

The World Trade Organization

By

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The World Trade Organization (“WTO”) is an international institution designed to promote the free flow of trade.¹ Under the auspices of the WTO, member governments agree on rules and principles for trade, engage in negotiations to decrease trade barriers, and participate in dispute settlement.² It is a system based on rules not power.³ It is founded on the principles of trade without discrimination, free trade through negotiation, predictability in the trading system, economic development, fair competition, and economic reform.⁴

The WTO has 145 members,⁵ representing over 95% of world trade,⁶ and developing countries constitute approximately 80 percent of its membership.⁷ Decisions are normally taken by a consensus of the member countries,⁸ and the institutional

¹ “Trading Into the Future,” The World Trade Organization, 2nd ed. at 4 (March 2001), available at: www.wto.org (hereinafter “Trading Into the Future”).

² Lenore Sek, Vladimir N. Pregelj, and Arlene Wilson, “The World Trade Organization: The Debate in the United States,” CRS Report for Congress, RL30521 at 3 (April 12, 2000) (hereinafter 2000 CRS Report).

³ WTO Policy Issues for Parliamentarians: A Guide to Current Trade Issues for Legislators, World Trade Organization at 4 (2001), available at: www.wto.org. (hereinafter WTO Policy Issues for Parliamentarians).

⁴ “Trading Into the Future” at 5-7.

⁵ “WTO Membership Rises to 145,” available at: http://wto.org/english/news_e/news_e.htm (last visited Feb. 7, 2003).

⁶ Lenore Sek, “The World Trade Organization: Background and Issues,” CRS Report for Congress, 98-928 at 1 (Jan. 12, 2001) (hereinafter 2001 CRS Report).

⁷ Statement of Susan S. Westin, Associate Director, International Relations and Trade Issue, National Security and International Affairs Division to the Committee on Finance, U.S. Senate, “World Trade Organization, Seattle Ministerial: Outcomes and Lessons Learned,” General Accounting Office at 2 (Feb. 10, 2000) (hereinafter Statement of Susan Westin).

⁸ While consensus is the preferred means of achieving results in the WTO, the WTO Agreement does allow for a limited use of voting. Depending on the circumstances, an affirmative vote can be achieved by either a three-quarters or two-thirds majority, and the effect of the vote on a party not in favor of the measure depends on the circumstances of the vote. “Trading Into the Future” at 60.

bureaucracy generally has no influence on the stance of individual members.⁹ This holds true even for enforcement measures, so that any trade sanctions imposed under the rules of the WTO are imposed by the individual members and not by the WTO, itself.¹⁰

The WTO operates on a relatively small budget, especially when compared to other international institutions. For example, the WTO has a staff of about 500 persons, whereas the IMF has approximately 2,600 persons and the World Bank has 5,500.¹¹ It operates on a total budget of less than \$100 million per year, which is meager in light of the fact that, in 1999, the World Bank's operating budget alone was \$1.375 billion and the IMF travel budget was \$77 million.¹²

Creation of the WTO

The concept of the WTO emerged from the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade ("GATT"). The GATT, itself, was not originally intended to exist as an institution to handle international trade issues. It sprang from the failure of the international community, principally the United States, to create the International Trade Organization when the IMF and the World Bank were created. Notwithstanding their inability to create a formal institution, nations nonetheless recognized the value of trade rules and thus operated under the GATT, a "multilateral instrument governing international trade, founded on the belief that free trade would help

⁹ Id.

¹⁰ Id.

¹¹ Scholte, O'Brien and William, "The WTO and Civil Society," 33(1) Journal of World Trade 107, 120 (1999) (hereinafter "The WTO and Civil Society").

