

## **Nazmul Haque Tonmoy: How effective WTO in practice? What is its core activities and contribution to the development of international trade?**

### **Abstract**

International trade and the integrated capital market both are essentially unique features of 20<sup>th</sup> century. The process of internationalizing businesses through the foreign investment was still in practice in the earlier period of gradual globalization but in the form of foreign direct investment. There were still some barriers in existence in international trade and it was necessary to eliminate such barriers like tariffs and import quotas, relationship between countries and an effective dispute resolution system therefore, a unified trading system based on the international trade law was an inevitable necessity for countries. This research paper examines the general overview of World Trade Organization; it also analyzes its potency in the development of international trades and how effective it is in practice. An attempt is made in this paper to examine the core activities of WTO and answering the questions whether developing countries are benefited through the adaptation of the WTO. The paper further discusses the impact of WTO policies on developing countries, whether or not the WTO policies have positive effect on the trade of developing countries.

### **Introduction**

A French economist “Thomas Piketty”, quoted that “Protectionism does not produce wealth, and free trade and economic openness are ultimately in everyone’s interest”. By protectionism, we mean an economic protectionism, it is the economic policy that restricts outsiders from doing businesses or importing goods through the methods of imposing tariffs in imported goods, import quotas and with other governmental regulations. The protectionist policies prevent the producers, businesses and workers of the import competition sector in the country from foreign competitors. The protectionist policies not only reduce trade but also adversely affect consumers through tariffs in imported goods, and harm the producers and workers in export sectors. The economists are agreed that protectionism has negative effect on economic welfare and economic growth, whereas free trade and the reduction of trade barriers has significantly positive impact on economic growth<sup>1</sup>. The governments and leaders found out that the free trade and economic openness is crucial for economic welfare and economic liberalization is the only way to achieve economic goals. Contrary to what we see today, USA and Western European Countries once adopted protectionism policies which led the Great Depression in 1930. The Great Depression was a severe worldwide economic depress originated in the United States, after a major fall in stock prices that began around 4<sup>th</sup> September 1929 and became worldwide news with the stock market crash of October 29, 1929. In consequences, US had experienced a decade-long period of poverty and unemployment followed the stock market crash. Between 1929 to 1932, worldwide GDP fell by an estimated 15%. (By comparison, worldwide GDP fell by less than 1% from 2008 to 2009 during the Great Recession).

### **HOW BAD WAS THE GREAT DEPRESSION?**

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<sup>1</sup> N. Gregory Mankiw, Economists Actually Agree on This: The Wisdom of Free Trade, *New York Times* (April 24, 2015): "Economists are famous for disagreeing with one another.... But economists reach near unanimity on some topics, including international trade.

As I mentioned above, the Great Depression was a decade-long period of unemployment and poverty beginning in 1929, resulted from a number of economic issues including an overall decline in demand, imbalances and weaknesses in the economy, faltering demand for housing, and reduced production in the automobile industry.<sup>2</sup> Loans to foreign nations was one of the worrying aspects for the United States after first World War, which became problematic in the 1920s as European countries lacked the means to repay the loans, destabilizing American debt markets, farm prices began to fall in the post-war period and farmers already deeply in debt, therefore failed to pay back their creditors.<sup>3</sup> In consequence, more than 10,000 banks failed, taking the life savings of 9 million people. In addition, outstanding debts became heavier, because prices and incomes fell by 20-50% but the debts remained at the same dollar amount. The failure of the banks and stock markets led to factory closures and foreclosures worldwide, leading to millions of unemployed and evicted Americans during the 1930s.

In order to deal with the Great Depression, United States and other western nations decided to adopt protectionist policies with high import tariff. As of June 1930, the United States passed an Act called “Smoot-Hawley Tariff Act of 1930”. Through the “Tariff Act of 1930”, the United States implemented protectionist trade policies supported by Senator Reed Smoot and Representative Willis C. Hawley and raised US tariff on over 20,000 imported goods.<sup>4</sup> The tariffs under the Act were the second-highest in the U.S in 100 years, exceeded by a small margin by the Tariff of 1828. Prior to this Act, in 1922 Congress passed similar act increasing tariffs on imports known as Fordney-McCumber Tariff. As soon as the United State began to impose tariffs on imported goods, all western European developed countries began to pass similar acts/laws, as a result, not only United States, other industrialized world declined their export and import up to 40% to 50%. The aim of these Acts on tariffs, were to recover from Great Depression by imposing tariffs on imported goods but in reality it turned into a phenomenon which was contrary to the expectations. The Great Depression became more and more intense, worsening the world economy and a major worldwide downturn ensued. Today, many economists and historians together put the consensus view that such economic downturn would never have happened if the Tariff Act of 1930 hadn't been enacted and implemented. Thus the tariff war begins around the world and export and import relation between countries significantly decreased and nations became less interdependent on each other. Most importantly, due to this tariff war some economic issues raised which subsequently led to the World War 2. Speaking candidly, tariff war was not only reason for World War 2 but one of the significant reasons.

As we know from the aforementioned events, Tariff Acts of 1930 exacerbated the Great Depression.<sup>5</sup> After World War 2, when it was obvious that Allied forces going to defeat Axis Powers, the world leaders arranged Bretton Woods Conference, which was formally known as the United Nations Monetary and Financial Conference held in Bretton Woods,<sup>6</sup> New Hampshire at the Mount Washington Hotel, to regulate the international monetary and financial order. After having experienced Great Depression and its circumstances, world leaders were reluctant to experience such depression again in the future, particularly John Maynard Keynes of the British Treasury and Harry Dexter White of the United States Treasury Department started developing ideas about the financial order of the postwar world and therefore in order to avoid such

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<sup>2</sup> <https://courses.lumenlearning.com/boundless-ushistory/chapter/the-great-depression/>

<sup>3</sup> Ibid

<sup>4</sup> Taussig (1931)

<sup>5</sup> Whaples, Robert (March 1995). "Where Is There Consensus Among American Economic Historians? The Results of a Survey on Forty Propositions" (PDF). *The Journal of Economic History*. Cambridge University Press. **55** (1): 144.

<sup>6</sup> Markwell 2006.

economic downturn, it was necessary to conclude some form of agreement so that there is a less possibility for protectionism and a global norm of an open market. The predominant idea behind the Bretton Woods Conference was the notion of open market. The conference was held from July 1-22, 1944 where 730 delegates from the all 44 Allied nations were present. Agreements were signed that, after legislative ratification by the member governments, established the International Bank for Reconstruction and Development (IBRD), the International Monetary Fund (IMF) and International Trade Organization (ITO). Unlike the IBRD and IMF, International Trade Organization never came into existence because the ITO charter, even if it was agreed on at the U.N Conference in March 1948 but it was not ratified by the U.S. Senate as a result the International Bank for Reconstruction and Development came into existence and began operating in a regular basis since 1944.

