? Who Decides? The Case of TRIPS and Pharmaceutical Patent Protection, *Journal of International Economic Law*, vol. 7, no. 2 (2004), pp. 459-482, p. 472.

on the import of goods and services.<sup>127</sup> The Sutherland report considered whether monetary compensation from the losing party should be used. However, it came to the conclusion that monetary compensation should only be employed as a temporary fallback. Otherwise, the report saw the poorer countries again at a disadvantage since only the rich and powerful countries could afford such “buy outs”.<sup>128</sup>

## Summary

Political actors discuss the implications of reform proposals for improving effectiveness and equity, but implications for legitimacy are rarely addressed. While all member states might claim an interest in the effective functioning of the WTO, many would argue that this is only the case as long as WTO safeguards their interests. The European Union and the United States show also an interest in varying forms of equity (environment in the EU, labor in the US, participation of non-state actors for both). While equity concerns of the EU in recent years have been strengthened (“collective preferences” approach), those of the US have clearly diminished under the Bush administration. Developing countries are interested in increasing a different type of equity in terms of more effective participation leading to decisions that better reflect their interests. NGOs clearly show more concern with (varying forms of) equity than with effectiveness. Some have argued that enhancing the internal transparency of the WTO would also improve its functioning. However, taking into account the widespread satisfaction of NGOs with the failure of Cancún, it might be doubted whether many of these groups are seriously interested in the effective functioning of the WTO.

The following table provides an overview over the support that selected actors provide to specific reform proposals (support is indicated by crosses).

---

127 *M. C. E. J. Bronckers* (Fn. 86), p. 61.

128 Sutherland report (Fn. 26), p. 54.

**Table 1:  
Reform Proposals and the Support by different Political Actors**

Reform Proposal	EU	US	Developing Countries	NGOs
More powers to the WTO Secretariat	X			
Reduction / Exclusion of informal meetings with restricted access			X	X
Consultative Group	X			
Enhancing the acceptance of domestic stringent environment and health standards	X			NGOs from Industrialized MS
More opportunities for external participation	X	X		X

### **Academic Concepts: A Rebalancing of Effectiveness, Equity and Legitimacy**

In academic literature, some concepts have been developed that aim at establishing a new balance between effectiveness and equity at the WTO. Shell<sup>129</sup> developed a “Trade Stakeholder model” aimed at increasing equity in WTO procedures – even at the cost of effectiveness, some would argue. His starting point is that the legitimacy of a norm is based on the consent of those who had a special interest (a “stake”) in the matter. Therefore the standing rules of WTO Dispute Settlement had to be relaxed to include private parties, including all those that had “a stake” in the outcomes of trade decisions. New rules should enable not only the enforcement of technical trade rules, but also of “a limited set of globally defined, international trade-related labor, environmental, safety, and consumer norms” both at the international and

---

129 R. Shell, Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization, in R. Howse (ed.), *The World Trading System: Critical Perspectives on the World Economy*, Vol. II Dispute Settlement (London and New York: Routledge, 1998), pp. 333-416. Reprint from *Duke Law Journal*, vol. 44, no. 5 (1995), pp. 829-927.

at the domestic level. Trade Dispute Resolution would thus be transformed into a wide-ranging deliberative process by which global priorities could be set.<sup>130</sup>

In contrast to Shell, Petersmann shows more concern about the lack of effectiveness at the WTO. In his view, GATT and WTO law mainly protects the interests of governments to preserve domestic production by concurrently violating individual traders and consumers rights to import. He criticizes the Dispute Settlement Mechanism for its state-centred design and one-sided trade orientation. Both EC and US legislation prevented individual citizens invoking WTO rules before national courts.<sup>131</sup> Petersmann argues that the GATT and WTO tie national governments to the objective of trade liberalization and thereby exert “constitutional functions” of limiting governments. He deduces from that an individual right to engage in foreign trade that should be defended in courts at the domestic level. At the same time, Petersmann acknowledges that constitutionalism requires the control of power. He therefore suggests the establishment of an advisory parliamentary WTO body and an advisory WTO Economic and Social Committee to institutionalize “more representative and more responsible, participation of NGOs in the WTO”.<sup>132</sup>

Howse<sup>133</sup> takes a very different approach. In his view, concerns about democracy, inequality and instability affecting the substantive legitimacy of the WTO could be dealt with through “moderation and new-found modesty in WTO rule-making or rule-interpretation”.<sup>134</sup> He proposes that adjudicative action be tempered through “institutional sensitivity”.<sup>135</sup> Traditionally – according to Howse – GATT panels failed to display institutional sensitivity by summarily dismissing environmental information, including information on international environ-

---

130 *Ibid*, p. 372.

