

# 5 Relations with other organizations and civil society

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My objective when I came here was to get the WTO on the front page of the *New York Times*, my hometown paper, and I succeeded. But I just didn't in my wildest dreams imagine that it would be with a photo of policemen firing tear gas at kids dressed as turtles and dolphins.

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## Introduction

The front-page treatment of the Seattle Ministerial Conference in 1999 symbolized the profound changes that had taken place in the scope and politics of trade over the preceding half-century. At the founding of the GATT system trade policy was confined to tariffs and quotas, and this field was the province of a very small set of decision-makers and stakeholders. The one global institution that dealt with the topic was so obscure that it could not even be described as an international organization; there were only a handful of countries that made significant commitments in GATT; those commitments concerned only a few government ministries, especially finance and foreign affairs; and the only domestic interests that cared were firms and workers in the affected industries. By 1999, the subject matter of trade negotiations and disputes had encompassed a far wider and growing array of laws and policies; the work of the WTO impinged on that of several other international organizations and vice versa; nearly every country in the world was in or seeking to get in; the operations of almost all government ministries were concerned by WTO rules, with commitments affecting their revenues, regulations and procurement; and ministerials became magnets for reporters, labour leaders, religious activists, “black bloc” anarchists, children adorned with butterfly wings and policemen in riot gear. The tear gas and the media scrums did not become permanent features of WTO meetings, but the larger point remains: the days when this community was isolated and low-profile have long since passed. Trade ministries and the WTO Secretariat have had to learn how to communicate with the many other policy-makers, stakeholders and opinion leaders whose interests are affected by what they do.

The changes and challenges come not just in the widening of the WTO but in the general proliferation of international organizations. This is a process that accelerated in the 1960s, which saw the transformation of the post-war Organisation for European Economic Cooperation (principally a Marshall Plan administrator) into the Organisation for Economic

Co-operation and Development (OECD) in 1961 and the first United Nations Conference on Trade and Development (UNCTAD I) in 1964. Other global institutions have become more involved in trade policy, partly in response to the expanding subject matter and partly as a post-Seattle realization that they needed to address the development dimension of trade. This multiplicity of bodies, coupled with the widening scope of trade policy, creates both problems and opportunities. Despite the fact that all of these organizations are beholden to their members, and the memberships of these organizations are nearly identical, each of them has its own character and is prone to approach similar topics in dissimilar ways. There is a potential for conflict between international organizations that have overlapping jurisdictions and that might encourage countries to adopt conflicting policies, a problem that is usually defined as “coherence”. To the extent that the WTO can draw upon the expertise that is housed in another body, however, the two organizations might be able to devise a working relationship that takes best advantage of their respective strengths and capabilities.

The problem often looms larger than the opportunity. At its worst, a lack of coherence could spawn an outright conflict of laws. The commitments that countries make in one international organization could directly contradict those that they make in another. The International Monetary Fund (IMF) might oppose tariff cuts that threaten to reduce government revenue and contribute to budget deficits, for example, just as the World Health Organization (WHO) might promote restrictions on trade in tobacco and the United Nations Educational, Scientific and Cultural Organization (UNESCO) may be friendlier to a “cultural exception” for trade in motion pictures. A less severe but ever-present danger is that the multiplicity of institutions, meetings and agreements will lead to uncertainty or confusion over the objectives that countries seek and the proper forum in which they will pursue them. When the WTO handles issues affecting such diverse topics as, for example, agriculture, health care and tourism, and there already exist other specialized organizations that do so as well, which institution should take the lead?

While the problem of coherence often manifests itself at the level of international organizations, much of it originates at the national level. The expanding scope of trade policy-making can upset the often delicate relationships between different stakeholder groups and government ministries. It was one thing when a country's trade negotiators were given the responsibility to negotiate reductions in tariffs on imports, a task that usually required close coordination with the finance ministry (of which they may have formed a part). It is something else altogether for that same ministry to seek the authority to make binding commitments on behalf of other ministries and independent regulatory bodies.<sup>1</sup> If not managed properly, this may provoke “turf battles” between government bodies that can delay or even block the conduct of negotiations. Avoiding incoherence in what countries do in the WTO versus the IMF, the WHO and UNESCO, for example, may require that their ministries of trade, finance, health and culture cooperate much more closely than they are accustomed to doing.

Despite these challenges, or perhaps because of them, the WTO operates more transparently than did GATT. It makes most of its documents available over the Internet, and has closer ties to non-governmental organizations (NGOs), parliamentarians and the press.

## How the WTO relates to other institutions

Coordination with other international organizations is a higher priority in the WTO than it was in the GATT period. The prospects for incoherence and outright conflict have risen with the strengthening of the dispute settlement rules. GATT already had more enforcement power than did other international organizations, and the WTO Dispute Settlement Understanding (DSU) is both stricter and more frequently used than its GATT predecessor. The scope of issues in the WTO system is much wider than had been the case under GATT, in part because the proponents of the new issues preferred to bring agreements within the jurisdiction of these dispute settlement rules. In some cases, that meant negotiating wholly new agreements dealing with subjects that are also treated in other organizations; in others, the Uruguay Round negotiators cross-referenced or even incorporated the standards and agreements of those institutions within the agreements that they drafted. The only international organizations that the original GATT mentioned were the IMF and the United Nations, whereas WTO agreements make reference to these two plus the Codex Alimentarius, the Food and Agriculture Organization of the United Nations (FAO), the International Labour Organization (ILO), the International Plant Protection Convention (IPPC), the International Telecommunication Union (ITU), the International Trade Centre (ITC), the OECD, UNCTAD, the United Nations Environment Programme (UNEP), the World Bank, the World Customs Organization (WCO), the WHO, the World Organization for Animal Health (OIE) and the World Intellectual Property Organization (WIPO).

### *The problem of coherence*

The range of issues that are now dealt with in the WTO includes many that were either left out of GATT altogether or were handled less comprehensively under that regime. Table 5.1 illustrates the topics in WTO law that might lead to conflict with other institutions. This sampling of a dozen agreements from the Uruguay Round shows that there are at least two dozen other international organizations dealing with the same subject matter.

The negotiators in the Uruguay Round were well aware of the problem of coherence, having made this one of the main issues in the talks on the functioning of the GATT system (Chapter 2), and they approved several provisions that are intended to address these concerns. One was the Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking, which was part of the Uruguay Round package. In it, ministers recognized that “difficulties the origins of which lie outside the trade field cannot be redressed through measures taken in the trade field alone,” and underlined “the importance of efforts to improve other elements of global economic policymaking to complement the effective implementation of the results achieved in the Uruguay Round.” They then declared that:

The interlinkages between the different aspects of economic policy require that the international institutions with responsibilities in each of these areas follow consistent and mutually supportive policies. The WTO should therefore pursue and develop cooperation with the international organizations responsible for monetary

and financial matters, while respecting the mandate, the confidentiality requirements and the necessary autonomy in decision-making procedures of each institution, and avoiding the imposition on governments of cross-conditionality or additional conditions.

In particular, the ministers invited the WTO director-general to review with his counterparts at the IMF and the World Bank “the implications of the WTO’s responsibilities for its cooperation with the Bretton Woods institutions, as well as the forms such cooperation might take, with a view to achieving greater coherence in global economic policymaking.” Article III:5 of the Agreement Establishing the World Trade Organization (WTO Agreement) complemented that declaration by providing that: “With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the IMF and with the International Bank for Reconstruction and Development [the World Bank] and its affiliated agencies.” Other provisions in the Uruguay Round agreements called for similar initiatives with additional institutions. Article V:1 provides that the General Council “shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.” Similarly, GATS Article XXVI states that: “The General Council shall make appropriate arrangements for consultation and cooperation with the UN and its specialized agencies as well as with other intergovernmental organizations concerned with services.”

**Table 5.1. Illustrative list of WTO agreements that address issues dealt with in other international organizations**

<b>Agreement</b>	<b>Other organization(s)</b>
Agreement on Agriculture	Common Fund for Commodities, FAO, International Grains Council, International Coffee Organization (among many other commodity groups)
Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994	WCO
Agreement on Rules of Origin	WCO
Agreement on Sanitary and Phytosanitary Measures	Codex Alimentarius Commission, FAO, International Union for the Protection of New Varieties of Plants, Office international des épizooties
Agreement on Technical Barriers to Trade	International Electrotechnical Commission, International Organization for Standardization
Agreement on Textiles and Clothing	International Textiles and Clothing Bureau
Agreement on Trade-Related Intellectual Property Rights	International Union for the Protection of New Varieties of Plants, WHO, WIPO
Agreement on Trade-Related Investment Measures	IMF, International Centre for the Settlement of Investment Disputes, World Bank
Decision on Measures in Favour of Least-Developed Countries	UNCTAD, UN Development Programme (UNDP)
General Agreement on Trade in Services	ILO, ITU, UNESCO, WHO, World Tourism Organization (among others)
Understanding on Rules and Procedures Governing the Settlement of Disputes	International Court of Justice, International Centre for Settlement of Investment Disputes
Understanding on Balance-of-Payments Provisions of GATT 1994	IMF, World Bank

Sources: Compiled from WTO agreements and the websites of other international organizations.

One way that the WTO carries out this mandate is through the director-general's participation in the Chief Executives Board for Coordination (CEB), comprised of the leadership of 28 member organizations and chaired by the UN secretary-general. These include the heads of the UN specialized bodies (the ILO, WHO etc.) and the other Bretton Woods institutions (the IMF and the World Bank).<sup>2</sup> The CEB's origins date back to 1946, when it was known as the Administrative Committee on Coordination.<sup>3</sup> Its members now hold regular retreats, with gatherings in October or November hosted in New York and those in March or April held at the headquarters of one of the other institutions. These are informal and leaders-only meetings in which note-takers are not allowed. Each meeting will focus on a specific topic of current interest, with the heads of these organizations dealing horizontally with the issue at hand, but the larger aim is to promote coherence among the institutions by ensuring that their chiefs are in regular contact with one another.

The issues taken up in the CEB can sometimes lead to more permanent collaboration between the member institutions. One prominent example is the UN High Level Task Force on the Global Food Security Crisis that the CEB created in 2008 to address the problem of rising food prices. Chaired by the UN secretary-general, with the FAO director-general as its vice chair, this group is comprised of the heads or other representatives of 22 international organizations, including the WTO director-general.<sup>4</sup> Food security is one of many topics on which the perspectives and institutional cultures of different international organization can come into conflict, as demonstrated by the discussion below on the exchanges between the WTO and the UN Special Rapporteur on the Right to Food.

The High Level Task Force on the Global Food Security Crisis is an example of one way that the WTO works with other organizations on collaborative projects, creating permanent, inter-agency bodies to deal with matters of joint interest and expertise. These activities are especially prominent in the area of trade and development, with the longest-running example being the International Trade Centre (ITC). This joint project of the WTO (and GATT before it) and UNCTAD is located at a Geneva site that is roughly equidistant between its parent institutions, and provides training and other assistance to policy-makers and exporters in developing countries. It is a successor to the International Trade Information Centre that GATT created in 1964, and became a joint GATT–UNCTAD institution in 1967.<sup>5</sup>

One of Director-General Pascal Lamy's first steps in 2005 was to launch the Aid for Trade initiative. It aims to foster coherence in trade capacity-building through collaboration with such partners as the OECD, the IMF, the ITC, UNCTAD, UNDP, the World Bank and regional development banks. The WTO is the host institution for the executive Secretariat of the Enhanced Integrated Framework (EIF), a coordinating body for the Aid for Trade initiative. Dating back to the Integrated Framework approved in 1997, the EIF was expanded in 2006. Starting in 2009, the WTO has hosted biennial Global Aid for Trade Reviews, fostering coherence by bringing together donors, beneficiaries, the private sector and civil society.

The WTO is also the host institution for the Standards and Trade Development Facility. A joint project with the FAO, the OIE, the WHO and the World Bank, this is a global partnership that supports developing countries in building their capacity to implement international sanitary and phytosanitary standards, guidelines and recommendations in order to improve their human, animal and plant health status, and to promote their ability to gain or maintain access to markets.<sup>6</sup>

The WTO and its counterparts have other options for promoting coordination and avoiding clashes. One is to provide observer status, with each institution allowing the other to witness its deliberations and, in some cases, to have a voice in them. Organizations sometimes take the further step of negotiating a memorandum of understanding that lays out the terms by which they might cooperate in such areas as the sharing of documents and the provision of technical assistance to their members. Another approach is either to incorporate the other's laws within one's own, or even to negotiate joint agreements on topics of shared interest and expertise. There are several WTO agreements that take the first of these routes, but the only example of the second dates from the early GATT period.<sup>7</sup>

Another way organizations can work jointly is at the level of research and analysis, and the WTO Secretariat has issued several publications developed in collaboration with its counterparts on issues of mutual interest. The *WTO Agreements & Public Health* report, issued by the WTO with the WHO in 2002, was the first in a growing series of such studies. Collaboration is not always easy: the drafting of that WHO/WTO volume was contentious, with at least one WTO official expressing concerns in internal correspondence over the wisdom of issuing a joint report on this subject prior to the Doha Ministerial Conference discussions on trade-related aspects of intellectual property rights (TRIPS) and public health.<sup>8</sup> Despite that early hiccup, the two organizations continue to collaborate. In 2013, they joined with WIPO to issue a joint study entitled *Promoting Access to Medical Technologies and Innovation: Intersections between Public Health, Intellectual Property and Trade*. Collaborations have been especially frequent with the ILO. Joint studies include: *Trade and Employment: Challenges for Policy Research* (2007), *Globalization and Informal Jobs in Developing Countries* (2009) and *Making Globalization Socially Sustainable* (2011). The ILO and the WTO are also among the numerous international organizations that came together in the International Collaborative Initiative on Trade and Employment (ICITE), initiated by the OECD in 2010. The WTO and the OECD jointly produce a series entitled *Aid for Trade at a Glance*, issuing volumes in 2007, 2009 and 2011. These reports follow current developments in the Aid for Trade initiative, highlighting both the successes and the failures. And as discussed in Chapter 8, starting in 2009 the WTO has worked jointly with the OECD and UNCTAD in producing regular reports that monitor countries' actions to restrict trade or bail out troubled industries.

