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THE MAIN DIFFERENCES BETWEEN GATT 1947 AND THE WTO

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ABSTRACT

Purpose: The purpose of this article is to discover the aims behind applied the General Agreement on Tariffs and Trade (GATT) 1947 and the main reasons which led to replace it by the World Trade Organization (WTO) in 1994. Also, exploring the main differences between the GATT 1947 and the WTO and evaluating the impact of the WTO. **Methodology /approach:** This article has employed descriptive and comparative methods. The following materials were referenced as part of this article: books, journal articles, reports, agreements. **Findings:** This article has found that after the Second World War there was a need to establish an international regime to cancel trade barriers. Moreover, this article has discovered that, in the 1940s, the negotiators intended to create an International Trade Organization (ITO) in order to complete the Bretton Woods system, which includes the International Monetary Fund and World Bank. ITO was adopted to organise trading the goods. However, it failed because the United States Congress did not approve it. Then the GATT 1947 was provisionally applied according to the Protocol of Provisional Application, which was signed in late 1947. Finally, it has been found that the GATT 1947 faced many difficulties, which led to replacement of it by the WTO in 1994. The latter tried to address shortages in the GATT 1947. Nevertheless, there are some matters that need further improvement. **originality/value:** This article contributes to increase the understanding of the idea behind applied the GATT and discover the main reasons led to setup WTO and the limitations of the latter.

KEYWORDS

International Monetary Fund, World Bank, Multilateral Trade Agreements, Second World War, goods, services, ITO, IMF, GATT, WTO, GATS, TRIPS, TRIMs, BISD, NGOs, DSB and DSU.

THE MAIN DIFFERENCES BETWEEN GATT 1947 AND THE WTO

INTRODUCTION

After the Second World War there was a need to establish an international regime to cancel trade barriers (Simon 2012). In the 1940s, the negotiators intended to create an International Trade Organization (ITO) in order to complete with the Bretton Woods system, which includes the International Monetary Fund and World Bank. In Havana in 1948, a charter for an International Trade Law (ITO) was adopted to organise trading the goods. However, it failed because the United States Congress did not approve it (John 2013). Thus, the GATT 1947 which means; 'the provisions in the General Agreement on Tariffs and Trade, dated 30 October 1947...as rectified, amended or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement' (General Agreement on Tariffs and Trade 1994), it was intended to be under ITO, was provisionally applied according to the Protocol of Provisional Application, which was signed in late 1947. Therefore, the GATT 1947 was not meant to be an organization (John 2013). The GATT 1947 faced many difficulties, which led to replacement of it by the World Trade Organization (WTO) in 1994. The latter tried to address shortages in the GATT 1947. Therefore, many differences appeared in favour of the WTO. Nevertheless, there are some matters that need further improvement. This article will focus on the reasons behind the replacement of the GATT 1947, determining the main differences between the GATT 1947 and the WTO and evaluating the impact of the WTO.

WHY WAS IT NECESSARY TO REPLACE THE GATT 1947?

The GATT was considered as one of the most important factors, which played a vital role in recovery of the World from the desolation after the Second World War and it also achieved a huge growth (Pitroda 1995). However, it was not meant to be an organization as thus it created many difficulties, as described by Jackson (2007) as 'birth defects'. These defects amongst others led to the creation of the WTO instead of the GATT 1947. The most important defects maybe divided based on structure and non-structure as follows:

The reasons related to the structuring of the GATT 1947 treaty were: Firstly, a difficulty of amendment to the procedures (John 2013). This was due to delayed procedures, complicated to reach the numbers of acceptance that the states required, the bargaining influence involved in the procedures with a large number of states (John 2013). In the case of the agreement on the amendments, it was applied only between the parties, which accepted it. The authorities of the parties under the General Agreement of GATT 1947 were very vague (Pitroda 1995). Consequently, these difficulties led to certain inflexibility that harmed the improvement of the rules acclimatize into new changes (John 2013). Secondly, it remained to deal only with the goods (Michael 2012). Thirdly, it seemed as a secret regime, therefore, some documents were released for the first time in 1966 (Jackson 2007). Fourthly, the major problem was the link between the General Agreement of the GATT 1947 and side agreements, with about 200 (John 2013), sometimes the relationship was not clear and created various procedures for the different subjects. Some states were not parties thereof and consequently, the GATT 1947 was accused as a system of selective (John 2013). Fifthly, the relationship between the GATT 1947 and national law of some parties was very ambiguous (John 2013).