131 *E.-U. Petersmann*, *European and International Constitutional Law: Time for Promoting “Cosmopolitan Democracy” in the WTO*, in G. De Búrca/J. Scott (eds.), *The EU and the WTO: Legal and Constitutional Issues* (Oxford/Portland Oregon: Hart, 2001), pp. 81-110, p. 101.

132 *Ibid*, p. 107 ff.

133 *R. Howse* (Fn. 30); *Howse* (Fn. 9).

134 *R. Howse* (Fn. 9), p. 359 f.

135 *R. Howse* (Fn. 30), p. 62 ff.

mental law, as irrelevant for the case under consideration.<sup>136</sup> Institutional sensitivity included deference to domestic law and to other issue-area regimes. The effectiveness of the Dispute Settlement System could be strengthened at the same time, if deference was combined with “strict scrutiny of national compliance with general trade-regime norms, such as non-discrimination”.<sup>137</sup>

### **Organizational Theory: A New Analytical Framework for WTO Reform**

Academic discussions on the reform of the WTO suffer from a variety of shortcomings. Usually scholars fail to employ social science approaches and methods. Most academics tend to rely exclusively on the study of literature and documents, while surveys and interviews are rarely if ever used. This approach creates a risk of missing valuable information “from the field”. Moreover, normative theory for international organizations is still in an infant stage. As a result, the reform discussion is dominated by international lawyers who devise new normative concepts (“institutional sensitivity”, “constitutional functions”, “stakeholder model”), which have to fill this gap. Other scholars offer narrative accounts on why specific ministerial conferences have failed. They often discuss a whole range of different reform areas and issues without, however, clarifying what the theoretical and empirical bases for evaluating reform proposals are.

This chapter has discussed reform proposals with regard to their likely effects on promoting effectiveness and equity at the WTO. As was to be expected, reform proposals that work towards both objectives seem to stand a better chance of realization. However, in light of the general shortcomings of the academic and political debate, it is necessary to carry out more thorough empirical research on the functioning of the WTO before any recommendations for reform can be

---

136 *Ibid.*

137 R. Howse/K. Nicolaidis, *Enhancing WTO Legitimacy: Constitutionalization or Global Subsidiarity?*, *Governance: An International Journal of Policy, Administration, and Institutions*, vol. 16, no. 1, January 2003 (2003), pp. 73-94, p. 87.

made. This empirical research, including “field research”, should be guided by appropriate theory.

International Relations (IR) theory, which one would expect to have dealt in depth with international organizations, remains surprisingly silent on this issue. The study of international organizations has even been termed the “ugly duckling of international relations”.<sup>138</sup> The so-called realists expect international outcomes to be determined by state power and interests alone, while international organizations are not regarded as autonomous actors in their own rights.<sup>139</sup> The use of IR approaches to international organizations is also problematic because of their treatment of NGOs. The IR focus on self-interested nation-states as the primary units of international relations leaves hardly any room for autonomous NGO action.<sup>140</sup> However, empirical results point to the ability of NGOs to impact policy outcomes as well as their implementation, even though they may be constrained or enabled by other players such as nation states, companies and international organizations.<sup>141</sup> Pressure from civil society groups can result in concrete organizational reforms such as the creation of an Inspection Panel for the World Bank in 1994 and the creation of an Independent Evaluation Unit for the IMF in 2001.<sup>142</sup>

More recently, the Principal-Agent Framework has been applied to international organizations. The organization is then understood as an

---

138 *B. Verbeek*, *International Organizations: The Ugly Duckling of International Relations Theory?*, in *B. Reinalda/B. Verbeek* (eds.), *Autonomous Policy Making by International Organizations*. (London and New York: Routledge, 1998), pp. 11-25.

139 See *D. L. Nielson/M. J. Tierney*, *Delegation to International Organizations: Agency Theory and World Bank Environmental Reform*, *International Organization*, vol. 57 (2003), pp. 241-276, p. 243; *B. Reinalda/B. Verbeek*, *The Issue of Decision Making within International Organizations*, in *B. Reinalda/B. Verbeek* (eds.), *Decision-Making within International Organisations* (London: Routledge, 2004), pp. 9-41.

140 *B. Reinalda* (Fn. 97), p. 15.