The *Manual on Statistics of International Trade in Services* is something of a hybrid between a joint publication and an agreement, insofar as it sets standards for compiling and reporting on statistics. It was developed and published jointly by the WTO, the European Commission, the IMF, the OECD, UNCTAD and the United Nations, and makes recommendations that the six

organizations will promote in order to enable countries to expand and structure information on trade in services in an internationally comparable way.<sup>9</sup>

### *The multilateral trading system and the United Nations*

The WTO is not part of the UN system, but matters were more complicated in the GATT period. The International Trade Organization (ITO) was intended to be a specialized agency of the United Nations, as was specified in Article 86 of the Havana Charter, and in the meantime the contracting parties to the “temporary” GATT asked in Article XXV:2 that the UN secretary-general formally convene their first meeting. GATT nevertheless could not be considered a UN agency for the simple reason that it never rose to the level of a formal international organization, instead being a contract to which a secretariat was attached.

The Interim Commission of the International Trade Organization (ICITO), which formed the legal basis for the existence of the GATT Secretariat, was a UN agency. It was created by a resolution adopted at the Havana Conference – more formally entitled the United Nations Conference on Trade and Employment – with the intent of providing the link between GATT and the ITO until the latter came into effect. Over time the sense of a formal tie between GATT and the UN system was attenuated, with Secretariat staff and contracting parties thinking of this as an institution quite apart from the United Nations. One important step came in 1951, when the contracting parties decided to finance the Secretariat with their own contributions rather than from funds provided by the United Nations. The link was not fully broken until the transition between GATT and the WTO, and even then came in stages.

There are several respects in which the WTO’s legal instruments reflect the new institution’s independence from the UN system. Under paragraph 5 of the GATT Protocol of Provisional Application, for example, a country that wished to withdraw from GATT had to lodge its written notice with the UN secretary-general. By contrast, WTO Article XV:1 specifies that it is the WTO director-general who would receive any written notice of a country’s intention to withdraw. The only mentions made of the United Nations in the WTO Agreement come in the Article VIII:4 declaration that WTO officials and the representatives of its members have privileges and immunities *similar to* those stipulated in the UN Convention on the Privileges and Immunities of the Specialized Agencies, and a provision in Article XVI.6 stating: “This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.” That does not indicate subordination to the United Nations, as Article 102 applies to “[e]very treaty and every international agreement entered into by any Member of the United Nations.”

The WTO cut its ties to the United Nations at birth. During the transition from GATT to the WTO, the ICITO Executive Committee met on 9 December 1994 to approve a Decision on Transitional Arrangements: Transfer Agreement between GATT 1947, ICITO and the WTO. This measure, which was also approved by the Preparatory Committee for the WTO and endorsed by the newly constituted WTO General Council the next month, incorporated the Agreement on the Transfer of Assets, Liabilities, Records, Staff and Functions from the

Interim Commission of the International Trade Organization and the GATT to the World Trade Organization.<sup>10</sup> The agreement gave the director-general the authority to “appoint the members of the staff of the Secretariat of the WTO on or before 30 June 1995.” The WTO staff therefore remained UN employees in those first six months. Although the agreement provided that the ICITO would be dissolved “as of the date on which the members of the Secretariat of the WTO are appointed”, this was not actually accomplished until the WTO General Council and the ICITO Executive Committee finally adopted a decision (WTO document WT/L/282) on 16 October 1998, by which the ICITO ceased to exist as of 31 December. By that time the only practical consequence of the decision was to sever the last connection between the pay and pension programmes of the WTO and the UN system. The WTO members created a new and separate WTO Pension Plan in 1999 after withdrawing the institution from the UN Joint Staff Pension Fund.

Perhaps the most important distinction is that UN agencies are founded upon a principle of inclusiveness in which virtually all countries are assumed to have by right a place at the table and can accede with relatively little difficulty. Membership in the WTO is instead a privilege rather than a right, and applicants must pay for that privilege by negotiating what are often extensive commitments with the existing membership. Being a sovereign state is neither a sufficient nor even a necessary condition for being a member, as WTO Article XII specifies that accession is open not just to states but to any “separate customs territory possessing full autonomy in the conduct of its external commercial relations.” Three of its members, each of which has a special relationship with China, are not recognized in the United Nations as independent states: Hong Kong, China; Macao, China; and Chinese Taipei.

### *Relations between the WTO, UNCTAD and other UN agencies*

The WTO can sometimes come into conflict with UN bodies that deal with issues related to trade. UNCTAD is the one UN agency with which the WTO has the closest working relationship, but also one that could pose the greatest threat of incoherence if that relationship were to deteriorate.

There has long been a sense among many developing countries that the UN system is friendlier to their interests than is the multilateral trading system. The Havana Charter of the UN-affiliated ITO did make a number of compromises to the demands of developing countries (a group that did not yet include the many countries that gained their independence in later decades), while the ostensibly “temporary” GATT made very few such concessions. Developing countries devoted considerable energy in the ensuing decades to correcting that oversight. One proposed solution was to bypass the GATT system altogether and to rely instead upon alternative negotiating forums such as the UN General Assembly and then UNCTAD. The potential for creating a strong rival to GATT seemed especially large when it was decided at UNCTAD I in 1964, over the objections of developed countries, to make UNCTAD a recurring conference (every four years) to which would be attached a permanent secretariat.

If its founders had their way, UNCTAD would be where the North and South negotiated the terms of a “new international economic order” (NIEO) in which global institutions would play at least as important a role as the market in setting prices, regulating trade and determining outcomes. Key elements of that proposed order included commodity agreements that guaranteed high prices for developing countries’ raw materials, import protection for these countries’ infant industries, and open access to the industrialized countries markets’ for their manufactured exports. Few of these proposals gained much traction, apart from the creation of the Generalized System of Preferences (GSP) in the early 1970s; that concession to developing country demands required modification of GATT rules. These demands came to a head in 1974 with the UN General Assembly’s adoption of the Declaration for the Establishment of a New International Economic Order, which called for a variety of reforms that relied as much on states as on the market for improving the economic condition of developing countries.<sup>11</sup> The Brandt Commission report of 1980 can be seen as a mid-point in the evolution of this debate, advocating as it did the merging of UNCTAD and GATT into a new international organization (Brandt, 1980: 184-185). Far from consolidating the institutions or producing an NIEO, the 1980s instead saw the movement of ever more developing countries towards accessions to and active participation in GATT. The last time that developing countries made any effort to bring the trading system within the orbit of the United Nations came in the endgame of the Uruguay Round, when Egypt, Pakistan and others urged that the proposed new institution that was then still called the Multilateral Trade Organization (see Chapter 2) be made a specialized UN agency. Their efforts were too little and too late, facing determined opposition from developed countries and Director-General Peter Sutherland. Since that time, there has been more emphasis placed on reforming the trading system from within than on devising alternatives to it.

Relations between the WTO and UNCTAD can be strained by the differences in their institutional cultures. There is an undeniable tension that separates the officials in these two agencies, and these divisions are based not just on turf battles between potentially competing institutions but on philosophical differences between individuals. Both organizations are devoted to trade and development, but in UNCTAD those priorities are in alphabetical order and in the WTO it is the reverse. Some UNCTAD officials reflect the higher degree of trade-scepticism that one finds in many developing countries, a point that was exemplified by an incident at the Cancún Ministerial Conference in 2003. When the suspension of those negotiations was announced, Director-General Supachai Panitchpakdi (see Biographical Appendix, p. 594) – who would become secretary-general of UNCTAD two years later – observed the jubilant reaction of UNCTAD officials. He saw them grouped together with representatives of NGOs, and heard them shout: “Great!” That infuriated Mr Supachai. “I thought UNCTAD should have supported what we did because we were doing things that would have helped the cause of the developing countries,” he later recalled.<sup>12</sup> His own move up the hill from the WTO to UNCTAD was one of several changes in personnel that would help to bridge part of the gap between the two institutions. Another was the appointment in 2011 of Guillermo Valles (see Biographical Appendix, p. 596), formerly the Uruguayan ambassador to the WTO, as director of UNCTAD’s International Trade in Goods and Services and Commodities Division.

The relationship between UNCTAD and the WTO is now much more complementary than it had been in past decades. That complementarity is partly the result of much closer composition in their memberships. Most developing countries were not in GATT in the 1960s and 1970, many of those that joined were non-resident, and the few that participate actively would generally confine their participation to demands for exemptions, special and differential treatment and less than full reciprocity. The agreements negotiated in the Kennedy and Tokyo rounds were not part of a single undertaking, and thus not binding on the countries that opted not to sign them. That made it easy to think of GATT as the place where industrialized countries negotiated among themselves but UNCTAD as the place where they negotiated with developing countries. The differences in membership narrowed in the ensuing decades, however, when numerous developing countries acceded to GATT and the WTO.

UNCTAD and the WTO cooperate in several ways. One is their aforementioned joint sponsorship of the ITC. Much of the technical assistance that UNCTAD provides on its own is complementary to WTO initiatives, such as aiding countries in their WTO accessions and in the negotiation and implementation of their commitments. Most of the diplomats who represent their countries in the WTO are also accredited to UNCTAD and other UN agencies in Geneva. The top officials of the two institutions also have a good working relationship. The memorandum of understanding that UNCTAD and the WTO reached in 2003 aims to deepen and give practical effect to the strategic partnership between the parties for the purpose of the implementation of the Doha Round, "cooperating to ensure that trade serves development goals, and for assisting the beneficial integration of the developing and least developed countries into the global economy and the multilateral trading system."<sup>13</sup> It provides for meetings between the heads of the two organizations every six months as well as cooperation in the fields of technical cooperation, capacity-building, training, and research and analysis.

Two other UN agencies have dealt directly with the interface between trade and development. The United Nations Development Programme (UNDP) collaborates with the WTO on joint projects such as the EIF and the Aid for Trade initiative, but sometimes tends to take a more cautious view of the relationship between trade and development. That was evident in the UNDP report *Making Global Trade Work for People* (2003), which noted several aspects of the WTO system that, in view of the authors, might place greater restrictions on the policy space of developing countries than is in their best interests.

Comparable issues arose in a conflict over agricultural trade or, as viewed from a different angle, the relationship between trade and the right to food. The exchanges between WTO officials and the UN Special Rapporteur on the Right to Food, Olivier De Schutter, illustrate philosophical divides that could also be manifested in actual conflicts of law. In 2009 Mr De Schutter issued a report to the UN Human Rights Council based on consultations with Director-General Pascal Lamy, Secretariat staff and WTO ambassadors. He directly challenged the approach taken to agricultural trade negotiations in the WTO, stating that agricultural products should not be treated the same as other commodities. WTO agreements should instead be founded upon the human right to adequate food, as provided

for by the Universal Declaration of Human Rights that the UN General Assembly adopted in 1948, and more explicitly by the International Covenant on Economic, Social and Cultural Rights, which it adopted in 1966. The latter treaty commits its parties to work toward the granting of economic, social, and cultural rights to individuals, including “the fundamental right of everyone to be free from hunger” and “an equitable distribution of world food supplies in relation to need” (Article 11). According to Mr De Schutter’s report (2009: 5), “[t]he realization of the right to adequate food should guide the efforts aimed at the establishment of the multilateral trading system,” which “should not only refrain from imposing obligations which directly infringe upon the right to food” but “should also ensure that all States have the policy space they require to take measures which contribute to the progressive realization of the right to food under their jurisdiction.”

Mr De Schutter followed up two years later with another report entitled *The World Trade Organization and the Post-Global Food Crisis Agenda: Putting Food Security First in the International Trade System* (2011). Mr Lamy responded to that latter report with formal comments and a detailed letter in which he stated his fundamental disagreement “with the assertion that countries need to limit reliance on international trade to achieve food security objectives.”<sup>14</sup> The exchange between Mr Lamy and Mr De Schutter continued well into 2012, with the director-general explaining the approach that WTO members take towards negotiating on agricultural trade issues and the rapporteur arguing that the WTO is defending an outdated version of food security.

### **Observer status**

Article V of the WTO Agreement directed the General Council to “make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.” The council built upon that directive in the Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council that it adopted in 1996, which provide that the “purpose of observer status for international intergovernmental organizations ... in the WTO is to enable these organizations to follow discussions therein on matters of direct interest to them.”<sup>15</sup> The council took a fairly narrow approach to granting this status, which gives a partner organization access not to the WTO as a whole but to specific bodies within it. An organization that seeks observer status must make that request “in writing to the WTO body in which such status is sought, and shall indicate the nature of the work of the organization and the reasons for its interest in being accorded such status.” The rules by which these requests are considered are reproduced in Box 5.1.

The data in Table 5.2 show that the IMF and UNCTAD are the only international organizations that have observer status in both the General Council and in all of the other major WTO bodies that grant this status. (The Dispute Settlement Body does not grant observer status to any international organizations, although the agreement with the IMF does provide for the possibility of IMF participation in cases.) Only six other international organizations have observer status in the General Council, each of which also has observer status in at least one

other WTO body. Ten other international organizations have observer status in one or more of the other major WTO bodies, either on a permanent or an ad hoc basis, and another 51 organizations have this status in one or more of the other WTO bodies.

**Box 5.1. Observer status for international intergovernmental organizations in the WTO**

*Partial text taken from Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council, WTO document WT/L/161, 25 July 1996, Annex 3.*

Requests for observer status shall be considered on a case-by-case basis by each WTO body to which such a request is addressed, taking into account such factors as the nature of work of the organization concerned, the nature of its membership, the number of WTO Members in the organization, reciprocity with respect to access to proceedings, documents and other aspects of observership, and whether the organization has been associated in the past with the work of the CONTRACTING PARTIES to GATT 1947.

In addition to organizations that request, and are granted, observer status, other organizations may attend meetings of the Ministerial Conference, the General Council or subsidiary bodies on the specific invitation of the Ministerial Conference, the General Council or the subsidiary body concerned, as the case may be. Invitations may also be extended, as appropriate and on a case-by-case basis, to specific organizations to follow particular issues within a body in an observer capacity.

Organizations with which the WTO has entered into a formal arrangement for cooperation and consultation shall be accorded observer status in such bodies as may be determined by that arrangement.

Organizations accorded observer status in a particular WTO body shall not automatically be accorded such status in other WTO bodies.

Representatives of organizations accorded observer status may be invited to speak at meetings of the bodies to which they are observers normally after Members of that body have spoken. The right to speak does not include the right to circulate papers or to make proposals, unless an organization is specifically invited to do so, nor to participate in decision-making.

Observer organizations shall receive copies of the main WTO documents series and of other documents series relating to the work of the subsidiary bodies which they attend as observers. They may receive such additional documents as may be specified by the terms of any formal arrangements for cooperation between them and the WTO.

