



Institutional and Legal Features of the Current World Trade Organization

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Abstract: In this article analyzed institutional and legal features of the world trade organization. In additional author of this article tried to open all functions of institutional organs of world trade organization and "member-oriented" nature of the organization. In addition, in this article analyzed the order of dispute settlement in World Trade Organization and main article belong to control main institutions.

Keywords: GATT, WTO, "member-oriented" nature of the organization, function of "cooperation", function of "monitoring", WTO Secretariat, WTO bodies, WTO institutions.

Many of the institutional features of the current World Trade Organization, in particular the "member-oriented" nature of the organization, should be considered against the background of the GATT history. While some of them are aimed at eliminating institutional defects inherited from the GATT, such as the consensus rule or the absence of a limited body, others are reduced to restoring the former characteristics of the GATT, which were abandoned after the conclusion of the Uruguay Round, such as variable geometry. The institutional structure of the WTO can be conceptually represented with reference to the functions set out in article III of the Agreement Establishing the WTO, which include the function of "implementation", the function of "forum", the function of "dispute settlement", the function of "monitoring" and the function of "cooperation" (with respect to other intergovernmental organizations). Considering the first three functions, the institutional structure of the WTO to some extent reflects the constitutional model of separation of powers.[1]

Whereas in reality, the WTO institutions only approximately correspond to this model, since there is a frequent intersection of the competence of the bodies, which is also further analyzed regarding the relationship between the implementation functions (i.e. executive) and the forum functions (i.e. legislative). With regard to the relationship between the political and judicial branches of government, the issue of separation of powers was considered in the case [2] "India - Quantitative Restrictions", concerning the competence of the WTO Committee on Restrictions related to the Balance of Payments. In this case, the Appellate Body ruled that India had not presented convincing arguments in support of the existence of the principle of institutional balance, according to which each WTO body should exercise its powers with due regard to the powers granted to other bodies. Accordingly, it is believed that the WTO provides for a "hybrid system of investigation of complaints."

In this regard, it would be advisable to consider the WTO bodies in the following three areas:

the first area performing the function of the forum is the negotiating groups established on the basis of the work program of the rounds of negotiations;

the second direction, which is endowed with the function of implementation, consists of "regular bodies" of the WTO, created in accordance with the covered agreements;

Finally, the third direction, which performs the monitoring function, relies on the work of the WTO Secretariat. Although it is this structure that should provide analytical clarity, it is obvious from the following analysis that the powers in the WTO are not distributed so clearly. In particular, it is

demonstrated that some regular bodies perform all three functions - forum, implementation and monitoring.

Starting with the WTO negotiating bodies, it is worth noting that at present the WTO forum function is organized within the framework of the working program of the Doha Ministerial Declaration.[3] Its paragraph 46 contains a requirement for WTO members to create a Trade Negotiations Committee (TNC), which, in turn, has established several negotiating bodies. To date, the established bodies include the rules negotiating group (which deals with anti-dumping agreements, subsidies and regional trade agreements), the trade facilitation negotiating group and the market access negotiating group. All relevant negotiations are monitored by the Trade Negotiations Committee, which, in turn, is accountable to the General Council.

The results of the bodies performing the function of the WTO forum are governed by the principle of "single commitment", which prescribes that before any rule can be adopted, an agreement must be reached between all members on all issues of the work program in the form of a "comprehensive deal". The rules adopted up to this point, which were supposed to allow for the possibility of fulfilling the agreements reached at an early stage before the completion of the entire round of negotiations (the so-called "early results"), are considered insufficient.[6] Since the start of the Doha Round, it was only for the first time that participants managed to adopt some rules in advance on the occasion of the Ninth Ministerial Conference [4] in Bali in December 2013, which dealt with trade facilitation and agricultural subsidies.

Turning to the regular WTO bodies, it is necessary to pay attention to the fact that they are also divided into bodies of the first, second and third layers, which will be discussed further. Thus, the WTO structure is headed by a Ministerial Conference, which, in accordance with Article IV: 1, must meet "at least once every two years" and "perform the functions of the WTO and take the necessary measures for this." Formally, below the Ministerial Conference, but substantially at the same level is the General Council, which, in accordance with a similar article: 2 performs the functions of the Ministerial Conference in the intervals between its meetings. Thus, the General Council exercises de jure all the general and specific powers of the Ministerial Conference, regardless of the fact that certain provisions of the WTO Agreement are addressed exclusively to the Ministerial Conference, and not to the General Council at the same time.

As a general authority, the Ministerial Conference also "has the right to take decisions on all issues under any of the Multilateral Trade Agreements, if required by the participating country, in accordance with the special requirements for decision-making provided for in the Agreement and in the relevant multilateral trade agreement." This specific reference to the decision-making provisions in the relevant agreements gives the WTO particularly broad powers compared to most other international organizations, which usually just have the right to make non-binding decisions.[5] Among its specific powers, the Ministerial Conference may give an authoritative interpretation of the agreements (Article IX of the Marrakesh Agreement), waive obligations under the Agreements (Article IX), agree on amendments to any of the Agreements (Article X) and approve the accession of new members (Article XII). Moreover, the General Council has general powers for general supervision of the lower WTO bodies (Article IV). Among its specific powers, it adopts financial regulation and the annual budget (article VII) and takes appropriate measures for cooperation with other intergovernmental organizations and non-governmental organizations on issues related to WTO issues (article V).

In practice, the General Council and the Ministerial Conference hardly use their decision-making powers, except for everyday and organizational decisions. With regard to solutions with externalities, only one amendment has been adopted to date, namely article 31 of TRIPS concerning access to pharmaceutical products. In addition, since the Appellate Body made it clear in the US – Clove Cigarettes case that an authoritative interpretation requires the recommendation of the Council overseeing the operation of the relevant Agreement, it turns out that the General Council and the Ministerial Conference have not yet accepted such authoritative interpretations.