141 *M. E. Keck/K. Sikkink*, *Transnational Advocacy Networks in International and Regional Politics*, *International Social Science Journal*, vol. 51, no. 159 (1999), pp. 89-101, p. 89; see also *F. Loy* (En 100), p. 124, and *B. Reinalda* (En 97), p. 26, drawing on *B. Arts*, *The Political Influence of Global NGOs. Case Studies on the Climate Change and Biodiversity Conventions* (Utrecht: International Books, 1998).

142 *J. A. Scholte* (Fn. 114), p. 222.

agent hired by multiple principles.<sup>143</sup> The notorious P-A problem describes the situation in which the organization might take actions not reflective of the preferences of its principles. This narrow problem focus, however, does not seem to reflect broader concerns that determine the debate on the WTO. Under a Principal-Agent Framework the failure of a ministerial conference or public protests against an organization would not constitute a problem as long as the preferences of the organization's member states are respected.

Given the inadequacies of International Relations and the Principal-Agent Framework, this paper proposes the use of organizational theory as a heuristic framework: First, organizational theory has developed a framework for a better understanding and comprehension of the relationship between an organization, the organizational participants and different types of environments. Second, organizational theory highlights the importance of informal versus formal procedures. Third, organizational effectiveness and organizational legitimacy are key features. While organizational theory has traditionally been applied to domestic organizations, some scholars have begun to employ organizational theory for the study of international organizations.<sup>144</sup>

The application of organizational theory to international organizations was found more appropriate for "service organizations" than for organizations functioning primarily as a forum for negotiations.<sup>145</sup> However, organizational theory has also dealt with organizations in which most decisions are taken by members ("collectivist organiza-

---

143 See *D. L. Nielson/M. J. Tierney* (Fn. 139).

144 For an early attempt, see *E. B. Haas*, *Beyond the Nation State: Functionalism and International Organization* (Stanford: Stanford University Press, 1964). *M. Egeberg*, *How Federal? The Organizational Dimension of Integration in the EU (and Elsewhere)*, *Journal of European Public Policy*, vol. 8, no. 5 (2001), pp. 728-746; *M. Egeberg*, *An Organizational Approach to European Integration: Outline of a Complementary Perspective*, *European Journal of Political Research*, vol. 43 (2004), pp. 199-219; *Y.-C. Xu/P. Weller* (Fn. 48).

145 *R. Cox/H. K. Jacobson*, *The Framework for Inquiry*, in *P. F. Diehl* (ed.), *The Politics of Global Governance: International Organizations in an Interdependent World* (Boulder; London: Lynne Rienner, 1997), pp. 75-90, 76.

tions”<sup>146</sup>, “collective action organizations”<sup>147 148</sup>). The dominant position of members does not exclude that a bureaucracy – such as a secretariat – exerts influence on decisions.<sup>149</sup> A recent study on the internal operation of the WTO/GATT found that the GATT Secretariat played a pivotal role in shaping the multilateral trade negotiations in the Uruguay Round.<sup>150</sup>

Organizational theory emphasizes the importance of informal structures in the operation of organizations. Formal structures designed to regulate organizational behavior are affected, eroded or transformed by the emergence of informal structures.<sup>151</sup> Nevertheless, formal structures may officially be preserved as they symbolize meaning and order.<sup>152</sup>

The WTO member states are, at the same time, members of the WTO and elements of its environment. They can be treated as organizational participants as far as their activities relate to the tasks, decisions, structures and procedures of the WTO. They are considered part of the WTO environment to the extent that their activities relate to non-trade areas. In this respect it should be noted that “outside interests and commitments” inevitably constrain and influence the behavior of organizational participants. The WTO is a typical modern organization built on the partial involvement of its members.<sup>153</sup>

While early theories of organization tended to overlook the environment, the open system perspective on organizations perceives the environment as an ultimate source of materials, energy and informa-

---

146 *J. Rothschild-Whitt*, 'The Collectivist Organization: An Alternative to Rational-Bureaucratic Models', *American Sociological Review*, vol. 44, no. 4 (1979), pp. 509-527.

147 *D. Knoke*, *Organizing for Collective Action: The Political Economics of Voluntary Associations* (Hawthorne, New York: De Gruyter, 1990).

148 See also “club organizations” identified by *F. W. Scharpf*, *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research* (Colorado: Westview Press, 1997).

149 *B. Reinalda/B. Verbeek* (Fn. 139), p. 19.

