

## **CHAPTER II**

### **WORLD TRADE ORGANIZATION (WTO)**

#### **A. WTO Profile**

In 1995, the WTO was founded. Because it was just established, the WTO became the youngest international organization at that time. The WTO was formed as the successor to the General Trade and Trade Agreement (GATT) which was established after the end of the Second World War.<sup>1</sup> As a result of the Brenton Wood agreement, GATT came into being in 1947, which also created The IMF and the World Bank. The GATT Secretariat was located in the Villas Bocage and Fenêtre, near the Palais des Nations, in Geneva.<sup>2</sup> While the first time of WTO establishment, initially the multilateral trading system was established under the GATT more than 50 years old. The last 50 years have seen very significant growth in world trade. Exports of goods grow at an average value of 6% every year. In 2000, total trade had reached 22 times that of 1950. GATT and the WTO have helped create a stable and prosperous trading system that has contributed to unprecedented world economic growth.<sup>3</sup>

The system has developed a lot through a series of trade negotiations or rounds held with the auspices and supervision of the GATT. The first round was mainly concerned with lowering tariffs, but further negotiations included other fields such as non-tariff and anti-dumping measures. The final round of the Uruguay Round from 1986 to 1994 has led to the creation of the WTO. The trade negotiations in Uruguay Round conducted under the supervision of the GATT led to the creation

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<sup>1</sup> The WTO (2014). WORLD TRADE ORGANIZATION: WTO Publications

<sup>2</sup> [https://www.wto.org/english/thewto\\_e/cwr\\_e/cwr\\_history\\_e.htm](https://www.wto.org/english/thewto_e/cwr_e/cwr_history_e.htm)  
accessed on February 5, 2019

<sup>3</sup> The WTO (2014). WORLD TRADE ORGANIZATION: WTO Publications

of the WTO in 1995. The WTO has grown to covers new areas of work. The organization has gradually expanded to occupy most of The Centre William Rappard (CWR). Delegations from the WTO's Members meet in its historic rooms every day to discuss and negotiate the further development of trade rules and to seek peaceful resolution of trade disputes. The *des immeubles* foundation officially owns the CWR *pour Les organization Internationales* (FIPOI), a foundation established by the Geneva State to manage and maintain buildings that are then occupied by international organizations.<sup>4</sup> The negotiation process does not end just like that. Some continued after the end of the Uruguay Round. In February 1997 there was an agreement on telecommunications services, with approval by 69 governments regarding broad liberalization measures that exceed those agreed upon in the Uruguay Round. In the same year, 40 governments were successful in negotiating for tariff-free trade in information technology products, and 70 members concluded on financial service agreements covering more than 95% of trade in insurance, securities, banking, and financial information.<sup>5</sup>

GATT was finally replaced by the WTO as a world international trade organization in 1995, a series of rules used by the government at this time originating from the negotiations of the Uruguay GATT Round, which lasted eight years, from 1986 to 1994. The GATT trade regulations were established between 1947 and 1994 and specifically those negotiated during

the Uruguay Round remained the main rule book for multilateral trade in goods.<sup>6</sup>

The WTO faces two legal challenges. The first about the WTO's ability to fulfill its core tasks direct trade in the rule of law - the area where GATT does pretty well start in its time but is incomplete. The second challenge may come from a possible conflict between trade law and other fields of theory.

The new agreement negotiated on the Round of Uruguay and its surroundings has expanded into coverage of international law, but the intent and purpose of the agreement are not always finished. It is partly because of the general practice of "constructive ambiguity," where negotiators blocked at several sides in being able to compile a compromise language that succeeds in getting them to go straight through the problem but not resolving the differences between them. They tried to quantify several times to resolve the ambiguity that occurred, but there they instead entered into an unclear formulation. It is one reason that makes the WTO a little change from the previous organization, GATT.

In 2000, issues were discussed about agriculture and services. In November 2001, the Doha Development Agenda (DDA) was launched by the fourth WTO Ministerial Conference in Doha, Qatar, which has now been incorporated into a broader work program. In this agenda, negotiations and other work on non-agricultural, environmental and trade tariffs have been added, WTO rules such as subsidies and anti-dumping, competition policy, investment, trade facilitation, transparency in government procurement, intellectual property, and a number of issues raised by developing countries as the

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<sup>6</sup> Haikal, Reem, (2018). What Is the World Trade Organization: Investopedia <https://www.investopedia.com/investing/what-is-the-world-trade-organization/>

challenges they face in implementing the current WTO agreement.<sup>7</sup>

The WTO held the First Ministerial Conference in Singapore in December 1996, almost two years after the signing of the Marrakesh Agreement on the Establishment of the WTO. At the Fourth WTO Ministerial Conference in Doha in November 2001, the WTO launched Trade Round negotiations. At the WTO Ninth Ministerial Conference in Bali in December 2003, conclusions were made regarding the first elements of the Doha Round.<sup>8</sup>

