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A CRITIQUE OF THE WTO'S STRUCTURE*

INTRODUCTION

The World Trade Organization (WTO) is the most effective international institution for the management of "economic globalization"¹. It was created in 1995, replacing the General Agreement on Tariff and Trade [GATT]. The GATT was established after World War II, at the instance of the United States, after the failure of the International Trade Organization conceived by John Maynard Keynes.² The creation of the WTO is seen in the international plane as one of the best events during the last decade of the twentieth century³. Its membership consists of both sovereign states and separate customary territories⁴.

The Marrakesh Agreement establishing the WTO sets out the purposes and objectives of the WTO and its institutional framework. The primary purposes of the WTO are twofold namely, to ensure the reduction of tariffs and other barriers to trade, and to eliminate discriminatory treatment in international trade relations.⁵ These primary purposes are not totally absolute but are means to facilitate the attainment of stronger economies for members States, higher standards of living, full employment, a growing volume of real income and effective demand and an expansion of production and trade in goods and services.⁶

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¹ Richard Blackhurst. [2000] *Reforming WTO, Decision-making: Lessons from Singapore and Seattle*. "Centre for Research on Economic Development and Policy Reform." pp 2-4

² See Challenges before the World Trade Organisation a serial culled from BBC by *Nigerian Tribune* of 17th April, 2007, pg. 31

³ Richard Steinberg. "Judicial Law-making at the WTO, Discursive, Constitutional and Political Constrains" [2004] *American Law Journal*. p.2.

⁴ Theodore and Timothy. "Homage to a Bull Moose. Applying Lessons of History to meet the Challenges of Globalization" [2000] *Fordham International Law Journal* pp1-7.

⁵ See Marrakesh Agreement [1994].

⁶ Asif A Quareshi, [1996]. "The World Trade Organization:

Pursuant to the above, the WTO ensures that member governments keep their trade policies within agreed limits, according to agreements signed by them and reached through negotiation.⁷ To achieve this mandate the WTO provides “ a substantive code of conduct” for the purpose of reducing tariffs and other barriers to trade and the elimination of discrimination in international trade relations.⁸ Secondly, the WTO puts in place a dispute settlement mechanism to ensure implementation and compliance of its rules and policies and third, the WTO acts as a forum for international relation between member states.⁹

To achieve the above-mentioned responsibilities of the WTO, there is the need for effective structure and institutional organs that will facilitate the attainment of its objectives.

Indeed, the major problem of the World Trade Organization could be traced to the institutional framework of the WTO at its inception. We are of the view that if the WTO is to attain her objectives, the structure of the WTO is an essential factor that cannot be ignored meet but must be reformed to meet the challenges of the present time. Therefore, this article examines the structure of the World Trade Organization. It consists of six parts; the first being the introduction which gives a brief overview of the World Trade Organization. The second part attempts to look in to the structure of the WTO and discusses its organs while the third part enumerates the advantages of the structure. The fourth part outlines the procedures for accession to the WTO, which is the foundational structure for new members. The fifth part is a critique of the structure and conclusion is in part six.

Structure: Bodies and organs of the WTO.

The highest organ of the WTO is the Ministerial Conference which meets at least once every two years. It is composed of representatives of all members. Ministers of Trade of each member states are normally chosen to represent them. The Ministerial

Implementing International Trade Norms” *Manchester University Press*. pp. 1-2.

⁷ Fatoumata Jawara & Aileenkwa [2003]. *Behind the Scenes at the WTO: the Real World of International Trade Negotiations*. Zed Books. pp. 10-14.

⁸ Ibid.

⁹ See n6 above at 14-15.

Conference has the final say on all matters and makes major decisions for the organization. The Ministerial Conference is specifically empowered to "carry out the functions of the WTO and take actions necessary to this effect"¹⁰

As the supreme organ of the WTO, the power of the Ministerial Conference is so enormous; it has a duty to carry out the objectives of the organization and can take decision on any matter relating to Multilateral Trade Agreement if so requested by any member¹¹. Ministerial Conference plays the greatest role when it comes to decision-making as the most powerful organ of the WTO. It has exclusive authority which it shares with the General Council to adopt interpretations of Marrakesh Agreement and of the¹² multilateral trade agreement. Using its discretion, it can decide to waive an obligation imposed on a member by the Marrakesh Agreement or any of the Multilateral Trade Agreement. Though, to do that, the decision must be supported by three fourths of its members¹³.

