



ABSTRACT

The World Trade Organization (WTO) is an intergovernmental organisation, which regulates international trade. Its creation marked the biggest reform of international trade since the end of World War II. Whereas the General Agreement on Tariffs and Trade (GATT) mainly dealt with trade in goods, the WTO and its agreements cover trade in services and intellectual property. The birth of the WTO also created new procedures for the settlement of disputes. However, the WTO has not been able to ensure a balance of trade between economically-advanced countries

A N ASSESSMENT OF THE RULES OF THE WORLD TRADE ORGANIZATION (WTO) AND THEIR IMPLICATIONS

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Introduction

The World Trade Organization (WTO) is an intergovernmental organisation that regulates international trade. The WTO officially commenced on 1 January 1995 under the Marrakesh Agreement, signed by 123 nations on 15 April 1994, replacing the General Agreement on Tariffs and Trade (GATT) which commenced in 1948 (DBpedia, About: World Trade Organization). A series of trade negotiations, referred to as “GATT Rounds” began at the end of World War 2. One of the main activities of the GATT was “to negotiate the reduction and stabilization of tariffs” (General Agreement on Tariffs and Trade, *United Nations Conference on Trade and Development* 1964).

The significance of the WTO cannot be overstated because trade is listed as one of the ways of attaining the Sustainable Development Goals (SDGs) as provided in the 2030 Agenda for Sustainable Development. The Agenda was adopted by all United Nations Member States in 2015 and provides “a shared blueprint for peace and prosperity for people and the planet, now and into the future” and global partnership between developed and developing countries is required to put an end to poverty, other deprivations while putting in place strategies to improve reduce inequality, spur economic growth and improve health and education amongst other vital considerations. (United Nations, *Sustainable Development Goals* 2022). Thus, the 2030 Agenda notes that, ‘International trade is an engine for inclusive economic growth, job creation and poverty reduction, and contributes to the promotion of sustainable development.’ Member States agreed to ‘continue to promote a universal, rules-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the World Trade Organization, as well as meaningful trade liberalization’



and poorer countries which remain in its fold. It would appear that the rules and regulations set out by the organisation to govern trade among its member-nations favourably benefit a select few. It is in the light of the foregoing that this paper reviews the strategy of the WTO with regards to its rules and regulations, identifies loopholes in its rules and regulations, assesses the strategic implications on world trade and proffers solutions. The method of research adopted is the doctrinal research method from related literature. Data is generated from primary data sources such as provisions of international, regional and national conventions, statutes, declarations and policies. Secondary data is sourced from newspapers, journals, articles and other sources including the internet. Findings reveal the existence of operational and strategic issues in the WTO, which hinder the achievement of its organisational objectives especially in the context of developing countries and manifest themselves due to factors such as lack of transparency, communication gap and the existence of dominant personalities. Consequently, a re-examination of how the multilateral trading system currently operates and how it can be of immense benefit to developing economies is recommended.

(International Trade Centre, *Strategic Plan 2018-2021: Trade Routes to Sustainable and Inclusive Development*). This statement underpins the significance of the World Trade Organization (WTO), which was established to supervise and liberalise world trade (Anderson, Kym, *World Trade Organization: International Trade*).

Historical Background of the World Trade Organization

The World Trade Organization (WTO) was established to supervise and liberalise world trade. The WTO is the successor to the General Agreement on Tariffs and Trade (GATT), which was created in 1947 with the hope that it would soon be substituted by a specialised agency of the United Nations to be called the International Trade Organization (ITO) (Anderson, *World Trade Organization: International Trade*). The ITO along with the International Monetary Fund (IMF) and the World Bank, were primarily predicted as one of the key pillars of post- World War II reconstruction and economic development but the ITO never came about. However, the GATT was amazingly effective in liberalising world trade over the next five decades. By the late 1980s, there were calls for a stronger multilateral organisation to monitor trade and resolve trade disputes. Following the completion of the Uruguay Round (1986-94) of multilateral trade negotiations, the WTO began operations on January 1, 1995 (Anderson, *World Trade Organization: International Trade*). In Havana, in 1948, the UN Conference on Trade and Employment concluded a draft charter for the ITO, known as the Havana Charter, which would have created extensive rules governing trade, investment, services as well as business and employment practices. The United States of America however failed to ratify the Havana Charter.

