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The World Trade Organization: Background and Issues

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Summary

The World Trade Organization (WTO) was established on January 1, 1995, under an agreement reached during the Uruguay Round of multilateral trade negotiations. The Uruguay Round was the last of a series of periodic trade negotiations held under the auspices of the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT).

The WTO is the most important international organization that governs world trade. Decisions are made by the member countries. The WTO has 148 members and 31 observer governments (most of which have applied for membership), and members represent over 95% of world trade. The highest-level decisions are made at the Ministerial Conference, which is the meeting of trade ministers from member countries. The Ministerial Conference must meet at least every two years. The General Council is the body of national representatives that oversees the day-to-day operations of the WTO. The General Council meets approximately monthly. It also meets in two other capacities: it reviews national trade policies, and it oversees the dispute settlement process. Under the General Council are numerous committees, working groups, and other bodies.

Assisting the members is a WTO Secretariat that numbers about 600 and is located in Geneva, Switzerland. The top official of the Secretariat is Director-General Supachai Panitchpakdi of Thailand, whose three-year term began on September 1, 2002. Currently, there are four candidates for the position of Director-General, and a final candidate might be presented for confirmation by late May 2005.

Trade agreements administered by the WTO cover a broad range of goods and services trade and apply to virtually all government practices that directly relate to trade, for example tariffs, subsidies, government procurement, and trade-related intellectual property rights. The WTO agreements are based on the principle of non-discriminatory treatment among countries. Some exceptions however, such as preferential treatment for developing countries, are allowed. Other basic principles of the WTO are open information on rules and regulations, negotiated limits on trade barriers, and settlement of disputes under specific procedures.

Among the questions asked during debate on U.S. trade policy and the WTO are: To what extent are U.S. trade goals achieved through the WTO's multilateral forum, compared to other means such as bilateral or regional trade agreements or unilateral actions? Can the United States maintain its sovereignty as a member of the WTO? Are U.S. interests served through the WTO dispute process? Should the United States seek broader WTO rules to include nontraditional issues such as labor and the environment? What is the role of Congress in U.S. participation in the WTO?

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The World Trade Organization: Background and Issues

Background

Following World War II, nations throughout the world, led by the United States and several other developed countries, sought to establish an open and nondiscriminatory trading system with the goal of raising the economic well-being of all countries. Aware of the role of trade barriers in contributing to the economic depression in the 1930s, and the military aggression that rose following the depression, the countries that met to discuss the new trading system saw open trade as essential for economic stability and peace.

The intent of these negotiators was to establish an International Trade Organization (ITO), which would address not only trade barriers but other issues indirectly related to trade, including employment, investment, restrictive business practices, and commodity agreements. The ITO was to be a United Nations specialized agency, but the ITO treaty was not approved by the United States and a few other signatories and never went into effect. Instead, a provisional agreement on tariffs and trade rules, called the General Agreement on Tariffs and Trade (GATT) was reached and went into effect in 1948. This provisional GATT became the principal set of rules governing international trade for the next 47 years.

The GATT document established trade principles that continue to be applied today. Among the most important of these principles was nondiscrimination with regard to the treatment of trade in goods among countries. The most-favored-nation principle, which was Article I of the GATT, states that any advantage given by a contracting party to a product of another country must be extended unconditionally to a like product of all other contracting parties. A second rule of nondiscrimination was national treatment, which said that imported and domestic goods should be treated equally. Although nondiscrimination was a cornerstone of the GATT, some exceptions were allowed. For example customs unions, free-trade areas, and special treatment for developing countries were permitted.

Another principle was the open and fair application of any trade barriers. Tariffs were the most common and visible form of trade barrier at the time the GATT was established. Tariffs were to be “bound,” or set at maximum levels, and not increased above the negotiated level. In general, quantitative restrictions such as quotas were not allowed, since tariffs were much easier to identify and to eventually reduce.

The GATT also included a forum and process for countries to follow in trying to resolve disputes. The dispute process allowed countries to consult with each other

and if that was not successful, a country could ask that a panel hear the complaint. Although the panel's decision was not enforceable, the panel report carried some force of opinion and encouraged countries to work toward an agreeable resolution.