It has a duty of watchdog on the waiver granted, ensuring prompt review of the waiver as to whether the terms and conditions attached to the waiver have been met or whether the exceptional circumstances justifying the waiver still exist. For example, if a waiver is granted for a time more than one year, the Ministerial Conference must review such a waiver annually¹⁴. The Ministerial Conference has responsibility to establish different committees to facilitate the works of the organization and to assign functions to them. It established Committees on Trade and Development, Balance-of-payments Restriction and Budget Finance and Administration.¹⁵

The second most important body after the Ministerial Conference is the General Council, which is composed of representatives of all the Members. Most members of this body are based in Geneva, although, to have a place in Geneva is optional. In spite of the option, it is advantageous for members to have a base in

¹⁰Marrakesh Agreement (1994) Article IV.

¹¹ Ibid

¹² Ibid. Article IX

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid. Article IV

Geneva because of the nature and volume of works to be done. In addition, it helps in developing country coalitions in WTO which improve the qualitative and quantitative participation of members with limited resources in the negotiations. Therefore, it creates problem for most of the least developed countries that cannot afford the financial capability to place their representatives in Geneva.

The General Council carries out the administrative duties of the organization day-by-day and when the Ministerial Conference is not in operation, it can perform all the powers of the Ministerial Conference. It meets as appropriate in the intervals between Ministerial Conference to perform functions assigned to it by the Agreements.¹⁶ It has power to establish its rules of procedure and approve the rules of procedure for the committees. The General Council performs different duties in the WTO; it sits as the Dispute Settlement Body (DSB) and the Trade Related Aspects of Intellectual Property Right (TPRB). The DSB determines trade disputes between members. It has the power to establish panels of experts to determine trade dispute between members, and to accept or reject whatever might be the findings or decisions of each panel. It also oversees the implementation of rulings, findings and recommendations, and can order one member to retaliate against the other who failed to implement the rulings of the panel.

The TPRB deals with trade policies, and practices of individual members. Peer reviews are conducted on individual member's trade policies and practices taking into account the country's developmental needs within the trade and economic environment in which it operates.¹⁷ The reviews are designed to provide information to outsiders and serves as feedback to the country concerned to measure its performance and progress.

The General Council has power to assign functions to Councils for Trade in goods, Trade in services and Trade-Related Aspects of Intellectual Property Rights and to approve their respective rules of procedure before such rules are effective.¹⁸ In addition, it has exclusive power, which it shares with the Ministerial

¹⁶Peter, Bossche v. Iveta Alexovije, 'Effective Global Economic Governance by the WTO' (2005), 8 Journal of International Economic Law 667-680. see also Marrakesh, above n5, Article IV

¹⁷ Marrakesh, above n5, Article IV.

¹⁸ at Article IV

Conference to adopt interpretative decisions¹⁹, though it must act on the advice of the relevant council under whose jurisdiction the relevant agreement falls.

The General Council delegates responsibility to three other major bodies, which are Council for Trades in Goods, Council for Trade in Services and Council for Trade-Related Aspects of Intellectual Aspects of Intellectual Property Rights. The three Councils occupy the third level in the hierarchy of power in the WTO. Each of them works under the General Council, handling different sphere of responsibilities. The three are responsible for the workings of the WTO Agreement in each assigned areas of trade.

The workings of the GATT that covers international trade in goods are the responsibility of the Council for trade in goods. It is made up of representatives from all member countries. Council for Trade-Related Aspects of Intellectual Property Rights deals with information on intellectual property in the WTO, news and official records of the activities of the TRIPS Council, and detail of the WTO's work with other international organizations in the field.

The third one, which is Council for GATS, operates under the guidance of the General Council and is responsible for overseeing the functioning of the General Agreement on trade and services. It is open to all WTO member countries and can create subsidiary bodies as required.

The next in the hierarchy after the Councils are the subsidiaries and the committees. Each of the 'higher level Councils has subsidiary bodies. The Goods Council has 11 Committees consisting of all member countries dealing with specific subjects such as agriculture, market access, subsidies, anti-dumping measures and so on. Also reporting to the Goods Council is the Textiles Monitoring Body which consists of a Chairman and 10 members acting in their personal capacities, and groups dealing with notifications [governments informing the WTO about current and new policies or measures] and state trading enterprises.