Furthermore, the sixth reason is based on the membership; there were many ways whereby the countries could become a party. Moreover, there were some ambiguous articles. For instance, Article XXXV by which some parties could withdraw from the GATT 1947 connection with other parties (John 2013). Seventhly, the weak dispute settlement procedures, because the provisions were diffused over the GATT 1947 Agreement (John 2013), it was based on the consensus, and therefore it was possible to block the request to establish a panel or to adopt the panel's reports and in some cases the government interfered in the panel's decisions (John 2013). As Pitroda (1995) said: 'many loopholes exist in the mechanism dealing with disputes regarding unfair trade practices'. In addition, there were no specific remedies (Jackson 2007). There was no timetable to tie every stage of the procedures (Simon 2012). Furthermore, it was seemed to harm the developing countries because it was formed based on diplomatic without formal procedures; and usually the elements of the power are considered (Jackson 2007). Finally, the market access became difficult, because the GATT 1947 failed to address the textiles and clothing trade and so therefore became more limited. In 1974, the Multi Fibre Agreement extended this restraint to cover some fiber goods. As a result, some countries could use some non-tariff measures. For example,

quotas and voluntary export restraints (Cable 1987). In conclusion, it appears there were reasons as to the structuring of the GATT 1947 treaty, which lead the WTO to replace it.

In addition, there are also other reasons which seem not to be relating to the treaty structure such as: Firstly, the GATT 1947 was treated as a lower by IMF and the World Bank, compared to other organizations and sometimes this led to confliction (Simon 2012). Secondly, in the 1980s and 1990s some industrial developed countries faced competition from industrial countries in Asia and Latin America. Therefore, the intellectual property rights became on the trade agenda (Michael 2012). Furthermore, the preamble of the WTO agreement apparently indicates other reasons (Bosschle 2013), for instance, the standard of living was decreased and the unemployment rate was increased (Robert E. Hudec 1993).

THE MAIN DIFFERENCES BETWEEN THE GATT 1947 AND THE WTO

The WTO generally follows the GATT 1947 institutional notions, in it is processes (John 2013). However, there are five main differences between them, which include:

Firstly: The GATT 1947 was an international treaty for trade, which was only valid temporarily and therefore, it did not become an organization (John 2013). In contrast, the WTO is an international organization with legal entity. The WTO agreements state that various bodies should carry out particular duties. For instance, the Ministerial Conference, which consists of all the members, the General Council (the WTO Agreement n.d.), the Dispute Settlement Body and Trade Policy Review Body (the WTO Agreement n.d.). Furthermore, the WTO has a Secretariat headed by a Director-General of the WTO (the WTO Agreement n.d.). The structure of the WTO may assist to manage it effectively in particularly in the amending process (John 2013), because, it makes clear procedures for different matters, such as interpretations, waivers and changes to the agreements (John 2013). Moreover, the WTO structure assisted to create the new GATT 1994 and can be easily withdrawn from the GATT 1947 (John 2013).

Secondly: The WTO Agreement is considered as one unit with numerous texts (John 2013). In other words, when the state accepts it automatically it becomes a member of all Multilateral Trade Agreements. In addition, the reservation is generally not permitted, (Art XV1: 5 of The WTO Agreement) states: 'No reservations may be made in respect of any provisions of this Agreement. Reservations in respect of any of the provisions of the Multilateral Trade Agreements may only be made in accordance with the provisions set out in those Agreements. Reservations in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement'. Conversely, the GATT 1947, had about 200 side agreements, which sometime stand alone. Consequently, the WTO Agreement and relevant agreements may be applied easily. Nevertheless, in the WTO Agreement, there are optional agreements, which include: Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, International Bovine Meat Agreement and International Dairy Agreement. The two latter were terminated in 1997.

Thirdly: The GATT 1947 rules covered only the trade of goods (John 2013). In contrast, the WTO has extended this scope to cover trade in new areas which includes: (a) Trade in services according to the General Agreement Trade in Services (GATS). The word services cover more than 100 different fields, for instance, banking and transport (John 2013). (b) Intellectual property rights under the Agreement on Trade Related Intellectual Property Rights (TRIPS). It is commonly referred to others intellectual property treaties. For example, Paris Convention for the Protection of Industrial Property. (c) Trade investment according to the Agreement on Trade Related Investment Measures (TRIMs).