One of the GATT's chief purposes was the reduction of barriers to trade. With this goal in mind, GATT contracting parties met periodically to negotiate further reduction of tariffs and other trade barriers and changes to GATT rules. These negotiations were called "rounds." Early rounds dealt only with tariff reductions, but later rounds also included nontariff barriers to trade. The most recent round, the Uruguay Round, lasted from 1986 to 1994 and included the most encompassing set of negotiations in the history of the GATT. On the agenda was reform of the existing GATT system, as well as expansion of rules to cover new areas such as services trade and the trade aspects of intellectual property rights (copyrights, trademarks, and patents). The agreements that resulted from the Uruguay Round also contained a built-in agenda requiring that further negotiations on agriculture, services, intellectual property rights, and government procurement begin by the year 2000.

One of the most important changes that came about from the Uruguay Round was the establishment of a new trade structure, the World Trade Organization (WTO), which incorporated the many changes reached during the Uruguay Round: the former GATT with its newly negotiated reforms, bodies to oversee the new trade issues, a stronger dispute resolution procedure, a regular review of members' trade policies, and many other committees and councils. In contrast to the GATT, the WTO was created as a permanent structure, with "members" instead of "contracting parties." The WTO went into effect on January 1, 1995.

The World Trade Organization

There are 148 members of the WTO, representing over 95% of world trade, 31 observer governments (most of which have applied for membership in the WTO), and seven international organization observers. Members and observers are listed in **Appendix 1**. All decisions are made by member countries, and decisions are usually by consensus.

The WTO is located in Geneva, Switzerland. The WTO Secretariat assists member countries and numbers about 600. The total WTO budget for the year 2004 is 161.8 million Swiss Francs, or about \$128.1 million (1.2632 Swiss Francs = \$1).¹ Countries contribute according to their share of world trade, based on trade in goods, services and intellectual property rights.²

¹ The total WTO budget includes 157.1 million Swiss Francs for the WTO Secretariat and 4.7 million Swiss Francs for the Appellate Body and its Secretariat. See the WTO web page at [<http://www.wto.org>].

² In 2004, the U.S. share was 15.7% of total contributions to the WTO budget. The U.S. contribution is part of the Department of State budget and was \$18.6 million in FY2004. The FY2005 estimate is \$22.2 million, and the FY2006 request is \$21.5 million (see United States Department of State. *The Budget in Brief; Fiscal Year 2006*. P. 90).

The WTO's top official is Director-General Supachai Panitchpakdi of Thailand, whose three-year term began on September 1, 2002.³ A new Director-General, whose term will be four years and will begin September 1, 2005, must be selected. According to the *Procedures for the Appointment of Directors-General*,⁴ which WTO members adopted in 2002, the appointment process starts nine months before the end of a Director-General's term. Members nominate candidates, and the candidates make themselves known and engage in discussions on issues. The field is narrowed as the candidates with the least likelihood of achieving a consensus of support drop out. The current candidates for Director-General: Carlos Perez del Castillo of Uruguay, Jayakrishna Cuttaree of Mauritius, Luiz Felipe de Seixas Correa of Brazil, and Pascal Lamy of France. According to the WTO procedures, a final candidate should be presented for confirmation by WTO members by the end of May 2005.

Decisions within the WTO are made by members, not staff, and they are made by consensus, not by formal vote. The highest level body in the WTO is the **Ministerial Conference**, which is the body of political representatives (trade ministers) from each member country. (See the WTO structure in **Appendix 2**.) The Ministerial Conference examines current programs and sets the agenda for future work. It must meet at least every two years.