The Services Council has subsidiary bodies, which deal with financial services, domestic regulations, GATS rules and specific commitments. In the same manner but at the General Council level, the Dispute Settlement Body has two subsidiaries: the dispute

¹⁹ Ibid, Articles IX.

settlement panels of experts appointed to adjudicate on unresolved disputes, and the Appellate Body that deals with appeals.

The WTO Agreement establishes three main Committees. Membership of these committees is open to all members of the WTO. The committees are: the Committee on Trade and Development, the Committee on Balance-of-Payments Restrictions, and the Committee on Budget, Finance and Administration.

The General Council has established two other committees reporting to it which are: the Committee on Trade and Environment and the Committee on Regional Trade Agreements.

The committee on Trade and Development is the forum for discussion of all cross-cutting matters of special interest to developing countries in recognition of the objective of the WTO to ensure that developing countries, and in particular the least developed among them, obtain a portion of market in the international trade commensurate with what is compatible with their economic growth²⁰.

Therefore, the Committee has a wide - ranging mandate; it serves as a focal point for consideration and coordination of technical assistance work on development in the WTO and its relationship to development- related activities in other multilateral agencies. To attain that mandate, it has priority to examine how provisions favoring developing countries are being implemented and must report to the General Council for appropriate action.²¹

The committee on Balance of Payments Restriction (BOP) has a duty to ensure that member applies import restrictions for balance- of-payments reasons in a manner consistent or in compliance with the rules of international trading system.²² Therefore, the committee ensures that members observe the pre-conditions and disciplines necessary for the application of balance-of-payment restriction.

To be able to apply import restrictions for balance of payments reasons, members must hold consultation with the BOP. Consultation occurs in three different ways depending on circumstances of the member. For example, a member who is intending to apply new restrictions or substantially intensifying

²⁰ Marrakesh, above n5 preamble to the Agreement.

²¹at Article XV:7

²² General Agreement on Tariff and Trade, Article XII

existing ones is obliged to consult with the committee on BOP immediately after taking action or before doing so if prior consultation is possible²³.

A member maintaining such existing restrictions must consult the committee annually²⁴ or biennially²⁵ while an applicant member but an aggrieved member who is adversely affected by restrictions maintained by another member does not instigate the consultation. In such circumstance [aggrieved member's complain] it is the duty of the BOP to examine whether the alleged restriction is inconsistent with the provisions of the law relating to these restrictions.²⁶

The Committee is to decide by consensus after consultation whether the balance- of –payment situation warrants the measures imposed, and that the application of the measures is consistent with the balance-of-the payment provisions. If the Committee finds that the measures are not being applied consistent with the accepted criteria, it will request the consulting member to make the necessary adjustments, e.g. convert quantitative restrictions to price-based measures, or to annul the balance of payment provisions.²⁷

If on the opposite, despite the fact that the committee finds the measures inconsistent, the member is not in a position to withdraw its balance-of- payments, the committee will recommend measures that will bring them in to conformity with the provisions.²⁸ Whatever is the outcome of the committee's decision is drafted by the chairman as the report of the committee, which must reflect the main points of the discussion and the recommendations made by the committee. The committee must approve the report before it is submitted to the next General Council for its adoption.²⁹ Observing the structure of the WTO and the issue of balance-of-payments restrictions, one may be tempted to argue that two bodies which are the Committee on Balance-of-payments and the General Council have the exclusive competence to make decision in respect

²³ Ibid, Articles XII:4[A]

²⁴ Ibid [b]

²⁵ Ibid, Article XVIII: 12[B].

²⁶ Ibid, Articles X11:4[D] AND XV111:12[D].

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

with the matter. That was one of the arguments of India before the panel in India—Quantitative Restrictions on Imports and Industrial Products.³⁰ The Indians argued ferociously in that case that the panel had no jurisdiction, but the panel held that it had jurisdiction to review the legal status of balance-of-payments measures, to the extent necessary to address claims submitted to it within the scope of its mandate under the Dispute Settlement.³¹

The Appellate Body upheld the decision of the panel and ruled that there was no conflict or redundancy between the competency of the BOP Committee and the General Council and the competency of the WTO Panels, but considered that panels should take in to account the deliberations and conclusions of the BOP Committee and the General Council in reaching its decisions.³²

The Committee on Budget Finance and Administration has a duty to make proposal on financial regulations and recommendations on the annual budget estimate to the General Council who shall adopt them by two-third majority which signifies half of the members of the WTO.³³

The preamble³⁴ puts sustainable development as one of the objectives of the WTO. To archive that objective, the Committee on Trade and Environment is mandated to examine the relationship between trade measures and environmental measures and to determine the possibility of modifying the multilateral trading system in aid of sustainable development.³⁵ The Committee on Regional Trade Agreement, which is the next, has duty to consider the effects of individual regional agreements on multilateral trading system³⁶

Being, a member-driven' organization, the secretariat which is headed by a Director General³⁷ has no decision-making power as the members and not the secretariat takes decision. The

³⁰ WT/DS90/R, 6 APRIL 1999.