Fourthly: The GATT 1947 dispute settlement was weak compared with The WTO dispute settlement system, because the latter seems more advanced and active (Lowe 2007). These reasons were that: (a) Generally, it is based on rules rather than negotiations (Matsushita, Mavroidis and Schoenbaum 2015). (b) The members must start with consultations (Bosschle 2013), (c) A complaining member has entitled to demand an established penal or an appellate penal and the reports of both are adopted automatically unless there is a consensus contrary to adoption (Lowe 2007), (d) The WTO system establishes a permanent Appellate Body, consisting of seven members who are appointed for four years (the WTO Agreement n.d.). It has the jurisdiction only to review the matter of law. (e) There is an improvement in quality, because the members of the panel are well-qualified, (Article (8) 1 of the DSU of Annex 2 of the WTO Agreement) states that; 'Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member'. In addition, the appellate body consists of individuals who have practiced the law and international trade law. (f) Sets specific time limits for each stage of the procedures, (Article 20 of the DSU of Annex 2 of the WTO Agreement) states that; 'Unless otherwise agreed to by the parties to the dispute, the period from the date of establishment of the panel by the DSB until the date the DSB considers the panel or appellate report for adoption shall as a general rule not exceed nine months where the panel report is not appealed or 12 months where the report is appealed...'. (g) Remedy is more apparent. If the respondent does not comply with the recommendations in a reasonable term of time or a satisfactory compensation has not been reached in 20 days after the expiry of the suitable period, then the winning member may request permission from the DSB to claim temporary remedies include the suspension of concessions or other obligations. (h) The implementing of the recommendations or other obligations is observed by the DSB.

Fifthly: The GATT 1947 seemed without transparency, as mentioned above. In contrast, the WTO system may be considered relatively transparent. This is due to the many agreements that the WTO provide for its members to declare their plans and strategies internal or to WTO (Simon 2012). For instance, under (TRIMs), the members must comply with their obligations on transparency and notification, (Article 6(1) of Agreement on Trade-Related Investment Measures of the Annex 1A of the WTO agreement states that: 'Members reaffirm, with respect to TRIMs, their commitment to obligations on transparency and notification in Article X of GATT 1994, in the undertaking on "Notification" contained in the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance adopted on 28 November 1979 and in the Ministerial Decision on Notification Procedures adopted on 15 April 1994', also (Article 7(3) of Agreement on Trade-Related Investment Measures) states that 'The Committee shall monitor the operation and implementation of this Agreement and shall report thereon annually to the Council for Trade in Goods'.

Finally: The GATT 1947 did not prohibit a quota regarding textiles and clothing. Conversely, Article 4 (2) of the Agreement on Agriculture of the WTO Agreement states that 'Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties (1), except as otherwise provided for in Article 5 and Annex 5', in other words the WTO states explicitly quantitative restrictions are not allowed.

THE GREAT IMPROVEMENTS OF WTO COMPARING TO GATT 47

It seems that the WTO is an improvement compared with the situation in the GATT 1947. For instance, the WTO dispute settlement system with a registered degree of acceptance (Davey 2009). This system attempted to address the shortcomings in the GATT 1947 as mentioned above, and all differences are considered as an improvement. Consequently, in the first decade of the WTO, more than 300 disputes were brought to the WTO system, and about 95 penal reports were approved. However, about 300 complaints were filed during the duration of the GATT 1947 (Sacerdot, Yanovich and Bohanes 2006). However, the settlement disputes of the WTO, seems to need more reforming as to the suspension of concessions, as this suspension executes by a winning member. Bosschle (2013) states that these measures appear not to be the best option and difficult to carry out by a member from a developing country against a developed country, because of the imbalance as regards to the economy and policy powers between them. In addition, the compensation may be only paid if the members agree about it. It has been argued that: 'available remedies give no assistance to injured members' (Georgiev and der Borghet 2006). However, retaliation may achieve temporary economic benefits, in general these measures could damage weaker countries. Moreover, it has been criticised by Georgiev and der Borghet (2006) that as being a suspension against the principle of the free of trade. As a result, the financial compensation or fines may give a solution by creating gradation considering therein the developing countries, (Simon 2012). In particular, this proposal may be better for the developing countries, as the implementation is not expected to happen in reasonable time and comparatively action is not practical, (Davey 2009). In conclusion, the WTO dispute settlement is considered a great improvement. However, it needs more development as regards to the developing countries and compensation.