Consequently on January 1, 1948, the GATT was birthed following an agreement initially negotiated by 23 countries in Geneva in 1947, which phased out import quotas and reduced tariffs on merchandise trade. The WTO derives its income from annual contributions from its 164 members and miscellaneous income. The consolidated budget of the WTO is CHF 197,204,000. (World Trade



Organization, *WTO Secretariat budget for 2022*).

An Overview of the General Agreement on Tariffs and Trade (GATT): The GATT was the only major agreement governing international trade until the establishment of the WTO (World Trade Organization, *WTO Secretariat Budget for 2020*). The GATT finally evolved over a period of 47 years to become a sort of *de facto* global trade organisation and accommodated up to 130 countries as signatories which was a development from the initial 23 members. GATT was altered continuously over a period of 47 years to adapt various interests by means of negotiating rounds, numerous supplementary codes, waivers and reports by dispute-settlement panels.

During rounds of negotiations which ended in 1994, the original GATT and all changes to it introduced prior to the Uruguay Round were renamed GATT 1947. This set of agreements was distinguished from GATT 1994, which comprises the modifications and clarifications negotiated during the Uruguay Round plus a dozen other multilateral agreements on merchandise trade. GATT 1994 became an integral part of the agreement that established the WTO. Other core components include the General Agreements on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); the Understanding on Rules and Procedures Governing the Settlement of Disputes and the Trade Policy Review Mechanism. These agreements were signed in Marrakech, Morocco, in April 1994, and following their ratification, the contracting parties to the GATT treaty became charter members of the WTO. By the 2020s, the WTO had more than 160 members.

Purpose, Objectives and Mode of Operation of the World Trade Organization

The purpose of the WTO is to raise awareness of the scope and consequences of trade-distorting policies. This is achieved through a policy-review mechanism and through annual notification requirements. Thus, notices of all changes in members' trade and trade-related policies must be published and made available to their trading partners. For many developing countries and countries whose economies were previously centrally planned, this obligation was a key phase toward more transparent governance.

The key objectives of the WTO are six and are herein outlined as follows (Anderson, *World Trade Organization: International Trade*):

1. To set and enforce rules for international trade;
2. To provide a forum for negotiating and monitoring further trade liberalisation;
3. To resolve trade disputes;
4. To increase the transparency of decision-making processes;
5. To cooperate with other major international economic institutions involved in global economic management, and;
6. To help developing countries benefit fully from the global trading system.

It is important to mention here that the above objectives of the WTO were also shared by the GATT, in practice, these goals have been pursued more comprehensively by the WTO. For example; whereas the GATT focused almost exclusively on goods (Anderson, *World Trade Organization: International Trade*), the WTO regime encompasses all goods, services, and intellectual property, as well as some investment policies. In addition, the permanent WTO



Secretariat, which eventually replaced the preceding GATT Secretariat, has now strengthened and formalised mechanisms for reviewing trade policies and settling disputes.

Due to the fact that the number of member countries and the extent of their participation has grown steadily, open access to markets has increased substantially (Anderson, *World Trade Organization: International Trade*). This is also due to the fact that many more products are covered under the WTO than under the GATT regime.

Rules of the World Trade Organization

The Rules which were embodied both under the GATT regime and the WTO regime serve at least three different purposes. First and foremost, these rules attempt to protect the interests of small and weak countries against discriminatory trade practices of large and powerful countries. The WTO's **most-favoured-nation** and **national-treatment** Articles (Anderson, *World Trade Organization: International Trade*) stipulate that each WTO member must grant equal market access to all other members and that both domestic and foreign suppliers must be treated equally. Second, the rules require members to limit trade only through tariffs and to provide market access not less favourable than that specified in their schedules (i.e. the commitments that they agreed to when they were granted WTO membership or subsequently). Third, the rules are designed to help governments resist lobbying efforts by domestic interest groups seeking special favours. Exceptions to the rules have been made, however, the presence and replication of these rules in the core WTO agreements at inception ensured that the worst excesses would be avoided. By bringing greater certainty and predictability to international markets, it was thought, the WTO would enhance economic welfare and reduce political tensions.