The *first* meeting of the Ministerial Conference was held in Singapore on December 9-13, 1996. At that meeting, trade ministers reviewed the work of the WTO, since its establishment and agreed on a work schedule for the next few years. They also approved an action plan for least-developed countries, and many members entered into an agreement to eliminate tariffs on information technology products by the year 2000. The *second* meeting of the Ministerial Conference was held in Geneva on May 18 and 20, 1998. Again, it reviewed the work of the WTO and approved a future work program. It called for an examination of issues related to global electronic commerce and started preparations for the next meeting. The *third* Ministerial Conference was held in Seattle on November 29-December 3, 1999. That meeting was intended to review an agenda for a new round of trade negotiations, but trade ministers could not reach agreement and suspended their work. The WTO Director-General was directed to consult with delegations and discuss ways in which countries might bridge remaining differences. The *fourth* Ministerial Conference was held in Doha, Qatar on November 9-14, 2001. At that meeting, trade ministers agreed to launch a new round of multilateral trade negotiations, called the Doha Development Agenda, and set a deadline for final agreements of January 1, 2005. They established a work program for the new round and agreed to consider numerous developing-country issues.⁵ The *fifth* Ministerial Conference was held September 10-14, 2003, in Cancun, Mexico. According to the Ministerial Declaration released two

³ The institution of the WTO is examined in a 2004 report by leading experts to Director-General Supachai Panitchpakdi. See, Consultative Board, Peter Sutherland (Chair). *The Future of the WTO: Addressing Institutional Challenges in the New Millennium*. World Trade Organization, 2004. 86 p. Available at the WTO website [<http://www.wto.org>].

⁴ WTO document WT/L/509.

⁵ For more information on results of the Doha Ministerial Conference, see CRS Report RL31206, *The WTO Doha Ministerial: Results and Agenda for a New Round of Negotiations*, coordinated by William H. Cooper.

years earlier in Doha, Qatar, the fifth Ministerial Conference was intended to “...take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary.” Many trade ministers at the Cancun Ministerial attempted to reach a framework to guide the remaining negotiations of the new round, but they could not resolve major differences, and the negotiations stalled. The *sixth* Ministerial Conference will be held in Hong Kong on December 13-18, 2005.

The body that oversees the day-to-day operations of the WTO is the **General Council**, which consists of a representative from each member country. The Council generally meets monthly and provides a forum for countries to discuss a range of trade matters. The U.S. delegate to the General Council is the Deputy U.S. Trade Representative in Geneva.

The General Council also meets in two other, unique capacities. One is the **Trade Policy Review Mechanism (TPRM)**. The TPRM was established under the Uruguay Round agreements to allow closer monitoring of national trade policies of member countries. The four countries with the largest shares of world trade are reviewed every two years, the next 16 largest traders are reviewed every four years, and other countries are reviewed every six years, although least-developed countries might be reviewed less frequently. The trade reviews provide information on a country's trade policies and comment on whether a country is pursuing market-opening or market-restrictive policies. This public examination is a mild form of pressure for a country to avoid practices that discourage trade.

The General Council also meets in the capacity of the **Dispute Settlement Body (DSB)**. The Uruguay Round agreements greatly strengthened the process for settlement of disputes. The first stage of the process is consultation between the governments involved. If consultation is not successful, the complainant may ask the DSB to establish a dispute panel. The dispute panel hears the case and reports back to the DSB. If the complaint is upheld, the respondent must either change its practice or negotiate an agreeable resolution. Otherwise, the complainant may request that the DSB authorize suspension of obligations, thereby giving permission for the complainant to retaliate. For example, a complainant may receive permission to increase tariffs against a respondent country that disregards a decision by the DSB. Permission is automatic unless unanimously disapproved. Procedures are clearly set out with specific timetables at each stage.

More specialized work is done in three major bodies under the General Council. One of these is the **Council for Trade in Goods**, under which committees work on a number of trade areas. One committee works on trade in agriculture. Another committee oversees the related topic of sanitary and phytosanitary measures, which are measures that pertain respectively to animal and plant health and safety. Some committees monitor practices that are considered “unfair” if not implemented in accordance with WTO rules (antidumping, subsidies and countervailing measures). Other committees examine practices that are not necessarily “unfair” but could be trade-distorting nonetheless (rules of origin, safeguards, technical barriers, customs valuation, and import licensing). One committee works on the relatively new area of trade-related investment measures, and another addresses market access issues (tariffs and nontariff measures). Also under the Council for Trade in Goods is the Information Technology Agreement Committee.