If for any one-year period after the date of the grant of observer status, there has been no attendance by the observer organization, such status shall cease. In the case of sessions of the Ministerial Conference, this period shall be two years.

**Table 5.2. Organizations with observer status in the WTO**

	General Council	TPRB	Goods Council	Services Council	TRIPS Council	Other bodies
<b>Organizations with observer status in the General Council</b>						
Food and Agriculture Organization of the United Nations	◆	◆	◆		◆	◆
International Monetary Fund	◆	◆	◆	◆	◆	◆
International Trade Centre	◆			◆		◆
Organisation for Economic Co-operation and Development	◆	◆	◆		◆	◆
United Nations	◆		◆	◆	◆	◆
United Nations Conference on Trade and Development	◆	◆	◆	◆	◆	◆
World Bank	◆	◆	◆		◆	◆
World Intellectual Property Organization	◆				◆	◆
<b>Organizations with observer status in other major WTO bodies</b>						
European Bank for Reconstruction and Development		◆				
European Free Trade Association		◆				
International Civil Aviation Organization				□		
International Tele-communication Union				◆		
International Textiles and Clothing Bureau			◆			
International Union for the Protection of New Varieties of Plants					◆	
Universal Postal Union				◆		
World Customs Organization			◆		◆	
World Health Organization				□	□	
World Tourism Organization				□		
<b>Organizations with observer status in other WTO bodies</b>						
African, Caribbean and Pacific Group of States						Latin American Association for Integration
African Union						Latin American Economic System
Andean Community						Montreal Protocol
Arab Maghreb Union						Office international des épizooties
Basel Convention						Organization of American States
Caribbean Community Secretariat						Organization of the Islamic Conference
Central African Economic and Monetary Community						Pacific Islands Forum
Common Fund for Commodities						Permanent Secretariat of the General Treaty on Central American Economic Integration
Commonwealth Secretariat						Regional International Organization for Plant Protection and Animal Health
Convention on Biological Diversity						Rotterdam Convention
Convention on International Trade in Endangered Species of Wild Fauna and Flora						South Centre
Convention on Biological Diversity						Southeast Asian Fisheries Development Center
Cooperation Council for the Arab of States of the Gulf						Southern African Development Community
Economic Community of West African States						Stockholm Convention
Economic Cooperation Organization						United Nations Commission for Sustainable Development
FAO International Plant Protection Convention						United Nations Development Programme
FAO/WHO Joint Codex Alimentarius Commission (Codex)						United Nations Economic Commission for Africa
Inter-American Development Bank						United Nations Economic Commission for Europe
Inter-American Institute for Agricultural Cooperation						United Nations Economic Commission for Latin America and the Caribbean
Inter-Arab Investment Guarantee Cooperation						United Nations Economic and Social Commission for Asia and the Pacific
International Commission for the Conservation of Atlantic Tunas						United Nations Environment Programme
International Electrotechnical Commission						United Nations Framework Convention on Climate Change
International Grains Council						United Nations Industrial Development Organization
International Organization for Standardization						West African Economic and Monetary Union
International Organization of Legal Metrology						
International Plant Genetic Resources Institute						
Islamic Development Bank						

◆ = Permanent. □ = Ad hoc. TPRB = Trade Policy Review Body.

Source: Adapted from data at [www.wto.org/english/thewto\\_e/igo\\_obs\\_e.htm](http://www.wto.org/english/thewto_e/igo_obs_e.htm).

Notes: "other bodies" means that the organization has observer status in at least one additional body of the WTO, but not in all of them. Note that no international organizations have observer status in the Dispute Settlement Body.

Observer status generally implies a fairly passive role, but international organizations could participate more actively in WTO dispute settlement. That has been more of a hypothetical than an actual practice to date. As the Sutherland Report (2004: 39) pointed out, “the dispute settlement system of the WTO, due to its special characteristics and being self-contained in its jurisdictional responsibilities, offers no legal space for cooperation with other international organizations except on a case-by-case basis derived from the right of panels to seek information.” That observation did not trouble this commission, which endorsed “the maintenance of this policy”. While organizations *per se* do not participate in disputes, the agreements that they administer may, as discussed below, be considered or even incorporated into WTO law.

The WTO also enjoys observer status in other organizations, but is not in a good position to exercise that privilege frequently with respect to those that are located outside of Europe in general or Geneva in particular. As can be seen from the data in Table 5.3, 13 of the organizations in which the WTO is an observer are indeed based in Geneva. These include some with which the WTO works on a fairly regular basis, such as the ILO, WIPO and UNCTAD, as well as others for which trade is a marginal issue. There are another 21 corresponding organizations that are located either elsewhere in Europe or on other continents, and in most of them the WTO will rarely exercise its rights as an observer in any more active way than through the receipt of documents.

The WTO is unusual, though not unique, in having only a headquarters and no satellite offices in any other cities. In this respect it bears a closer resemblance to some regional institutions than it does to other international economic organizations that have numerous offices to liaise with national governments and other international organizations. The OECD has four such centres globally, for example, just as the ILO has offices in 40 countries, the IMF has 81 resident representatives and four regional offices, and the WHO has 147 country offices and six regional offices.<sup>16</sup> It is rare even for the topic of WTO satellite offices to be broached, as it was for example in internal Canadian discussions over the proposal to establish a WTO.<sup>17</sup> The only ways in which the WTO typically interacts with member governments or other stakeholders outside of Geneva are in the conduct of trade policy reviews or in the travels of top officials to participate in conferences, deliver speeches, or otherwise represent the organization.

### ***Controversy over observer status for the Arab League***

While most requests for observer status are handled as technical matters, the same cannot be said for the controversy over the League of Arab States (commonly called the Arab League). At issue here is not simply the extension of that status to the organization in question but also the blockage of requests for observer status from other intergovernmental organizations. This has created difficulties for cooperative work between the WTO and some organizations with which observer status has not been granted, requiring ad hoc arrangements to work around the problem.

**Table 5.3. Organizations in which the WTO has observer status****Organizations based in Geneva**

Basel Convention
Convention on International Trade in Endangered Species of Wild Fauna and Flora
European Free Trade Association
International Organization for Standardization
International Trade Centre
International Union for the Protection of New Varieties of Plants
Office of the United Nations High Commissioner for Human Rights
Rotterdam Convention
Stockholm Convention
United Nations Conference on Trade and Development
United Nations Economic Commission for Europe
World Health Organization
World Intellectual Property Organization

**Organizations based elsewhere in Europe**

African, Caribbean and Pacific Group of States	Brussels
Food and Agriculture Organization of the United Nations	Rome
International Commission for the Conservation of Atlantic Tunas	Madrid
International Grains Council	London
International Plant Genetic Resources Institute	Rome
Organisation for Economic Co-operation and Development	Paris
United Nations Commission on International Trade Law	Vienna
United Nations Educational, Scientific and Cultural Organization	Paris
United Nations Framework Convention on Climate Change	Bonn
United Nations Industrial Development Organization	Vienna
World Customs Organization	Brussels

**Organizations based in North America**

Convention on Biological Diversity	Montreal
International Monetary Fund	Washington, DC
United Nations	New York
United Nations Commission for Sustainable Development	New York
United Nations Development Programme	New York
World Bank	Washington, DC

**Organizations based in other regions**

Latin American Economic System	Caracas
Montreal Protocol	Nairobi
Pacific Islands Forum	Suva
United Nations Environment Programme	Nairobi

Sources: List of organizations from [www.wto.org/english/thewto\\_e/coher\\_e/wto\\_observership\\_e.htm](http://www.wto.org/english/thewto_e/coher_e/wto_observership_e.htm); locations from the websites of the organizations.

The Arab League first requested observer status for the Seattle Ministerial Conference in 1999. That same year it wrote to the director-general requesting observer status in the General Council and several of its subsidiary bodies. In October 1999, the chairman of the General Council proposed that any organizations requesting observership by a certain deadline be granted that status unless a member were to object. Two members lodged objections with the Secretariat, and while they were not officially identified at that time it was an open secret that these two members were Israel and the United States. They did so in opposition to the Arab League's continued sponsorship of the boycott on Israel (see Chapter 4; see also Reich, 2005). Substantially the same thing happened in advance of the Doha Ministerial Conference in 2001, the Cancún Ministerial Conference in 2003, the Hong Kong Ministerial Conference in 2005, and the Geneva Ministerial Conference in 2011. Throughout this period the Egyptian mission spoke on behalf of the Arab Group in favour of the request, and argued not only that the request be granted but that also, if the request were blocked, that in the interest of transparency the members objecting to the request should be identified. Starting in 2003, the Israeli and US representatives each confirmed that they had raised objections.

The Arab Group members took a more assertive position on the matter in 2005, taking the position that it would withhold consensus on the extension of observer status to other intergovernmental organizations until the request of the Arab League was granted. On 28 October 2011 the Arab Group also submitted a proposal on "Improving the Guidelines for Granting Observer Status to Intergovernmental Organizations in the WTO" (WTO document WT/GC/W/643). It argued that requests for permanent observer status should be evaluated only on the basis of the technical merits of such requests and that there should be objective and technical criteria in place to ensure the proper application of the existing guidelines.

## Relationship between WTO law and other organizations' laws

Often the initial negotiation on a subject concerns not the substance of the agreements that countries aim to conclude but the decision on where those talks should be conducted in the first place. Countries that promote the negotiation of enforceable commitments in a given area will favour the WTO as a negotiating forum. Conversely, the countries that prefer to keep a freer hand for national policy-makers will either oppose negotiations altogether or seek to bring the matter to an alternative international institution where the authority to enforce the rules tends to be weaker. "Forum shopping" by both the *demandeurs* and their opponents was quite evident in the 1980s, for example, when industrialized and developing countries differed over whether intellectual property rights should be dealt with in GATT or in WIPO, and since the 1990s, when squabbles erupted over whether labour rights should be handled in the ILO or the WTO.

This point should not be over-emphasized, as analysts err when they describe the WTO as the *only* international institution with strong dispute settlement provisions. Three examples may be cited on this point. Starting at the top, the UN Security Council has extraordinarily strong enforcement powers, all the way up to the authorization of military force. While it is difficult to imagine a scenario in which those powers may be employed in a trade dispute *per se*, the economic sanctions that the Security Council is empowered to impose can certainly affect trade. The ILO exemplifies an international organization in which the members have, at least on paper, agreed to a level of enforcement authority that is comparable to that of the WTO. Article 33 of the ILO Constitution provides that in cases where a member fails to carry out recommendations to correct a breach of an ILO convention “the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.” That rather vaguely worded authority to impose sanctions has been employed only once to date, with the Governing Body deciding after years of consideration to authorize sanctions on Myanmar in 2000.<sup>18</sup> The IMF prohibits its members from engaging in currency manipulation, with Article IV(iii) of the IMF Articles of Agreement requiring that members “avoid manipulating exchange rates or the international monetary system.” This obligation is further reinforced in Article VIII. Neither the rules nor the culture of the IMF, however, are as bilaterally litigious or institutionally confrontational as the dispute settlement rules of the WTO. While it is thus not entirely accurate to portray the enforcement powers of first GATT and now the WTO as unequaled, they can justifiably be deemed special. The WTO is unusual in the number of disputes that it routinely handles, the manner in which they are treated and the frequency with which enforcement measures are authorized.

### *The status of other organizations’ laws in the WTO*

Some WTO agreements provide means through which the standards reached in other bodies may be enforced or recognized. The most significant example concerns the WIPO and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), as the latter brings within its terms the disciplines of several WIPO-administered conventions. These include the Conventions of Paris (industrial property), Berne (literary and artistic works), Geneva (phonograms) and Rome (performers, producers of phonograms and broadcasting organizations). Members are free to determine the appropriate method of implementing the TRIPS Agreement within their own legal system, but they must give to the nationals of other members the national treatment required in these various conventions, subject to the national treatment exceptions contained in these same treaties.

Other organizations’ laws or rulings are given safe harbour in WTO law. One example is the International Plant Protection Convention (IPPC) of the FAO, which sets standards for the prevention of plant pests and diseases. The IPPC “has its own, non-binding dispute resolution mechanism,” as Princen (2006: 61) noted, “but this has not been used actively in practice.” A more effective means of enforcing IPPC standards is by way of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which provides that domestic regulatory standards are presumed to conform to the agreement if they are based on the IPPC. That same principle applies to the standards of the Codex Alimentarius

Commission, a joint undertaking of the FAO and the WHO that develops global food-safety standards. Similarly, the Agreement on Technical Barriers to Trade explicitly adopts the definitions used by the International Organization for Standardization in its publication on *General Terms and Their Definitions Concerning Standardization and Related Activities*, and several articles in the agreement provide for the adoption of international standards by WTO members. Article 2.4, for example, provides that:

Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

One point of recurring legal debate concerns the use of treaty law developed in other organizations as a guide for WTO dispute settlement panels. "Unlike domestic legal systems," as Pauwelyn (2003: 488) observed, "in international law hierarchy of norms is not determined by the particular source of the norms in question" because all such law "in one way or another, derives from the same source, that is, state consent." He therefore advocated "an examination of WTO law in the wider context of other norms of international law," such that –

WTO law is but a branch of public international law. Hence, WTO law must, first of all, be *interpreted* in a way that takes account of other norms of international law, as long as these other norms represent the 'common intentions' of all WTO members. The normal restrictions of treaty interpretation apply, although 'evolutionary interpretation' can be safely said to be the rule rather than the exception given the 'continuing' or 'living' nature of the WTO treaty. Apart from the process of treaty *interpretation*, other rules of international law must also *apply* to the WTO treaty unless that treaty has 'contracted out' of those rules. In addition, before a WTO panel the 'applicable law' must include all relevant norms of international law binding on the disputing parties, even if the jurisdiction of panels is limited to claims under WTO covered agreements only (*Ibid.*: 490).

Marceau (2002: 804-805) took up the same point, arguing that WTO law needs to be interpreted consistently with international law, and especially in the area of human rights law. In her view, human rights law can be respected if WTO panels interpret and apply WTO provisions properly. She has also argued that greater coherence in international law must ultimately be achieved through the negotiation of agreements, and cannot rely indefinitely on dispute-settlement procedures to resolve any conflicts of law. "There is an obligation to interpret WTO provisions by taking into account other relevant rules of international law, including relevant human rights law dealing with the same subject-matter." If there were to be a conflict of law, however, "the WTO is a specific subsystem of international law in which non-WTO law (including human rights law) cannot find direct application."