Resolution of Trade Disputes (Anderson, *World Trade Organization: International Trade*)

The GATT provided an avenue for resolving trade disputes, a role that was strengthened substantially under the WTO. Members are committed not to take unilateral action against other members. Instead, they are expected to seek recourse through the WTO's dispute settlement system and to abide by its rules and findings. The procedures for dispute resolution under the GATT have been automated and greatly streamlined, and the timetable has been tightened. Dispute resolution begins with bilateral consultations through the mediation, or "good offices", of the Director-General. If this fails, an independent panel is created to hear the dispute. The panel submits a private draft report to the parties for comment, after which it may revise the report before releasing it to the full WTO membership. Unlike the IMF and the World Bank, both of which use weighted voting, each WTO member has only one vote. As in the earlier GATT system, however, most decisions are made by consensus. Unless one or both of the parties files a notice of appeal or the WTO members reject the report, it is automatically adopted and legally binding after 60 days. The process is supposed to be completed within nine months, and, if an appeal is lodged, the WTO Appellate Body hears and rules on any claim of legal error within 60 days, with appellate rulings automatically adopted unless a consensus exists among members against doing so.

Trade-Policy Reviews

Part of the strategy of the WTO is the reviews of the trade policies of the world's four largest



traders namely: the European Union, the United States, Japan and China once every two years, the policies of the 16 next largest traders once every four years and the policies of all other traders once every six or more years (Anderson, Kym, *World Trade Organization: International Trade*). This is in view of the fact that since the inception of the WTO, it has sought to increase awareness of the extent and effects of trade-distorting policies through annual notification requirements and a policy-review mechanism. Additionally, notices of changes in trade and trade-related policies of its members must be regularly published and made accessible to their trading partners (Anderson, *World Trade Organization: International Trade*). The above requirement for publication of changes, if any, in trade and trade-related policies was initially conceived by the WTO as a step towards more transparent governance in many developing countries as well as in countries where their economies were formerly centrally planned.

However, it appears that certain large economies export more products to small or developing economies while importing small volumes in return. The checks and balances initiated by the WTO seek to ensure balance of trade between traders who are member-states. However, the question that follows therefore is whether the WTO readily ensures the balance of trade only in principle or in practice? What will happen when a unilateral action is taken against other members in the event of an issue on the balance of trade? It is imperative to mention that part of the WTO's strategy is the fact that members of the WTO are committed not to take unilateral action against other members. Instead they are expected to seek recourse through the WTO's dispute-settlement system and to abide by its rules and findings. In recent times however, since 2019 to be precise, President Donald Trump of the United States of America has taken unilateral action against China without first having recourse to the WTO (Baschuk, *U.S. Violated Trade Rules with Tariffs on China, WTO Says*, 2020). This ultimately begs the question as to whether the WTO is strong enough to sanction erring members or its sanctions are only meted out to poor and weak countries?

An Objective Assessment of the World Trade Organization Today

The pace of international economic integration via the GATT and WTO rounds of multilateral trade negotiations has been slower and less comprehensive than some members would prefer. It would appear that on the global stage today, super power nations and rich countries prefer to do trade negotiations among one another to the economic exclusion of poor and underdeveloped or developing countries. Some have suggested that there should be additional integration among subgroups of (often neighbouring) member economies – e.g., those party to the European Union, the North American Free Trade Agreement (which was superseded by the United States-Mexico-Canada Agreement, signed in 2018) as well as the Asia-Pacific Economic Cooperation – for political, military, or other reasons.

Notwithstanding the *most-favoured-nation* clauses in the agreements establishing the WTO, the organisation does allow such preferential integration under certain conditions. Although many such integration agreements arguably do not involve “substantially all trade” – the WTO's main condition – there has been little conflict over the formation of free-trade areas as well as customs unions. The most common omissions from such agreements are politically sensitive sectors such as agriculture.

With the COVID-19 pandemic, the WTO expects world trade to decline between 13% and 32% in 2020



(World Trade Organization, *Trade set to plunge as COVID-19 pandemic upends global economy*, 2020). However, recovery depends on the policies of member states and on the duration of the pandemic. The WTO has committed to work with other international organisations to minimise disruptions to trade and global supply chains and encouraged WTO members to notify trade measures taken in response to COVID-19, which have surged since the beginning of 2020, causing concern for many. Some members have called on the WTO to address the trade policy challenges emerging from COVID-19 through new rules (Congressional Research Service, *World Trade Organization: Overview and Future Direction*, 2020).