A second major body under the General Council is the **Council for Trade in Services**, which oversees the Uruguay Round agreement on trade in services. The Uruguay Round services agreement has three parts. The first part lists basic principles that countries agree to observe, including national treatment, most-favored-nation treatment, and transparency (open information about relevant laws and regulations). The second part contains four annexes with rules on: (1) the movement of persons who provide services, (2) financial services, (3) telecommunications, and (4) air transport services. The third part is a schedule of country commitments. These commitments are bound and cannot be reduced in scope, much like the tariff levels on goods, which cannot be increased once they are bound. The service commitments may include exceptions to the national treatment and most-favored-nation principles, if countries included these exceptions when they originally negotiated the commitments.

The **Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS)** is the third major body under the General Council. The TRIPS Council monitors the agreement on intellectual property rights that was reached during the Uruguay Round and supervises members' compliance. The TRIPS agreement has three parts. The first part outlines basic principles that countries must observe, including national treatment and most-favored-nation treatment. The second part establishes standards for the different types of intellectual property rights. For example, it ensures copyright protection for computer programs, sets rules for rental rights, protects integrated circuit designs and geographical indications (e.g., "champagne" indicates a wine from a specific region), and ensures minimum lengths of time for protections. The third part of the agreement establishes enforcement processes. Developing, transition, and least-developed countries are allowed additional time to implement the changes.

In addition to the bodies discussed above, there are many other committees and working groups under the General Council. For example, there are working groups on trade, debt, and finance and on trade and transfer of technology. There are committees on plurilateral agreements, which are not signed by all WTO members, on civil aircraft and on government procurement. The Committee on Trade and Development often works with other international institutions on special concerns of countries in development. Working parties on accession meet with applicant countries to identify changes that are necessary to bring the applicant's trade regime into line with WTO rules and principles. The Uruguay Round also established a committee on trade and environment.

Policy Issues

Congressional debate involving the WTO has focused on several major issues. These concern: (1) achievement of U.S. trade goals through a multilateral forum; (2) assurance of U.S. sovereignty in trade decisions; (3) the WTO dispute process and U.S. interests; (4) traditional and nontraditional topics in the WTO; and (5) the congressional role in U.S. participation in the WTO

1. To what extent are U.S. trade goals achieved through the WTO's multilateral forum, compared to other means such as bilateral or regional trade agreements or unilateral action? The WTO has many benefits for the United States: it provides the only multilateral dispute mechanism for international trade, administers rules to discourage discrimination, and ensures greater security on how trade will be conducted. However, critics of the WTO charge that the WTO is slow-moving, because there are so many members with such varied national interests and decisions are by consensus. One option is to pursue U.S. goals through another multilateral body. For example, the United States and other (mostly developed) countries have pursued negotiations on shipbuilding and investment in the Organization for Economic Cooperation and Development, but with mixed success. Another option is to pursue trade benefits through regional or bilateral agreements. Some trade experts say that these agreements offer substantial benefits to U.S. exporters and are easier to negotiate. Others, however, assert that regional and bilateral agreements may distract the United States and other countries from the possibly greater benefits from a worldwide approach.

During the first half of 2005, the 109th Congress might vote on whether or not the United States should continue as a member of the World Trade Organization (WTO). The provisions on such a vote are found in the 1994 legislation that implemented the Uruguay Round of multilateral trade agreements (P.L. 103-465). By March 1, 2005, the U.S. Trade Representative (USTR) must submit to the Congress a comprehensive report that includes a broad analysis of the costs and benefits of continued U.S. participation in the WTO. Once Congress receives this report, any Member of Congress may introduce a joint resolution withdrawing congressional approval of the WTO Agreement. Such a resolution must be introduced within 90 days after Congress receives the USTR's report. Debate on the resolution will offer Congress an opportunity to debate the costs and benefits of U.S. participation in the WTO.

