

# **The World Trade Organization**

Law, economics, and politics

**Bernard M. Hoekman  
and Petros C. Mavroidis**

Routledge Global Institutions

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# The World Trade Organization

The World Trade Organization (WTO) is one of the most important international organizations in existence today. It contains a set of disciplines that affect the ability of governments to impose trade restrictions, and has helped to support the steady expansion of international trade since the 1950s. It is a unique organization in providing a framework for member states to make binding policy commitments that are enforced through a unique dispute settlement system and a variety of transparency mechanisms.

Despite – or because of – its success, the WTO has recently become the focus of vociferous protests by anti-globalization activists. This book separates the facts from the propaganda and provides an accessible overview of the WTO's history, structure, and policies as well as a discussion of the future of the organization. It also confronts the criticisms of the WTO and assesses their validity.

This is essential reading for students of international trade, international political economy, commercial law, and international organizations as well as activists and others interested in a balanced account of a key global institution.

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## **Routledge Global Institutions**

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*University of Manchester, UK*

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# Foreword

The current volume is the sixteenth in a dynamic series on “global institutions.” The series strives (and, based on the volumes published to date, succeeds) to provide readers with definitive guides to the most visible aspects of what we know as “global governance.” Remarkable as it may seem, there exist relatively few books that offer in-depth treatments of prominent global bodies and processes, much less an entire series of concise and complementary volumes. Those that do exist are either out of date, inaccessible to the non-specialist reader, or seek to develop a specialized understanding of particular aspects of an institution or process rather than offer an overall account of its functioning. Similarly, existing books have often been written in highly technical language or have been crafted “in-house” and are notoriously self-serving and narrow.

The advent of electronic media has helped by making information, documents, and resolutions of international organizations more widely available, but it has also complicated matters. The growing reliance on the Internet and other electronic methods of finding information about key international organizations and processes has served, ironically, to limit the educational materials to which most readers have ready access – namely, books. Public relations documents, raw data, and loosely refereed web sites do not make for intelligent analysis. Official publications compete with a vast amount of electronically available information, much of which is suspect because of its ideological or self-promoting slant. Paradoxically, a growing range of purportedly independent web sites offering analyses of the activities of particular organizations has emerged, but one inadvertent consequence has been to frustrate access to basic, authoritative, critical, and well-researched texts. The market for such has actually been reduced by the ready availability of varying quality electronic materials.

For those of us who teach, research, and practice in the area, this access to information has been particularly frustrating. We were delighted, then, when Routledge saw the value of a series that bucks this trend and provides key reference points to the most significant global institutions. They are betting that serious students and professionals will want serious analyses. We have assembled a first-rate line-up of authors to address that market. Our intention, then, is to provide one-stop shopping for all readers – students (both undergraduate and postgraduate), interested negotiators, diplomats, practitioners from nongovernmental and intergovernmental organizations, and interested parties alike – seeking information about the most prominent institutional aspects of global governance.

## **The World Trade Organization**

The World Trade Organization (WTO) needs little introduction. Few global institutions have attracted the kind of public attention it has, let alone in such a short space of time. The mass demonstrations during the organization's Seattle ministerial meeting in late 1999 and again in Cancún four years later (which, though causing less disruption to the meeting, took a macabre turn with the suicide of Korean protestor Lee Kyang Hae) have contributed to a folklore that has grown up around this institution. While other global and regional organizations have certainly had their fair share of displays of public disaffection, they pale in comparison with the theater that routinely accompanies WTO ministerial meetings.