The functions of the International Bank for Reconstruction and Development (IBRD) were to offer loans to developing countries, economic development assistance and reducing poverty. It was owned, governed and funded by its member states, as the member states contribute capital to the IBRD, it primarily acquires funds by borrowing on international capital market. The IBRD was established with the mission of financing and reconstruction of European countries that are devastated by World War 2. On the other hand, International Monetary Fund (IMF) was created for the purpose of fostering global monetary cooperation, secure financial stability, facilitate international trade and to promote high employment and sustainable economic growth.<sup>7</sup> Both have equal numbers of member states (189 countries up to now).

In addition, in 1927, the League of Nations' World Economic Conference held at Geneva, concluding in its final report: "the time has come to put an end to tariffs, and to move in the opposite direction.

## **Emergence of WTO**

The "WTO" is an acronym for the World Trade Organization, which is the largest economic international organization deals with international trade by facilitating and liberalizing international trade, and supervise its member states. The WTO provides a framework for negotiating and standardizing trade agreements. It also mediates dispute resolution process aimed at enforcing member states adherence to WTO agreements which are signed by the state representatives of member governments and ratified by their parliaments. The WTO is a forum for trade regulation, regulating trade in goods and services and intellectual property within signatories. There are now 164 WTO member states operating under this agreement to ensure a level playing field, thus global trade is flexible and flows as smoothly reducing obstacles to international trade, thus contributing significantly to the economic growth and development. The WTO, as mentioned above, officially started to operate on 1 January 1995, under the Marrakesh Agreement replacing the General Agreement on Tariffs and Trade (GATT) and its headquarters is located in Center William Rappard, Geneva Switzerland.

## **History of WTO**

As of 1<sup>st</sup> January 1995, the World Trade Organization officially started its journey under the Marrakesh Agreement, which was held in Morocco, signed by 124 countries on 15 April 1994. The World Trade Organization is 'member-driven', with decision made by General Agreement

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<sup>7</sup> "About the IMF". IMF. Retrieved 14 August 2018.

among all member of governments, dealing the rules of trade between nations at a global. The Creation of WTO was one of the important achievements of Uruguay Round of GATT which was held in Marrakech in 1994. The WTO is considered as a successor of General Agreement on Tariffs and Trade (GATT) agreement, which was a multilateral treaty held in Geneva and signed by 23 countries in 30<sup>th</sup> October 1947. The purpose of the GATT agreement was to eradicate trade barriers such as tariffs or quotas and to facilitate international trade. GATT was the outcome of the failure of creating ITO (International Trade Organization) and was created after World War 2 in the wake of other two new multilateral institutions such as World Bank and IMF (International Monetary Fund) that were aimed at developing international economic cooperation. It was also purposes of holding Bretton Woods Conference to reduce trade barriers and smooth international trade through multilateral agreement. However, GATT as predecessor of WTO, have successfully reduced tariffs and its original text is still in effect under the WTO framework, subject to the amendments of GATT 1994.<sup>8</sup> Since 1946, The GATT was the only multilateral instrument leading, regulating and governing international trade around the world until the establishment of WTO in 1<sup>st</sup> January 1995.<sup>9</sup> The GATT held 9 rounds of negotiations. The first round that took place in Geneva as of April 1947, and lasted for 7 months which was predominantly about tariff concession. As a result, 45000 tariff concessions were made affecting \$10 billion of trade. In next rounds, more nations were involved and signed the treaty and variety of subjects were covered such and Anti-dumping, non-tariff measures, framework agreement. In 1986, Uruguay round (8<sup>th</sup> round) took place and it was lasted for seven and half year long. This round had led to the creation of WTO and variety of new subjects were covered such as intellectual property, dispute settlement, textiles, agriculture and most importantly it led major reductions in tariffs which was about 40%. In this GATT round(Uruguay Round) its signatories concluded that, they have been straining with the GATT system in order to adapt to a new globalizing world economy<sup>10</sup>. Subsequently, in 1993 in order to cope with the issues arising from new globalizing world economy, the GATT was amended (GATT 1994) and improved to include new duties and responsibilities upon its participants. One of the significant modifications was the creation of the WTO and as a result, all existing GATT member states and the European Communities became the founding members of the WTO in 1995 thus replaced GATT as an international organization. The World Trade Organization (WTO) along with General Agreement in Tariffs and Trade (GATT) created a strong and prosperous international trading system over the past 60 years and it has contributed significantly to the global economic growth.<sup>11</sup> Among the WTO (164 countries) members, 117 are developing countries who were benefited or believed to be benefited from the this international trade organization through its agreements. The GATT lasted until the signature by 123 nations in Marrakesh on April 14, 1994 of the Uruguay Round Agreements, which established the World Trade Organization on January 1, 1995.

There are some important points to mention about GATT, which differentiates GATT from WTO in following ways,

1. Under this agreement, countries agreed to substantially reduce tariff of goods (agriculture and textile were excluded)
2. GATT was applicable only on trading of merchandised goods
3. Unlike WTO, GATT was not organization, but an agreement.

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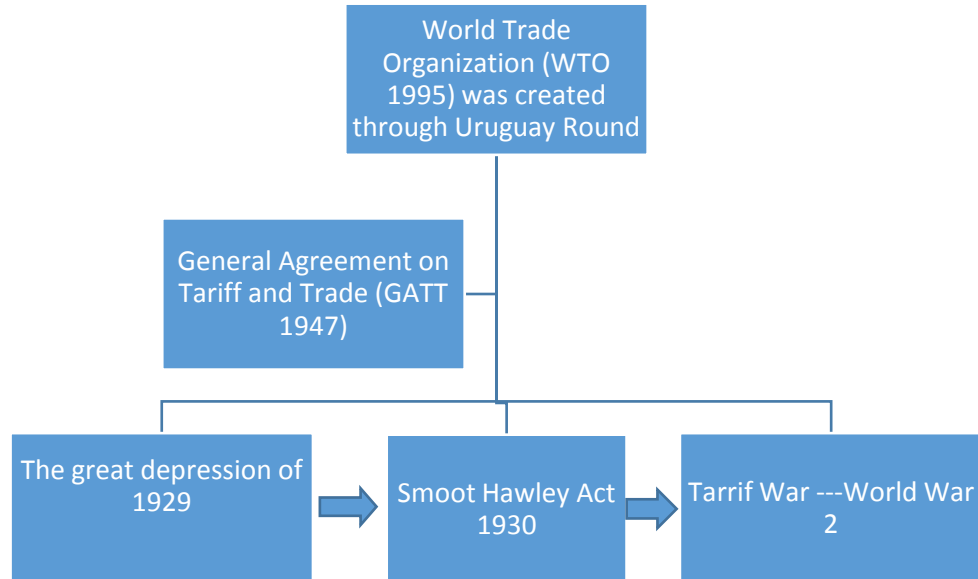
<sup>8</sup> World Trade Organization: WTO legal texts; General Agreement on Tariffs and Trade 1994