2. Can the United States maintain its sovereignty as a member of the WTO? Some critics of the WTO have raised the question of whether the United States will lose its sovereignty as a member of the WTO. As a member, the United States does commit to act in accordance with the rules of the multilateral body. Article XVI(4) of the Agreement Establishing the World Trade Agreement, states, "Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements." Those annexed Agreements are the agreements reached during the Uruguay Round covering trade in goods, trade in services, intellectual property rights, dispute settlement, and other trade areas. The WTO, however, cannot force members to adhere to their obligations. The United States and any other WTO member may act in its own national interest. The WTO recognizes certain allowable exceptions such as national security. However, any multilateral institution is only as strong as its members' adherence to the institution's rules. If the United States or another member country chooses to take unilateral action contrary to WTO rules, that action may weaken the institution. It is a decision for U.S. policymakers whether the discipline imposed by the WTO is an acceptable cost for the benefits of more open trade.

3. Are U.S. interests served through the WTO dispute process? The United States realizes several benefits from the existence of a multilateral forum for trade

disputes. Such a forum in general allows countries to peacefully resolve disputes without having to resort to more drastic measures. The WTO dispute process presents a clear, understandable set of rules to be followed, and the process is nondiscriminatory among countries.⁶ The United States has been relatively successful in using the process as a complainant. As of January 14, 2005, the U.S. Trade Representative reports that 22 cases were resolved to U.S. satisfaction without litigation; 22 cases were won by the United States on core issues; in 4 cases the United States did not prevail on core issues; and 25 other cases were in panel stage, in consultation, or monitoring progress or otherwise inactive.⁷

There are many complaints, however, about the WTO dispute process. In some cases, countries have not adhered to dispute panels' findings. An example is the U.S. complaint against European Union (EU) trade restrictions on imports of beef produced with hormones. Critics say that some cases are filed for political, not economic, reasons. For example, some analysts say that the EU took no action for years against a U.S. tax benefit for exports, but then filed a challenge after a U.S. win in another case. Finally, the United States as defendant has lost several cases involving trade remedies, and this has led some Members to charge that the WTO dispute panels are assuming too much authority in interpreting trade agreements. The United States has not done well as respondent. As of January 14, 2005, the United States won 10 cases on core issues but did not prevail in 24 cases, while 14 cases were resolved without completing litigation, 10 cases were in the litigation stage, and 22 cases were either in the pre-litigation consultation stage or then inactive.⁸

4. Should the WTO cover traditional trade issues only, or should it be broadened to include nontraditional issues such as labor and the environment? The GATT agreement first established rules only on border measures (tariffs and quotas) and later added rules on certain internal practices that clearly had direct effects on trade in goods (e.g., subsidies, government procurement). The WTO-administered agreements further expanded trade rules to cover new areas such as trade in services, but did not include rules that reached into areas not deemed directly related to trade practices. U.S. businesses generally want the WTO to refrain from extending beyond these traditionally trade-related issues, because they argue that the greatest export opportunities will be achieved only if negotiators focus on trade barriers and do not include social factors.

Many groups, however, argue that the WTO should be expanded to include nontraditional topics. Two topics that have been at the center of current trade debate are labor and the environment. Labor groups argue that many countries exploit workers, including children, to produce low-cost products for foreign markets. Environmental groups want more consideration of the environmental effects of the production of goods for trade included under WTO rules. There is strong

⁶ For information on the WTO dispute process, see CRS Report RS20088, *Dispute Settlement in the World Trade Organization: An Overview*, by Jeanne J. Grimmer.

⁷ See the U.S. Trade Representative website at [<http://www.ustr.gov>], under Trade Agreements, Monitoring and Enforcement.

⁸ Ibid.

disagreement domestically on traditional and nontraditional topics in trade negotiations. Internationally, countries hold a wide range of positions on this question.

5. What is the role of Congress in how the United States participates in the WTO? Although the executive branch maintains a staff in Geneva and conducts trade negotiations in the WTO, Congress has an important role in how the United States participates in the WTO through its constitutional authority over the conduct of foreign commerce. In legislation (P.L. 107-210) that approved expedited procedures for legislation to implement trade agreements (“trade promotion authority”), Congress prescribed trade objectives for U.S. negotiators and required the executive branch to consult with it. During negotiations, Congress maintains oversight, and the Congressional Oversight Group, which was established under P.L. 107-210, has an active advisory role. Once an implementing bill has been introduced, Congress decides whether or not to approve those legislative changes necessary to implement the trade agreement.