³¹ Ibid

³² WTO appellate report AB-1999-3, WT/DS90/AB/R [99-1329] adopted by DSB, 22september 1999.

³³ See n5, Article V11.

³⁴ Ibid.

³⁵ MTN, TNC/W/141, 29 MARCH 1994.

³⁶ SeeWT/L/127.

³⁷ See Peter above n18, Article V1 .

secretariat's duty is just to facilitate the decision-making powers.³⁸ It does this through five major ways. First, it provides technical assistance to state members and regional groupings in support of their meetings and organizing briefings on specific WTO-related topics. The aim of this support is to empower them on subject matter of negotiations. Second, it oversees the implementation of WTO member commitment by staffing the numerous WTO councils, committees and working groups. Third, it takes responsibility for the management of the informational divisions responsible for research and statistics and for communications with the media, civil society, parliamentarians and other organization. Fourth, the WTO services the ongoing WTO trade negotiations, and fifth, it services all dispute settlement panels.³⁹

ACCESSION: The foundational structure for new members.

Another important issue to mention when it comes to institutional framework or structure of the WTO is the accession process. This is a process which countries that did not become members at the WTO's inception must go through in order to join the WTO. The agreement provides that decisions on accession must be taken by the Ministerial Conference whose duty is to approve the agreement on the terms of accession "by a two-third majority of the members of the WTO".⁴⁰

The procedure or process shall be briefly discussed. Accession of new members takes four stages. The first stage is application stage whereby any state or custom territory who is interested to accede to the WTO must apply for membership. The second stage could be described as negotiation stage, where the applicant discusses with the WTO on what the applicant can offer the organization. The third could be described as Contractual stage where the agreement on the terms of accession is drafted. The last stage is the presentation of the terms of accession to the WTO's General Council or the Ministerial Conference for ratification. The four stages of accession may look so easy but are difficult and time consuming for the applicant. It took China more than ten years to

³⁸ Ibid.

³⁹ Gregory Shaffer, 'The role of the WTO Director-General and Secretariat' a paper delivered at the University of Wisconsin Law School.

⁴⁰ See n21 above Article X:3.

pass through the stages successfully and become re-admitted to the WTO.

Advantages of the structure

There is no doubt that the WTO structure offers some important advantages for assisting the effective implementation of the Uruguay Round. For example "a new GATT 1994" is created to supersede the old GATT. This procedure avoids the constraints of the amending clauses of the old GATT which might make it difficult to bring the Uruguay Round into legal force.

In addition, the WTO Charter establishes for the first time the basic explicit legal authority for a Secretariat, a Director-General and staff. It does this in a way similar to many international organizations and it also adds the obligation for nations to avoid interfering with the officers of the organization.⁴¹

Another important aspect of the structure is that it facilitates the extension of the institutional structure to the new subjects negotiated in the Uruguay Round, particularly services and intellectual property. Without some kind of legal mechanism such as the WTO, this would have been quite difficult to do since the GATT itself only applies to goods. Consequently, through councils and committees, the WTO administers the many Agreements contained in the Uruguay Round, plus agreements on government procurement and civil aircraft. It oversees the implementation of non tariff measures agreed to in the negotiations⁴². It is also a watchdog of international trade, regularly examining the trade regimes of individual members. In its various bodies, member's flag proposed or draft measures by others that can cause 'trade conflicts'. Members are also required to update various trade measures and statistics which are maintained by the secretariat in a large database⁴³.

Furthermore, the structure separates the institutional concepts from the substantive rules. The GATT 1994 will remain a substantive agreement while the WTO has a broader context⁴⁴.

⁴¹ See Gregory Shaffer, The Role of the WTO Director General a paper delivered at the University of Wisconsin law school, U.S.A.

⁴² Robert J. Carbaugh (2004) International Economics, Thompson Southwestern p. 196.

⁴³ Ibid.