<sup>9</sup> The GATT Years: from Havana to Marrakesh, WTO official site, accessed 16<sup>th</sup> of August 2018

<sup>10</sup> P. Gallagher, *The First Ten Years of the WTO*, 4

<sup>11</sup> <https://www.wto.org> WTO official website, accessed 16th August 2018

4. Participating countries were not called members, but contracting parties.



1.1 Sequences of the establishment of WTO

One of the important features of GATT agreements was the protocol for “provisional application”, (also known as Grandfather’s right) which was praised by the world and gave GATT a lot of flexibility in adopting national law complying with the GATT agreements when necessary. Under this protocol, when the national laws of a participating country contradict with GATT’s law, the participating country then can only follow GATT’s laws complying with their national laws, thus reduced the rigidity of the conflict of laws.

**Trade Round**

It is important to understand Trade Round in both GATT and WTO. The trade round is a meeting held often by the GATT’s contracting parties when there is issues to be addressed. For example, if contracting parties found out some problems need to solved or new issues need to be addressed or if contracting parties intend to include more areas in it or to amend the laws, they usually call for a meeting when necessary. All the contracting parties then decide the place where the trade round takes place becomes the title of the trade round. Under the GATT, there were eight trade rounds took place so far in different locations in the world. For starters, first round took place in Geneva in 1947 where 23 contracting states were involved for discussing Tariffs lasted for 7 months and signed GATT agreements. In every trade round, one thing was common, which is tariff reductions. The final round under GATT, the eighth round known as Uruguay round, which led to the creation of WTO. Under WTO, only one round takes place in Doha in 2001, where 159 members were participated but the round has not yet concluded.

**Why Replacing GATT?**

As we know one of the fundamental reasons for the establishment of WTO is to regulate international trade as an organization not as treaty. Now, it is crucial to discuss why it was

important to replace GATT. The GATT was replaced with WTO because of the following reasons:

1. Even though GATT was working efficiently but powerful contracting states of GATT decided to replace it with some global level regulating and governing authority.
2. GATT was applicable only on trading merchandised goods, but WTO significantly cover more trading services like intellectual properties along with the merchandised goods and so on.
3. GATT was highly bureaucratic structure, in the other hand WTO is faster in implementation of international agreements and it enjoys more authority while resolving the disputes between member countries.
4. GATT was actually just a set of instructions and rules, with no organizational or institutional foundation. There was no central body to regulate the functioning of GATT and its member countries. On the other hand, WTO is a permanent full-fledged international institution with its own independent secretariat.
5. Furthermore, unlike WTO, GATT agreements were subject to the willingness of member countries to implement it. It was quite possible that one or more member countries refused to implement the signed agreements simply due to various miscellaneous local reasons and no one was there to account their responsibility of implementation. But commitments of WTO are permanent and reliable.
6. Demand by Developing countries to include trade in agriculture and textile within international trade regime.
7. Mainly GATT was a provisional agreement not an organization.
8. The developing countries could get only little benefits from GATT. Trade liberalization was confined mostly to the developing countries.
9. The textile and clothing industries were exempted from GATT.
10. GATT followed the principle of commodity-based negotiations. Developing countries, mainly exporting primary products could not effectively bargain with developed countries.
11. There was no efficient means of resolving disputes arising from international trade in GATT agreement.

The developed countries were almost agreed with every issue which addressed in WTO except the trade in agriculture and textile within international trade regime so there was a bargain session commenced between developed countries and developing countries called “The Grand Bargain”. In response to the demand, for the inclusion of trade in agriculture and textile in WTO, developed countries from their standpoint demands to include service and intellectual property right in WTO, and subsequently both agreed and concluded agreements.

### **Principles of the trading system in WTO**

The WTO created a framework for trade policies which is concerned with setting the rules of the trade policy game.<sup>12</sup> After the conclusion of the Uruguay Trade Round and the creation of the WTO, the basic principles formulated in the GATT remained unaffected.

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<sup>12</sup> B. Hoekman, *The WTO: Functions and Basic Principles*, 42

**Non-Discrimination Principle** is one of the fundamental trading principles of WTO and is recognized in the Preamble of the trade policies in the WTO Agreement. Non-discrimination principle believed to be a crucial instrument to achieve objectives of the WTO. The WTO members expressed their desire in the Preamble WTO, to eradicate any type of discriminatory treatment in international trade relations. Non discrimination principle has two major components, the most favored nation (MFN) treatment obligation, and the national treatment obligation. The MFN principle applies to trade in services, trade in goods and trade in relation to intellectual property. On the report of the Appellate Body in the EU Tariff Preferences case (WT/DS246), the MFN treatment is a cornerstone of the GATT and one of the pillars of the WTO trading system.

A **Most favored nation** rule requires that a member of WTO must apply the same conditions on all trade with other WTO members while providing any concessions, privileges, or immunities granted in a trade agreement. For example, China and Russian both are WTO members and trading with each other, Russia granted a tax reduction to China up to 7% for imported goods and gave China a status of MFN (Most favored Nation). Now, any other WTO members, if exporting the same goods to Russia, in this case Russian cannot impose more than 7% tax as it for China, thus WTO avoiding discrimination within its members and making level playing field in order to facilitate international trade.

The **National treatment** principle constitutes the second component of the non-discrimination pillar and this principle prohibits WTO members from favoring domestic products over the imported products of other WTO member states, thus ensuring the absence of discrimination in trading. So therefore, imported goods cannot be treated less favorably for the same product or services as being WTO member countries. For example, Hungary as WTO member import cars from Germany, Hungary cannot create policies in which they treat less favorably to imported cars over its domestically produced cars with the WTO membership status.

**The Reciprocity principle** applies when a WTO member reducing trade barriers with when other trading WTO member, then trading partner must reciprocate with whom they are trading with. More candidly, it's a mutual lowering of trade barriers between two trading countries that are members of WTO.