Moreover, it has been argued that the WTO extends the scope to include the GATS being considered an improvement over the GATT 1947, because this agreement aims to liberalize the services between the members of WTO (Matsushita, Mavroidis and Schoenbaum 2015). In fact, it is important to the national and international economy, because it is considered the foundation of the modern economy (Simon 2012). For instance, telecommunication services and technology, in general, are found in a wide range of other sections that leads to an economic and productivity increase (John 2013). Consequently, the contribution of the trade in services may consider more than two thirds of World Gross Domestic Product (Simon 2012). Similarly, the TRIPS is considered as an essential development, since it achieves a relative degree of protection for intellectual property rights and enforcement (Matsushita, Mavroidis and Schoenbaum 2015). It seems that, the protection of the intellectual property rights led to an increase in the investment sectors, and technology transfer therefore becomes easier (Matsushita, Mavroidis and Schoenbaum 2015). Furthermore, it supports research in many fields, for instance, the pharmaceutical industry (Simon 2012). On the other hand, some civilian groups and NGOs criticised that, TRIPS is used to protect the domination over seeds, genes, technologies and medicines. Moreover, it obstructs the free trade (Simon 2012). Generally, the value of such products and services, as a result of the invention, without protecting the rights as to TRIPS, the trade in their items will not be developed (Bosschle 2013). However, TRIPS tries to balance its policies by providing some exceptions, for example, protection of humans, animals, and health and to prevent environmental damage. Furthermore, it seems fair to grant the under developed countries or developing countries, deferential treatments as to their agriculture inputs and medicines. For instance, under developed countries granted an extension to the grace period until 2016 as regards to their pharmaceutical products (Simon 2012).

Furthermore, it may be argued that the WTO is relatively transparent, as mentioned above, however, it was criticised by some members regarding the contribution of developing countries is less than expecting as regards to the decision-making procedures (Bosschle 2013). The reason behind this problem may be the gap between the developed countries and developing ones as regarding their power. Therefore, it has been proposed that, the developing countries must be assisted in order to improve their capability to participate positively in consultations (Steger 2008). Similarly, some members demanded to improve external transparency by various means, for instance, publishing the WTO secretariat working documents, minutes of the meetings and correspondences amongst the members of the WTO and its bodies (Matsushita, Mavroidis and Schoenbaum 2015). In addition, the WTO criticised that, the public are not allowed to attend the hearing at panel and Appellate Body or watching/listening to the hearing in any form, such as tapes (Jackson 2006). It may be argued that, it seems impractical to open all sessions to the public. On the contrary, it may be proposed that some NGOs may be selected to each session randomly. Moreover, it could be published on the WTO's website. Thus, it is may increase the knowledge for individuals, NGOs, and all states. As a result, it may lead to an increase in its supporters (Matsushita, Mavroidis and Schoenbaum 2015).

Moreover, there is a pressing need for transparency with regards to revenues of the members and other activities such as roads, in order to reduce the corruption, in particular, in the developing countries (Cottier, Oesch and Fischer 2005). In fact, the Agreement on Government Procurement (GPA) stays as a plurilateral treaty and almost all the parties are from developed countries. Therefore, efforts are required from all states in this regard to concluding a mandatory agreement. In other words, it requires total commitment from developing countries and real assistances from the developed countries, such as in its technical support.

What's more, the WTO has been criticized that, it has reached to level which makes it difficult to set up productive rules for decision-making or consultations, with the high number of members (Jackson 2006), which currently stands at 162 (WTO n.d.). This difficulty may harm the efficiency of the WTO. As Matsushita and others proposed that, an elected 'Executive Body' of the General council, based their objective and according to elements such as Gross Domestic Product, could contribute to the world trade, population, or to represent an developing countries and geographic balance (Matsushita, Mavroidis and Schoenbaum 2015). It has been evaluated that, an executive body consisting of some representatives may help to reach a suitable proposal by negotiation, like those formed in the IMF or the World Bank (Bosschle 2013). However, as to select the member, the first proposal may not be reasonable because the element of the population sometimes is not importance. In other words, a state with the small population may play a more vital role than one, which has a larger population. In addition, the second proposal may face difficulties because the developing countries existing in different areas have contrasting interests. It has been proposed that, for each geographical area selection a reasonable number of representatives who have votes, should equal the number of States represented by them for a fixed period; thus it seems more democratic and practical. Moreover, Van Den criticised that, the WTO has not a perpetual advisory body consisting of domestic parliaments or NGOs to make discussion within a civil society as existing in some international bodies (Bosschle 2013). It has been evaluated that, it is a good suggestion because some opinions may help the WTO bodies. In fact, this is accepted in a few cases, for example in 2003, the WTO Director-General formed the Informal Business Advisory Body (Bosschle 2013).