¹² "Trading Into the Future" at 66; "The WTO and Civil Society" at 120.

the economies of all nations grow.”¹³ Therefore, the GATT was created in 1948 as a provisional framework for handling trade issues.¹⁴

In the nearly half a century of its existence, GATT achieved much through a series of “trade rounds” which formed the basis for multilateral negotiations.¹⁵ The GATT established trade rules that are still germane today -- the most-favored-nation principle (any advantage given to one contracting party must be given to all contracting parties) and national treatment (imported and domestic goods must be treated equally) being the most prominent examples. While the GATT was extremely successful, the member nations nevertheless determined that they would be better served by a permanent structure for the administration of the global trading system.¹⁶ They found that the GATT was unable to react to the deteriorating trade policy environment where many contracting parties were establishing non-tariff barriers to avoid the rules.¹⁷ Moreover, GATT was not able to expand far beyond tariff reduction and was therefore becoming irrelevant to the modern realities of world trade.¹⁸ The United States was not necessarily in favor of establishing a formal organization at the beginning, but it later determined that such an organization would serve the U.S. objectives, as articulated by Congress in the Omnibus Trade and Competitiveness Act of 1988, to improve the GATT structure and mechanisms -- specifically, *inter alia*, the coordination between the GATT and

¹³ General Accounting Office, “General Agreement on Tariffs and Trade: Uruguay Round Final Act Should Produce Overall U.S. Economic Gains (Vol. 2),” GAO/GGD-94-83B at Ch. 1:1.1 (July 29, 1994) (hereinafter 1994 GAO Report).

¹⁴ 2001 CRS Report at 2.

¹⁵ “Trading Into the Future” at 10.

¹⁶ 1994 GAO Report at Ch. 1:1.1.1; 2001 CRS Report at 2.

¹⁷ “Trading Into the Future” at 11.

¹⁸ Id.

multilateral monetary institutions, increased transparency in the decision-making process, and a stronger and faster dispute resolution system to better enforce U.S. rights.¹⁹

The Uruguay Round of negotiations thus culminated in 1995 with the establishment of the World Trade Organization and, for the first time, a formal organization existed dealing with multilateral trade issues. In perhaps remarkable contrast to the high profile attention that the WTO receives today, former WTO Director General Michael Moore described the launch of the WTO as coming in the midst of “the silence of public apathy.”²⁰ That the public had virtually no interest in the creation of the WTO is somewhat surprising given that, with this organization, issues that went far beyond tariff barriers (such as agriculture, services, intellectual property rights, trade related investment measures, and textile and apparel) were included within the ambit of international trade rules.²¹ Although its legal texts are made up of about 60 agreements, annexes, decisions and understandings, the WTO agreements can be broadly categorized into its three main parts: the General Agreement of Tariffs and Trade, the General Agreement on Trade in Services, and the Agreement on Trade Related Aspects of Intellectual Property Rights.²²

For the United States, negotiating and acceding to the WTO was a somewhat cumbersome task. The successful negotiation of the WTO agreements was “the result of bipartisan cooperation ... [t]he Uruguay Round was launched by President Reagan,

¹⁹ 1994 GAO Report at Ch. 1:1.2 and 3:2.2.

²⁰ Press Release, Challenges for the Global Trading System in the New Millennium, WTO PRESS/139 (Sept. 28, 1999) quoted in Jeffrey L. Dunoff, “The WTO in Transition: Of Constituents, Competence, and Coherence,” 33 The Geo. Wash. Int’l Law Rev. 979, 982 n.6 (2001) (hereinafter “The WTO in Transition”).

²¹ 2000 CRS Report at 3.

²² “Trading Into the Future” at 15.

continued by President Bush, and concluded” by the Clinton Administration.²³ The Uruguay Round was negotiated under the President’s “fast-track” authority and thus, “[e]ach Administration consulted with Congress and welcomed congressional participation and guidance throughout the negotiations.”²⁴ A detailed Statement of Administrative Action²⁵ was developed by the Administration, in consultation with Congress and interest groups, to reflect an authoritative interpretation of the U.S. obligations under the Uruguay Round Agreements. In other words, because the President was using his fast-track authority to negotiate these agreements, the burdens on the U.S. negotiators were compounded -- they were required to simultaneously negotiate within the international arena and the domestic sphere to develop language that was acceptable on all fronts.

By early 1994, an agreement suitable to all parties was reached, and the USTR signed the Uruguay Round agreements on April 15, 1994.²⁶ President Clinton then transmitted the Uruguay Round Trade Agreements to Congress on September 24, 1994.²⁷ Finally, the House passed the Uruguay Round Agreements Act on November 29, 1994; the Senate passed it on December 1, 1994, and the President signed it into law on December 8, 1994.²⁸

²³ Message from the President of the United States Transmitting the Uruguay Round Trade Agreements, Texts of Agreements Implementing Bill, Statement of Administrative Action and Required Supporting Statements, H.R. Doc. No. 103-316, Vol. 2 at 1 (1994).