**Binding and enforceable commitments:** One significant difference between GATT and WTO is, in GATT agreements, however, the implementation of signed agreements were subject to the discretion of contracting parties. To be more candidly, it was within their discretion whether or not to implement it but commitments of the WTO are binding and enforceable. If there is any situation arises in which the tariff commitments made by WTO members and one or more the trading partners found violating WTO trade rules/ agreements are subject to negotiation with affecting members, which could lead them compensation for the damage in trading. If still no satisfaction is gained, the complaining WTO member state may invoke the WTO dispute settlement procedures.<sup>13</sup>

**Transparency:** It is important for the WTO members to publish their trade regulation in order to maintain institutions permitting for the appraisal of administrative decisions affecting

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<sup>13</sup> Principles of the Trading System, WTO official site accessed 20<sup>th</sup> August 2018

trade. The WTO system also strives to improve predictability and stability disheartening the use of quotas and setting limits on quantities of imported goods.<sup>14</sup> It is essentially important that regulations and policies of WTO are transparent and coherent to the member governments.

**Safety Values** principle allows the member government to restrict trade under certain circumstances when it relates to protection of environment as well as public health, animal health and plant health.<sup>15</sup>

**Freer trade: through negotiation:** As discussed above, the WTO is the result of negotiation, whatever WTO does is the result of negotiation. It is intuitively obvious that one of the effective means of encouraging trade is lowering trade barriers, such barriers includes custom duties or tariffs and banning quotas that restrict quantities of imported goods. The WTO occasionally discusses issues like exchange rate policies and red tape.

Ever since GATT came into existence, there have been eight rounds of trade negotiation had taken place where lot a subjects and issues were addressed in the first places, such as lowering tariffs in imported goods. A ninth negotiation round known as Doha Development Agenda, is still underway. The negotiations had expanded to cover variety of new issues in afterwards, such as services and intellectual property. The WTO agreements provide progressive liberalization with which countries can introduce changes they require for their economic growth and trade development.

## Structure of World Trade Organization

1. The Structure of WTO as follows:
  - a. Ministerial Conference
  - b. General Council
  - c. Council for Trade
  - d. Subsidiary Bodies
2. Memberships, alliances and bureaucracy
3. The Secretariat

## Ministerial Conferences

The main decision making body in WTO, is the Ministerial Conference, which takes place once in every two years.<sup>16</sup> However, the WTO is directed by the Ministerial Conference who has absolute power over the institution and carries out functions of WTO, playing vital role in administrating the new global trade rules. The Ministerial Conference consisted of Trade and Commerce Ministers of Member countries. It brings all members of the WTO and can take decisions on all matters under any of the multilateral trade agreements. **The WTO General Council** is the top-most decision making body, acting on behalf of the Ministerial Conference on all WTO affairs and oversee ministerial decision in a regular basis in Geneva, Switzerland.<sup>17</sup> The

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<sup>14</sup> ibid

<sup>15</sup> Understanding the WTO: What we stand for accessed 20<sup>th</sup> August 2018

<sup>16</sup> [https://www.wto.org/english/thewto\\_e/minist\\_e/min11\\_e/min11\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min11_e/min11_e.htm) accessed on 20<sup>th</sup> August 2018

<sup>17</sup> The WTO General Council <https://www.wto.org> official website accessed on 20<sup>th</sup> August 2018



General Council works in two different forms depending on demand and circumstances and sits regularly to carry out the functions of the WTO mainly to oversee procedures for settling disputes between members and to analyze member's trade policies.<sup>18</sup> The chairman of the General Council is Ambassador Muhamad Noor (Malaysia). **The Dispute Settlement Body** of WTO is the procedure for resolving trade dispute which is vital for enforcing the rules thus ensured the trade flows smoothly. It consisted of all member governments, usually represented by ambassadors or equivalent. The Chairperson is H.E Mr. Bruce Gosper (Australia). All WTO members are subject to review under **The Trade Policy Review Body** which carries out trade policy reviews. The role of the body is to improve transparency and creating a greater understanding of the policies that countries are adopting and to assess their impact. The WTO General Council meets as the Trade Policy Review Body (TPRB) to undertake trade policy review of members under to Trade Policy Review Mechanism(TPRM). The roles and responsibilities of the **Council for Trade and Goods** (also known as **Goods Council**) are to deal with agreement for trade in goods, particularly in the sector of agriculture and textile and with specific issues such as state trading, product standards, subsidies and action taken against dumping. It operates under the General Agreement on Tariffs and Trade, (since 1995 updated GATT has become the WTO's umbrella) which covers international trade in goods. The **Council for Trade in Service (Services Council)** operates under the guidance of the General Council, which is held responsible for overseeing the functioning of the GATS (General Agreement on Trade in Service), and can create subsidiary bodies as required. The sectors covered by Service Council are, Banks, insurance firm, telecommunications companies, tour operators, hotel chains and transport companies. For example, the telecommunications sector has a double role: it is a distinct sector of economic activities on the other hand it is an underlying means of supplying other economic activities for example, electronic money transfers. The WTO Council for Trade-Related Aspects of **Intellectual Property Rights/ Intellectual Property Council** (TRIPS Council) supervises implementations of the Agreements and sets meeting in which WTO Members can consult on intellectual property matters. It carries out the specific responsibilities allotted to the Council in the TRIPS agreement and provides sets of minimum standards of protection for copyrights and related rights such as, trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs, and undisclosed information. In addition, the TRIPS Agreement also provides minimum standards for the enforcement of intellectual property rights (IPRs) through civil actions for infringement.<sup>19</sup> The three main features of the Agreements covered by TRIPS are, **Standards, Enforcement and Dispute settlement.**<sup>20</sup>

**The Committee on Trade and Development (CTD) and Trade and Environment (CTE):** The WTO's committee on Trade and Development (CTD) works as a central point for the coordination of work on development in the WTO. It covers a broad range of issues relating to the trade of developing countries.<sup>21</sup> In 1994, the Ministerial Decision on Trade and Environment created the WTO's **Committee on Trade and Environment (CTE)**, which is subject to the all WTO membership along with international organizations as observer. The **Committee on trade and the environment** aimed at promoting sustainable development and it had contributed to identifying the understanding the relationship between trade and environment.

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<sup>18</sup> [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org1\\_e.htm#ministerial](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm#ministerial) accessed on 20<sup>th</sup> August 2018

<sup>19</sup> [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm) accessed on 20<sup>th</sup> August 2018

<sup>20</sup> Ibid

<sup>21</sup> Committee on Trade and Development <https://www.wto.org> official website accessed on 20<sup>th</sup> August 2018

## WTO Administration

**The Directorate-General** supervises the WTO's employees as well as serves as the WTO's public face and spokesperson and also known as the Secretariat.