Petersmann (2005c: 361) opined that “it seems only a matter of time” before “WTO dispute settlement bodies will have to respond to legal claims or questions” arising over potential conflicts between WTO agreements and the products of other international bodies that speak to issues of human rights. Article 3:2 of the DSU requires that the interpretation of WTO rules take into account “any relevant rules of international law applicable in the relations between the parties.” How might commitments affecting pharmaceutical patent protection and trade in health services relate to the 1966 UN Covenant on Economic, Social and Cultural Human Rights, Article 15 of which guarantees “the right of everyone” both to “enjoy the benefits of scientific progress and its applications” and also to “benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”? The potential for such disputes was demonstrated from 2009 to 2012, when, as was discussed earlier, a controversy broke out over the relationship between agricultural trade liberalization and the right to food.

## The WTO's relationship with specific organizations

GATT and the WTO have had formal relationships with other international organizations from the start, but those ties have grown more knotty with the proliferation of institutions and the widening of the trading system's issue base. Some of the organizations with which the WTO must deal most closely are discussed below, listed in roughly chronological order according to when the institutions were established.

### *International Labour Organization*

The ILO is the oldest of the organizations with which the WTO deals, being the sole institutional survivor from the League of Nations. It also shares a unique legacy with the WTO. The Centre William Rappard was the ILO headquarters building from its inauguration in 1926 until 1975, with GATT taking up residence there in 1977. This explains the somewhat anomalous appearance of some rooms in the building, such as the lighting fixtures in the library that are adorned with representations of workmen in different trades. The WTO is also graced with numerous works of art extolling the virtues of labour, many of them reflecting the styles of political art that were so prevalent in the years preceding the Second World War.

Their common architectural heritage notwithstanding, these two institutions have very different structures, aims and political cultures. Whereas the WTO follows the pattern of nearly all other intergovernmental organizations of allowing direct representation only by states, the ILO is notable for its unique trilateral nature. Every mission is composed of delegates from the member state's government, from an employer's organization and from labour unions. And while the principal aim of the WTO is to reach negotiated agreements by which at least some aspects of state intervention in the economy are reduced, the ILO is among those international organizations that are devoted to promoting certain forms of government regulation of the economy.

Many of the legal instruments and declarations of the ILO address trade issues directly or indirectly. Several of the 189 ILO conventions negotiated from 1919 to 2011 deal with trade-related issues or occupations that are heavily involved in trade; these include five conventions affecting dockworkers and 39 affecting seafarers. The work of the ILO starts from the premise, as stated in 1944 in the Declaration Concerning the Aims and Purpose of the International Labour Organization (also known as the Declaration of Philadelphia),<sup>19</sup> that “labour is not a commodity.” While that same declaration went on to support “a high and steady volume of international trade,” ILO pronouncements on the subject of trade will often include qualifying language that highlights its emphasis on how trade and other economic activity affect the interests of workers. In the Global Jobs Pact that the ILO approved in June 2009, for example, members called for cooperation among international organizations in “promoting efficient and *well-regulated* trade and markets that benefit all and avoiding protectionism” (ILO, 2009: 9, emphasis added). The role of the ILO in the debate over globalization, according to its Declaration on Social Justice for a Fair Globalization, is to evaluate the employment effects of trade and financial market policy “to achieve its aim of placing employment at the heart of economic policies” (ILO, 2008: 15). In so doing it neither promotes nor condones protectionism, stressing in that same declaration “that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes” (*ibid.*: 11).

One of the most divisive issues in the trading system throughout the WTO period has been the proposed linkage between the commitments that countries make in the ILO and the use of the WTO Dispute Settlement Understanding as a means of enforcing them. This is essentially what was done in the case of intellectual property rights, in which the agreements administered by WIPO are, by way of the TRIPS Agreement, made enforceable in the WTO. The conventions negotiated in the ILO are essentially pledges of good behaviour at home that are subject to review through a supervisory system of reports and experts, but while the ILO rules provide for sanctions in actual practice the institution almost never brings to bear anything more than peer pressure on countries that are found not to meet these obligations.

This is in sharp contrast to the WTO, where violations of the rules can lead to the threat or imposition of retaliatory measures. It is only a slight exaggeration to say that in the ILO there are labour standards without “teeth”, while the WTO has teeth but almost no standards related to labour. The one departure from that general rule is found in GATT Article XX(e), which provides (subject to the *chapeau* language of that article) an exception for measures that countries may impose “relating to the products of prison labour.” The controversies surrounding the proposed links between ILO standards and WTO enforcement were especially intense in the Singapore Ministerial Conference (see Chapter 11). The two secretariats have cooperated since 2005 in collaborative studies, as discussed above, the results of which have been presented jointly to their respective memberships.

### *International Monetary Fund and the World Bank*

One anomalous aspect of the relationship between the WTO, the IMF and the World Bank is that all three of these bodies are officially deemed to be “Bretton Woods institutions”. That is not an historically accurate title, as the IMF and the World Bank were the only institutions to emerge from the United Nations Monetary and Financial Conference that was held in Bretton Woods, New Hampshire during July 1944. The conferences that produced GATT and the failed charter of the ITO were held years later in London and Havana. The application of this title to the WTO is nevertheless a nod to the original concept of where the ITO was supposed to fit among the international economic organizations, forming the trade corner in that triangle, and also underlines the fact that none of these institutions are formally a part of the UN system. When the heads of these bodies meet with their UN counterparts they are thus listed together under that bucolic heading. In common parlance, however, when people refer to the Bretton Woods institutions they typically mean only the IMF and the World Bank.

The Havana Charter of the ITO referred in several points to the IMF, and this language was largely replicated in GATT 1947. GATT Article XV (exchange arrangements) provided for cooperation with the IMF and required that countries “consult fully” with it and to “accept all findings of statistical and other facts presented by the Fund relating to foreign exchange, monetary reserves and balances of payments.” With an eye on the discredited practices of the 1930s, the GATT negotiators also made sure in Article XV to enjoin countries from using exchange action to “frustrate the intent of the provisions of” GATT or “the intent of the provisions of the” IMF Articles of Agreement. These constructions appear to assume an identity in intent between the aims and actions of the two institutions. The IMF was also given a role in determining whether countries were within their rights when invoking GATT Articles XII (restrictions to safeguard the balance of payments) or XVIII (governmental assistance to economic development), and the IMF was further referenced in GATT Articles II:6(a) (schedules of concessions), VII:4(c) (customs valuation), and XIV (exceptions to the rule of non-discrimination). In brief, the drafters of GATT 1947 went to great lengths to ensure the coherence of countries’ trade and monetary policies as pursued through the one institution and the other agreement.

The only reference to the IMF in the WTO Agreement comes in Article III:5, which states: “With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the” IMF, the World Bank and World Bank-affiliated agencies. That agreement was nonetheless expanded upon somewhat by a 1996 cooperation agreement under which the IMF’s observer status in the WTO is more solid than that of other international organizations. The Agreement between the International Monetary Fund and the World Trade Organization provides channels of communication between the two bodies and accords observer status in other’s decision-making bodies.<sup>20</sup> Paragraph 6 provides that “[t]he WTO shall invite the Fund to send a member of its staff as an observer to meetings of the WTO Dispute Settlement Body where matters of jurisdictional relevance to the Fund are to be considered,” and further allows the WTO to invite the IMF to send a member of its staff to the Dispute Settlement Body when “such a presence would be of particular common interest to both organizations.”

The IMF could have a greater role in support of trade liberalization if the Doha Round were to be completed. In 2004, it established the Trade Integration Mechanism (TIM) to support progress in the Doha Round. The TIM is available to all IMF member countries whose balance of payments positions might suffer as a result of multilateral trade liberalization. It aims to make resources under existing IMF facilities more predictably available to countries facing trade-induced adjustment problems.

The World Bank also supports trade liberalization in developing countries. It reached an agreement with the WTO in 1997 that likewise calls for improved communication between the two institutions through the exchange and sharing of information; access to their respective databases, and joint research and technical cooperation activities; the exchange of reports and other documents; as well as observer status for one another. The bank also adopted a ten-year trade strategy in 2011 that seeks to respond more effectively to increased demand by its clients for analysis, project identification and delivery in this field. The strategy is focused on four pillars, including trade competitiveness and diversification to support countries in developing policy environments conducive to nurturing private-sector development, job creation and sustainable poverty reduction; trade facilitation, transport logistics and trade finance to reduce the costs of moving goods internationally in terms of time, money and reliability; support for market access and international trade cooperation to create larger integrated markets for goods and services; and managing external shocks and promoting greater inclusion to make globalization more beneficial to poor households and lagging regions.<sup>21</sup>

In addition to working with these global financial institutions, the WTO also has ties to their regional counterparts. These are especially important in Aid for Trade, trade finance and capacity-building activities, with the WTO collaborating with them in devising and delivering training and other forms of assistance. Regional banks can also be partners in trade policy reviews. The Inter-American Development Bank and the Islamic Development Bank are among the institutions that have observer status in the WTO; other regional banks with which it has cooperated include the African Development Bank and the Asian Development Bank.

### ***United Nations Educational, Scientific and Cultural Organization***

UNESCO is one of several specialized UN agencies that were created at about the same time as GATT. It has demonstrated different relationships to the trading system over time. While in the early GATT period (which might also be deemed the early UNESCO period) this organization appeared to treat trade as part of the solution, in the WTO period it appears to have seen trade as part of the problem. The Florence Agreement on the Importation of Educational, Scientific and Cultural Materials is a 1950s-era pact that is intended to dismantle customs barriers to cultural goods. This early example of a “zero-for-zero” sectoral agreement was a collaborative effort of UNESCO and GATT.<sup>22</sup> It covers, among other things, books, works of art, and audiovisual material of an educational, scientific and cultural nature, and also offers a unique example of inter-institutional collaboration on matters of cultural trade. The initial proposals for this agreement were developed by UNESCO, which formed the basis

for negotiations by a GATT working party. The text of the agreement was then communicated to UNESCO for sponsorship and administration, and entered into force in 1952.

That cooperative experience stands in contrast to the negotiations over the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.<sup>23</sup> Under development since 2001, members adopted a toned-down version of this convention in 2005. While it was still under debate there was some prospect that the instrument might establish principles that could lead to direct conflicts with the commitments of some WTO members. A draft text from July 2004 that served as the initial basis for discussion began from the premise that while the processes of globalization “afford unprecedented conditions for enhanced interaction between cultures” they “also constitute a threat to diversity and carry with them a risk of impoverishing cultural expressions” (Preamble). It provided a series of principles and steps to be taken in order to safeguard cultural diversity, including the adoption of “measures which in an appropriate manner reserve a certain space for domestic cultural goods and services among all those available within the national territory” (Article 6.2(a)). Article 19 of the draft provided for rules on the relationship between this agreement and other instruments of international law, setting out two alternatives. One option would simply state that “[n]othing in this Convention shall affect the rights and obligations of the States Parties under any other existing international instruments.” The other option would provide that:

1. Nothing in this Convention may be interpreted as affecting the rights and obligations of the States Parties under any existing international instrument relating to intellectual property rights to which they are parties.
2. The provisions of this Convention shall not affect the rights and obligations of any State Party deriving from any existing international instrument, except where the exercise of those rights and obligations would cause serious damage or threat to the diversity of cultural expressions.

The language suggested that the instrument would not derogate from the TRIPS Agreement, but that other WTO agreements – including commitments made on goods and services – could potentially be subject to modification or reinterpretation under some circumstances.<sup>24</sup> One could well imagine, for example, the hypothetical case of a WTO member modifying or withdrawing a GATS commitment on audiovisual services on the grounds that doing so would allow it to avoid a threat to the diversity of cultural expression.

The final version of this instrument that UNESCO adopted in 2005 avoided any conflict with WTO law. Article 20 provides that parties “shall perform in good faith their obligations under this Convention and all other treaties to which they are parties.” While they are to “take into account the relevant provisions of this Convention” when they interpret and apply other treaties to which they are parties or when entering into other international obligations, the convention specifies that “[n]othing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.” The episode nonetheless offered one of the clearer examples of how problems of coherence could potentially lead to outright conflicts of laws.

### *World Health Organization*

The relationship between the WTO and the WHO is especially complex, given the range of issues in which their jurisdictions overlap. These include trade in medical goods and services, as well as trade in goods that are deemed harmful to human health. In each case, the discussions taking place in the WTO are more likely to focus on the economic than on the public health aspects of the issue, while those in the WHO will place those priorities in the other order.

One way that international organizations can work to avoid problems in coherence is to have their secretariats communicate with one another during the drafting process for new agreements. It was in that spirit that WTO Deputy Director-General Alejandro Jara (see Biographical Appendix, p. 581) held a meeting in October 2009 with WHO officials at a time when their institution was working on recommendations related to noncommunicable diseases. "I come in peace," Mr Jara told them, and explained that he was there precisely in order to help them avoid challenges.<sup>25</sup> Having reviewed a draft text that they were then developing, he explained that if they couched their initiatives in "trade language" that would spare them possible trouble in the future regarding coherence and legal challenges in the Dispute Settlement Body. Employing terms related to the GATT general exceptions, for example, could help provide "safe harbour" for the terms of their agreements. That would mean incorporating terms similar to those in the *chapeau* to GATT Article XX, which specifies that the exceptions provided for measures relating to human health and safety (among other matters) are "[s]ubject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade." Framing the language of an agreement in these terms, Mr Jara explained, would signal to the trade officials in national governments and in international organizations that the agreement was designed to coexist with the relevant trade rules. This advice helped to shape the terms of drafts that the WHO Secretariat prepared for agreements in trade-related areas.

These inter-secretariat consultations came at a time when the WHO was either developing or implementing several instruments that might have implications for trade. These included the Global Strategy on Diet, Physical Activity and Health (2004), the Framework Convention for Tobacco Control (2005), the 2008-2013 Action Plan for the Global Strategy for the Prevention and Control of Noncommunicable Diseases (2008), and the Global Strategy to Reduce Harmful Use of Alcohol (2010). Language from the last of these instruments may be cited as an example of how the potentially competing interests of public health and open markets can be reconciled. One section of the WHO alcohol strategy notes that "measures to reduce harmful use of alcohol are sometimes judged to be in conflict with other goals like free markets and consumer choice and can be seen as harming economic interests and reducing government revenues" (WHO, 2010: 7). While recognizing that policy-makers "face the challenge of giving an appropriate priority to the promotion and protection of population health while taking into account other goals, obligations, including international legal obligations, and interests," it goes on to observe that –

international trade agreements generally recognize the right of countries to take measures to protect human health, provided that these are not applied in a manner which would constitute a means of unjustifiable or arbitrary discrimination or disguised restrictions to trade. In this regard, national, regional and international efforts should take into account the impact of harmful use of alcohol.