²⁴ Id.

²⁵ Id., Vol. 1.

²⁶ Id. at 656.

²⁷ Id., Vol. 2.

²⁸ <http://thomas.loc.gov/cgi-bin/bdquery/z?d103:HR05110:@@@L&summ2=m&|TOM:/bss/d103query.html|#status> (last visited March 16, 2003).

Organizational Structure of the WTO

The WTO is governed, at the highest level, by the Ministerial Conference, made up by trade ministers of all the members.²⁹ The Ministerial Conference meets every two years to examine the current trade regime and set the agenda for future work.³⁰ It then issues a ministerial declaration outlining these issues and details how negotiations should proceed.³¹

In the intervening years, a General Council, similarly made up of representatives of all the member nations, governs the day-to-day operations of the WTO through bodies, councils, and committees.³² In addition to providing a forum for countries' representatives to discuss trade matters, the General Council is responsible for the trade policy review mechanism, which reviews national trade policies to ensure a closer monitoring of the policies of member countries. Further, it oversees the dispute settlement process. It also has three major bodies under its authority, each, respectively, administering the rules on trade in goods, trade in services, and trade-related aspects of intellectual property rights.³³

Finally, the WTO has a Secretariat.³⁴ Unlike some other international bodies, the Secretariat has no power to make major decisions.³⁵ Its purposes are to provide support operations for the councils, committees, working parties, and negotiating groups that work under the auspices of the WTO; provide technical support to the developing

²⁹ 2001 CRS Report at 3; 1994 GAO Report at Ch. 3:3.2.

³⁰ 2001 CRS Report at 3.

³¹ Statement of Susan S. Westin at 1.

³² 1994 GAO Report at Ch. 3:3.2.

³³ 2001 CRS Report at 3-4. It also has numerous committees and working groups under its jurisdiction. Id.

³⁴ 1994 GAO Report at Ch. 3:3.2.

³⁵ 2000 CRS Report at 5.

countries; conduct trade policy analysis of member countries; provide legal assistance to the dispute settlement body; and assist in accession negotiations.³⁶ The Secretariat is headed by a Director General.³⁷

Decision-making in the WTO

The WTO issues rules in one of two ways -- either through negotiation or through opinions of the dispute settlement body. Negotiations generally are completed by consensus. Every country has veto power.³⁸ Nonetheless, there are some instances where scholars proffer that consensus is more form than reality because there are some situations where countries have no choice but to consent.³⁹ Consensus can be difficult to achieve among so many members so, at times, smaller groups must get together to reach agreement on particularly delicate problems of great interest to them (known as “green room” meetings), with this compromise then being presented to the membership at large.⁴⁰ Further, while consensus involves negotiation and compromise, in accepting the concept of consensus, U.S. negotiators at the time understood that agreement from the countries with the most economic power (the United States, Japan, and the European Union) was important and often necessary.⁴¹ Nonetheless, the developing countries are taking a more active role in the negotiation process and are insisting on meaningful participation, even to the extent of being willing to block progress until they feel they are

³⁶ Id.

³⁷ Statement of Susan S. Westin at 3.

³⁸ WTO Policy Issues for Parliamentarians at 42.

³⁹ Clyde Summers, “The Battle in Seattle: Free Trade, Labor Rights, and Societal Values,” 22 U. Pa. J. Int’l Econ. L. 61, 70 (2001) (hereinafter “The Battle in Seattle”).

⁴⁰ “Trading Into the Future” at 63.