Finally, **the Secretariat of the WTO** led by a Director-General is appointed by the Ministerial Conference without having the decision making powers. The roles and responsibilities include, supplying technical support for the various councils and committees, it provides advices to developing countries and to provide legal assistance in the dispute settlement process. In contrast to the WTO bodies mentioned above, the WTO Secretariat is integrated by international officers who cannot seek or accept instructions from any government or any other authority external to WTO in the discharge of their duties.<sup>22</sup> **Secretariat** based in Geneva and it includes more than 600 professional staffs members. It also provides supports to developing countries and advices governments seeing WTO membership.

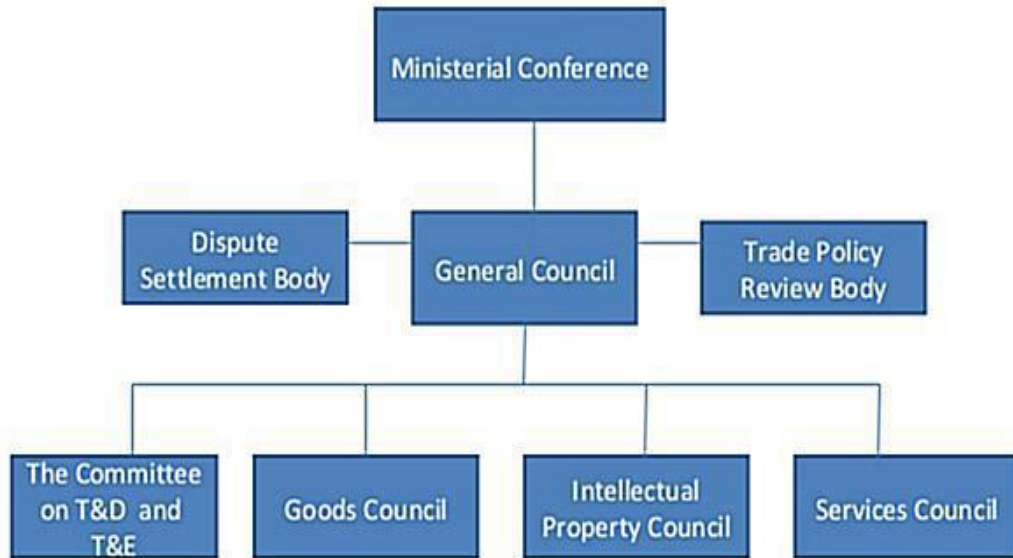
**Decision-Making Bodies in WTO:** The WTO labels itself as “a rules-based, member-driven organization and all decisions are made by the member governments through negotiations.”<sup>23</sup> In general, decisions are made by consensus, a consensus decision takes into account when no member formally objects to a decision. In certain circumstances, in order to reach a decision, the WTO agreements permit a voting system, usually by a supermajority. However, the WTO's Ministerial Conferences and the General Council are two most important decision making bodies as well as they have some of its subordinate decision-making bodies discussed above. These are, **Goods Councils, Services Councils, TRIPS Councils**. Six committees with limited responsibilities along with various **working groups** report to the General councils. Some of these subordinate bodies, sequentially, have their own sub-committees and working groups.

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<sup>22</sup> [https://ecampus.wto.org/admin/files/Course\\_382/Module\\_2317/ModuleDocuments/eWTO-M1-R2-E.pdf](https://ecampus.wto.org/admin/files/Course_382/Module_2317/ModuleDocuments/eWTO-M1-R2-E.pdf) accessed on 20<sup>th</sup> August 2018

<sup>23</sup> Decision-making at WTO official site accessed on 22<sup>nd</sup> August 2018

## STRUCTURES OF WTO



### Accession of WTO

The WTO, now has become an integral part of global economic governance and it has 164 members actively trading under this agreement. Any state having full independence in the conduct of its trade policies may become WTO member. In order to be a WTO member all WTO members must agree on the terms. As we know, international organization actually made up of sovereign States, it is same for the WTO. According to Article XII of the WTO agreement, it is not necessary for the trading partner to be fully-fledged sovereign states to accede, only if they are a separate customs territory and they possess full autonomy in the conduct of their external commercial relations.

**Process for accession:** The acceding country **first** send a written request expressing its interest to become a member of WTO under the procedures of Article XII of the Agreement Establishing the WTO. Thus begins the process of gathering information of the accession process and the applicants provides a **memorandum** on its foreign trade system describing all aspects of its trade policy that has a bearing on WTO Agreement.<sup>24</sup>

The memorandum provided by the acceding government covers board economic indicators, policies affecting the trade in goods and services, for example, import and export

<sup>24</sup> For complete details on what is included in the Memorandum, see WTO Documents WT/ACC/1, WT/ACC/4 and WT/ACC/5 available at <http://www.wto.org>

regulations, policies related to agriculture and industrial as well as intellectual property, policies affecting customs valuation and licensing requirements. However, the request is disseminated to all WTO Members and conveyed to the Chairman of the General Council for consideration at a future meeting. **Secondly**, the General Council then establishes a **Working Party (WP)**. The Working Party consisted of WTO members and it is open to all WTO members, any member states can join at any state of the process. The role of the Working Party is to examine trade system and coherence between domestic laws and the WTO. The Working Party also studies terms and condition on accession After having examined the application, the Working Party then submit to the General Council or Ministerial Conference recommendations, which may include a Draft Protocol of Accession.<sup>25</sup> **In third step**, accession negotiation comes to take place in which acceding government must be prepared for two types of negotiation, these are as follows:

1. **Multilateral Negotiations:** These are the negotiations take place within the framework of WP (Working Party) and cover all WTO Agreements. In its first phase (Fact –Finding Phase), it collects information on the applicant’s foreign trade regime and provide a basis for the negotiation of its terms of entry into the WTO. The acceding government (applicant) has to submit a “Memorandum” on its foreign trade regime which is disseminated to all WTO Members. On the basis of memorandum, the WP Members examined the applicant’s foreign trade regime and they can ask questions and replies on the basis of their submitted documents by the acceding government. In the first meeting, WP continues the fact-finding process and look for whether there is inconsistency with the WTO Agreements. The Secretariat, in order to ensure the transparency of the process, requests to circulate a **Factual Summary of Points Raised** (an informal document to sum up discussion in the WP) thus developed a draft WP report. The WP Report includes the commitments on the general rules to be accepted by the acceding country.
2. **Bilateral Negotiations:** Such negotiations take place when bilateral meetings are held with interested WP members regarding the concessions and commitments on tariff and market access for goods and services. It begins after the acceding government has submitted primary offers on goods and services to the Secretariat for consultation by Members. These negotiations take place usually on the fringes of WP meetings. However, once an agreement has been reached a bilateral agreement is concluded.
3. **Plurilateral Negotiations:** There are certain multilateral issues and interests that are discussed plurilaterally, such as, informal consultations with a number of interested WTO members. Such discussions relate to the technical aspects of domestic support and export subsidies in agriculture.