Public interest in the WTO emerged as a consequence of increasing anxiety about the social and political consequences of economic liberalization. Many worried that the competitive pressures to which producers would be exposed as a result of WTO-negotiated market openings would place an increasing strain on already vulnerable workers and a global environment exhibiting numerous signs of distress. Moreover, concerns were raised that the benefits to be had from further liberalization would disproportionately accrue to a small elite of large corporations in the leading industrialized states and not to the large mass of the world's population.<sup>1</sup>

Public interest in the WTO has, however, come with a cost. Although the institution is among the most familiar (often impressively so) of global institutions, many misconceptions prevail. The WTO is a member-driven institution. While the Secretariat is perhaps able to exercise influence at the margins, it does not decide the content of trade negotiations, nor does it decide how negotiations are conducted. Member states, as in all intergovernmental bodies, call the shots. And

the manner in which trade negotiations are conducted has evolved from practices first put into place by the original signatories to the General Agreement on Tariffs and Trade (GATT).<sup>2</sup> That said, the degree to which member states are able to exercise influence in content and conduct of negotiations varies greatly and some of the WTO's decision-making procedures are at best described as idiosyncratic.<sup>3</sup>

The profile along with the controversy surrounding and impact of the WTO meant that a book on it was at the top of our list of desirable titles when we first conceived the series in 2004. And next to that entry on our list were the people we most wanted to write the book for us. We were delighted then when Bernard Hoekman and Petros Mavroidis agreed to our initial approach.

They need little introduction. Both are excellent scholars and authorities in their field. Bernard Hoekman is a highly regarded economist and long-standing observer of, as well as participant in, the GATT/WTO system. He is currently research manager of the international trade team at the World Bank and a research fellow at the Center for Economic Policy Research, and former economist at the GATT. He is co-author of one of the earliest, best-selling, and most widely cited books on the WTO (*The Political Economy of the World Trading System*)<sup>4</sup> and has written more than 150 articles and book chapters on issues relating to trade and development. Petros Mavroidis is a first-rate trade lawyer and renowned authority on the WTO. He is currently Edwin B. Parker Professor of Foreign and Comparative Law at the University of Columbia Law School and Professor of Law at the University of Neuchâtel. He has written 5 books and edited 11 more on international trade and related law as well as published over 70 articles and book chapters.

Hoekman's and Mavroidis' expertise are visible on every page. This book is an authoritative guide to the WTO. Its subtitle – *Law, Economics, and Politics* – indicates the scope of their analysis. It deals in admirable detail with the workings of the institution, the intricacies of the legal agreements that the WTO administers, and considers the future of the organization and the multilateral trading system amid the turbulence of the current round of negotiations. It is an outstanding volume on this most important of institutions. It deserves to be read by all interested in trade, development, governance, and the global economy. As always, comments and suggestions from readers are welcome.

Thomas G. Weiss, The CUNY Graduate Center, New York, USA  
 Rorden Wilkinson, University of Manchester, UK  
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The views expressed in this book are those of the authors alone and should not be attributed to the World Bank.

# Abbreviations

AB	Appellate Body
ACP	African, Caribbean and Pacific
AD	antidumping
CPC	Central Product Classification
CRTA	Committee on Regional Trade Agreements
CTD	Committee on Trade and Development
CVD	countervailing duty
DDAGTF	Doha Development Agenda Trust Fund
DSB	Dispute Settlement Body
DSU	Dispute Settlement Understanding
EC	European Communities
EU	European Union
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GPA	Government Procurement Agreement
GSP	Generalized System of Preferences
HS	Harmonized Commodity Description and Coding System
IMF	International Monetary Fund
INR	initial negotiating right
IPR	intellectual property right
ITA	Information Technology Agreement
ITC	International Trade Centre, Geneva
ITO	International Trade Organization
ITTC	Institute for Training and Technical Cooperation
LDC	least-developed country
MAI	Multilateral Agreement on Investment
MFA	Multifibre Arrangement
MFN	most-favored-nation
NGO	nongovernmental organization