There nonetheless remains the potential for conflicts between the laws and policies of the two organizations. Their differing perspectives can be seen in one area where WTO rules are more restrictive than WHO principles might prefer (i.e. pharmaceuticals), and another in which WHO rules may lead to restrictions that do not sit well with WTO principles (i.e. tobacco).

The enforcement of intellectual property rights for pharmaceuticals is one of the most contentious issues in trade, as reviewed in Chapter 10. From a public health perspective, the trade-off involved in strict patent enforcement is a matter of balancing two desirable but somewhat contradictory outcomes. Those drugs that already exist would undoubtedly be cheaper if patents were not enforced, but removing those protections would also mean eliminating the profit incentive for the development of new drugs. The WHO recognizes this trade-off, supporting the balance struck in the TRIPS Agreement as modified by the Declaration on the TRIPS Agreement and Public Health. The WHO guardedly endorsed that view in its 2008 Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property,<sup>26</sup> which observed the “crucial need to strengthen innovation capacity as well as capacity to manage and apply intellectual property in developing countries” but noted that this could be achieved in part through “the use to the full of the provisions in the TRIPS Agreement and instruments related to that agreement, which provide flexibilities to take measures to protect public health.”

Tobacco trade is an area where the coherence of WHO and WTO principles may increasingly be tested. In 2005, the WHO adopted a Framework Convention on Tobacco Control, and in 2012 it provisionally adopted the Protocol to Eliminate Illicit Trade in Tobacco Products. These WHO instruments, together with the organization’s advocacy for national adoption of laws to restrict tobacco, relate to topics in the WTO disputes: *United States – Measures Affecting the Production and Sale of Clove Cigarettes* (initiated in 2010) and *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* (initiated in 2012). In this instance, one finds laws at the national level that were inspired by a WHO-like perspective on trade and public health but are being challenged in the WTO. The United States lost in the first of these cases, having been found to treat more favourably its domestically produced menthol cigarettes while banning the importation of like/similar clove cigarettes, and is obliged to bring its laws into conformity with WTO obligations. The disposition of the second case remains unresolved at the time of writing.

One project of joint WTO–WHO activity, together with the World Bank, the Food and Agriculture Organization of the United Nations, and the World Organization for Animal Health,

is the Standards and Trade Development Facility (STDF). This initiative aims to assist developing countries in establishing and implementing sanitary and phytosanitary (SPS) standards to ensure health protection and facilitate trade expansion, and to act as a forum for coordination and information-sharing on SPS-related technical assistance. The WTO also participates as an observer in the WHO Intergovernmental Working Group on Public Health, Innovation and Intellectual Property and in its International Medical Products Anti-Counterfeiting Task Force (IMPACT).

### *Organisation for Economic Co-operation and Development*

In the early 1960s, when the OECD made the transition from being the administrator of the Marshall Plan to becoming a permanent forum of the developed countries, its member countries were the same ones that dominated activity in GATT. Developing countries were not very active in GATT, where those with contracting party status limited themselves primarily to defensive aims, and none of them were members of the OECD. Both organizations have evolved since then, and their membership has grown. Today five of the OECD members – Chile, Israel, the Republic of Korea, Mexico and Turkey – continue to claim developing country status in the WTO. Despite these changes, the division of labour between the OECD and the WTO remains largely the same: the OECD is principally a research institution that occasionally serves as a negotiating forum among its members, and the WTO is a negotiating forum that also engages in some research.

There had been some prospect in the GATT period that the OECD might serve as a more active negotiating forum. From the Code of Liberalisation of Current Invisible Operations that was first negotiated in the 1960s through later agreements on shipbuilding subsidies and bribery, this institution has hosted negotiations in which the developed countries could conclude agreements on topics that, for whatever reason, were not taken up in GATT talks. Its role has been somewhat more circumscribed in the WTO period, however, with the one major negotiation that it undertook since 1994 having ended in failure.

The roles of the OECD and the GATT/WTO in negotiations are best seen as complementary rather than competitive, as the most notable successes have come when the members take best advantage of the two institutions' respective strengths. The comparative advantage of the OECD comes in the exploration of issues and the consideration of negotiating options; its personnel and other analytical resources are much larger than those available in-house at the WTO. As of 2012, the total staff of the OECD was almost four times greater than that of the WTO. And where some hundreds of the OECD staff are devoted in one form or another to research, many of them specifically in trade (with many more in trade-related areas), the researchers (as opposed to the statisticians) in the WTO Statistics and Research Division have never exceeded a dozen. As a negotiating forum, however, the OECD has two disadvantages vis-à-vis the WTO. The first is that its membership is not nearly as broad. Although the 34 countries that were members as of 2012 represented most of the world's industrialized economies, that group still leaves out nearly all of the developing countries.<sup>27</sup> The second disadvantage is that the OECD has nothing to compare to the Dispute

Settlement Body of the WTO, and hence is in no position to enforce any agreements that its members might reach in the same way that the WTO routinely does.<sup>28</sup>

The Tokyo Round's Government Procurement Agreement (GPA) offers an example of a fruitful collaboration between GATT and the OECD. The OECD was not the forum in which the GPA was negotiated, but it did play an important role in exploring the issue and the options before the negotiations began in earnest. There is no doubt that the negotiations *were not* concluded until the locus had moved from the OECD to GATT. Blank and Marceau (2006: 27) further argued that the negotiations *could not* have been completed without this move, due to advantages that GATT held over the OECD as a negotiating forum:

There would not be an international agreement on government procurement if the negotiations had not been transferred from Paris to Geneva. As a principle, such an agreement could not have taken place without providing rights for developing countries (although their participation turned out to be very low). Moreover such an agreement needed a dispute settlement mechanism to ensure its implementation and its evolution and such mechanisms are foreign to the OECD forum. In addition, only multilateral and horizontal negotiations made the agreement on lists and minimum thresholds possible.

Heydon (2011) made a similar point with regard to the OECD's work in the development of a Conceptual Framework for Trade in Services, the product of several years of consultation in the OECD Trade Committee.<sup>29</sup> Originally drawn up in 1985, this framework created much of the structure that subsequently became the GATS. The OECD "provided a forum where ideas and negotiating principles could be exchanged and developed, and then shared with the GATT," according to Heydon (2011: 234), "but where the actual process of negotiation was conducted in Geneva, not Paris." The development of the Trade Policy Review Mechanism offers another example of an idea that the OECD helped to develop before passing it along to the Uruguay Round negotiators, although in this instance it was only one of several institutions that promoted some form of surveillance or reporting of countries' trade measures (see Chapter 8).

If the pre-Uruguay Round experience with the conceptual framework can be deemed a qualified success, then the post-Uruguay Round negotiations for the Multilateral Agreement on Investment (MAI) may be called a qualified failure. Unlike the examples cited above, in the MAI negotiations the OECD served as the actual negotiating forum rather than as a think tank acting in support of negotiations. The aim was to produce an investment treaty that would supplement or even replace the collage of bilateral investment treaties that OECD members and others had been negotiating for decades, and also to clean up what many saw as unfinished business from the Uruguay Round. The Agreement on Trade-Related Investment Measures (TRIMs Agreement) was among the weakest instruments to come out of those talks, consisting of a prohibition on the use of certain kinds of investment performance requirements rather than a full-fledged agreement on the relationship between trade and investment. Initiated just one year after the end of the Uruguay Round, the MAI negotiations in the OECD aimed to go farther than the TRIMs Agreement. The talks went on for three years

until collapsing in 1998. The participants had hoped to produce a binding treaty that would be open to OECD and non-OECD members alike, and to that end eight developing countries did participate in the talks. Ironically, the divisions between OECD members over such matters as exceptions for security issues and culture proved to be at least as great as those between the industrialized and developing countries. "The MAI failed because of a lack of political will to address the substance of negotiation and a scaling down of ambition to the point where the game was not worth the candle," Heydon (2011: 231) insisted, "not because the OECD lacked credibility as a negotiating forum." It is nonetheless notable that the initiative in which the OECD's failure was greatest is also the one in which its members tried hardest to make the transition from research and discussion to negotiation.

The OECD continues to engage in research on matters that are directly and indirectly related to issues in the WTO. One such example is the International Collaborative Initiative on Trade and Employment (ICITE), an OECD-led project launched in 2011 through which this organization, the WTO, the ILO and seven other global and regional institutions seek a better understanding of how trade interacts with employment, promote discussion on these issues and develop policy-relevant conclusions. The OECD and the WTO also worked together on the "Made in the World" initiative discussed in Chapter 15. The OECD is active in other topics under negotiation in the WTO, from agricultural subsidies to trade in services.

### *World Intellectual Property Organization*

WIPO is in one sense among the oldest of the trade-related international organizations, yet its relationship with the WTO is among the newest. One of the treaties that WIPO administers is the Paris Convention for the Protection of Industrial Property, which was adopted in 1883 and would be incorporated into WTO law 111 years later via the TRIPS Agreement. Some of its laws thus predate nearly all other international organizations.<sup>30</sup> WIPO itself is a relatively new institution, however, having been established in 1970 and becoming a specialized UN agency in 1974. Its relationship with the WTO became important when the TRIPS Agreement entered into force in 1995.

Cooperation between the WTO and WIPO is especially close, with the latter institution offering the most significant example of the phenomenon in which the laws of another organization are incorporated into the terms of WTO agreements. The two institutions signed an agreement in late 1995 that provides for cooperation in the extension of technical assistance to members,<sup>31</sup> and they later launched joint initiatives to aid developing and least developed countries in meeting the 2000 and 2006 deadlines, respectively, for the implementation of the TRIPS Agreement. One expert observed that although the language of the cooperation agreement "was diplomatically couched as between two equal intergovernmental organizations," this document and later initiatives "were *de facto* recognition of the longer history, deeper experience and much larger capacity of WIPO's programme of support for developing countries" (Yu, 2011: 126).

## Representation and relations with other stakeholders

Although the WTO is formally an intergovernmental organization, and one in which some members insist that only governments should have any role in deliberations and decision-making, it has reached out more to non-state actors than did its GATT predecessor. This is partly a matter of combating the negative public image from which the WTO suffered at the turn of the century, especially after the 1999 Seattle Ministerial Conference, but remains a point of contention between developed and developing countries.

### *Transparency*

The happy coincidence by which the establishment of the WTO came at the same time as the rapid spread of the Internet allowed the new institution to make good on the intentions of bringing its agreements, deliberations, and studies into the open. In mid-1996, the General Council adopted the Procedures for the Circulation and De-Restriction of WTO Documents. This decision, which came at the same time as the guidelines discussed below on dealing with NGOs, applied retroactively to all WTO documents circulated after the date of entry into force of the WTO Agreement. It provided generally that “documents ... in any WTO document series shall be circulated as unrestricted with the exception of documents specified in” an appendix to the decision; those exceptions could later be derestricted. Among the exceptions were working documents in all series (which were then to be derestricted upon the adoption of the report), documents in the SECRET/- series (i.e. relating to modification or withdrawal of concessions pursuant to GATT 1994 Article XXVIII), minutes of meetings of WTO bodies (which were to be considered for derestriction six months after the date of their circulation)<sup>32</sup> and documents relating to working parties on accession (which were to be derestricted upon the adoption of the report of the working party).<sup>33</sup>

These guidelines were then replaced in 2002 by a new set.<sup>34</sup> The revised procedures, which remain in effect and cover all documents issued since their entry into force, provide as a general rule that “[a]ll official WTO documents shall be unrestricted.”<sup>35</sup> There then follow five modifications to this general rule, as summarized in Box 5.2. The procedures further provide for the expeditious translation of documents to the three official WTO languages (English, French and Spanish) and that, once translated, “all official WTO documents that are not restricted shall be made available via the WTO web-site to facilitate their dissemination to the public at large.”

Not all documents in the WTO system (broadly defined) are posted. One large and growing exception to the general rule is the “JOB document”, an unofficial WTO document that is usually restricted. Communications that are member-to-member are generally confidential. This category includes “non-papers”, these being proposals that a member will float informally before deciding whether to pursue the topic in the open. Similarly, “room documents” are intended to be distributed only within a room and are not formally recorded, distributed or posted. The requests and offers that members make of one another in GATS negotiations have a unique nature: the requests are considered confidential documents that are never to be posted – although that has happened in the case of leaks (see Chapter 9) – but the offers that come in reply are restricted on only a temporary basis.

**Box 5.2. Rules for the derestriction of WTO documents**

*Text taken from Procedures for the circulation and derestriction of WTO documents, WTO document WT/L/452, 16 May 2002.*

The five exceptions to the general rule that documents are unrestricted.

- (a) any Member may submit a document as restricted, which shall be automatically derestricted after its first consideration by the relevant body or 60 days after the date of circulation, whichever is earlier, unless requested otherwise by that Member. In the latter case, the document may remain restricted for further periods of 30 days, subject to renewed requests by that Member within each 30-day period. The Secretariat shall remind Members of such deadlines, and derestrict the document upon receipt of a written instruction. Any document may be derestricted at any time during the restriction period at the request of the Member concerned.
- (b) any WTO body when requesting a document to be prepared by the Secretariat shall decide whether it shall be issued as restricted or unrestricted. Such documents which are issued as restricted shall automatically be derestricted 60 days after the date of circulation, unless requested otherwise by a Member. In the latter case, the document shall remain restricted for one additional period of 30 days after which it shall be derestricted.
- (c) minutes of meetings (including records, reports and notes) shall be restricted and shall be automatically derestricted 45 days after the date of circulation.
- (d) documents relating to modification or renegotiation of concessions or to specific commitments pursuant to Article XXVIII of the GATT 1994 or Article XXI of the GATS respectively shall be restricted and automatically derestricted upon certification of such changes in the schedules;
- (e) documents relating to working parties on accession shall be restricted and shall be automatically derestricted upon the adoption of the report of the working party.

