

An Anatomy of Accountability at the WTO

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Abstract

Accountability is fundamental to democratic governance and good administration, but its multiple meanings and claimants challenge international organizations. Who *is* accountable implies who *can* be accountable, and the matters for which some process exists to hold them accountable through some effect on their behavior. The answers to those questions in the World Trade Organization (WTO) will differ depending on who is asking and on the values to be promoted, from international order, procedural fairness, prosperity and justice to sustainable development. An anatomy of accountability in the WTO finds many possible 'accountability regimes', illuminating the tension between vertical and horizontal accountability (domestic responsiveness and international obligation) and the challenge in choosing among horizontal accountability regimes (promise keeping by members): efforts to satisfy any one accountability claim can make achieving the others more difficult.

Policy Implications

- International organizations such as the WTO face a choice between horizontal accountability for international obligations and vertical democratic responsiveness.
- Institutional designers must choose among differing conceptions of the purposes for which organizations ought to be accountable, because the processes through which such accountability can be pursued will not be identical.
- Members of the WTO cannot be simultaneously accountable for commercial liberalization, social justice and sustainable development; nor can they be simultaneously accountable to each other and to everyone affected by the WTO.
- Fidelity to the aspirations of the WTO, which may conflict with a narrow reading of reciprocal obligation, is better managed in surveillance mechanisms rather than via the dispute settlement system.

Sites of apparent public authority ought to be accountable, but a burgeoning literature on accountability in international organizations has not reached consensus on what such a claim might mean in global governance. The difficulties begin with the definition of 'public authority': 'public' is usually understood by reference to a polity instantiated in a state but we have no such global polity, and the 'authority' of any international organization is ambiguous. Rather than consider these ambiguities across a disparate range of international organizations, this article is an anatomy of accountability in the World Trade Organization (WTO). This anatomy should be useful in evaluating claims about WTO institutional design, while being suggestive of how to think about accountability in other global governance contexts.

Accountability is now a 'magic concept': a term that has talismanic properties, one that can be invoked without a definition because its value is beyond question (Pollitt and Hupe, 2011). The only thing worse than alleging a lack of transparency in a decision-making process is to claim that the decision makers were unaccountable. Accountability describes a contingent relation among

actors but it is not a virtue in itself (Bovens, 2010), and many different values are conflated with accountability (Drake, 2012). While it now seems ubiquitous, the concept is hardly new in political theory. Borowiak finds it in ancient Athens and in 18th-century constitutional debates in the US (Borowiak, 2011). Others trace its roots in thinking about liberal democracy at least to Jeremy Bentham, who saw publicity as a kind of panopticon for government, a means to ensure that it took place in full public view (Baume, 2011). Contemporary transparency policies reflect an awareness that it is now harder for ordinary people in every country to understand and observe the administration of public affairs. Where once we could imagine that citizens could easily monitor politicians without help, and sanction them effectively by voting in elections, such simple models no longer describe political reality in a complex policy environment at home. One of the fundamental objectives of domestic administrative law – clear articulation of responsibility for a decision – is difficult if not impossible in global governance (Kingsbury et al., 2005, p. 54). An anatomy of accountability in one international organization, there-

fore, can be suggestive of how to think about accountability in global governance generally.

Every accountability regime is the answer to a set of questions about a particular domain. One can distinguish types of accountability based on the nature of the forum, the actor, the conduct and the obligation (Bovens, 2007). When international organizations have greater autonomy, more resources and the capacity to affect people directly (as with the International Monetary Fund (IMF)), accountability rests on the ability of the organization to keep its promises. When organizations have less autonomy, relatively few resources and their actions are limited to governments (as is the case with the WTO), accountability rests more on members' ability to keep their promises to each other. 'Is WTO accountable?' is a question that cannot be answered, but it is fair to ask 'who is accountable at WTO?' Who *is* accountable implies who *can* be accountable, *to whom*, and the matters for which some *process* exists to hold them accountable through some *effect* on their behavior. Because the answers to those questions will differ depending on who is asking, and will have a degree of unity between the need for accountability and the process to achieve it, every domain can in principle be subject to multiple accountability regimes.

The next section describes a generic model of an 'accountability regime' as it might apply to the WTO. This device is then used to construct an anatomy of different accountability regimes that seem plausible at the WTO. The third section describes the tension between vertical and horizontal accountability. Within the abstract conception of horizontal accountability we observe three distinct accountability regimes, posing a trilemma described in the fourth section. The fifth section contrasts accountability for commitments with the usual concern about 'compliance'. The conclusion shows that the variety of plausible accountability regimes at the WTO is in some sense incommensurable. One variable that distinguishes them is the value to be maximized – be it global order, commercial liberalization, social justice or sustainable development. Being simultaneously accountable for each one is both a process problem (about who has standing) and an outcome problem: more accountability in one dimension may mean less accountability in another.