The approval of the accession relies on the result of both multilateral and bilateral negotiations. The accession process includes the **draft Report**. The **Draft Decision** is taken by the General Council/Ministerial Conference. If two-third majority of WTO members vote in favor, the acceding government is invited to sign the protocol and to accede to the organization. In most cases, the acceding country’s own parliament has to ratify the agreement before the accession process is complete.

As you know from the aforementioned information, WTO accession process involves complex negotiations and requires many documents. In order to face the challenges efficiently

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<sup>25</sup> <https://peycanlas.files.wordpress.com/2008/01/wto-structure.pdf> accessed on 22nd August 2018

and effectively, WTO Secretariat along with the WTO Members as well as other international organization provides technical assistance to the acceding government. There are many forms of technical assistance provided by the WTO Secretariat to acceding government in the preparation of documents and answers to questions regarding WTO rules and requirements. Acceding governments can participate in WTO trade-related technical assistances (TRTA) and training activities coordinated by the Institute for Training and Technical Cooperation (ITTC).<sup>26</sup>

Thus countries become members of WTO by negotiating for accession.

### **WTO's Objective and Functions**

The World Trade Organization was created to facilitate international trade and it is driven by its member states and it cannot function without its Secretariat to organize the activities. In addition, it provides a framework for negotiating trade agreement and dispute resolution process by enforceable to participants adhering WTO agreements, signed by the member government and ratified by their parliament.<sup>27</sup> The core activities and its objectives of the WTO are such as, highlighting benefits of trading systems while stimulating economic growth and employment opportunities for its member government and helping weaker member countries to develop.

**Objectives of the WTO:** One of the important objectives of WTO is to improve the standard of living of people in the member countries and to enlarge production and trade of goods, thus increased the trade of services and the trade of goods. Secondly, it ensures full employment and board increase of effective demand and optimum utilization of world resources. Another objective of the WTO, is to emphasize the protection and preservation of the environment through the **Committee on Trade and Environment** (established in 1994 by Ministerial Decision on Trade and Environment, subject to all WTO members and operate alongside some international organizations as observers) which was created by the WTO General Council, acting under article IV para.7 of the Agreement Establishing the World Trade Organization.<sup>28</sup> In addition, the central principle of the WTO is Sustainable development, which strives to alleviate economic growth and poverty through the trade and thus making trade a powerful ally of sustainable development.<sup>29</sup>

### **The core functions of WTO are as follows:**

1. Implementing rules and provisions regarding trade policy and review mechanism.
2. Providing a platform to member states to decide what would be the future strategies in relation to the trade and tariff.
3. Facilitating implementation process, administration and operation of multilateral and bilateral agreement of the world trade.
4. Administrating the rules and procedures in dispute settlement process.

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<sup>26</sup> [https://ecampus.wto.org/admin/files/Course\\_382/Module\\_2317/ModuleDocuments/eWTO-M1-R2-E.pdf](https://ecampus.wto.org/admin/files/Course_382/Module_2317/ModuleDocuments/eWTO-M1-R2-E.pdf) Technical Assistance And Training of WTO for Acceding Government, accessed on 25<sup>th</sup> August 2018

<sup>27</sup> Malanczuk, P. (1999). "International Organizations and Space Law: World Trade Organization". *Encyclopedia Britannica*. **442**. p. 305. Bibcode:1999ESASP.442..305M.

<sup>28</sup> WTO official website [https://www.wto.org/english/tratop\\_e/envir\\_e/wrk\\_committee\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/wrk_committee_e.htm) accessed on 29th August

<sup>29</sup> WTO official website [https://www.wto.org/english/tratop\\_e/envir\\_e/sust\\_dev\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/sust_dev_e.htm) accessed on 3th September

5. Ensures the optimum use of world resources.
6. Finally, assisting international organization such as, IMF and IBRD for establishing coherence in Universal Economic Policy determination.

### **The World Trade Agreement/ WTO Code**

The World Trade Organization provides a framework through WTO code for an integrated approach to confront the trade-related economic issues which cannot be isolated from the world economic order. These codes lie in the international instrument, such as, the GATT 1994, the Multilateral Trade Agreement and the Plurilateral Trade Agreement (PTA). The WTO Agreements therefore, covers the following:

- 1. Multilateral Agreements on Trade in Goods**
- 2. General Agreement on Trade in Service**
- 3. Agreement on TRIPS**
- 4. Rules and Procedures regarding dispute settlement**
- 5. Plurilateral Trade Agreements (PTA)**
- 6. Trade Policy Review Mechanism (TPRM)**

The abovementioned agreements seek to deal with non-tariff measures affecting global competition, aimed at reducing domestic and export subsidies on agricultural goods. The agreements also demonstrate that the current total collective measures of supports should not exceed more than 10 percent of the annual value of total agricultural product measured at international price. It also demonstrates that member states should reduce the value of direct export subsidies to a level of 36 percent below the 1986-90 base period level during the implementation span of 6 years. In addition, the volume of subsidized exports should be reduced by 21 percent.

### **WTO Membership Benefits**

The WTO aids trade throughout the world flow easily through its trade agreement. The members of the WTO are aware of the rules and penalties for breaking the rules. They know how to play the global trade game, thus creating a safer trading arena for everyone. The WTO also provides a fair method to resolve disputes arising from the trade for its member states. It prevents a practice that retards economic growth called “trade protectionism”. In addition, the WTO negotiation improves trade agreements within its members.

After the establishment of WTO, only one negotiation round took place, known as DDA (Doha development agenda), that was predominantly aimed at reducing agricultural subsidies, agricultural market access, services and trade facilitation but it is still underway thus remained ineffective because the United States and Europe were not willing to cooperate in reducing agricultural subsidies. The WTO membership lowers the cost of doing business and the strives to eliminate barriers and thus facilitate increased global trade.

The WTO membership also lowers the costs of doing business by eliminating instability and these benefits extend to all member states, such benefits include “Most favored nation status” (status providing equal treatment for all member states in trade, no preferential trade benefit to any one member without giving it to all) and secondly, removing barriers like tariffs, import, quotas and regulations, thus lowering the trade barriers and allow members to enter into larger

market with their goods and larger market as a consequence, it breeds a lot of opportunities like greater sales, more jobs and faster economic growth.