The broad scope of trade policy has only exacerbated governance and coherence problems. While most trade in goods falls right in the GATT jurisdiction, the WTO is now faced with matters such as violations of organizational jurisdiction and other international agreements. Some countries that want to observe rules in certain fields remain voluntary or not. They will still be actively enforced; in general, it will be debated that the subject matter must be submitted to other international organizations. That is the reason why the World Intellectual Property Organization must deal with intellectual property rights and not the GATT that handles it, for example, both insist that the WTO should not address the issue of workers' rights that are better handled by the International Labor Organization. In contrast, The WTO proposes jurisdiction applicants for problems that are not adequately resolved, because they want these methods to be supported to resolve disputes with the WTO. It means that the role of the WTO must be promoted in the United Nations Educational, Scientific and Cultural Organization in matters of cultural trade, and more from the

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<sup>7</sup> The WTO (2014). WORLD TRADE ORGANIZATION: WTO Publications

<sup>8</sup> Twenty years of WTO A retrospective (2015), Geneva; WTO Publications. Page 24

World Health Organization on issues related to the trade in health-related goods and services, et cetera.<sup>9</sup>

## **B. WTO Decision Making Proses**

Political problems have permeated the WTO, even in its daily operations, it seems that the economic and political fields are minimal. While members try to limit the level of political interests in free trade, expect it to be unrealistic all political issues to be subordinated by the state to the norms and rules of this authorized economic institution. It seems not wise if the country is required to do so. If countries prevent using trade as one of the foreign policy instruments, the WTO will force them to choose between WTO membership, and they exercise sovereignty freely, on this matter, maybe there is no WTO at all. It can be clearly understood in negotiating the Havana Charter. In Article 86, prospective members recognize that the ITO "should not try to take actions that will involve judgment in any way a political matter," and that no action is taken to "maintain or restore international peace and security, must be considered contrary to the provisions of this Charter." There is no comparable provision in the 1947 GATT, which is expected only to be an act of stopping the gap, but the agreement still contains two articles brought in the regime of WTO. Someone gave an exception from the WTO regulations for invalid acts that restrict trade carried out by the state in pursuing their vital security interests (Article GATT XXI and Article XXIV bis GATS). Other provisions allow members to be a little patient from applying WTO treatment to certain members of which they are alienated politically (GATT Article XXXV, replaced by WTO Article XIII). That decision helped to limit the division between high diplomatic and security politics and low trade politics but did not hinder them from the meeting. All the member countries have interests that exceed

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<sup>9</sup> Craig VanGrasstek (2013), The History and Future of the World Trade Organization (Geneva: WTO Publications) Page. 14

trade policy, and they are interested in how they use soft power.<sup>10</sup>

Rules and agreements by the WTO are the results of negotiations among the members. The current device was the result of the 1986-1994 negotiation in Uruguay Round, which includes necessary revisions of the authentic GATT. The WTO makes the GATT the main regulatory book for trade in goods. The new rules also marked the Uruguay Round also created new rules for dealing with trade services, relevant aspects of intellectual property, dispute resolution, and trade policy reviews.

With this agreement, the trading system is non-discriminatory, which describes the rights and obligations operated by WTO members themselves. Every country is guaranteed that its exports will be treated fairly and consistently in other countries' markets. Each agrees to do the same for the needs of imports to the market. This system also gives some developing countries flexibility in carrying out their commitments, especially in regulating trade.<sup>11</sup>

In structure the WTO has 160 members, accounting for almost 95% of world trade. Around 25 others are negotiating membership. The entire membership makes decisions. It is usually by consensus. Voting is also possible, but it has never been implemented in the WTO and has not even been used under the predecessor of the WTO, GATT. The agreement of WTO has been adopted in all member parliaments.<sup>12</sup>

The top decision-making body in WTO is a Ministerial Conference that holds meetings once every two years. Below are the General Councils which are generally ambassadors and heads of delegations in Geneva, but sometimes officials are sent

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<sup>10</sup> *Ibid.* Page 24,25

<sup>11</sup> The WTO (2014). WORLD TRADE ORGANIZATION: WTO Publications. Page 4

<sup>12</sup> *Ibid.* Page 7

from the member capital which meets several times a year at Geneva headquarters. The General Council held a meeting at the Trade Policy Review Agency and the Dispute Resolution Agency. At the next level, the Goods Council, the Service Council, and Intellectual Property (TRIPS) report to the General Council. "Many special committees, working groups, and working parties deal with individual agreements and other fields such as the environment, development, membership applications and regional trade agreements."<sup>13</sup>