Generic questions about accountability regimes at the WTO

The landmark article on this topic in international relations argues that 'accountability functions to *expose* and *sanction* two sorts of abuses: the unauthorized or illegitimate exercise of *power* and *decisions* that are judged by *accountability holders* to be unwise or unjust' (Grant and Keohane, 2005, p. 30; my emphasis). The WTO presents

an interesting problem in this context because it appears to be enormously influential in the governance of trade – it has even been condemned as a bunch of unaccountable bureaucrats dictating government policy – and yet it has no agency (Nordstrom, 2005). To speak of 'the WTO', which all of us do, is actually to conflate the treaty; the many committees of national officials created by the members to administer the treaty, conduct surveillance (peer review) and engage in periodic 'rounds' of negotiations on revisions to the treaty; and a secretariat created to support these various bodies. As an organization that aspires to near-universal membership, the WTO includes countries at vastly different levels of development, whose political and legal systems are based on divergent premises, and who are unequally penetrated by the social and economic forces of globalization. And the WTO is not one agreement, but dozens. While all members are bound by all agreements in the Single Undertaking, the constellation of active participants differs for each one. Nobody can find a singular place from which to see the WTO legal order as a whole, as if the WTO could mean the same thing for all actors, or be reflective of a single set of values. The treaty is a set of obligations accepted by members, but they pertain only to the actions of national governments. The famous Dispute Settlement Body, far from being autonomous, comprises representatives of all members, and its recommendations can only lead to actions by governments themselves. Who, then, should be accountable for any decision thought to be unwise or unjust?

Similarly, a focus on 'abuse of power' requires consideration of who has power at the WTO and what can be done with it. If current material power determined the relative hierarchy of WTO members it would be hard to understand the recent leading roles of emerging market members, notably China, India and Brazil, since only China has entered the ranks of top traders (see WTO, 2013). In light of the Single Undertaking, all members must accept all the obligations but that enables even the smallest member to use the consensus rule to slow the process down, as clubs (coalitions) of members do frequently. This institutional power of developing countries has also influenced debate on what *must* be discussed, even if there is not much the WTO can do, and what *cannot* be discussed, even if the WTO offers a useful forum. Deciding who might be abusing these forms of power in the WTO is not feasible.

My alternative starts with the recognition that accountability is a political project in which ends and means are inseparable – *how* we are accountable is part of *being* accountable (Fuller, 1981). Attention to the method of accountability matters, but Gerry Mashaw (2005) argues that the prior questions are about the purpose to be served and, therefore, the particular 'accountability

regime' chosen. Accountability regimes are defined by the answers to six questions. In his first formulation, Mashaw argued that analysts should ask:

Who is liable or accountable to whom; what they are liable to be called to account for; through what processes accountability is to be assured; by what standards the putatively accountable behavior is to be judged; and, what the potential effects are of finding that those standards have been breached (Mashaw, 2005, p. 17).

In more recent work, he suggests that we also ask *when* all the relevant actors will be called to account, and *when* those actions at issue took place or will take place (Mashaw, 2012).

Mashaw (2005) shows that the answers to the six questions will differ for domestic accountability regimes associated with: *public governance*; those that police the *marketplace*; and those that inhabit the nongovernmental, nonmarket, *social* realm. Answers will also differ depending on the device an accountability regime uses. For example, Mashaw notes, public governance accountability regimes include *political* regimes that operate through electoral processes or require public consultation; *administrative* regimes that operate through hierarchical control of subordinates; and *legal* regimes that operate through the authoritative application of law to facts. The accountability regimes generated by social networks will be more horizontal, using internally generated norms and sanctions. In the public governance realm, we observe significant role differentiation and accountability obligations tend to flow in only one direction. Elected officials owe an obligation of political accountability to citizens, for example, but not vice versa (Mashaw, 2005).