Thirdly, two-thirds of WTO members are developing countries. As being WTO members these developing countries have direct access to developed markets at the lower tariff rate, and this creates opportunities for developing countries for sophisticated corporations and their mature industries. They don't have to remove mutual tariffs in their markets until later. That means developing countries don't immediately have to open their markets to overwhelming competitive pressure. In addition, thirty-six WTO members are considered as least developing countries or LDSc. The United Nations along with other agencies provide them additional assistance in development and trade. Moreover, Thirty-six WTO members are categorized as least-developed countries or LDCs. The United Nations grants that status to low-income countries with severe blocks to sustainable economic growth. The U.N. and other agencies provide them extra assistance in development and trade.

### **WTO in Practice and its criticism**

The “World Trade Organization” in practice does not manage the global economy impartially said “Martin Khor”, (the executive director of the South Center) and it has been seen in its operation which has a systematic bias towards rich countries and multinational corporations, harming smaller countries which has less negotiation power. One of the core objectives of the WTO is trade predictably and freely.<sup>30</sup> The WTO, however, often described as a “free trade” institution, but that is not absolutely true in practice because in certain circumstances, the WTO system impose tariffs or other forms of protection. More candidly, critics are often arguing that the WTO only empowers the rich and facilitate their big corporations of arbitrage to exploit the people for developing countries.

In 2004, the WTO members met in Geneva to fine tune the draft modalities concerning trade in Agriculture and Non-Agriculture products. In this development round, it is believed that developed countries were trying to convince developing countries by offering concessions, but in reality the WTO always stands in favor of developed countries who controlled half if the world trade, domestic supports like subsidies are taken away from the developing countries. In addition, rich countries like the United States and EU continue to provide subsidies for their own farmers, thus equal and fair treatment is absent for developing countries.

The most common criticisms made about the WTO are the followings:

1. Undermines national environmental protection laws
2. Reduces national sovereignty
3. Trade agreements do not include provisions for environmental and labor standards
4. WTO governance and decision making process is not democratic.

Most popular criticism is that the WTO strikes down policies that countries have implemented to protect the environment.

**Undermines national environmental protection laws:** - This can be best described from the case Shrimp and Turtle case (a case brought by Pakistan, India, Malaysia and Thailand against the USA) where the WTO compliance panel ruled in favor of the US in 2001. The Shrimp and turtle case refers to the complaint against the US prohibition on import of shrimp from these countries. The reason given by the US for ban was that the shrimp coming from these countries were not using turtle escape devices, these devices allow sea turtles to escape if they are

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<sup>30</sup> "WTO Homepage". Retrieved 2018-09-09.

unintentionally caught into nets intended for catching shrimp. The US considered requiring the use of such devices as an important environmental protection. The WTO does nothing to prohibit countries for implementing policies that protect environment but it does insist that such policies implemented in a manner that does not discriminate between the members of the WTO. The WTO ruled that US ban violated WTO rules not because countries are not allowed to implement environmental protection policies but because the US was applying the protection in a discriminatory manner. The USA had allowed certain central American countries greater flexibility in adopting the turtle escape devices but did not allowed the Asian countries the same flexibilities. The ruling was not about environmental protection but it was simply a discrimination. The ruling was discarding larger issue labeling this as environmental protection. It is similar to that of the case ruled by the US Supreme Court in 1954 known as *Brown Vs Board of Education* which was about whether the parents should have choice about their children's school.

**WTO Undermines National Sovereignty:** In the Shrimp and turtle case the WTO was suggesting the US what they could and could not do. Shouldn't sovereign state have the right to determine how they are going to conduct policies with other countries, yes of course they should. But the WTO is not imposing its rules to any sovereign state wants to be left alone. The WTO is only asking to the sovereign states just to comply with the agreement it had signed onto in order to get the benefits of other countries following the same rules. The countries often sign such agreements that bind them to a certain course of action. Such example includes, an agreement that prevents proliferation of nuclear weapons, agreement to not use landmines, agreement to not trade in ivory blood diamond etc. But such agreement does not undermine national sovereignty.

According to many critics, the WTO does not adopt a neutral stand on trade policies. Due to the fact that it benefits only to the powerful states in trade commerce. One of the main criticisms of the recipients of the World Bank loans as WTO members often found repressed. The IMF (International Monetary Fund) and World Bank both implemented some economic policies known as SAPs (Structural Adjustment Program) which must be followed by the countries with economic crisis as WTO member in order to get loan and help them make debt repayments on the older debts owed to commercial banks, governments and World Bank but of course in many conditions.<sup>31</sup> The recipient countries are forced to adopt reform their regulations of capital market, privatization of state companies and many other stabilization policies include:

1. The balance of payments deficits reduction through currency devaluation
2. Budget deficit reduction through higher taxes and lower government spending, known as austerity
3. Restructuring foreign debts
4. Monetary policy to finance government deficits
5. Eliminating food subsidies
6. Raising the price of public services
7. Cutting wages
8. Decreasing domestic credit

The long-term SAPs conditions include liberalization of markets to guarantee a price mechanism, privatization, or divestiture, of all or part of state-owned enterprises, creating new financial institutions, improving governance and fighting corruption, enhancing the rights of

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<sup>31</sup> Lensink, Robert (1996). *Structural adjustment in Sub-Saharan Africa* (1st ed.). Longman. ISBN 9780582248861.



foreign investor and focusing economic output on direct export and resource extraction and finally increasing the stability of investment.<sup>32</sup>

More candidly, critics asserted that such conditions (SAPs) is threat to the sovereignty of national economies because with these program an outsider dictating and influencing a nation's economic policy. Critics also argue that the creation of policy is in a sovereign nation's own best interest thus SAPs undermine national sovereignty. In addition, according to some post colonialists view, SAPs are the modern form of colonization, by which government's power and ability to regulate its internal economy is minimized. The SAPs established a pathway for the multinational companies to enter into the states and extract resources. The SAP free-trade and low-regulation requirements take over the control or restricted controls of natural valuable resources (oil, minerals) of nations who are unable to repay the debt. Subsequently, in order to repay both the loan and interest countries are forced to take further foreign debt thus they experience endless cycle of financial subjugation.<sup>33</sup>

The Structural Adjustment Programs (SAPs) connected to IMF loans have proven surprisingly catastrophic for the poor countries and proved huge beneficial for rich countries.