The congressional role described above has evolved to help coordinate and streamline activities of the executive and legislative branches on trade matters, but this role is continually debated and reevaluated. Many of those involved in the debate question whether this executive-legislative relationship is still useful or appropriate. The Administration has called for greater authority in trade negotiations, saying that the need for repeated reauthorization of trade promotion authority interrupts U.S. trade policy and keeps the United States from participating in trade negotiations. However, many Members assert that Congress has given up too much of its constitutional role and should have a stronger hand in trade policy formulation and in oversight of trade negotiations.

Appendix 1. WTO Members (as of February 8, 2005)

Members (148)

Albania	Djibouti	Korea, Republic of	Philippines
Angola	Dominica	Kuwait	Poland
Antigua & Barbuda	Dominican Republic	Kyrgyz Republic	Portugal
Argentina	Ecuador	Latvia	Qatar
Armenia	Egypt	Lesotho	Romania
Australia	El Salvador	Liechtenstein	Rwanda
Austria	Estonia	Lithuania	Saint Kitts and Nevis
Bahrain	European Communities	Luxembourg	Saint Lucia
Bangladesh	Fiji	Macao, China	Saint Vincent and the Grenadines
Barbados	Finland	Madagascar	Senegal
Belgium	Former Yugoslav Republic of Macedonia (FYROM)	Malawi	Sierra Leone
Belize	France	Malaysia	Singapore
Benin	Gabon	Maldives	Slovak Republic
Bolivia	The Gambia	Mali	Slovenia
Botswana	Georgia	Malta	Solomon Islands
Brazil	Germany	Mauritania	South Africa
Brunei Darussalam	Ghana	Mauritius	Spain
Bulgaria	Greece	Mexico	Sri Lanka
Burkina Faso	Grenada	Moldova	Suriname
Burundi	Guatemala	Mongolia	Swaziland
Cambodia	Guinea	Morocco	Sweden
Cameroon	Guinea Bissau	Mozambique	Switzerland
Canada	Guyana	Myanmar	Chinese Taipei
Central Africa Republic	Haiti	Namibia	Tanzania
Chad	Honduras	Nepal	Thailand

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Chile	Hong Kong, China	Netherlands, for the Kingdom in Europe and for the Netherlands Antilles	Togo
China	Hungary	New Zealand	Trinidad and Tobago
Colombia	Iceland	Nicaragua	Tunisia
Congo	India	Niger	Turkey
Costa Rica	Indonesia	Nigeria	Uganda
Cote d'Ivoire	Ireland	Norway	United Arab Emirates
Croatia	Israel	Oman	United Kingdom
Cuba	Italy	Pakistan	United States
Cyprus	Jamaica	Panama	Uruguay
Czech Republic	Japan	Papua New Guinea	Venezuela
Democratic Republic of the Congo	Jordan	Paraguay	Zambia
Denmark	Kenya	Peru	Zimbabwe

Observer Governments (31)

Afghanistan	Holy See (Vatican)	Seychelles
Algeria	Iraq	Sudan
Andorra	Kazakhstan	Tajikistan
Azerbaijan	Lao People's Democratic Republic	Tonga
Bahamas	Lebanese Republic	Ukraine
Belarus	Libya	Uzbekistan
Bhutan	Russian Federation	Vanuatu
Bosnia and Herzegovina	Samoa	Vietnam
Cape Verde	Sao Tome and Principe	Yemen
Equatorial Guinea	Saudi Arabia	
Ethiopia	Serbia and Montenegro	