150 *Y.-C. Xu/P. Weller* (Fn. 48), p. 252.

151 *R. W. Scott*, *Organizations: Rational, Natural and Open Systems* (Upper Saddle River: Prentice Hall, 2003), p. 59.

152 *Ibid*, p. 285.

153 *Ibid*, p. 23.

tion, which are all vital for the organization and constitute a relevant source of order.<sup>154</sup> The great majority of studies of the organization – environment connection have been conducted at the level of analysis of “organization set”. Analysts select a “focal” organization and highlight the resource needs and dependencies characterizing its relation with the environment.<sup>155</sup> This relationship between an organization and its environment cannot be conceptualized as a one-way street. The organization may be forced to adapt to its environment, but at the same time it seeks to select and manage its environment.<sup>156</sup>

The two most relevant approaches to dealing with organizations and their environments are the resource dependence and the institutional theory. The resource dependence model emphasizes that organizations engage in exchanges with the environment because they need to acquire resources. Institutional theory also starts from the assumption that organizations are open systems strongly influenced by their environments; however, it does not see only efficiency-based forces at work. In addition, there are socially constructed and normative rule systems that exercise control over organizations.<sup>157</sup>

Organizational theory conceptualizes the legitimacy of an organization in an empirical sense as a “generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions”.<sup>158</sup> For Meyer and Scott, a completely legitimate organization is one in which every goal is specified, unquestionable and reasonably important. Every technical means has to be adequate and every aspect of the control system should be complete and without alternative.<sup>159</sup>

---

154 *Ibid*, p. 101.

155 R. W. Scott, *The Organization of Environments: Networks, Cultural and Historical Elements*, in J. W. Meyer/R. W. Scott (eds.), *Organizational Environments: Ritual and Rationality*, Updated edn. (Beverly Hills; London; New Delhi: SAGE, 1992), pp. 155-175, p. 157; Scott (Fn. 151), p. 126.

156 R. W. Scott (Fn. 151), p. 119/146.

157 R. W. Scott (Fn. 151), p.118 ff.

158 R. W. Scott (Fn. 151), p. 314.

159 J. W. Meyer/R. W. Scott, *Centralization and the Legitimacy Problems of Local Government*, in J. W. Meyer/R. W. Scott (eds.), *Organizational Environ-*

The perception of what is legitimate differs over time and across groups. For instance, criteria for evaluating organizational effectiveness are always value-based and conflicting. Different measures based on outcomes, procedures and structural features of organizations are likely to be preferred differently by different constituencies.<sup>160</sup> Variations in legitimacy can be explained by failures in efficiency, but also by “social changes in the perceptions” of tasks, alternatives to these tasks and social changes in the assessment of efficiency and effectiveness.<sup>161</sup>

## Conclusions

Organizational theory is a promising heuristic tool for analyzing and gaining a better understanding of the WTO as an organization that has to deal with intraorganizational conflicts while satisfying various, sometimes contradictory requirements from its environment. It offers useful concepts that can guide empirical research on the WTO. One of the most important questions is to what extent the WTO Secretariat may be regarded as an organization that can act independently from or even influence a collective decision-making process. Other questions concern the importance of formal and informal procedures and how they contribute to intraorganizational conflict-solving in the WTO. The strategies developed by the WTO to deal with its environment should be explored in more detail. Finally, it should be analyzed how organizational participants and external actors view the causal relationship between (in-)dependence of the WTO Secretariat and perceived deficiencies as regards effectiveness, equity and legitimacy.

---

ments: *Ritual and Rationality*, Updated edn. (Beverly Hills; London; New Delhi: SAGE, 1992), pp. 199-216, p. 201.

160 *R. W. Scott* (Fn. 151), p. 372.

161 *J. W. Meyer/R. W. Scott* (En 159), p. 201.