⁴¹ 1994 GAO Report at Ch. 3:1.2.

getting such participation.⁴² An example of this can be seen in their level of participation in the last ministerial conference at Seattle -- of the 250 formal proposals submitted for consideration, over half were from developing nations.⁴³

Dispute settlement under the WTO Agreements provides the members with a mechanism for receiving clear judgments about right and wrong in trade disputes and provides an acceptable framework for going forward once a dispute has been resolved in one party's favor.⁴⁴ "An effective dispute settlement system advantages the United States, not only through the ability to secure the benefits negotiated under the agreements, but also by encouraging the rule of law among nations."⁴⁵ At the time the WTO came into existence, the dispute settlement mechanism was heralded as the "crown jewel" of the WTO.⁴⁶

As of November 2001, there were approximately 240 complaints brought under the dispute settlement system, and about 53 resulted in findings, either from panels or the Appellate Body.⁴⁷ These findings are based on contractual relations and thus are not binding; the parties cannot be compelled to perform the specific terms of the contract.⁴⁸

⁴² "The WTO in Transition" at 983. For example, the developing countries adamantly opposed President Clinton's suggestion to include labor rights as part of the agenda for negotiations, viewing the suggestion as disguised protectionism to keep out exports from developing countries. "The Battle in Seattle" at 62.

⁴³ "The WTO in Transition" at 981.

⁴⁴ "Ten Benefits of the WTO Trading System," World Trade Organization at 3 (2002), available at: www.wto.org (hereinafter "Ten Benefits of the WTO Trading System").

⁴⁵ Executive Branch Strategy Regarding WTO Dispute Settlement Panels and the Appellate Body, Report to Congress Transmitted by the Secretary of Commerce at 2 (Dec. 30, 2002).

⁴⁶ Susan Esserman and Robert Howse, "The WTO on Trial," Foreign Affairs, Vol. 82, No. 1, 130, 131 (Jan./Feb. 2003).

⁴⁷ John H. Jackson, "Perceptions About the WTO Trade Institutions," 1 World Trade Review 101, 109 (2002) (hereinafter "Perceptions About the WTO Trade Institutions").

⁴⁸ Scott McBride, "Dispute Settlement in the WTO: Backbone of the Global Trading System or Delegation of Awesome Power?" 32 Law & Policy in International Business 643, 651 (2001) (hereinafter "Dispute Settlement in the WTO").

In lieu of specific performance, the WTO rules permit the losing party to compensate the prevailing nation in the form of tariff concessions.⁴⁹ As a matter of U.S. jurisprudence, the findings of the panels are not self-executing, and Congress must affirmatively act to change the law if it is going to implement an adverse panel ruling against any law.⁵⁰ Nonetheless, there has been a high rate of compliance with these findings, even by the larger nations, and, thus, smaller, less developed countries are utilizing this dispute settlement process with some measure of success.⁵¹ Even more notable, as the numbers suggest, many of the complaints that are brought are being settled, thus enhancing the efficiency of resolving otherwise contentious disputes.⁵²

The success of the dispute settlement process is not without some pitfalls, however. Whereas consensus building makes the negotiation of new rules a burdensome and time-consuming process, the dispute settlement process is extremely quick, with the entire process through the appeals stage being completed in approximately two years. As a result, there is an incentive on the part of some members to resolve through the dispute settlement process issues that are better left for negotiations. The unfortunate consequence of this phenomenon is that panels are being forced to address issues that are outside their mandate to apply the previously negotiated rules. They are faced with issues that are truly better solved by negotiators, as part of the rule-making process, than as part of the panel's judicial functions.⁵³

⁴⁹ *Id.* at 644.

⁵⁰ *Id.* at 651.

⁵¹ "Perceptions About the WTO Trade Institutions" at 109-110.

⁵² *Id.* at 110.

⁵³ *Id.* at 111.

The role of NGOs in the WTO

Because the WTO is administered by governments, non-governmental organizations (“NGOs”) do not have a primary role in the workings of the WTO. NGOs have a voice in the WTO to the extent that they influence the negotiating position of the member governments.⁵⁴ NGOs therefore are limited to participation through their governments, which can choose to accept or reject the NGOs’ positions.⁵⁵ Some argue that by allowing governments the flexibility to decide whether to accept the narrow interests of the NGOs, governments are protected against having to consistently comply with the demands of interest groups whose demands may not necessarily be in the interest of the multinational trading system.⁵⁶ Under this system, governments are in a better position to put off interest groups by arguing that the narrow views of the group do not fit into the broad-ranging agreement that works to the benefit of all sectors of the economy.⁵⁷

However, because the WTO plays such an important role in the distribution of world-wide resources, many NGOs have sought more direct contact with the WTO.⁵⁸ In particular, NGOs began to take a keen interest in the workings of the WTO after the GATT Tuna-Dolphin panel report in 1994,⁵⁹ which made many in the NGO community realize how trade rules can affect areas within their competence.⁶⁰ As a result of this

⁵⁴ 2000 CRS Report at 10.