At the level below the Ministerial Conference and the General Council, namely the bodies of the second and third layers, three types of bodies are created that are accountable to the latter. [7] Firstly, these are three specialized councils established by Article IV of the WTO Agreement: the Council for Trade in Goods (CTG), the Council for Trade in Services (GATS Council) and the Council on Trade-Related Aspects of Intellectual Property (TRIPS). These councils meet "as needed" (in practice four or five times a year) and have general powers to oversee the implementation of their respective agreements. In addition, as the main specific powers, they must submit recommendations to the General Council before an authoritative interpretation of their respective agreement (Article X), reports before granting waivers (Article X) and proposals for amendments. (Article X).

Secondly, there are several "horizontal" committees, which are created either by direct mention in article IV of the Marrakesh Agreement, or by decision of the Ministerial Conference or the General Council. Among the committees established by the covered agreements are the Committee on Trade and Development, the Committee on Balance of Payments Restrictions and the Committee on Budget, Finance and Administration. The committees established by the decision of the members include the Committee on Trade and Environment, the Committee on the Regional Trade Agreement and the Committee on Market Access (which, as an exception, reports to the Council on Trade in Goods). [8]

Thirdly, the Ministerial Conference and the General Council established, on the basis of article IV of the WTO Agreement, a number of working groups established to address various issues of trade relations on an ad hoc basis. Thus, as the third layer of WTO bodies, a number of committees function within the Council for Trade in Goods or the Council for Trade in Services (GATS). They are created on the basis of a treaty provision from which they usually derive from their competence, or a decision of a specialized council based on article IV. Eleven bodies report to the Goods Trade Council, most of which are fairly independent due to their wide variety, and in some cases due to the technical features of the areas they cover. [9] Four bodies are subordinate to the GATS Council, some of which were established on the basis of Article VI of the GATS Agreement. In turn, the listed committees of the third layer can also create subsidiary bodies, as was done, for example, in the field of subsidies, where a Working Group on Notifications of Subsidies and a Permanent Group of Experts were established on the basis of article 24 of the Agreement on Subsidies and Countervailing Measures.

In addition to the general task of the bodies of the second and third layers of the WTO, the competence "to act as a discussion forum and monitor the implementation of the relevant agreement" also applies. These specific competencies are associated with one of four functions: monitoring, implementation, negotiation and management of special and differential treatment. [10] The first function is to monitor compliance by members with their obligations under the WTO . Accordingly, these bodies should collect notifications from members, in particular, on national subsidies and anti-dumping or sanitary measures. In practice, the decisions taken by the committees in carrying out this monitoring function mainly relate to the classification of certain national measures and the format in which information from members is collected. As soon as the authorities have the necessary information, their monitoring function further consists in evaluating the information provided, providing reports to higher authorities on the overall implementation of agreements and making recommendations for their improvement. [11] The second function of WTO bodies is enforcement, which mainly consists of specifying and interpreting elements of treaties. In this context, WTO bodies may adopt guidelines to expand certain provisions of WTO agreements. The implementation function also entails ensuring uniformity at the technical level in the interpretation and application of certain agreements . In addition, as part of the implementation of functions, WTO bodies may sometimes clarify the concepts contained in WTO agreements.

Thirdly, WTO bodies can perform negotiating functions either in relation to market access or in matters of rulemaking. The GATS Agreement, for example, provides for negotiations on the so-called GATS rules on subsidies (Article XV), guarantees (Article X:1) and public procurement (Article XIII). [12] In addition, it entrusts the GATS Council with the overall task of agreeing on specific market access obligations (article XIX: 1). On this basis, four negotiating groups were established, reporting to the GATS Council, which resulted in three protocols that were added to the GATS Agreement,

namely on the movement of individuals, basic telecommunications and financial services. In addition, the GATS Council is given the right to develop any new rules of internal regulation (Article VI) through bodies that it may create. [13] Based on this, the Council adopted some rules that should apply to specific sectors, such as accounting, and a decision on internal regulation. Similarly, the TRIPS Council may develop additional rules based on the built-in agenda, one example of which is the rules on the internal regulation of the protection of geographical indications. Other examples concerning the negotiation and development of regulations include the task of the Committee on Sanitary and Phytosanitary Control and the Committee on Technical Barriers to Trade to monitor the harmonization process. In addition, the Committee on Rules of Origin and its Technical Committee are tasked with managing work programmes on the harmonization of rules of origin. Moreover, some bodies may perform a rule-making function when they are empowered to submit proposals for amendments to their respective agreement to higher authorities. On this basis, the TRIPS Council adopted negotiations that led to the Decision of the General Council on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. [14]

Some features of the WTO's institutional structure make the distribution of powers between its bodies unpredictable. In fact, they prevent the creation of mechanisms for public participation. In particular, as discussed above, we see that the information about the powers attributed to different WTO bodies varies. Although their functions, powers and working methods are determined either by agreements, or by the parent body that established them, or by a decision taken at their first meeting, detailed information about these elements is sometimes not available. [16] Moreover, it seems that the bodies sometimes make decisions on the basis of implied powers, due to the general provision contained in most agreements that "the Committee must perform the functions necessary to implement the provisions of this Agreement and advance its objectives." Secondly, it is unclear whether powers specifically related to lower-level bodies can be transferred to higher-level bodies. In this regard, it can be noted that many decisions formally fall within the competence of lower-level bodies on the basis of the powers granted, which were subsequently transferred to higher-level bodies.

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