## References

- Applbaum, A. I.*, Culture, Identity and Legitimacy, in J. S. Nye/J. D. Donahue (eds.), *Governance in a Globalizing World* (Washington: Brookings Institution Press, 2000), pp. 319-329.
- Arts, B.*, *The Political Influence of Global NGOs. Case Studies on the Climate Change and Biodiversity Conventions* (Utrecht: International Books, 1998).
- Blackhurst, R.*, The Capacity of the WTO to Fulfill Its Mandate, in A. Krueger (ed.) *The WTO as International Organization* (Chicago: Chicago University Press, 2000), pp. 31-47.
- Boisson de Chazournes, L. /M. M. Mbengue*, GMOs and Trade: Issues at Stake in the EC Biotech Dispute, *Review of European Community and International Environmental Law (RECIEL)*, vol. 13, no. 3 (2004), pp. 289-305.
- Bronckers, M. C. E. J.*, More Power to the WTO?, *Journal of International Economic Law*, vol. 4, no. 1 (2001), pp. 41-65.
- Charnovitz, S.*, Opening the WTO to Non-Governmental Interests, in S. Charnovitz (ed.), *Trade Law and Global Governance* (London: Cameron May, 2002), pp. 495-532.
- Cho, S.*, A Bridge Too Far: The Fall of the Fifth WTO Ministerial Conference in Cancún and the Future of Trade Constitution, *Journal of International Economic Law*, vol. 7, no. 2 (2004), pp. 219-244.
- Coicaud, J.-M.*, Reflections on International Organisations and International Legitimacy: Constraints, Pathologies, and Possibilities, *International Social Science Journal*, vol. 53, no. 170 (2001), pp. 523-536.
- Cox, R./H. K. Jacobson*, The Framework for Inquiry, in P. F. Diehl (ed.), *The Politics of Global Governance: International Organizations in an Interdependent World* (Boulder; London: Lynne Rienner, 1997), pp. 75-90.
- Dahl, R. A.*, A Democratic Dilemma. System Effectiveness Versus Citizen Participation, *Political Science Quarterly*, vol. 10, no. 1 (1994), pp. 23-34.

- Das, D. K.*, Debacle at Seattle: The Way the Cookie Crumbled, *Journal of World Trade*, vol. 34, no. 5 (2000), pp. 181-201.
- Egeberg, M.*, An Organizational Approach to European Integration: Outline of a Complementary Perspective, *European Journal of Political Research*, vol. 43 (2004), pp. 199-219.
- Egeberg, M.*, How Federal? The Organizational Dimension of Integration in the EU (and Elsewhere), *Journal of European Public Policy*, vol. 8, no. 5 (2001), pp. 728-746.
- Esty, D.*, The World Trade Organization's Legitimacy Crisis, *World Trade Review*, vol. 1, no. 1 (2002), pp. 7-22.
- European Commission, Trade Policy in the Prodi Commission 1999-2004. An Assessment, (2004), p. 39. Online available: [http://trade-info.cec.eu.int/doclib/docs/2004/november/tradoc\\_120087.pdf](http://trade-info.cec.eu.int/doclib/docs/2004/november/tradoc_120087.pdf).
- European Commission, The EU and the WTO: Improving the Functioning of the WTO System. EU Paper on WTO Activities, (2000). Online available: [http://europa.eu.int/comm/trade/issues/newround/eu\\_wto/legis/ifwtos.htm](http://europa.eu.int/comm/trade/issues/newround/eu_wto/legis/ifwtos.htm).
- Figueres Olsen, J. M./J.-M. Salazar-Xirinachs/M. Araya*, Trade and Environment at the World Trade Organization, in G. P. Sampson (ed.), *The Role of the World Trade Organization in Global Governance* (Tokyo; New York: United Nations University, 2001), pp. 155-181.
- Friends of the Earth International, *Citizen's Objection: Bite Back – WTO Hands Off Our Food* (2004). Online available: <http://www.bite-back.org/objection/index.php>.
- George, C./C. Kirkpatrick*, Putting the Doha Principles into Practice: The Role of Sustainability Impact Assessment, in H. Katrak/R. Strange (eds.), *The WTO and Developing Countries* (Chippenham & Eastbourne: Rowe, 2004), ), pp. 315-338.
- George, S.*, *WTO: Demokratie statt Drakula. Für ein gerechtes Welt-handelssystem* (Hamburg: VSA, 2002).
- Greenpeace and Friends of the Earth Europe, Submission to Trade, Foreign Affairs and Environment Ministers, Members of the Committee 133, the European Commission and European Parliament. After

Cancún: The Way Forward (2003). Online available:  
<http://www.foeeurope.org/publications/2003/AfterCancun.pdf>

*Guzman, A. T.*, Global Governance and the WTO, *Harvard International Law Journal*, vol. 45, no. 2 (2004), pp. 303-351.

*Haas, E. B.*, *Beyond the Nation State: Functionalism and International Organization* (Stanford: Stanford University Press, 1964).

*Heinelt, H.*, Civic Perspectives on a Democratic Transformation of the EU, in J. R. Grote/B. Gbikpi, (eds.), *Participatory Governance: Political and Societal Implications* (Opladen: Leske + Budrich, 2002), pp. 97-120.