⁵⁵ “The WTO in Transition” at 987.

⁵⁶ “Ten Benefits of the WTO Trading System” at 13.

⁵⁷ Id.

⁵⁸ “The WTO and Civil Society” at 109.

⁵⁹ United States Restrictions on Imports of Tuna, June 16, 1994, GATT Doc. DS29/R, 33 I.L.M. 839 (1994).

⁶⁰ “The WTO in Transition” at 982.

interest, the WTO is reaching out to NGOs and has created formal guidelines for increased interaction with them.⁶¹ Moreover, it provides briefings to NGOs and organizes symposia on issues of interest to NGOs.⁶² The WTO has reached out to NGOs only on an ad hoc basis, however, and, unlike other international organizations, it has no liaison committee with civic groups, does not have any permanent accreditation of civic organizations, does not allow NGO participants as ex officio observers on WTO committees, and does not allow NGO participation in trade policy reviews.⁶³ While there is room for NGO participation in dispute settlement, this option is at the will of the panel or appellate body and has been exercised only when the NGOs submissions have been adopted by one of the parties to the dispute.⁶⁴

It would be a mistake to assume, however, that NGOs and other non-state actors are powerless before the WTO. Software and pharmaceutical industries were the leading advocates for bringing intellectual property rights into the ambit of the WTO because these industries believed that WIPO lacked the necessary enforcement measures.⁶⁵ Similarly, trade disputes are often only nominally between state actors, with the real parties at interest being large corporate enterprises.⁶⁶ Further, NGOs are plainly making their voices heard. When the WTO members convened in Seattle to discuss an agenda for the next round of negotiations, they were met by over 30,000 protestors, mainly from labor, environmental, and human rights groups.

⁶¹ “The WTO and Civil Society” at 110.

⁶² “The WTO in Transition” at 984; see also “The WTO and Civil Society” at 117.

⁶³ “The WTO and Civil Society” at 119.

⁶⁴ “The WTO in Transition” at 986.

⁶⁵ Id. at 1003.

⁶⁶ Id. Disputes over film, reformulated gasoline, and bananas are examples. Id.

Not all NGOs are interested in reaching out to the WTO, however. NGOs can be divided into three general categories: (1) NGOs that accept the aims and activities of the WTO; (2) NGOs that accept the need for a global trade regime, but seek to change the WTO's theories, policies, and/or operating procedures; and (3) NGOs that seek to reduce the powers of the WTO or abolish it altogether.⁶⁷ Generally speaking, groups that by and large support the WTO include business associations, commercial farmers' unions and economic research institutes such as the World Economic Forum, the International Chamber of Commerce, the US Dairy Foods Association, the American Sugar Alliance, the Brookings Institution, and the Institute for International Economics.⁶⁸ Trade unions, human rights groups, development NGOs, and environmental NGOs, such as the International Confederation of Free Trade Unions, Oxfam, and the International Centre for Trade and Sustainable Development, fall into the second group.⁶⁹ The approximately 30,000 protestors that convened during the Seattle Ministerial⁷⁰ from groups such as the AFL-CIO, Teamsters, Longshoremens, Sierra Club, United Steelworkers of America, students, church groups, and social justice advocates are also part of the second group.⁷¹ Finally, groups that seek to severely curtail the WTO's role or eliminate it entirely include the Peoples' Global Action Against "Free" Trade and the World Trade Organization and Greenpeace.⁷²

⁶⁷ "The WTO and Civil Society" at 112.

⁶⁸ Id. at 112-13.

⁶⁹ Id. at 113-14.

⁷⁰ "The Battle in Seattle" at 61.