⁴⁴ Ibid.

One of the most important achievements of the World Trade Organization and unfortunately the most controversial aspects is that of its dispute settlement mechanism. At its inception, a major objective of the WTO was strengthening the GATT dispute mechanism suffered from long delays, the ability of accused parties to block decisions of GATT panels that went against them, and inadequate enforcement⁴⁵. The dispute settlement mechanism of the WTO addresses each of these weaknesses. It guarantees the formulation of a dispute panel once a case is brought and sets time limits for each stage of the process. The decision of the panel may be taken to an Appellate Body, but the accused party can no longer block the final decision⁴⁶.

The problem of international law is the problem of enforcement of its law. The international community lacks coercive enforcement structure analogous to those found in domestic system, so optimal levels of compliance may simply not be attainable⁴⁷.

On the contrary, the World Trade Organization has the most effective dispute resolution with efficient enforcement mechanism. Article 21 of the Dispute Settlement Understanding (DSU) sets up direct rules for the enforcement of the Dispute Settlement Body's (DSB) decisions. Within 30 days after the adoption of the decision, the member concerned shall inform the DSB of its intention in respect of the recommendations and rulings. The DSB has the duty to monitor the implementation of its decisions if, after six months following the decision ordering the implementation of the report, the member does not comply or incorrectly complies. The monitoring procedure will last until the full compliance with the decision has been reached. A member can also be sanctioned for non-compliance with DSB decisions⁴⁸.

Article 22.2 stipulates the possibility in case of failure of compliance with the decision to enter into negotiations with other parties to find a mutually acceptable compensation. In case of a

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Andrew T. Guzman, 'Global Governance and the WTO', *Harvard International Law Journal* volume 45 Number 2, 2004 p. 321.

⁴⁸ Xavier philippe 'The dispute resolution mechanism of the World Trade Organization five years after its implementation'. *Law and Democracy* vol 3 1999 pp 69-87.

further failure within twenty days, case of a further failure within twenty days, the other party may request authorization from the DSB or suspend concessions or other obligations covered by the agreement. This as the ultimate means to enforce the original decision. Such a request to the DSB will be automatically enforceable⁴⁹.

To conclude, the dispute resolution mechanism of the WTO can be regarded as a progress in the sense that it has produced a mechanism for settlement which is the envy of other international institutions⁵⁰. The shortcomings of WTO dispute settlement as well as other structural defects of the WTO shall be discussed in the next section.

A critique of WTO structure

The first problem has to do with the mandate of WTO which is too narrow to bring equal development to all its members. The GATT/WTO system was established as an organization devoted to reciprocal trade liberalization. The GATT 1947 created the structure for 'reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade'⁵¹. In the Agreement establishing the WTO, concluded in 1994, the wordings was changed from "full use" to "optimal use of the world's resources" and the objective of "sustainable development" and "preserving the environment was added. Otherwise the goal remained similar, with the agreement repeating the goal of substantial reduction of tariffs and other barriers to trade⁵² etc.

The problem with this issue is that the current structure of the WTO is designed to cover trade issues alone, however, the WTO could not survive with such a narrow focus⁵³. Although the

⁴⁹ Ibid P. 85

⁵⁰ Marco CEJ Bronackers, 'More power to the WTO', 4 Journal of International Economic Law 41 (2001) P. 45.

⁵¹ See The preamble to the General Agreement on Tariff and Trade.

⁵² Article III and I of the GATT respectively. See also Arie Reich, "The threat of politicization of the WTO' a working paper No 7, 7-05-2005 <http://www.biu.ac.il/law/unger/uk-papers.html> assessed on the 9th of March 2009.

⁵³ Claude E. Barfield, 'Free Trade, Sovereignty, Democracy The future of the WTO' 2 Chicago Journal of International Law 403, 406. (2001).

influence of the WTO now extends well beyond the trade issues, the institution remains overwhelmingly oriented towards trade concerns⁵⁴ because there is no credible structure to anchor its involvement in non-trade issues. WTO can not over look non-trade issues such as the need for people to have access to food, access to medicine to fight deadly diseases like AIDS, access to production facilities like capital and technology etc. The fact is that labour and human rights could not be jettisoned if the World Trade Organization is to be fair to all and sundry. As John Jackson has pointed out, that effective international trade measures will always have some impact within the national borders⁵⁵. The better strategy, then, is to bring non-trade issues in to the debate at the WTO⁵⁶. We therefore suggest that the mandate of the WTO should be extended to include non trade issues and the WTO itself should be re-structured for such an expansion.