*Hernández-Lopez, E.*, Recent Trends and Perspectives for Non-State Actor Participation in World Trade Organization Disputes, *Journal of World Trade*, vol. 35, no. 3 (2001), pp. 469-498.

*Hoberg, G.*, Trade, Harmonization and Domestic Autonomy in Environmental Policy, *Journal of Comparative Policy Analysis: Research and Practice*, vol. 3 (2001), pp. 191-217.

*Howse, R.*, The Legitimacy of the World Trade Organization, in J.-M. Coicaud/ V. Heiskanen (eds.), *The Legitimacy of International Organizations* (Tokyo; New York: United Nations University Press, 2001), pp. 355-407.

*Howse, R.*, Adjudicative Legitimacy and Treaty Interpretation in International Trade Law: The Early Years of WTO Jurisprudence, in J. H. H. Weiler (ed.), *The EU, the WTO and the NAFTA: Towards a Common Law of International Trade?* (Oxford: Oxford University Press, 2000), pp. 35-69.

*Howse, R./K. Nicolaidis*, Enhancing WTO Legitimacy: Constitutionalization or Global Subsidiarity?, *Governance: An International Journal of Policy, Administration, and Institutions*, vol. 16, no. 1, January 2003 (2003), pp. 73-94.

Institute for Agriculture and Trade Policy (IATP), *WTO Decision-Making: A Broken Process*. WTO Cancun Series Paper No. 4 (2003). Online available: <http://www.tradeobservatory.org/library.cfm?RefID=25941>

- International Centre for Trade and Sustainable Development (ICTSD), *The Future of the WTO* (2003). Online available: <http://www.ictsd.org/monthly/bridges/BRIDGES7-7.pdf>.
- Jawara, F. /A. Kwa*, *Behind the Scenes at the WTO: The Real World of International Trade Negotiations* (London, New York: Zed Books in association with Focus on the Global South, 2003).
- Kahler, M.*, *Defining Accountability Up: The Global Economic Multilaterals, Government and Opposition*, vol. 39, no. 2 (2004), pp. 132-158.
- Keck, M. E./K. Sikkink*, *Transnational Advocacy Networks in International and Regional Politics*, *International Social Science Journal*, vol. 51, no. 159 (1999), pp. 89-101, p. 89.
- Keohane, R. O./J. S. Nye*, Introduction, in J. S. Nye/J. D. Donahue (eds.), *Governance in a Globalizing World* (Washington: Brookings Institution Press, 2000), pp. 1-41.
- Kirshner, O.*, *Triumph of Globalism: American Trade Politics*, *Political Science Quarterly*, vol. 120, no. 3 (2005), pp. 479-503.
- Knoke, D.*, *Organizing for Collective Action: The Political Economics of Voluntary Associations* (Hawthorne, New York: De Gruyter, 1990).
- Koremenos, B. /C. Lipson/D. Snidal*, *The Rational Design of International Institutions*, *International Organization*, vol. 55, no. 4 (2001), pp. 761-799.
- Kovach, H./C. Neligan/S. Burall*, *The Global Accountability Report 1/2003: Power without Accountability?* (2003). Online available: <http://www.oneworldtrust.org/documents/GAP20031.pdf>.
- Krajewski, M.*, *Democratic Legitimacy and Constitutional Perspectives of WTO Law*, *Journal of World Trade*, vol. 35, no. 1 (2001), pp. 167-186.
- Lamy, P.*, *Co-Existence between Public Policy and Free Trade: Can We Achieve Good Protectionism?*, Conference of the Greens/European Free Alliance at the European Parliament, Brussels, 5 March 2004, Online available: [http://europa.eu.int/comm/archives/commission\\_1999\\_2004/lamy/speeches\\_articles/spla211\\_en.htm](http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/spla211_en.htm).

*Lamy, P.*, The Future of WTO. Speech Delivered to the European Parliament Kangaroo Group, (27 January 2004). Online available: [http://europa.eu.int/comm/archives/commission\\_1999\\_2004/lamy/speeches\\_articles/spla207\\_en.htm](http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/spla207_en.htm).

*Lindblom, C.*, The Intelligence of Democracy. Decision Making through Mutual Adjustments (New York: 1965).

*Loy, F.*, Public Participation in the World Trade Organization, in G. P. Sampson (ed.), The Role of the World Trade Organization in Global Governance (Tokyo; New York: United Nations University, 2001), pp. 113-135.

