

Principles of Trade Law: The World Trade Organization

An Introduction by Chief Reporters Henrik Horn and Petros C. Mavroidis

The World Trade Organization (WTO) Agreement covers the vast majority of international commerce in goods and services, and also contains an agreement on the protection of intellectual property. The Agreement covers not only measures that directly affect trade, such as tariffs and import quotas, but potentially almost any type of internal measure with a trade effect. It applies to all of its approximately 150 Member countries, which range from the poorest to the richest countries on the globe. The WTO contains a rarity in international relations, a compulsory third-party adjudication system that embodies the idea that trade conflicts that cannot be resolved bilaterally, should be resolved through multilateral adjudication rather than through unilateral actions. This two-level system of legal adjudication – the Dispute Settlement (DS) system – plays a core role in the WTO since it determines the practical reach of the legal obligations in the various Agreements.

The overarching aim of the project *Principles of Trade Law: The World Trade Organization* is to evaluate, from a joint legal and economic perspective, the current regulatory framework, and suggest ways to improve it. Such an interdisciplinary approach is in our view necessitated by the fact that the WTO Agreement has inherently economic objectives. For instance, its Preamble states that the objectives of the Agreement are to contribute in:

...raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development....

The project is distinguished into two mutually supportive legs. The *first* part consists of economic and legal analyses of the emerging case law from the adjudicating bodies of the WTO. The general task of the authors (teams of lawyers and economists) is to evaluate whether the ruling “makes sense” from an economic as well as from a legal point of view, and, if not, whether the problem lies in the legal text, or in the interpretation thereof. The analyses do not necessarily cover all issues discussed in a case, but do aim to discuss both the procedural and the substantive issues that form the “core” of the disputes.

The analysis of the emerging WTO case law is meant to serve several purposes. First, and as emphasized above, the adjudication plays a central role by shaping the practical ambit of the agreement. At the same time, this task is extremely difficult, due, in our view, to the amorphous nature of the legal texts, often

inconsistent case law, and political sensitivity of many of the issues at stake. It cannot be expected that a few adjudicators can always “get it right” without drawing on external analyses. This project intends to contribute to the discussion concerning the appropriate interpretation of the WTO agreements analyses that are well-grounded in both law and economics.

To date, approximately 40 reports have been written, covering cases decided in the years of 2001 to 2005. The disputes have concerned all three major WTO agreements: the GATT and the other Annexes forming the multilateral regulation of trade in goods; the services agreement GATS; and the agreement on intellectual-property protection, the TRIPs. The analyses include classic cases such as Havana Club (intellectual-property protection), FSC (tax treatment for Foreign Sales Corporations), the Byrd Amendment (antidumping), and Embraer-Bombardier (export credits and loan guarantees for aircraft). These reports have benefited from being presented and discussed in conferences with external experts, including both lawyers and economists.

The *second* part of the project concerns the preparation of *Principles of WTO Law*. Work along this path has only just started. The purpose of the work in this part is to develop a coherent reading of the WTO Agreement, unconstrained by case law, and where warranted to suggest improvements to the text.

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