The second point is the role of the secretariat in the World Trade Organization. A report that was conducted on the role of the WTO Director-General and secretariat⁵⁷ generally expresses concern that the WTO secretariat, although “highly skilled” and “well-regarded” has become “more timid” and passive than in the past and that the “mutual confidence” between delegations and WTO staff has declined. The report finds that the Director General and the Secretariat have become more of a “spokesperson and marketing executive” for the organization.

There is no doubt that the growth in WTO membership, combined with the expansion of the WTO agreements’ coverage, has led to some organizational tension. In particular, there may be tension between the secretariat’s role as service provider for negotiations, compliance monitoring and judicial enforcement, on the one hand, and developing country assistance provider on the other⁵⁸. That notwithstanding the secretariat as an organ of the WTO

⁵⁴ n 47.

⁵⁵ John H. Jackson, ‘the path of Globalization and the World Trading System’ 24 *Fordman International Law Journal* 371, 374 (2004).

⁵⁶ n 47.

⁵⁷ The future of the WTO: Addressing institutional challenges in the new millennium. Report of the consultative Board to the Director General Supachai Paniteh Pakdi 51 WTO, 2004.

⁵⁸ See Gregory Shaffer 39.

is under appreciated and changes should be effected to make it effective impartial, capable to exercise its authority and acceptable to all members.

The Consultative Board's suggestion of placing WTO related technical assistance and capacity building programs in a semi-independent agency should be considered⁵⁹. Officials could be seconded to this agency from organizations such as the World Bank and UNCTAD. Secretariat members from WTO operational divisions could be included where needed since they will hold the most up-to-date knowledge and experience on WTO developments. The institutional development would provide greater autonomy to those who engage in capacity building and it would reduce internal tensions with the secretariat is "brokering" and "guardianship" roles⁶⁰.

The third issue is in the area of dispute settlement system of the WTO. As we have mentioned earlier, the dispute system has been hailed as a great development in international trade law but the truth is that the system remains "far from a neutral technocratic process in its structure and operation"⁶¹ because of certain notable defects.⁶² First, the domination by the developed countries in the participation of WTO dispute system and the decline of the developing countries relative participation since the advent of the WTO⁶³. Without exaggeration, the dynamics of litigation thus favour the developed countries. For example, the WTO insiders found that Malaysia failed to develop available factual and legal arguments in its WTO challenge of the United States' implementation of the Appellate Body's Shrimp – turtle decision⁶⁴. Gregory Shaffer explains the second defect better when he wrote:

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Gregory Shaffer, 'How to make the WTO dispute settlement system work for developing countries: some proactive developing country strategies. ICTSD Resource paper No 5, 2003 www.ictsd.org, assessed on the 6th of March 2009.

⁶² Ibid.

⁶³ Gregory Shaffer, Power, governance and the WTO. A comparative institutional approach assessed on the 8th of March 2009. <http://ssrn.com/abstract>.

⁶⁴ Ibid.

“Constituents are dependent on their national representatives to put forward their concerns and they do not have equal access to these officials. Their access is a function of domestic political processes that favour discrete producer groups with high per capital stakes in a given claim”⁶⁵.

Third, the use of amicus curiae brief from a private party in WTO judicial body favours developed countries who have the resources and legal expertise to submit persuasive arguments and frame debates before WTO judicial panels⁶⁶.

This unfair structure should not be allowed to persist, it should be restructured to reduce “structural biases” within it. Furthermore, the WTO dispute system should appoint professional panelists designated for a fixed time rather than relying on the secretariat for legal analysis as to the “right” outcome⁶⁷.

As regards the Ministerial Council, it is unfortunate that despite the success without hitch of the first and the second Ministerial conferences in Singapore in December 1996 and in Geneva in May 1998, other Ministerial Conferences that follow have never known peace. The third Ministerial Conference in Seattle in December 1999 ended in fiasco due to an outburst of anger by the developing countries who became increasingly disappointed at the lack of developed countries, faithful implementation of what they had promised in the Uruguay Round⁶⁸.

As a result of that widespread discontent by the developing countries, the fourth WTO ministerial conference held in Doha, Qatar in 2001 started the negotiation of a new Round called Doha Development Agenda (DDA) in order to ensure capacity building for the developing countries through technical assistance so that they can integrate their fragile economies into the global trade stream.