***Non-governmental organizations***

The recognition of NGOs<sup>36</sup> as actors in international relations predates the WTO and even GATT. Article 71 of the United Nations Charter authorized the Economic and Social Council to “make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.” The Havana Charter of the ITO similarly provided for consultations with NGOs, with Article 87.2 stating: “The Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of this Charter.” That provision led the Interim Commission for the International Trade Organization (ICITO) to begin work towards the establishment of formal relations between the ITO and NGOs, including the

preparation of notes for the members on this topic and the identification of suitable candidates (e.g. the International Chamber of Commerce, the International Association for the Protection of Industrial Property, the World Federation of Trade Unions, among others).<sup>37</sup> All of this came to naught when the ITO collapsed. With no corresponding provisions in GATT 1947, apart from a weak link between its dispute settlement provisions and the UN Economic and Social Council,<sup>38</sup> GATT never established formal ties to any NGOs. It nonetheless came to engage in an informal and ad hoc fashion with some of them, especially in the final years of the institution. NGOs were never given direct access to meetings.

WTO members revisited the issue during the transition from GATT and in the early years of the new institution. The WTO Agreement deals much more explicitly with NGOs than did GATT 1947, but those provisions still left considerable room for manoeuvre and interpretation. The drafters of the WTO Agreement demonstrated a preference for dealing directly with other international organizations rather than NGOs. While Article VI:1 provides that the General Council “*shall* make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO,” Article VI:2 provides merely that it “*may* make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO” (emphasis added).

As their predecessors had done in the mid-1940s, in the transition to the WTO the members of GATT asked the Secretariat to report to them on the practice in other international organizations. A 1994 Secretariat report observed that “NGOs have no negotiating status in UN conferences or in the preparatory process,” but that they “may be given an opportunity to briefly address preparatory sessions in plenary meetings, at the discretion of the Chairman, and they may at their own expense make written submissions to the preparatory sessions.” In UN conferences, they “are restricted by and large to a role of observership in plenary meetings, but that role may be extended on a formal or informal basis ... to observing also the proceedings of sub-groups of the conference, including negotiating groups.”<sup>39</sup> The report also described the varying ways that other organizations dealt with NGOs, several of which had created more formal ties than had GATT to date.

The provisions in the WTO Agreement were further fleshed out in mid-1996 when the WTO members adopted new Guidelines for Arrangements on Relations with Non-Governmental Organizations.<sup>40</sup> These guidelines provided that “to achieve greater transparency Members will ensure more information about WTO activities in particular by making available documents which would be derestricted more promptly than in the past,” and that the Secretariat’s interaction with NGOs –

should be developed through various means such as *inter alia* the organization on an *ad hoc* basis of symposia on specific WTO-related issues, informal arrangements to receive the information NGOs may wish to make available for

consultation by interested delegations and the continuation of past practice of responding to requests for general information and briefings about the WTO.

The guidelines acknowledged the “broadly held view” among the members “that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings.” It nonetheless suggested that closer consultation and cooperation could be achieved “through appropriate processes at the national level where lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making” (*ibid.*).

The guidelines did not go as far towards the involvement of NGOs as might be authorized under the legal instruments of the organization. “While the legal basis in the WTO Agreement is broad enough to allow for” the direct participation of NGOs in the activities of WTO bodies, according to Van den Bossche (2009: 314), “NGOs do not have consultative status in any WTO bodies.” NGOs nonetheless have many other options for interacting with WTO members and the Secretariat, including public symposia and forums on WTO-related issues, informal briefings, opportunities for information exchange, the Informal NGO Advisory Body and participation in dispute settlement cases as experts and friends of the court. Starting in May 2008, the Secretariat granted access to the WTO building for NGO representatives from Geneva and its wider region, with a view towards improving transparency and promoting closer working relations with the local NGO community. Through early 2013, the Secretariat had issued 59 badges granting access to individuals from 23 organizations. The badges are valid for one year, allowing the bearer to enter the Centre William Rappard without having to register or having a specific appointment.

Some proposals would expand the role of NGOs in the WTO. Lacarte (2005: 449) and others advocated the establishment of an Advisory Economic and Social Committee to the WTO that “would allow civil society to contribute to the furtherance of world trade and to its links with other areas of endeavor.” The function of such a group would be limited, and “[w]hatever proposals came out of any new NGO advisory body would certainly have to be just that: proposals that Members would take up if and when they saw fit” (*ibid.*).

The perennial disputes over the role of NGOs in the deliberations of the WTO are partly a manifestation of the split between developing and developed countries. While developed countries often urge that the institution be made more open to NGOs, developing countries generally oppose these proposals. “This deep resistance to proposals aimed at making the institution more responsive and responsible to the world community,” according to McGrew (1999: 200), “is not primarily the product of an anti-democratic impulse.” He instead attributes it to “reasonable fear that a WTO which is more open to the influence of private interests and NGOs will become even more Western dominated,” and that a “‘democratic’ WTO could thereby legislate the global application of Western standards, whether in the environmental or social domain, which would erode the competitive advantages of developing economies.”

That sentiment applies more to some NGOs than to others. Pérez-Esteve (2010) reported the results of two surveys circulated among NGOs. More respondents identified trade and the environment as an area of interest than any other, though four other issues – trade and development, trade in services, food security and agriculture – tied for a close second place. More significant were her findings regarding the preferred forum, with the NGOs “rat[ing] their success in influencing trade policy formulation at the multilateral level highest, followed closely by their achievements at the national level” (*ibid.*: 302). The least preferred forum is the preferential trade agreement (PTA):

They argue that the decision-making process within the WTO favours the diverse interests of developing countries in a more coherent way than in PTAs, where a lot of pressure ends up falling on the weakest participant. They also consider the negotiation of PTAs as being more secretive and thus limiting the ability to reach an interested audience. Furthermore, they note that the administration of multiple PTAs at the global level has become very complex and that a multilateral framework is likely to be more comprehensive (*ibid.*).

“Business organizations have been by far the most active in seeking to influence trade policy formulation at the multilateral since the establishment of the [GATT] in 1947,” according to Pérez-Esteve (2010: 285). One such organization is the Transatlantic Business Dialogue, a group that brings together the chief executive officers of European and US firms to coordinate activities on trade and regulatory matters. First convened in 1995 by the US Department of Commerce and the European Commission, it serves as the official dialogue between business leaders, US cabinet secretaries and EU commissioners.

Whereas it is no doubt true that NGOs representing business interests are usually better organized and funded in the developed than in the developing countries, there are also NGOs headquartered in developed countries that promote positions that are intended to be favourable to the developing countries. That is the case, for example, in the role that NGOs such as Health Action International, Oxfam, Médecins Sans Frontières and others played in helping developing countries to reframe the debate over pharmaceutical patents as a health issue rather than strictly as a matter of intellectual property rights (see Odell and Sell, 2006). NGOs and governments have both become more adept at playing the two-level game of modern trade negotiations, which often requires a relaxation of the previously solid barriers that prevented civil society in one country from dealing directly with, or even on behalf of, a government in another country. These tactical exceptions notwithstanding, as a general rule developing countries are more wary of involvement on the part of NGOs than are industrialized countries.

### ***NGOs, ministerial conferences and dispute settlement***

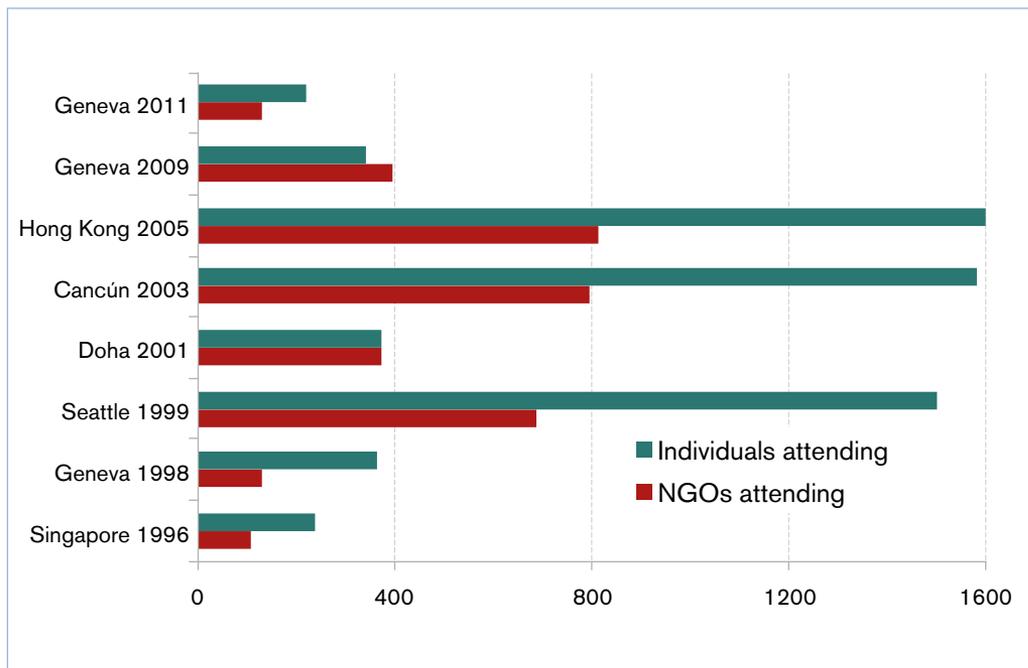
NGOs cannot participate directly in the deliberative portions of ministerial conferences, but that does not prevent them from seeking to exert some influence on the negotiations. The

spectrum of activities range from seminars in adjoining conference rooms to protests in nearby streets. It has been the practice at all WTO ministerial conferences to allow NGOs to attend the formal plenary sessions (which are more ceremonial than substantive) and to organize events in which they may participate (see Figure 5.1).

Apart from a downturn in the 2001 Doha Ministerial Conference, where facilities were limited and attendance was dampened by concerns over security, each ministerial from 1996 to 2005 saw an increase in the number of NGOs that are accredited (rising from 159 in 1996 to 1,596 in 2005) and attending (rising from 108 in 1996 to 812 in 2005). The numbers dropped off sharply in 2009 and 2011, however, by which time the Doha Round had receded and ministerials were less likely to deal concretely with issues of interest to NGOs.

The question of NGO participation in dispute settlement proceedings is a more sensitive topic. Article 13 of the Dispute Settlement Understanding provides that panels have “the right to seek information and technical advice from any individual or body which it deems appropriate.” The Appellate Body further provided in a 1998 decision in *United States – Import Prohibition of Certain Shrimp and Shrimp Products* that panels are free to consider or

**Figure 5.1. NGOs and associated individuals participating in WTO ministerial conferences, 1996-2011**



Sources: Data for the first six ministerial conferences are reported in Van den Bossche (2009: 322); data for the 2009 and 2011 Ministerial Conferences are from the WTO Secretariat.

Notes: Data for individuals in attendance at the 1999 Ministerial Conference are approximate.

reject *amicus curiae* briefs. In this case, the United States had attached to its submission briefs from the Earth Island Institute, the Center for International Environmental Law and the Philippine Ecological Network, among other NGOs. Other parties to the case objected, but the Appellate Body ruled that “the attaching of a brief or other material to the submission of either appellant or appellee, no matter how or where such material may have originated, renders that material at least *prima facie* an integral part of that participant’s submission.”<sup>41</sup> The Appellate Body went further still, ruling not only that a panel may consider *amicus* material that makes its way into a case by way of a party’s submission, but also that unsolicited briefs may be accepted:

A panel has the discretionary authority either to accept and consider or to reject information and advice submitted to it, whether requested by a panel or not. The fact that a panel may *motu proprio* have initiated the request for information does not, by itself, bind the panel to accept and consider the information which is actually submitted. The amplitude of the authority vested in panels to shape the processes of fact-finding and legal interpretation makes clear that a panel will not be deluged, as it were, with non-requested material, unless that panel allows itself to be so deluged.<sup>42</sup>

This is yet another issue that divided developed from developing countries. While developed countries have advocated a more transparent system that would open dispute arguments and proceedings to the public and set firmer guidelines for the consideration of *amicus curiae* submissions, many developing countries were “concerned that allowing direct submissions by non-parties (NGOs and business associations) to the panels or Appellate Body would weaken the inter-governmental nature of the WTO” (Mshomba, 2009: 69).

These disagreements extend to the opening of panels to the public. In September and October 2006, the panel in the twin cases of *Canada – Continued Suspension* and *United States – Continued Suspension* granted the request of the parties (Canada, the European Union and the United States) to provide a simultaneous, closed-circuit feed of two of its meetings. The proceedings were not webcast, broadcast or even recorded, but were instead beamed into a separate viewing room where the first 200 persons who requested passes were permitted to view them. “[D]espite the frequent calls by NGOs for increased transparency of dispute settlement proceedings,” Van den Bossche (2009: 329) wryly observed, “few actually ‘attended’ and the enthusiasm of those attending waned considerably after the first few hours (after the novelty had worn off).” Similar arrangements have been made in a few subsequent cases, but the great majority of the panels remain entirely closed to the public and the press.

### ***The Public Forum and submission of papers to the WTO***

A similar dynamic may be at work in the extent to which NGOs avail themselves of the opportunity to submit position papers to the WTO. The Guidelines for Arrangements on Relations with Non-Governmental Organizations that the General Council adopted in 1996

called for the Secretariat to “play a more active role in its direct contacts with NGOs” which “should be developed through various means” including “informal arrangements to receive the information NGOs may wish to make available for consultation by interested delegations.”<sup>43</sup> Among the steps that the Secretariat undertook in pursuit of this mandate was creation of a page on the WTO website where position papers from NGOs could be posted. Use of this opportunity started small, with just 11 such papers posted in late 1998, but the next year the number reached 74. It was still high in 2003, when the Secretariat posted 68 position papers received from NGOs, but the numbers fell sharply thereafter. There were just three such papers posted in 2011, and only one in 2012.<sup>44</sup>

Analysis of the papers submitted tends to confirm the view that giving greater voice to NGOs means providing yet another opportunity for developed country opinions and demands to be heard more than those of the poorer countries. Bown’s (2009: 182) tabulation of NGO position papers submitted from 1999 to 2007 shows that the most prolific groups were the International Chamber of Commerce (37 papers), the Union of Industrial and Employers’ Confederation (31) and the American Chamber of Commerce (21). With 20 papers, Greenpeace came in fourth place.

Starting in 2000, the WTO has sponsored an annual public forum<sup>45</sup> on current topics in the trading system. These two- or three-day events are organized around panel discussions, each of which is sponsored by NGOs, universities, think tanks or other institutions. The meetings open the WTO to the full community of trade and trade-related professionals and have become a regular part of the annual calendar. Attendance at these events rose rapidly in the first few years before stabilizing at around 1,500 people, with about 45 sessions held at each event in recent years (see Table 5.4).