*Mason, M.*, Representing Transnational Environmental Interests: New Opportunities for Non-Governmental Organization Access within the World Trade Organization, *Environmental Politics*, vol. 13, no. 3 (2004), pp. 566-589.

*Matsushita, M./T. Schoenbaum/P. C. Mavroidis*, The World Trade Organization: Law, Practice, and Policy (Oxford: Oxford University Press, 2003).

*Mc Rae, D.*, What Is the Future of the WTO Dispute Settlement?, *Journal of International Economic Law*, vol. 7, no. 1 (2004), pp. 3-21.

*McGinnis, J. O./M. L. Movesian*, Against Global Governance in the WTO, *Harvard International Law Journal*, vol. 45, no. 2 (2004), pp. 353-365.

*Meyer, J. W./R. W. Scott*, Centralization and the Legitimacy Problems of Local Government, in J. W. Meyer/R. W. Scott (eds.), *Organizational Environments: Ritual and Rationality*, Updated edn. (Beverly Hills; London; New Delhi: SAGE, 1992), pp. 199-216.

*Nanz, P./J. Steffek*, Global Governance, Participation and the Public Sphere, *Government and Opposition*, vol. 39, no. 2 (2004), pp. 314-335.

*Nielson, D. L/M. J. Tierney*, Delegation to International Organizations: Agency Theory and World Bank Environmental Reform, *International Organization*, vol. 57 (2003), pp. 241-276.

- O'Brien, R./A.-M. Goetz/J. A. Scholte/M. Williams*, *Multilateral Economic Institutions and Global Social Movements* (Cambridge: Cambridge University Press, 2000).
- Petersmann, E.-U.*, European and International Constitutional Law: Time for Promoting "Cosmopolitan Democracy" in the WTO, in G. De Búrca/J. Scott (eds.), *The EU and the WTO: Legal and Constitutional Issues* (Oxford/Portland Oregon: Hart, 2001), pp. 81-110.
- Porter, R. B.*, Efficiency, Equity and Legitimacy: The Global Trading System in the Twenty-First Century, in R. B. Porter/P. Sauvé/A. Subramanian/A. Beviglia Zampetti (eds.), *Efficiency, Equity and Legitimacy: The Multilateral Trading System at the Millennium* (Washington D.C.: Brookings Institution Press, 2001), pp. 3-15.
- Reinalda, B.*, Private in Form, Public in Purpose: NGOs in International Relations Theory, in B. Arts, M. Noortmann/B. Reinalda (eds.), *Non-State Actors in International Relations* (Aldershot: Ashgate, 2001), pp. 11-40.
- Reinalda, B./B. Verbeek*, The Issue of Decision Making within International Organizations, in B. Reinalda/ B. Verbeek (eds.), *Decision-Making within International Organisations* (London: Routledge, 2004), pp. 9-41.
- Rollo, J./A. L. Winters*, Subsidiarity and Governance Challenges for the WTO: Environmental and Labour Standards, *The World Economy*, vol. 23 (2000), pp. 561-576.
- Rothschild-Whitt, J.*, 'The Collectivist Organization: An Alternative to Rational-Bureaucratic Models', *American Sociological Review*, vol. 44, no. 4 (1979), pp. 509-527.
- Rudisch, S.*, Die institutionelle Struktur der Welthandelsorganisation (WTO): Reformüberlegungen, in *Arbeitspapiere aus dem Institut für Wirtschaftsrecht*, Martin-Luther-Universität Halle Wittenberg, 2002, p. 19 ff.
- Scharpf, F. W.*, *Games Real Actors Play: Actor-Centered Institutionalism in Policy Research* (Colorado: Westview Press, 1997).

*Scholte, J. A.*, Civil Society and Democratically Accountable Global Governance, *Government and Opposition*, vol. 39, no. 2 (2004), pp. 211-231.

*Scott, R. W.*, *Organizations: Rational, Natural and Open Systems* (Upper Saddle River: Prentice Hall, 2003).

*Scott, R. W.*, The Organization of Environments: Networks, Cultural and Historical Elements, in J. W. Meyer/R. W. Scott (eds.), *Organizational Environments: Ritual and Rationality*, Updated edn. (Beverly Hills; London; New Delhi: SAGE, 1992), pp. 155-175.