Although, there are some articles in the WTO agreements regarding the environment, such as Article XX on General Exceptions as to human health protection (WTO n.d.). In addition, the WTO Dispute Settlement Body has dealt with some conflicts as regards to the environment such as E C- Measures affecting asbestos and asbestos-containing products, in this case France prohibited import asbestos and products including asbestos; therefore, Canada asked consultations with the EC in this regard and alleged that, the Decree issued by France not comply with the WTO agreement. The (Appellate Body, 2001) upheld that 'the Panel's conclusion, under Article XX(b) of the GATT 1994, that the French Decree is necessary to protect human ... life or health'. Another example, United States-Import Prohibition of Certain Shrimp and Shrimp Products, in this disputes the United States banned import specific shrimp and shrimp products, which harvest by nets lead to kill Turtles. Therefore, some states include; India, Malaysia, Thailand and Pakistan argued that, the United States measures against the WTO agreement. The Appellate Body states that the United States measure, did not comply with Article XX of the GATT 1994. In other words, those measures were applied in a manner reflecting the arbitrary discrimination or unfair between states (the Appellate Body 1998). Nevertheless, some argued that, the WTO fails to address the environment problem; in contrast it appears to have succeeded with regards to the TRIPS. It seems useful if the environment matters were incorporated into the WTO with the same mechanism dealt with in the TRIPS (Thomas 2002). On the other hand, one could argue that, there is the WIPO originally deals with intellectual property rights; in contrast there is no one to deal with the environment. It could be criticised that, there is the United Nations Environmental Programme and many treaties concluded under its umbrella. In addition, one argues that, there is no need to be much internationally discussed in order to protect the environment, as it can apply domestically (Jackson 2006). It has been criticized that, the environment is transboundary. In addition, it depends on the abilities of states (Jackson 2006). In other words, the poor countries are very unlikely to protect it. Moreover, as suggested by Matsushita and others, the WTO may assist in protecting the environment by imposing border taxes against products that do not comply with environmental requirements (Matsushita, Mavroidis and Schoenbaum 2015). However, the questions remain, how much these taxes will amount to and how can that improve the specific products that harm the environment?

In addition, it seems practicable to establish an international body to look after the environment. Moreover, the WTO could be given a complementary jurisdiction to enforce agreements relating to the environment. Similarly, to the TRIPS, the developing countries must be granted full support and discriminatory treatment (McKenzie 2008). However, the idea of establishing the organization, has been criticized as part of its aim is to remove the environment from the jurisdiction of the WTO (Jackson 2006). It may be argued that, although the WIPO exists, the WTO plays a vital role in protecting the intellectual property rights. Furthermore, it has been criticised that, the Committee on Trade and Environment, established in 1995, seems unenthusiastic to make recommendations regarding the environment (Charnovitz 2007). It may be useful to appoint an advisory team to support this committee.

CONCLUSION

Although, the GATT 1947 was originally a temporary agreement it succeeded in respects to the increase in the trading of goods. In addition, there were reasons behind replacing the GATT 1947 by the WTO. For instance, there was not an institutional structure, difficulty in making decisions, huge number agreements and a weak dispute settlement system, making it appear as a secret regime, focusing on goods only and failing to address the textiles and clothing trade. Furthermore, this article has shown that, there are main differences between the GATT 1947 and the WTO as the latter is characterized as: an institutional organization, decisions not being blocked, strong dispute settlement system, more transparency and extending its scope to cover trade in new areas such as trade in services, intellectual property rights and investment. Moreover, this article has suggested that, more improvement may be required in some areas such as: compensation, decisions making, transparency and the environment.

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