Analysis of Criticisms and Dissent against the World Trade Organization

Beginning in the late 1990s, the WTO was the target of fierce criticism. Opponents of economic globalisation (“Antiglobalization” in *Encyclopedia of Governance*, 2007) particularly those opposed to the growing power of multinational corporations, argued that the WTO infringes upon national sovereignty and promotes the interests of large corporations at the expense of smaller local firms struggling to cope with import competition. Environmental and labour groups (particularly those from wealthier countries) have claimed that trade liberalisation leads to environmental damage and harms the interests of low-skilled unionised workers. Protests by these and other groups at the WTO ministerial meetings in the past, has become a growing cause for concern.

Example of protest against the WTO is the 1999 demonstrations in Seattle, Washington, which involved approximately 50,000 people. It became larger and more frequent, in part because the development of the internet and social media encouraged large scale organising. In response to criticisms of the WTO, supporters opine that regulating trade is not an efficient way to protect the environment and labour rights. Meanwhile, some members of the WTO, especially developing countries have resisted attempts to adopt rules that would allow for sanctions against countries that failed to meet strict environmental and labour standards, arguing that they would amount to veiled protectionism, (“Antiglobalization” in *Encyclopedia of Governance*, 2007).

Also, part of the strategy of the WTO is the reviews of the trade policies of the world’s four largest traders namely: the European Union, the United States, Japan and China once every two years, the policies of the 16 next largest traders once every four years and the policies of all other traders once every six or more years (Anderson, Kym, *World Trade Organization: International Trade*). This requirement provides information on newly opened markets, is believed to monitor the extent to which members are meeting their obligations and is also meant to provide a firmer basis for subsequent trade negotiations and dispute resolution (Anderson, Kym, *World Trade Organization: International Trade*).

However, it appears that certain large economies export more products to small or developing economies while importing small volumes in return. The checks and balances initiated by the WTO seeks to ensure balance of trade between traders who are member-states, the question is begging for an answer, to wit; does the WTO readily ensure the balance of trade only in principle or in practice? Part of the WTO’s strategy is the fact that members of the WTO are committed not to take unilateral action against other members. Instead they are expected to seek recourse through the WTO’s dispute-settlement system and to abide by its rules and findings. In recent times however, since 2019 to be precise.



It is pertinent to mention that many observers believe the WTO needs to negotiate new rules and adopt reforms to continue its role as the foundation of the trading system. Observers are also concerned that the WTO's effectiveness has reduced following the collapse of the Doha Round of multilateral trade negotiations, which started in 2001. Consequently, members have been unable to reach an accord for a new comprehensive agreement on trade liberalisation and rules. Thus, many countries have turned to negotiating free trade agreements outside the WTO and plurilateral agreements involving subsets of WTO members.

Conclusion

The philosophy of the World Trade Organization is shown in its objectives while its *modus operandi* is expressly stated in its rules; the most remarkable being the protection of the interests of small and weak countries against discriminatory trade practices of large and powerful countries. However, this can only be achieved where collaboration exists amongst all member states and by objectively addressing the needs and expectations of member states, particularly vulnerable members. This can only be achieved by establishing and implementing strategies that are transparent, objective and equitable. The WTO should also place significant emphasis on the discipline of risk management in order to take advantage of both upside and downside risks. This is most relevant today especially in view of new and emerging trends. Strategic analytical approaches such as the structured what if-technique, the delphi technique and root cause analysis could be used. The PEST (political, economic, social, technological) analysis tool and SWOT (strengths, weaknesses, opportunities, threats) analysis tool should be adopted in analysing emerging risks such as the COVID-19 pandemic.

Findings reveal further the urgent need for re-examination of how the multilateral trading system currently operates and how this system can particularly be beneficial to developing economies. It seems that both operational and strategic issues affect the achievement of organisational objectives and manifest themselves due to factors such as lack of transparency, communication gap and also due to the existence of dominant personalities. Also, the WTO should name, shame and sanction member states, especially powerful ones that violate any of its rules such as the United States violation of trade rules with tariffs on China under Trump's administration.

Despite these criticisms, however, admission into the WTO has remained attractive for non members, as evidenced by the increase in the number of members after 1995. Most significantly, China entered the WTO in 2001 after years of accession negotiations. The conditions for Chinese membership were in some ways more restrictive than those for developing countries, reflecting the concerns of some WTO members that the admission of such a large and still somewhat planned economy might have an overall negative effect on free trade.

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