*Shaffer, G. C.*, Can WTO Technical Assistance and Capacity Building Serve Developing Countries?, in E.-U. Petersmann (ed.), *Reforming the World Trading System: Legitimacy, Efficiency and Democratic Governance* (Oxford: Oxford University Press, 2005), pp. 245-274.

*Shaffer, G. C.*, Recognizing Public Goods in WTO Dispute Settlement: Who Participates? Who Decides? The Case of TRIPS and Pharmaceutical Patent Protection, *Journal of International Economic Law*, vol. 7, no. 2 (2004), pp. 459-482.

*Shaffer, G. C.*, *Defending Interests: Public-Private Partnerships in WTO Litigation* (Washington: Brookings Institution Press, 2003).

*Shell, R.*, Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization, in R. Howse (ed.), *The World Trading System: Critical Perspectives on the World Economy*, Vol. II Dispute Settlement (London and New York: Routledge, 1998), pp. 333-416. Reprint from *Duke Law Journal*, vol. 44, no. 5 (1995), pp. 829-927.

*Short, C.*, Making the Development Round a Reality, in G. P. Sampson (ed.), *The Role of the World Trade Organization in Global Governance* (Tokyo; New York: United Nations University, 2001), pp. 59-80.

*Steffek, J.*, The Legitimation of International Governance: A Discourse Approach, *European Journal of International Relations*, vol. 9, no. 2 (2003), pp. 249-275.

*Steinberg, R.*, In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO, *International Organization*, vol. 56, no. 2 (2002), pp. 339-374.

Sutherland report, Consultative Board, The Future of the WTO: Addressing Institutional Challenges in the New Millennium. Report by the Consultative Board to the Director General Supachai Panitchpakdi, Authored by *P. Sutherland/J. Bhagwati/K. Botchwey/N. FitzGerald/K. Hamada/J. H. Jackson/C. Lafer/ T. de Montbrial*, World Trade Organization (2004). Online available: [http://www.wto.org/English/thewto\\_e/10anniv\\_e/future\\_wto\\_e.htm](http://www.wto.org/English/thewto_e/10anniv_e/future_wto_e.htm)

The Third World Network, Oxfam International, Public Services International, WWF International, The Center for International Environmental Law, Focus on the Global South, The Institute for Agriculture and Trade Policy, The Africa Trade Network, The International Gender and Trade Network and The Tebtebba International Centre for Indigenous Peoples' Rights 2003, Memorandum on the Need to Improve Internal Transparency and Participation in the WTO. Online available: <http://www.twinside.org.sg/title/memo2.doc>.

*Tonelson, A.*, *The Race to the Bottom: Why a Worldwide Worker Surplus and Uncontrolled Free Trade Are Sinking American Living Standards* (Boulder: Westview Press, 2000).

*van Rooy, A.*, *The Global Legitimacy Game: Civil Society, Globalization and Protest* (Houndsmill, Basingstoke; New York: Palgrave Macmillan, 2004).

*Verbeek, B.*, *International Organizations: The Ugly Duckling of International Relations Theory?*, in *B. Reinalda/B. Verbeek (eds.)*, *Autonomous Policy Making by International Organizations*. (London and New York: Routledge, 1998), pp. 11-25.

*Wallach, L./M. Sforza* (Public Citizen's Global Trade Watch), *Whose Trade Organization? Corporate Globalization and the Erosion of Democracy. An Assessment of the World Trade Organization* (Washington: Public Citizen Foundation, 1999).

*Wilkinson, R.*, *The WTO in Crisis: Exploring the Dimensions of Institutional Inertia*, *Journal of World Trade*, vol. 35, no. 3 (2001), pp. 397-419.

*Woods, N. /A. Narlikar*, *Governance and the Limits of Accountability: The WTO, the IMF and the World Bank*, *International Social Science Journal*, vol. 53, no. 4 (2001), pp. 569-583.

*Wouters, J./C. Ryngaert*, Good Governance: Lessons from International Organizations, in D. Curtin/R. A. Wessel (eds.), Good Governance and the European Union: Reflections on Concepts, Institutions and Substance (Antwerp – Oxford – New York: Intersentia, 2005), pp. 69-104.

WTO (World Trade Organization), Understanding the WTO, 3rd Edition, September 2003.

*Xu, Y.-C./P. Weller*, The Governance of World Trade: International Civil Servants and the GATT/WTO (Cheltenham; Northampton: Edward Elgar, 2004).

*Zürn, M.*, Global Governance and Legitimacy Problems, Government and Opposition, vol. 39, no. 2 (2004), pp. 260-287.