The WTO Secretariat, with its headquarters in Geneva, has around 640 booths where a director general is a leader. It does not have a branch office outside Geneva. It is because Members themselves decide that the Secretariat is not given a role in the decision-making process given by other international bureaucracies. Providing technical support to various council and committee and ministerial conferences, to provide technical assistance to developing countries, to analyze world trade, and to explain WTO broadcasts to the public and the media is the main task of the Secretariat. The Secretariat is also tasked with providing some form of legal assistance in the process of resolving disputes or problems and providing advice to governments who wish to become members of the WTO. The budget prepared annually is around 197 million Swiss francs.<sup>14</sup>

Changes in relations between the members of WTO are influenced is not only the Cold War enemies that enter the system but also have significant changes in the relative position of other countries who have participated since it was founded. Small groups from advanced industrial countries are referred to as lighters during the period of GATT, but in the WTO period, the distribution of economic influence and political power was far more widespread. The broader scope of membership, between developed and developing countries, can be seen in the come down in Quad's relative (European Union, Japan, Canada

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<sup>13</sup> *Ibid.* Page 6

<sup>14</sup> *Ibid.* Page 6

and the United States) and increased compensation from developing countries such as South Africa, India, Indonesia, Brazil, China, Malaysia, Mexico , and Turkey. The relation of politics between these groups and their relationship with the leftover WTO members is far more complicated and controversial than what happened before during the GATT period. The implementation of multilateral trade diplomacy, which used to look like the oligarchy of developed countries that meet in green space but today has similarities with diverse representative democracies that are coalitions are the best way to be done at a time like this.

Economic and political power in the WTO period was more widely distributed than when the GATT was still operating, a more conducive power configuration in this system for multilateral liberalization compared to the top-down leadership period in the past. The GATT leaves its debt to a large and significant force, a broader international economic division in the WTO era. It requires a higher level of cooperation between countries not only with different interests but also the multilateral trading system must be operated properly.<sup>15</sup>

The current relations of power in the system of trade need to be observed through a wider angle that brings countries that have moved from not having an essential part in the GATT period to a more central position in the WTO. It increases in power included several members who had long been involved in the simple system but did not use their potential until relatively late in the GATT period and others who did not even access until after the WTO was formed. Prominent among the developing countries in the first group were Brazil, India, and South Africa, each of which was a party to the 1947 GATT

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<sup>15</sup> Craig VanGrasstek, The History, and Future of the World Trade Organization(Geneva: WTO Publications, 2013) Page. 32



contract, while the latter included China and the Russian Federation. Both of these countries have a considerable influence on their territory, both economically and politically, and has aspired to have a higher influence at the international level. Regional GDP shares may only measure their local influence: South Africa accounts for around 32.2 percent of the economy of sub-Saharan Africa, and that share is still higher than China in East Asia and the Pacific (39.0 percent). Brazil in Latin America and the Caribbean (42.7 percent) and India in South Asia (81.3 percent), while the Russian Federation is the only country that has a considerable influence on two continents. China and the Russian Federation are among the five permanent members of the UN Security Council; India and Brazil want to occupy a permanent place on the expanded council. In addition, while the military powers of these countries are not directly impacting trade negotiations, it should be observed that all countries in the top ten countries except South Africa have conventional military power, and all have nuclear weapons such as China, India and the Russian Federation, or at one time tried to develop them like Brazil and South Africa. Other developing countries, such as Chile, Malaysia, Mexico, Singapore, and Turkey, took a far more active role in the WTO negotiations than they did in the GATT period which in fact was more passive, sometimes they approached this institution as one their way to be able to increase the level of influence on world affairs.<sup>16</sup>

After the Seattle tragedy, the developing countries of the WTO members began to show their position by playing an active role in the WTO forum by forming coalitions to balance their position with the position of developed countries members of the WTO. Brazil, India and South Africa became the first coalition in the forum then other developing countries such as Malaysia, Chile, Mexico and Turkey joined the coalition and took an active role in the forum to reduce the dominance of developed countries such as the European Union, Japan and the

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<sup>16</sup> *Ibid.* Page 32 and 33

US. Often there is debate during the WTO forum between coalitions of developed and developing countries. This makes the decision making process at the WTO quite difficult because there is no dominant power again after the Seattle tragedy which is indeed the point of rise of developing countries. The WTO must also pay attention to this to avoid chaos within the WTO.