**Privatization and Austerity:** The **privatization** of state-owned industries and resources is one of the requirements of structural adjustment. The nations are bound to implement new policies complying with SAPs. Primarily, such policies aimed at increasing efficiency and investment and decreasing state spending. State-owned resources are to be sold whether they generate a fiscal profit or not.<sup>34</sup> There are many criticisms in these privatization requirement, arguing that when resources are transferred to foreign corporations and national elites, the goal of public prosperity is replaced with the goal of private prosperity. Moreover, state-owned companies fulfill a wider social role such as providing low cost utilities and jobs therefore they may show fiscal losses. The SAPs and neoliberal policies have negative impact on many developing countries.<sup>35</sup> On the other hand, the borrowing countries facing economic stagnation due to SAPs which emphasize a balanced budget thus forcing **austerity** programs. **Austerity** measures are taken by the government having difficulties to pay their debts by reducing government budget deficit through spending cuts, tax increases or a combination of both. But such program can be detrimental to the society and country as a whole, for example, if the government cuts education funding, universities are impaired and so the long term economic growth. Correspondingly, cuts to health program have allowed diseases such as AIDS to devastate some areas economies by destroying the workforce.

**Trade Agreement do not include environmental and labor standards:** The trade agreement negotiated under the WTO do not include provisions for environmental and labor standards. The critics mean here is that, the trade agreement should allow WTO members to prohibit imports from fellow WTO members whose labor and environmental standards are below a certain level. Such provisions would protect producers and workers in high standard countries from a race to the bottom and unfair competition from countries that do not spend as much money on labor and environmental protection. It would also force the countries with low standard

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<sup>32</sup> White, Howard (1996). "Adjustment in Africa". *Development and Change*. 27: 785–815. doi:10.1111/j.1467-7660.1996.tb00611.x. Retrieved 12 September 2018.

<sup>33</sup> McGregor, S (2005-05-03). "Structural adjustment programmes and human well-being". *journals2.scholarsportal.info*. Retrieved 2018-09-10

<sup>34</sup> Cardoso and Helwege, "Latin America's Economy" Cambridge, MA: MIT Press (1992)

<sup>35</sup> McPake, Barbara. 2009. Hospital Policy in Sub-Saharan Africa and Post-Colonial Development Impasse. *Soc Hist Med* 22 (2):341-360.

to improve. However, agreeing to a level of standards that all countries are expected to reach is very difficult. First question is, whose standard should be adopted, higher standard result in higher expenditures for firms, it can only be followed by rich countries. The Poor countries work at the suggestions that they should spend an amount comparable to the rich countries on labor and environmental standards. It would be like mandating that all people must buy cars that have safety features that are closed to the most expensive cars. The rich people would not be affected much but poor people would. It is not surprising that the biggest opposition to labor and environmental provisions come from the government of the poor countries requiring their firms to incur higher cost would erode their only competitive advantage. The firms in poor countries cannot compete with their counterparts in rich countries based on quality, speed or innovation. They can however, compete on cost. The poor countries have expressed their fear that such provisions will be used by rich countries to practice “backdoor protectionism” under the guise of concern for the poor. In this respect, Egyptian trade minister Youssef Boutros Ghali, said, “The question is why industrialized countries are suddenly bothering about Third World workers now that we have shown we can compete with them”.

In 1999, the rich country protesters outside the WTO ministerial were fighting for the inclusion of labor and environment standards into trade agreements. The representative of the poor countries garments inside the ministerial were fighting against the inclusion of such provisions.

**WTO governance and decision-making is not democratic and is dominated by big powerful countries:**

Another criticism of the WTO is that, its decision making process is undemocratic and its dominated by some rich countries. On its face, the WTO is democratic, each country has one vote unlike other international organizations where some countries have more votes than others. In fact, the WTO is extremely democratic that instead of a simple majority, 100% of votes are required in favor of a proposal before it can be adopted. Additionally, developing countries are given what I called “special and differential” treatment, which means they are allowed to liberalize their trade to a smaller extent and at a slower pace than rich countries. But the purpose of saying WTO undemocratic is that the US and EU have disproportionate influence on the decisions because of certain norms followed in the WTO, that allow the US and EU to set the agenda for the talks and decide, what is to be voted upon and when. Such criticism has some validity. These norms are handover from an era when the GATT was a small club of mostly rich countries. But now, developing countries make up majority of the membership and they have begun to demand a great say in proportion to their numbers. The latest round of trade talks, the Doha Development Round has been so named because it puts the needs of the developing countries. The round has not yet concluded even it has been 13 years since it begun because the developing countries are asking for more concessions than the rich countries had bargain for. The round came very close to its agreement in 2008 but the agreement could not be signed because of the reluctance of one developing county and that is India.

Regardless of whose fault is was the WTO seems like an undemocratic organization where the rich countries bully to weak into submission.

In conclusion, the ultimate goal of the WTO is to facilitate the international trade and support developing countries for their prosperities. The WTO was actually set up by the governments to deal with businesses related negotiations, discussion and conclude agreements for further economic improvement, thus creating more predictability and stability in the area of international world trade. Moreover, the WTO is working in a daily basis on variety of issues

(two or three meetings a day involving all WTO members). The most importantly, one of the democratic principles the WTO adopting when it comes to decision making that, everything is decided by consensus where all members must be present and all member must agree. Unlike other organizations, the WTO system requires member government to agree on the proposed issue then the decision is reached, it does not discard any of its members because the WTO considers trade policies so crucial and so important for economics of many countries and they wanted consensus to be the basis. The WTO provides security and protection to international traders. In contrast to the criticisms, the WTO adopts non-discriminatory trade rules applicable to the all member states as it strives to create a balance that equalizes countries regardless of its size and economic position. So in a fact, the biggest country is bound for the same rules as smallest country and smallest country can actually use these rules against biggest country. The WTO rules, by the way, cannot solve every power and balance in the world. It's the given fact the bigger economic power, bigger political power and the smallest ones, the WTO is one aspect deals with trade while try to create a balance. The WTO is nothing but a facilitator, its core object is to facilitates trade and support member governments in producing documents and settle dispute arising from the trade. Environment protection is the concern for the member government whereas the WTO set up for trade, this does not mean it does not care of environment. It seems intuitively obvious that the trade does get into other area and other area does get into the trade.

The WTO cares for the environment but its rely on the member government involved in trading. The governments implement their own policies for the protections of plants, animal, health of the citizens, thus it only can save itself. The WTO has dealt with a lot of dispute settlement cases in relation to the environment protections. The WTO member countries try to apply different standards in the context of trade. Another way the WTO facilitates international trade is to resolving trade dispute effectively and efficiently. Surprisingly, around 40% cases have been brought by developing countries and 60% of cases have been brought by developed countries. The WTO offers rights and obligations to everyone on an equal basis regardless of the size and power of the country. The dispute settlement system is there to enforce these rules, accessible to everyone on same basis regardless of the size, strength and economy. The WTO provides comparative advantage equally to all member states and there are many empirical evidences to show that the member countries do indeed gain from the WTO trade policies.