⁷¹ Heath Foster, "A March and a Message from Union Members," Seattle Post-Intelligencer (Dec. 1, 1999) available at: <http://seattlepi.nwsource.com/business/labr012.shtml> (last visited Jan. 30, 2003).

⁷² "The WTO and Civil Society" at 115-16.

The NGOs in the second category seek to change the way the WTO operates and alter its scope because they perceive a need for the WTO to take upon itself the amelioration of the undesirable effects of the existing trade order.⁷³ The issues of concern to these NGOs have been much discussed in the WTO. For example, linking enforceable labor standards to trade was discussed during the Singapore Ministerial in 1996. Developing countries, fearing that developed countries would use these standards as a type of back-door protectionism, strongly opposed such a linkage, however, and the outcome was a recognition of core labor standards left under the competence of the International Labor Organization.⁷⁴ As to environmental concerns, the preamble to the Marrakesh Agreements, establishing the WTO, include environmental goals such as sustainable development and protecting and preserving the environment.⁷⁵ Also, the ministers established a Committee on Trade and the Environment, which has issued reports regarding the relationship between trade and the environment.⁷⁶

National Sovereignty and the WTO

The concept of sovereignty does not fit neatly into WTO parlance. In fact, in the view of some, the very concept of sovereignty, with its focus on the “national interest,” is completely antithetical to the very underpinnings of the WTO, which deems national interest to be “protectionism” and instead focuses on nondiscrimination between local and foreign products.⁷⁷ Once it accedes to the WTO, it is beyond dispute that a country relinquishes its right to act rashly in its national interest. At best, it must ensure that the

⁷³ “The WTO and Civil Society” at 113.

⁷⁴ 2000 CRS Report at 6.

⁷⁵ Id. at 7.

⁷⁶ Id. at 7-8.

⁷⁷ “The WTO in Transition” at 1009.

rules it enacts to do not contravene agreed upon principles of international trade. This concept lies at the foundation of the WTO trading system.

Conservatives as well as liberals find fault with the WTO for violating national sovereignty. Those that believe governments should act independently and in their own self-interest criticize the WTO for limiting the ability of its signatories to act freely and allowing an international body to supervise national actions. They argue that the mere entry into the WTO, while deemed a matter of “sovereign choice,” in fact presents little choice for the member governments. “[G]overnments have had little option but to approve the Uruguay Round accords.”⁷⁸ Further, these same scholars argue that, when signing onto the WTO Agreements, the member states eroded their sovereignty by committing to change their laws, regulations, and administrative procedures to conform to the WTO rules.⁷⁹ They also assert that, not only did the states relinquish some of their sovereignty at the time they entered the WTO, these states also subjected themselves to repeated intrusions into their sovereignty by subscribing to review by the WTO Trade Policy Review Body, which, as described above, conducts periodic reviews of the members states’ commercial measures.⁸⁰

Further, the dispute settlement process has caused concern for those that view the WTO as an intrusion into sovereignty. Critics see the dispute resolution process as creating legally binding obligations, and they argue that Congress has “assigned a boundless, de facto legislative power to a supranational, extra-constitutional body” which

⁷⁸ “The WTO and Civil Society” at 108.

⁷⁹ Id.

⁸⁰ Id. at 108.

“deprive[s] this country of its ultimate self-determination.”⁸¹ They also believe that the dispute settlement mechanisms hamper the ability of the United States to unilaterally deal with non-violation type trade issues and intrude in U.S. government policy making in areas outside the traditional realm of trade policy.⁸²

While discussions about the implication of the dispute settlement process can take place on a theoretical level, there is also a very practical element underlying the resentment for the dispute settlement body. As noted above, many NGOs realized the wide-reaching ambit of WTO dispute settlement authority only after the panel made a ruling touching on the concerns of environmental activists. Critics affected by these decisions resent that, as they perceive it, many aspects of daily life that were traditionally the purview of local and national governments are now being governed by “a group of unelected trade bureaucrats sitting behind closed doors in Geneva, Switzerland.”⁸³

Supporters of the WTO, however, note that, on a theoretical level, the decision of the United States to enter into the WTO Agreements was, in and of itself, an exercise of its national sovereignty.⁸⁴ The United States, in acceding to the WTO, made a choice to set a limit on its own behavior.⁸⁵ Further, they argue, decisions at the WTO are generally

⁸¹ “Dispute Settlement in the WTO” at 644. Whether binding or not, the fact clearly remains that “the standing of the United States to be insistent when it is a successful complainant at the WTO will be related to its willingness to be graceful should it find itself an unsuccessful respondent.” Homer E. Moyer, Jr., “How Will the Uruguay Round Change the Practice of Trade Law in the United States?: U.S. Institutions, Not the WTO, May Hold the Answer,” 30 Journal of World Trade 63, 67 (June 1996).