The WTO decision-making process is a fairly complex and long process because developing countries begin to have the same position as developed countries. Thus, developing countries can begin to emphasize what they need to reform WTO policies. Developed countries have also been unable to pressure developing countries because their position has begun to be balanced in the forum. Coalitions conducted by developing countries have a significant impact on the WTO decision-making process.

For almost 50 years WTO Members have sought to meet their needs, first at the GATT and now at the WTO, the goal of which is reflected in the opening of the WTO Agreement to conduct trade relations in order to improve living standards throughout the world. Trade liberalization facilitating increased international trade in rule-based systems has created more and better jobs in many countries. The WTO carved achievements during the first two years as witnesses to collaborating to create the most of the possibilities available in the multilateral system to promote growth and sustainable development while contributing to a more stable and safe environment in building international relations.<sup>17</sup>

### **C. The Dynamic Situation in WTO after Tragedy of Seattle**

After the bid demonstration in Seattle, the governments of WTO realized that both decision making in WTO's internal or external to be improved. The former is known as "I-Transparency" and henceforth known as "E-Transparency."

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<sup>17</sup> Twenty years of WTO A retrospective (2015), Geneva; WTO Publications. Page 27

Director General Moore has done his best for both. E-Transparency has the purpose of strengthening the Secretariat's External Relations staff has been one of his most important initiatives, which can interact with NGOs daily.

At the end of November 2000, external transparency was discussed by the General Council. No decisions were made or taken at the time, but some governments argued that NGOs were not permitted to be involved in WTO activities. Countries like Hong Kong argue that civil society that participates directly in the WTO is not desirable because it will have a negative impact such as politicizing organization operations because of elections and interests in sectorial aspect. Colombia explained it at the level of the multilateral system, that is important "the necessary state responsibility is maintained over positions and proposals." Elsewhere, several governments gave statements to do more to increase transparency. The opening of the WTO Trade Policy Review should be given to accredited and competent observers, Canada proposes this to the WTO. Canada also suggested holding an experiment to test other forms of transparency, for example, like "(1) holding small dialogues between government, academics, and NGOs to address focused problems, and (2) authorizing the Secretariat to create advisory boards for problems like E-commerce." The United States calls for better transparency in resolving WTO disputes and argues that a lack of openness will create a more difficult situation to resolve disputes.<sup>18</sup>

While in October 2000, Australia requested that the WTO would circulate two non-governmental statements that advocated an enlargement of agricultural trade liberalization, the consistent position with the position of the government of Australia. The statement came from the Cairns Agriculture Group and the Global Alliance for Reform of Sugar Trade and Liberalization Leaders. Cairns Group Farms is an association of

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<sup>18</sup> Steve Charnovitz, *OPENING THE WTO TO NON-GOVERNMENTAL INTERESTS* (Fordham International Law Journal: 2000) Page 12

agricultural in eleven countries covering South America, Central America, North America, East Asia, and South Africa. They have the same interests and goals to get better WTO rules, especially in agriculture.

In November 2000, EU Trade Commissioner Pascal Lamy gave a speech full of ideas about the WTO where he expressed his opinion on that “the internet has made the market for political ideas contested and that this allowed NGOs to engage in real-time networks.” As a result, he said, “policymakers have lost the monopoly in setting the international trade agenda if they ever had it. Lamy did not discuss the implications of this insight for WTO organizations except to call for a broad public debate involving policymakers at various levels of government (national, regional and global), members of parliament, business, trade unions, and NGOs.”

In late 1999 and throughout 2000, Moore, who was the director general, used his speech to articulate the institutional foundations of the WTO and its relations with the public. He explained that “the WTO is not a supranational government, but an organization whose decisions are made by the Member States and whose agreements are ratified by parliament.” Furthermore, he claimed that the WTO was a democratic process. “Indeed, can it be more democratic than the sovereign government that instructed the Ambassador to reach an agreement which was then accepted by the cabinet and parliament?” In his point of view, “the WTO is driven by members; the basic constituency must be a nation-state.”

The case that made it possible for the WTO to listen to non-government interests was strong. When official decisions can affect individuals, inputs must be possessed by them into decision making at the level of decision making. The government claimed to have established WTO policies in the country and ignored the truth that critical resolution in the WTO emerged as a result of direct negotiations between the governments. NGOs argue that the best way to negotiate is to

be together in a room. It may be true that parliament or an official Congress must recognize the WTO agreement that has been amended in several countries. However, parliamentary votes like that will be too late for NGOs or movements that want to change the results for their interests. This movement can oppose ratification, but it is usually not very effective in achieving the goal of constructive policy movement. Besides, given the economic importance of WTO membership, the ratification of the new WTO agreement tends to be accepted by countries.