**Table 5.4. The WTO Public Forum, 2001-2013**

Year	Theme	Sessions	Participants
2001	Symposium on Issues Confronting the World Trading System	12	NA
2002	The Doha Development Agenda and Beyond	18	782
2003	Challenges Ahead on the Road to Cancún	24	1,148
2004	Multilateralism at a Crossroads	32	1,325
2005	WTO after 10 Years: Global Problems and Multilateral Solutions	27	1,821
2006	What WTO for the XXI <sup>st</sup> Century?	36	1,377
2007	How the WTO Can Help Harness Globalization?	40	1,741
2008	Trading into the Future	42	1,335
2009	Global Problems, Global Solutions: Towards Better Global Governance	45	1,289
2010	The Forces Shaping World Trade	44	1,368
2011	Seeking Answers to Global Trade Challenges	46	1,523
2012	Is Multilateralism in Crisis?	44	1,359
2013	Expanding Trade through Innovation and the Digital Economy	36	TBD

Source: WTO Information and External Relations Division.

### *Parliamentarians*

Starting with Seattle in 1999, parliamentarians have held formal meetings in conjunction with the WTO ministerial conferences. Meeting in 2001 in Geneva, where one conveniently finds the headquarters of both the Inter-Parliamentary Union (IPU) and the WTO, the first global parliamentary meeting on international trade produced the Final Declaration that called for “a parliamentary dimension to international trade negotiations and arrangements.” Formal organization among parliamentarians advanced further at the Doha Ministerial Conference later that year, where the IPU and the European Parliament jointly sponsored a meeting. The ministers did not take up this group’s proposal that the Doha Ministerial Declaration explicitly provide for greater WTO transparency “by associating Parliaments more closely with the activities of the WTO,” but the legislators themselves created a Parliamentary Conference on the WTO. This IPU-affiliated group holds annual meetings, participates in side events at WTO ministerials, and has a steering committee that follows events more closely.

The involvement of parliamentarians is enthusiastically embraced in Europe. The European Parliament adopted a resolution in 1999 calling on the Commission and the Council “to examine the possibility of setting up WTO Parliamentary Assembly to achieve greater democratic accountability.”<sup>46</sup> Erika Mann (2005: 425), a Member of the European Parliament, noted some frictions:

The European Parliament and the IPU are the main drivers of parliamentary involvement. Considering the different histories, functions, structures, and decision-making procedures of the two organizations, it is more than understandable that the cooperation has not always been without difficulties. Political problems occasionally also arose from the lack of congruence between the respective memberships of the IPU and the WTO. Most prominently, Taiwan is a member of the WTO as a Separate Customs Territory without being a member of the IPU. By contrast, Iran is a member of the IPU but not of the WTO. Some WTO Members even lack a parliament or have one that is suspended.

There is little support for this process in the United States, where Congress already exercises considerable authority over trade policymaking and “many US congressional representatives believe that their constituents’ interests are best advanced when the USTR negotiates in a closed intergovernmental context” (Shaffer, 2005a: 398). When the IPU and the European Parliament formed a steering committee after the Doha Round, for example, with representatives from 22 countries and four international organizations, no one came forward to fill the two seats that were reserved for members of the US Congress (Mann, 2005: 425).

The interparliamentary option remains unpopular in some developing countries, due variously to “fear that the addition of a parliamentary dimension would add to [governments’] burden,” concerns that such an approach “would favour large countries with larger delegations” and “undermine their negotiating positions,” and worries that parliamentarians might undermine deals by “defend[ing] vested protectionist interests” (Shaffer, 2005a: 400). Shaffer nevertheless concluded that the benefits could outweigh the costs, and that

a "Consultative Parliamentary Assembly of the WTO would be an adequate instrument to channel the interests and aspirations of individuals into the decision-making process of the WTO" (*Ibid.*: 420).

### *The press*

While not a stakeholder *per se*, the press offers a vital link between the WTO, its members and civil society. The media can become indirect participants in negotiations, especially to the extent that their reporting may affect countries' negotiating positions by way of public opinion. Odell and Sell (2006: 86), for example, argued that "a developing country coalition seeking to claim value from dominant states in any regime will increase its gains if it captures the attention of the mass media" and if it "persuades the media to reframe the issue using a reference point more favourable to the coalition's position." In support of this contention they cited events in the Uruguay Round, in which –

powerful transnational firms and their governments had framed intellectual property protection as a trade issue. They argued that strong patent protection promotes trade and investment for mutual benefit and that the alternative is tolerating piracy. More recently, TRIPS critics attempted to frame intellectual property protection as a public health issue, arguing that strong protection could be detrimental to public health provision. Reframing in this case was a tactic in a distributive strategy (for gaining at the expense of the United States and other property owners' positions) (*Ibid.*: 86-87).

The press can also be a useful tool for trade negotiators, with the experience of WTO Director-General Peter Sutherland offering a case in point. The first step that he took once in office was to direct the press office to launch a more aggressive campaign, stressing the importance of the round and the concrete benefits that would accrue if it reached a successful conclusion. That press offensive was part of his larger plan to force the negotiators out of the slump into which they had fallen, and to increase the pressure on them from the outside.

Media relations are one of the areas in which the WTO is qualitatively different from GATT, although this change did not take place as a result of any formal decision on the part of the members. It was instead the product of an internal debate, and not always a calm one, in which Secretariat officials looked for ways to repair the damage that the Seattle Ministerial Conference had done to the image of free trade in general and the WTO in particular. A key participant in this process was Keith Rockwell (see Biographical Appendix, p. 590), formerly a reporter for the venerable *Journal of Commerce* who moved laterally into the directorship of the WTO Information and External Relations Division. Having been on the receiving end of the GATT's media relations, Mr Rockwell characterized the institution's relations with journalists as "based on a deep reticence around the house to divulge information."<sup>47</sup> He set out post-Seattle to encourage more direct engagement with the press and the NGOs on the part of both the institution and its members. Earlier efforts to provide journalists with timely information encountered sharp opposition from some members. This was particularly true

during the selection of the new director-general in 1999, when Mr Rockwell was ordered not to provide real-time information to journalists on the conduct of this process. The fiasco in Seattle decisively brought home to many delegations the importance of enhancing the institution's outreach to media and civil society.

The higher political profile of the WTO ensured that the older GATT practices were dead. Attention was especially intense in the most active period of the Doha Round, when the ranks of journalists in attendance at ministerials rose and fell in roughly the same pattern observed above for NGOs (see Figure 5.1). The approximate number of journalists in attendance at the 1999 Seattle Ministerial Conference reached 2,700, and rose still higher to 3,400 at the 2005 Hong Kong Ministerial Conference, but by the 2009 and 2011 Geneva Ministerial Conferences the numbers had plummeted to 209 and 226, respectively.<sup>48</sup>

Journalists have access to the Centre William Rappard. The Secretariat issues badges to any journalist who can provide a press card, and recognizes the badges issued to journalists by the United Nations Office in Geneva. As of early 2013, the Secretariat had issued another 55 yearly badges to journalists from around the world.

The Information and External Relations Division increased its outreach to media, persuading members that it was important to bring developing-country journalists to Geneva for intensive workshops on the WTO and its activities. Working with the Friedrich Ebert Stiftung (FES) the division organized 20 events in Geneva for developing-country journalists from 2003 to 2012. The WTO and the FES have arranged to bring 15 journalists from LDCs to every ministerial conference since Marrakech in 1994. Working with the FES and other foundations, the division organizes similar workshops around the world for NGOs and parliamentarians. These outreach activities are now funded out of the WTO technical assistance budget. Another of the division's initiatives was to hire information officers from outside the official languages of English, French and Spanish. It brought aboard Chinese and Arabic speakers in 2010 and 2012, respectively, to serve as spokesmen, and the 32-member staff also has Catalan, Dutch, Portuguese, Tagalog, Thai and Urdu speakers. It also began to engage new media in 2009, putting up a presence on Facebook and Twitter. As of early 2013, it had more than 17,000 "friends" on each of these social media outlets, primarily younger people.<sup>49</sup>

## Capacity-building, technical assistance and support

One of the consequences of the expanding scope of trade policy is a vast increase in the technical knowledge that is expected of negotiators and other trade policy-makers. For much of the GATT period the principal things a professional in this field needed to know in order to operate effectively concerned tariffs, other border measures, the conduct of diplomacy, and at least the rudiments of trade-remedy laws and dispute settlement procedures. Policy-makers in the field today need to have, or have access to, expertise in a much wider range of topics.

This is not to say that even the most traditional area of trade policy-making is easy. Preparing for and conducting tariff negotiations requires not only access to the raw numbers – bound tariffs, applied tariffs and data on imports and exports<sup>50</sup> – but also the capacity to “crunch the numbers” and relate actual or potential proposals to the effects that they may have on one’s individual industries and the economy as a whole. That can be hard enough to do in a static approach that identifies individual tariff lines that might be affected, much less in a dynamic model that forecasts how those changes might affect actual levels of production, trade, employment, consumer welfare and government revenue. Developed countries that have sophisticated research facilities at their disposal, whether in government agencies or in their academic/think tank communities, can routinely conduct both types of analysis. At the other extreme, the issue is moot for the least-developed countries (LDCs) that are generally exempt from making new commitments. The rest of the developing countries can be divided between the “haves” whose research capacities sometimes rival the developed countries and the analytical “have-nots”. This is one respect in which the use of formulas as an instrument of market access negotiations can add to the complexity of the task. The transition from linear to non-linear formulas (see Chapter 9) might be compared to moving from slide rules to spreadsheets, but that is an advance only if everyone owns a computer and is proficient in its use.

The analytical problems associated with the traditional issues of trade in goods may nevertheless be deemed simple when compared to the more complex issues that the system began to take on in the Uruguay Round. Trade in services is far more analytically complex than trade in goods, encompassing not just border measures but the whole array of laws and other instruments by which countries regulate and promote such diverse activities as law, medicine, accounting, tourism and education. When one adds to that such topics as intellectual property rights and investment, not to mention the subjects that can be tied to trade through dispute settlement or proposed new negotiations (e.g. environmental issues and competition policy), it is evident that not even a modern Renaissance person can master all of the topics that might arise in Geneva.

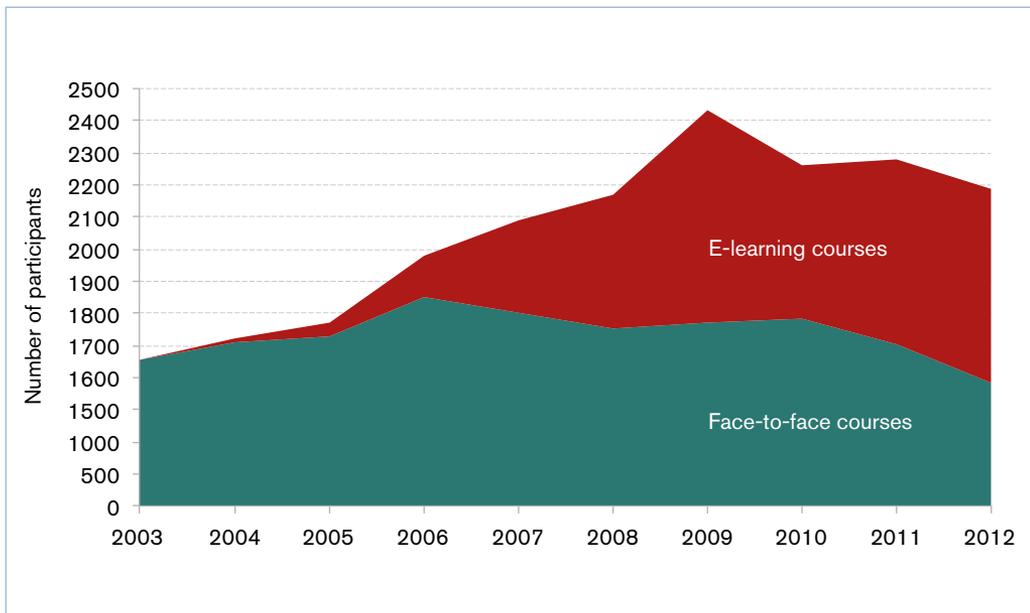
The most direct way for the WTO Secretariat to assist countries with these analytical problems is to provide the services to them. Any WTO member can request assistance from the Secretariat in determining how a given proposal might affect its tariffs and those of its trading partners, for example, and that aid can be indispensable in getting past the immediate problem. It also exemplifies the cliché about how giving a man a fish will feed him for a day but teaching him to fish will feed him for life. The capacity-building services that the WTO Secretariat provides, both on traditional matters such as market access negotiations and on the more complex subject matter that distinguish the WTO from its GATT predecessor, are even more useful in helping members to cope with the ever-growing demands for facts and analysis.

Trade policy-making requires not only that the trade ministries be ready to handle a wide range of issues but that they coordinate with all of the other governmental bodies whose “turf” is at issue. Capacity-building therefore requires more than the training of trade ministry officials. “The prime objective of the Enhanced Integrated Framework,” WTO Deputy Director-General Valentine Sendanyoye Rugwabiza (see Biographical Appendix, p. 592) observed, “is really less

about making people in a trade ministry understand what a specific multilateral agreement entails than about helping the ministry to bring together all the other agencies which one way or the other have something to do that will have an impact in trade policy."<sup>51</sup> The need to bring in an array of different ministries is matched by the need to call upon the expertise of an equally wide range of international organizations. One task of the WTO Secretariat is to promote capacity in the members, both by providing assistance itself and by coordinating activities with other organizations. The Enhanced Integrated Framework (EIF) that the WTO coordinates is a partnership with the IMF, the ITC, UNCTAD, the UNDP and the World Bank Group.

The main purpose of the Secretariat's trade capacity-building programmes is to provide direct support to the beneficiaries, enhancing their human and institutional capacities to confront the challenges of trade policy-making. Training is delivered in a variety of ways and in different sites, including courses in Geneva, in the members, and increasingly through Internet-based e-learning.<sup>52</sup> Figure 5.2 illustrates how this electronic pedagogy began in 2004 and rapidly came to be the leading form of training. The e-learning programme is based on the concept of progressive learning, and allows participants to move from basic to more advanced topics.<sup>53</sup> Another way that the WTO takes advantage of information technology as a tool of training and technical support is through the funding of reference centres that provide a dedicated, physical location where any relevant information on the WTO can be accessed via the WTO Internet site, on CD-ROMs, in print and in electronic format. There were reference centres in 86 countries as of 2011, including 35 LDCs and 14 members that did not have permanent missions in Geneva.<sup>54</sup>

**Figure 5.2. WTO technical assistance for government officials, 2003-2012**



Source: WTO Institute for Technical Cooperation and Training.