⁸² 1994 GAO Report at Ch. 3:4.3.

⁸³ Michael Paulson, “WTO is Weakening Health Laws, Nader Says,” Seattle Post Intelligencer (Oct. 13, 1999), available at: <http://seattlepi.nwsourc.com/business/wto131.shtml> (last visited Jan. 30, 2003) (hereinafter Paulson article).

⁸⁴ “America and the World Trade Organization,” available at: http://www.ustr.gov/html/wto_usa.html (last visited Jan. 31, 2003) (hereinafter “America and the World Trade Organization”).

⁸⁵ WTO Policy Issues for Parliamentarians” at 12.

made by consensus, such that each sovereign nation has a voice; power is not delegated to any suprapstate entity.⁸⁶

Moreover, supporters note that the findings of a WTO panel can never force the United States to change its laws; only the United States can determine how it will respond to the recommendations of a panel. The United States, in an exercise of its sovereignty, can choose to change its laws in accordance with the recommendations of the panel, compensate the prevailing country, or do nothing and be subject to retaliation.⁸⁷ In addition, the supporters of the WTO note that, under the WTO regime, each country is free to establish its own level of protection for the environment and health and safety concerns, as long as they do so in a fair and transparent way and do not use them as disguised barriers to trade.⁸⁸ All that is required under the WTO is that national legislators enact rules that are in conformity with the treaty obligations they have accepted.⁸⁹ Finally, proponents note that, in fact, the United States has not compromised any of its objectives or values, even when the WTO has ruled that it must accomplish those objectives in a different, non-discriminatory way. The United States has been able to comply and correct any discrimination found by the WTO while continuing to achieve the original objectives.⁹⁰

Frequently, when faced with criticisms about the abrogation of sovereignty, supporters of the WTO do not address the sovereignty issue directly, but instead point out that many benefits flow from membership in the WTO. Supporters of the WTO

⁸⁶ 2000 CRS Report at 5.

⁸⁷ “America and the World Trade Organization.”

⁸⁸ Id.

⁸⁹ WTO Policy Issues for Parliamentarians at 14.

⁹⁰ Paulson Article.

recognize that the attention given to internal regulatory activities of governments in the WTO provides much fodder for opponents of the WTO system, but they argue that this intrusion into the internal processes has been a necessary step in providing the institutional framework that is essential to workings of the global market.⁹¹ They argue that the WTO steps in to fill a void in that it provides an “international cooperative institutional mechanism to address these regulatory problems in a way that nation states are increasingly unable to do successfully.”⁹² They also claim that businesses recognize the value of a rules-based international trading system and thus have an appreciation for the system, even if it means that they can have less influence on their local governments.⁹³ Finally, they also argue that the new procedures give the United States better leverage for enforcing violations by other countries.⁹⁴

Conclusion

The establishment of a formal international organization to handle trade issues was long delayed, but in those intervening years a solid foundation was built for the creation of a strong institution to handle the sometimes contentious issues surrounding international trade matters. The WTO came into existence in 1995 with little fanfare, but its expansive reach has made it the focus of attention for many in recent years. NGOs are seeking more interaction with this institution administered by sovereign states, and many criticize it for reaching into areas that are traditionally considered the domain of nations. Nonetheless, the WTO was created to bring order out of the chaos that existed in the prior

⁹¹ “Perceptions About the WTO Trade Institutions” at 106.

⁹² Id.

⁹³ Id. at 109.

⁹⁴ 1994 GAO Report at Ch. 3:4.3.

trade regime, and most agree that this type of stability in the international trade arena is much needed.



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