⁶⁵ Ibid

⁶⁶ Ibid.

⁶⁷ n39

⁶⁸ SungJoon Cho, A bridge too far: the fall of the fifth WTO ministerial conference in Cancun and the future of trade constitution, *Journal of International Economic Law* 7 (2) 219-244.

Unfortunately, the Doha Round that was scheduled for completion on 1st of January 2005 is yet to be completed in 2009 at the time of writing this article. All Ministerial Conferences held since 2001 till date over the issue has not yielded any fruitful result. Although the Doha Round if completed can stimulate industrial development for developing countries and ensure that all members of the WTO enjoy the benefits of trade liberalization. The problem of such an egalitarian international trade regime is the absence of structure within the WTO to accommodate it. Sungjoon Cho seems to recognize this when he wrote⁶⁹:

“The Doha Declaration is full of verbal commitments and plans for capacity building; it is silent about how to fund the ambitious technical assistance programs. Furthermore, its legal nature as a ‘work program’ is vague. One might reasonably speculate that this document would not be enforceable through the WTO dispute settlement mechanism since the DSU (dispute Settlement Understanding) applies only to ‘covered agreements’”.

Definitely, a new structure that will ensure enforcement of Doha Development Agenda must be put in place. Once the Doha Round is completed, it must be moved from the status of a ‘work program’ to that of an agreement covered by the DSU so that it can come within the jurisdiction of the “WTO’s legalized system” and regulatory framework can be provided for its enforcement.

Finally, on the General Council, the Dispute Settlement Body (DSB) is staffed with WTO General Council members. The DSB is the central organ of the judicial system of the WTO. In all types of settlement, including those made under specific agreements, the DSB plays the key-role by making decisions through the principle of consensus⁷⁰. Jeffery Atik expressed his dissatisfaction to

⁶⁹ Ibid.

⁷⁰ Article 2:4 of the DSU.

the present structure of the WTO which gives so much power to the DSB without a “meaningful legislative check. He said⁷¹;

“Much WTO lawmaking occurs in the context of dispute resolution. Dispute panelists, like judges, are isolated from ordinary politics. The WTO dispute settlement Body enjoys a form of judicial supremacy that is democratically suspect, particularly because there is no meaningful check on Dispute Settlement Body activism. Current WTO lawmaking (structure) is quite primitive. There are the constituent treaties and little else, a condition analogous to a nation with a constitution but without statutes and regulations. The WTO is starved institutionally; there is no legislature and no much administration”.

In fact, it is crystal clear that the existing structure of international trade regime is deficient not only because of what it contains but also because of what it does not contain. WTO operates like a world government in the area of trade regime. As in a state, there must be organs of government for effective administration. There must be legislature to make the law, the executive to enforce the law and the judiciary to implement it. Not only that, if such a government is democratic, it must put in to operation the principles of separation of power and check and balances among the three arms of government. We therefore recommend that the WTO should be restructured by creating a separate organ to make law. Such law making organ will comprise of the representatives of all members of the organization. Consequentially, WTO then can dispense with the GATT tradition of “rounds” that is yielding no fruitful result as a result of its inability to conclude the Doha Round.

⁷¹ Jeffery Atik, Democratizing the WTO Research paper No 2001-1 assessed on the 16th of March 2009. <http://papers.ssrn.com/abstract=250331>.

6.0 CONCLUSION

We can not over emphasize the importance of structure to an international organization. Structure determines the extent to which an organization must go. It is the pattern and the compass that guide an organization on the path it must take. It is the fulcrum on which the whole organization revolves.

This article has discussed the structure of the WTO. Our contention is that in order to understand the governance of international trade regime, it is essential as we have done that initial attention should be focused on the structure of the WTO, particularly in Africa where the knowledge of international trade regime is not as vibrant as in the developed countries.

We have discovered in this article that the Ministerial Conference, the General Council and the Dispute Settlement Body have the power to adopt legally binding decision that will affect all members of the World Trade Organization. We have also observed that the current structure of the WTO is defective not only because of what it contains but also because of what it does not contain. In spite of the present wobbly effort by the WTO members to conclude the Doha Round so as to correct the inherent faults with the WTO the structural defects that we have enumerated in this article will not make it possible unless they are corrected.

It is our hope that the recommendations proffered in this article shall be implemented by the WTO so that the hope of a fair, equitable and egalitarian global trade regime can be reached.