Notes: Data for 2012 are preliminary and incomplete.

The WTO also sponsors internship programmes that promote a learning-by-doing approach, especially for entry-level personnel from developing countries. These include the Missions Intern Programme (MIP) and the Netherlands Training Programme (NTP), each of which supports several individuals while assigning them to specific divisions in the WTO. Interns are given a stipend that is not much less than what a junior officer is paid, as well as health insurance. From 2005 to 2011, the MIP hosted interns from 38 developing countries (21 of which were LDCs), and the NTP hosted interns from 55 developing countries (35 of which were LDCs).<sup>55</sup> The internship programmes can contribute to more than just the improvement of specific persons' knowledge and skills, as they can also help to catalyse countries' decisions to move from non-resident to resident status. They have led some countries to follow up by establishing a mission and, in some cases, sending that former intern back as a delegate (in some cases as ambassador). One example is Benin, which helped to form the Cotton-Four coalition. Niger and Togo are other examples of the same phenomenon.<sup>56</sup>

This is not the only issue in residency, as many countries find it difficult to support a full-time mission in one of the most expensive cities in the world to work and live. Non-residency has nevertheless declined since the start of the WTO period, roughly halving from 1997 to 2012. That may be attributed in part to the assistance that the Swiss government provides to LDCs, as well as to aid that the British Commonwealth and other organizations offer to these and other developing countries. Non-residency thus tends to be more of a problem for the countries that are slightly richer than an LDC than it is for the LDCs themselves, and especially those that have small populations and thus very limited tax bases. LDCs are eligible for Swiss support that amounts to some Sfr 3,000 per month, which is about what is needed to pay the rent on office space in Geneva. Assistance from other sources can offset some of the other costs associated with operating a mission in Geneva.

Funding has generally not been a problem in the WTO trade-related technical assistance programmes, with Director-General Pascal Lamy having secured commitments to the Aid for Trade initiative at the Hong Kong Ministerial Conference in 2005. This could, however, become a problem area as a consequence of the financial crisis and tighter budgets. In 2011, for example, the incoming funds did not cover all of the expenses of the WTO technical assistance plan, requiring the cancellation or postponement of several projects.<sup>57</sup> This may be attributed in part to a decline in the contributions and pledges that members make to the Doha Development Agenda Global Trust Fund (DDAGTF), as shown in Table 5.5. The contributions and pledges to this trust fund totaled Sfr 19.7 million in 2009, but by 2011 these had declined to Sfr 15.1 million – a fall of 23.6 per cent. These reductions can sometimes be attributed to changes in the value of the Swiss franc; as is explained in Chapter 14, the general WTO budget is denominated in francs but contributions to the DDAGTF can be in any currency. The European Union and its member states provide about two thirds of the funding for the DDAGTF, but pledges and contributions declined from 2009 to 2011 for ten member states and from the European Union itself. The same may be said for the pledges and contributions of China, Japan, the Republic of Korea and the United States. The decline in the trust fund led to a similar reduction in technical assistance activities, as can be seen for example in the lower number of attendees in face-to-face courses (see Figure 5.2).

**Table 5.5. Contributions and pledges to the Doha Development Agenda Global Trust Fund, 2008-2011**

<b>Donor</b>	<b>Swiss francs ('000s)</b>	<b>Share of total (%)</b>
European Union and member states	45,281.8	65.2
<i>Sweden</i>	9,151.9	13.2
<i>Netherlands</i>	5,892.0	8.5
<i>European Union</i>	5,794.1	8.3
<i>Germany</i>	5,751.5	8.3
<i>Finland</i>	5,473.2	7.9
<i>France</i>	3,517.0	5.1
<i>Ireland</i>	3,313.4	4.8
<i>Spain</i>	1,973.3	2.8
<i>Luxembourg</i>	1,525.5	2.2
<i>Other EU members</i>	2,894.9	4.2
Norway	7,093.6	10.2
Australia	6,267.7	9.0
United States	3,913.3	5.6
Canada	1,805.0	2.6
Japan	1,755.2	2.5
Korea, Republic of	1,383.6	2.0
Switzerland	800.0	1.2
China	616.9	0.9
Chinese Taipei	184.2	0.3
Liechtenstein	160.0	0.2
New Zealand	158.0	0.2
Turkey	50.0	0.1
<b>Total</b>	<b>69,469.3</b>	<b>100.0</b>

Source: Calculated from *Annual Report on Technical Assistance and Training*, WTO document WT/COMTD/W/186, 25 June 2012, Annex 5.

## Endnotes

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- 1 For African perspectives on this universal problem, see Mbekeani (2005) and Odhiambo et al. (2005).
- 2 For reasons explained below, the IMF and the World Bank are properly called the “other” Bretton Woods institutions because, contrary to the common usage, the WTO falls within this same category.
- 3 For further information on the history, structure and activities of the Chief Executives Board for Coordination, see [www.unsceb.org/ceb/home](http://www.unsceb.org/ceb/home).
- 4 For further information on the task force, see [www.un.org/issues/food/taskforce/index.shtml](http://www.un.org/issues/food/taskforce/index.shtml).
- 5 For further information on the ITC, see [www.intracen.org/](http://www.intracen.org/).
- 6 For further information on the facility, see [www.standardsfacility.org/en/index.htm](http://www.standardsfacility.org/en/index.htm).
- 7 See the discussion below of the joint agreement negotiated in GATT and UNESCO in the 1950s.
- 8 For the text of a 2001 e-mail on this subject from Adrian Otten (see Biographical Appendix, p. 588), director of the Intellectual Property Division to Deputy Director-General Paul-Henri Ravier, which was inadvertently released as part of a WTO document and then posted to the Internet, see <http://lists.essential.org/pipermail/ip-health/2001-September/001900.html>. In this note, Mr Otten urged caution in the collaborative process and observed, among other things, that “there is a network which includes the leading non-governmental people, certain people in the WHO Secretariat, Mr Raghavan and his newsletter and many developing country delegates and nothing that is given to WHO can be relied upon to remain confidential.”
- 9 For further information on the manual, see [www.wto.org/english/res\\_e/statis\\_e/its\\_manual\\_e.htm](http://www.wto.org/english/res_e/statis_e/its_manual_e.htm).
- 10 The text of the transfer agreement is in *Transitional arrangements; Transfer Agreement between GATT 1947, ICITO and the WTO*, WTO document PC/W/12 and 6SS/W/1, 7 December 1994.
- 11 See *Declaration on the Establishment of a New International Economic Order*, UN resolution A/RES/S-6/3201, 1 May 1974.
- 12 Author’s interview with Mr Supachai on 27 September 2012.
- 13 The text of the MOU is posted at <http://unctad.org/sections/press/docs/mou.pdf>.
- 14 Letter of 14 December 2011 at [www.wto.org/english/news\\_e/news11\\_e/agcom\\_14dec11\\_e.htm#letter](http://www.wto.org/english/news_e/news11_e/agcom_14dec11_e.htm#letter).
- 15 See *Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council*, WTO document WT/L/161, 25 July 1996.
- 16 Data from the websites of the respective organizations.
- 17 Canadian officials considered proposing such an arrangement at the time that they developed their ideas for the transformation of GATT into the WTO. In an undated (c. 1990) note from Debra Steger to Bill Crosbie, one of the institutional reforms proposed for the purpose of promoting greater coherence between the new WTO, the IMF and the World Bank was “establishing a GATT liaison office in Washington” (p. 1). This is the only reference that the author has ever seen in any document that suggests any form of permanent presence for the WTO outside of Geneva.
- 18 On the enforcement powers of the ILO, see Harrison (2007: 87-92).
- 19 The text of the declaration is posted at [www.un-documents.net/dec-phil.htm](http://www.un-documents.net/dec-phil.htm).

- 20 The text of the agreement is posted at [www.imf.org/external/pubs/ft/sd/index.asp?decision=DN18](http://www.imf.org/external/pubs/ft/sd/index.asp?decision=DN18).
- 21 The strategy is posted at <http://siteresources.worldbank.org/TRADE/Resources/WBGTradeStrategyJune10.pdf>.
- 22 The initial proposals were developed by UNESCO, which formed the basis for negotiations by a working party in the third (Annecy) round of GATT negotiations in 1950. The text of the agreement was then communicated to UNESCO for sponsorship, and entered into force in 1952. See World Trade Organization (1995: 281).
- 23 The text of the convention, together with related documents, is posted at <http://unesdoc.unesco.org/images/0021/002148/214824e.pdf>.
- 24 For a fuller discussion of the development and terms of the draft convention, see VanGrasstek (2006).
- 25 Author's interview with Mr Jara on 23 February 2013.
- 26 See *Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property*, WHO document WHA61.21, 24 May 2008.
- 27 While the term "OECD country" is often used as a synonym for developed or industrialized that is more of a linguistic convenience than a legal rule, such that when people speak of the OECD countries aiming for one thing or another, they more often mean this as a shorthand reference to the developed countries rather than as a means of describing a formal initiative that the OECD *per se* has undertaken. Status as a developing country in the WTO remains a matter of self-declaration, for which there are no specific standards.
- 28 One could of course speculate that the OECD members, were they of a mind to do so, could replicate something like the Dispute Settlement Body as part of this institution. If they did so, however, that could be taken as a definite signal of interest in replacing the WTO as the principal forum for the negotiation and enforcement of agreements affecting trade and related economic matters.
- 29 See also Blair (1993) for case studies in the OECD negotiations on export credits and trade in agricultural goods, steel and ships.
- 30 Here the International Telegraph Union has pride of place as the first modern international organization, having been established in 1865 and later becoming the International Telecommunication Union (ITU). Like WIPO, the ITU is a specialized agency of the United Nations.
- 31 The text of the agreement is posted at [www.wto.org/english/tratop\\_e/trips\\_e/wtowip\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/wtowip_e.htm).
- 32 In an exception to this rule, the minutes of the Trade Policy Review Body were circulated as unrestricted documents. Similarly, trade policy review reports by the Secretariat and by the government concerned were to be derestricted upon the expiry of the press embargo.
- 33 See *Procedures for the Circulation and Derestriction of WTO Documents: Decision Adopted by the General Council on 18 July 1996*, WTO document WT/L/160, 22 July 1996.
- 34 See *Procedures for the Circulation and Derestriction of WTO Documents: Decision of 14 May 2002*, WTO document WT/L/452, 16 May 2002.
- 35 A footnote defines the term "official WTO document" to mean "any document submitted by a Member or prepared by the Secretariat to be issued in any one of the following WTO document series: WT-series (including reports of panels and the Appellate Body); G-series (except G/IT-series); S-series; IP-series; GATS/EL-series; GATS/SC-series; the Schedules of Concessions and TN-series."

- 36 Some analysts prefer the term "non-state actors" to describe groups that are not affiliated with governments. See for example Capling and Low (2010) and their collaborators. For the sake of consistency, the term NGO will be used here throughout.
- 37 See *Relations with Non-Governmental Organizations: Note by the Secretariat of the Interim Commission for the International Trade Organization*, GATT document ICITO/EC.2/11, 15 July 1948.
- 38 GATT Article XXIII.2 (Nullification and Impairment) provides that in dispute settlement cases the contracting parties could consult "with the Economic and Social Council of the United Nations ... in cases where they consider such consultation necessary." That provision makes no explicit reference to the association between this council and NGOs.
- 39 See *Arrangements for Relations with Non-Governmental Organizations in the United Nations, Its Related Bodies and Selected Other Inter-Governmental Organizations: Note by the Secretariat*, WTO document PC/SCTE/W/2, 11 October 1994, p. 4.
- 40 See *Guidelines for Arrangements on Relations with Non-Governmental Organizations: Decisions Adopted by the General Council on 18 July 1996*, WTO document WT/L/162, 23 July 1996.
- 41 See *United States – Import Prohibition of Certain Shrimp and Shrimp Products: AB-1998-4*, WTO document WT/DS58/AB/R, 12 October 1998, p. 31.
- 42 *Ibid.*, p. 38.
- 43 See *Guidelines for Arrangements on Relations with Non-Governmental Organizations: Decisions Adopted by the General Council on 18 July 1996*, WTO document WT/L/162, 23 July 1996.
- 44 Tabulated by the author from papers posted at [www.wto.org/english/forums\\_e/ngo\\_e/pospap\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/pospap_e.htm), accessed 19 January 2013.
- 45 The term "public symposium" was used for the events held in 2001 to 2005.
- 46 See *European Parliament Resolution on the Communication from the Commission to the Council and the European Parliament on the EU Approach to the WTO Millennium Round*, document COM(1999) 331 – C5-0155/1999 – 1999/2149(COS), A5-0062/1999, 18 November 1999.
- 47 Author's correspondence with Mr Rockwell on 11 February 2013.
- 48 Data provided by the WTO Information and External Relations Division.
- 49 Author's correspondence with Mr Rockwell on 8 February 2013.
- 50 The author has found in his own experience as an adviser to numerous developing-country trade ministries that many of them lack this most basic set of data. Trade data are collected in the first instance by the customs department for one specific purpose (i.e. assessing value and collecting revenue on imports), and sharing the data with a different department of government is often not a high priority.
- 51 Author's interview with Mrs Sendanyoye Rugwabiza on 24 January 2013.
- 52 The web portal for the WTO e-learning system is <http://etraining.wto.org/>.

- 53 Courses are limited to verified government officials who have been approved by their ministries. They are accessed via user identification and password that are obtained when a user registers online and sends a note signed and stamped by the supervisor. Participants should generally be allowed to devote five to six hours a week to follow the course during normal working hours, and have up to three months to complete a course (after which the password expires). Each course is divided in a certain number of modules for which there is an end-of-module multiple choice questionnaire, followed by a final examination. Participants who correctly answer the required number of questions will receive a certificate and move up to a higher level of training. E-learning is also used to select participants for other advanced activities.
- 54 See *Annual Report on Technical Assistance and Training (1 January to 31 December 2011)*, WTO document WT/COMTD/W/186, June 2012, p. 31.
- 55 *Ibid.*, pp. 47-48.
- 56 Author's interview with Mrs Sendanyoye Rugwabiza on 24 January 2013.
- 57 See *Annual Report on Technical Assistance and Training*, WTO document WT/COMTD/W/186, 25 June 2012, p. 3.