NT	national treatment
NTB	nontariff barrier
OECD	Organization for Economic Cooperation and Development
PRC	People's Republic of China
PTA	preferential trade agreement
QR	quantitative restriction
RPT	reasonable period of time
SCM	subsidies and countervailing measures
SDT	special and differential treatment
SGA	Safeguards Agreement
SPS	Agreement on Sanitary and Phytosanitary Measures
TA	technical assistance
TBT	technical barrier to trade
TNC	Trade Negotiating Committee
TPRM	Trade Policies Review Mechanism
TRIPs	trade-related intellectual property rights
TRQ	tariff rate quota
UN	United Nations
UNCITRAL	United Nations Committee on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
VER	voluntary export restraint
WCO	World Customs Organization
WTO	World Trade Organization

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# Introduction

Established in 1995, the World Trade Organization (WTO) administers the trade agreements negotiated by its Members, in particular the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), and the Agreement on Trade-related Intellectual Property Rights (TRIPS). The underlying philosophy of the WTO is that open markets and nondiscrimination are conducive to the national welfare of all countries. The *raison d'être* of the WTO is to offer a mechanism to governments to reduce both their own trade barriers and those in foreign markets. Its primary functions are to be a focal point for the negotiation of binding agreements to reduce trade barriers and agree on disciplines for policies affecting international trade, and to provide a mechanism through which WTO Members can enforce these negotiated commitments.

The organization is a stand-alone international institution. It is independent of the United Nations system (that is, it is not a UN specialized agency), in contrast to many other specialized international organizations such as WIPO, ITU, and UNCTAD. The WTO is the successor to the GATT, which it now subsumes. The GATT was never a *formal* international organization; it was an international treaty to which countries and independent customs territories could become a contracting party. The WTO is located on the shore of Lake Geneva in a beautifully landscaped park. Its tranquil environment belies the turbulence that characterized the first ten years of its operation. Few of the officials who were present at the 1994 Ministerial meeting that concluded the Uruguay Round and created the WTO are likely to have foreseen how much controversy the organization would create among nongovernmental organizations (NGOs), parliaments, and industry, farm and labor groups around the world. The WTO has become the focal point of many of those opposing the process of globalization of the world economy.

## 2 Introduction

The visibility of the WTO rose significantly following its 1999 Ministerial meeting in Seattle, USA. Intended to launch a new multilateral round of trade negotiations, the meeting collapsed. A contributory factor to the failure of the meeting was large-scale demonstrations by labor unions, environmental groups and other NGOs, who either supported or opposed specific proposals for expansion of the WTO. Union representatives, for example, were in favor of introducing disciplines on labor standards into the WTO – so as to be able to use the WTO dispute settlement mechanism and the threat of trade sanctions to enforce norms in this area. Many developing countries opposed this, fearing that the real objective of proponents was not to improve working conditions in their countries but to increase their costs of production so as to make their goods less competitive in OECD markets. They also argued that linking trade to labor standards was inappropriate, as trade sanctions would only make working conditions worse in poor countries. A statement by President Clinton at the meeting that he supported discussions on labor standards helped inflame the debate and crystallize developing country opposition to this.

Other contentious issues included suggestions to include disciplines on competition and investment policies in the WTO. The latter had been on the agenda of the OECD for some time, with the objective of negotiating a Multilateral Agreement on Investment (MAI). The draft texts of a MAI that had been proposed by some OECD members had generated great concern among many NGOs – in particular, provisions to allow for so-called investor-state dispute settlement. This would give foreign investors the right to sue host country governments for losses incurred as the result of actions that violated the provisions of the agreement, including changes in policies that would impose additional costs on investors (so-called regulatory takings in US legal parlance). NGOs argued that the MAI was all about defining and strengthening the rights of investors, while not establishing any obligations for them. The extent of opposition to the MAI was strong enough for negotiations to break down in 1998. This reflected not just NGO opposition, but a lack of support by the business community, which concluded that there were so many exceptions being introduced into the text (mostly reflecting national sensitivities regarding specific industries) that it was not worth pushing for. The perception that a significant portion of the MAI agenda would be transferred to the WTO was opposed by many groups in Seattle, as well as by many developing countries that felt that capital-exporting nations would be imposing their preferred investment regimes.