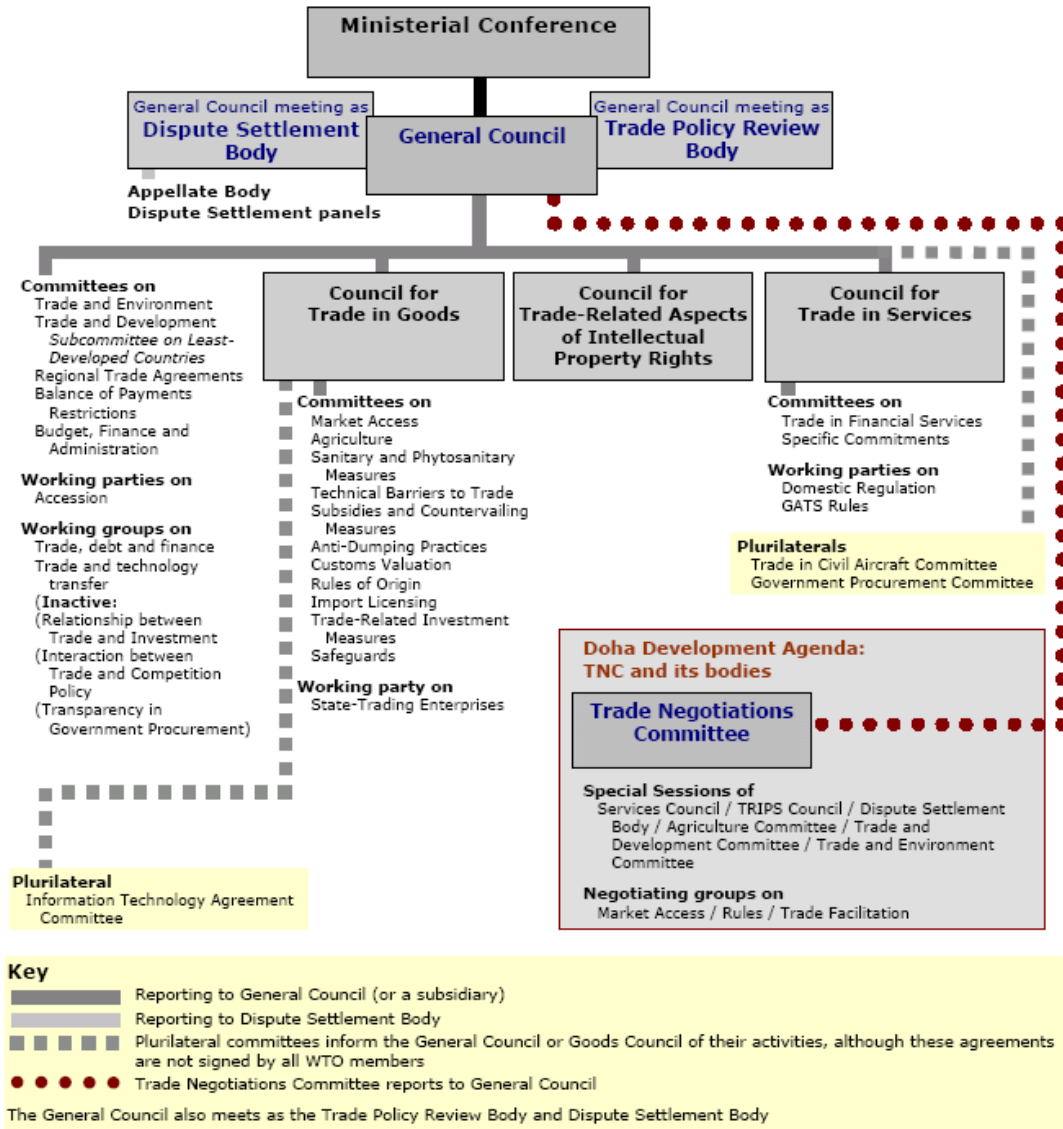
International Organization Observers to General Council (8)

Food and Agricultural Organization (FAO)	United Nations (UN)
International Monetary Fund (IMF)	United Nations Conference on Trade and Development (UNCTAD)
International Trade Centre (ITC)	World Bank
Organization for Economic Co-operation and Development (OECD)	World Intellectual Property Organization (WIPO)

Source: World Trade Organization web page [<http://www.wto.org/>]

Appendix 2. WTO Structure

All WTO members may participate in all councils, committees, etc., except Appellate Body, Dispute Settlement panels, Textiles Monitoring Body, and plurilateral committees. The negotiations mandated by the Doha Declaration take place in the Trade Negotiations Committee and its subsidiaries.



Source: World Trade Organization web page at [<http://www.wto.org/>].