Table 1 shows the sorts of issues that might attach to Mashaw's questions at the WTO. The identities of both agents (who) and principals (to whom) are ambiguous, depending on how one understands the purpose of accountability. For example, if we focus on the accountability of individuals (to themselves and to others), how do we resolve 'the problem of many hands', in which it is unclear where to assign blame for the wrongdoing of an international organization (Drake, 2012, p. 20)? An equally ambiguous question is whether the 'what' for which actors are to be accountable is a promised action, or an outcome. Are members accountable for meeting imputed or implicit objectives, or the aspirations of the preamble to the WTO Agreement, or for the explicit obligations of the covered agreements? Accountability is not coercion. The prior standards on which it must rest can be explicit contractual obligation or implicit social norms. The latter is a minefield domestically, depending on which dominant group is able to define the relevant norm, but it can be even more contentious for an inter-

national organization (Borowiak, 2011, p. 8). And yet the normative force of WTO rules goes well beyond anything in its written texts, even if the consent implied by the consensus rule must be the basis of obligation.

It is one thing to ask if members' *actions* are consistent with their obligations both at home and in Geneva, but members must have promised an *outcome* if they are to be routinely accountable for it, and we have to be able to make causal connections between an action and the supposed outcome in order to make an accountability claim. Countries can take credit for doing what they said they would do, or can be blamed for not doing it, but the causal effects of a specific government action on trade flows can never be proved (Hudec, 1998, p. 10). For example, agriculture subsidies have been on a downward trend in Organisation for Economic Co-operation and Development countries for many years now (OECD, 2011), which could be a consequence of changes in world prices rather than anything to do with policy.

Perhaps the hardest question is about the 'effects' on actor behavior, since the usual notion in the literature is that shining a light on official action is insufficient: accountability must include some sanction or possibility of redress (Scholte, 2011). These consequences faced by actors range from social pressure to removal from office, and can involve military punishment or the wrath of investors but also include learning about appropriate policy or behavior (Borowiak, 2011, p. 7; Bovens, 2010). Surveillance and dispute settlement are not forms of supervisory accountability delegated by states to the WTO (contrary to Grant and Keohane (2005), p. 31). These tasks are undertaken by members and the WTO as such has no capacity to enforce any determination, which is why Mashaw's question about effects is a more useful frame than the usual focus on 'sanctions' – although losing the esteem of one's peers is certainly a sanction, and retaliation authorized by the Dispute Settlement Body is a form of redress. Instead of thinking about sanctions, we should ask the question 'what is the remedy' or 'what does the member seek to gain from raising an issue in a WTO body?'

Finally, all of those questions are affected by time lags – that is, long separations between decisions and their effects. Should members of WTO be accountable for the supposed effects of past policies on developing countries, or for the way current decisions might affect the life chances of people yet unborn? Is the assessment to be retrospective or prospective; continuous or episodic?

Who is accountable at the WTO?

The generic model of accountability described in the previous section specifies the questions to ask. Using them to construct an anatomy of the WTO helps identify a number of possible accountability regimes, but creates a

Table 1. Issues attached to Mashaw's six questions at the WTO

Who (agents)	To whom (principals)	About what	Through what process	Criteria/standard of assessment	With what effects on agents
Members (ministers, officials, delegates) or secretariat?	States as unitary actors represented by ministers, or networks of officials? Stakeholders (economic actors or NGOs)? Citizens?	Mandate or commitments? Outcomes or actions? Good management? Keeping promises, or abuse of power?	Delegation or participation? Ex ante or ex post?	Effectiveness? Procedural rules or substantive obligations? Codified law or informal norms?	Good in itself or instrumental to some valued end? Removal from office, social ostracism or policy change?

dilemma in choosing between horizontal and vertical conceptions. The response to the global financial crisis that began in 2008 illustrated such a dilemma. On the one hand, governments are accountable to their citizens to mitigate the effects of such an economic shock using whatever means are thought appropriate, regardless of whether the measures would be deemed 'protectionist'. On the other hand, consistent with multilateral principles, they are accountable to each other for not passing the burden of adjustment on to other governments (Wolfe, 2012).

The first row of Table 2 reflects the views of international-relations scholars, who see international organizations contributing to international order and stability. When the General Agreement on Tariffs and Trade (GATT) was created after the Second World War, the promotion of trade was seen as essential for peace, but so was giving the new welfare states scope to develop.

The procedural norms of the society of states that constitute the WTO include notably sovereign equality and the peaceful settlement of disputes. This objective of ensuring that legitimate policy differences between states do not lead to conflict comes from the 'constitutional structure' of the multilateral international order (Jackson, 2000; Reus-Smit, 1997; Ruggie, 1998). The GATT, negotiated in 1947, was a dynamic compromise between the need to end the managed trade of the 1930s and the equal imperative of preserving the social innovation of the New Deal. The WTO is founded on the same principled beliefs that open markets are good for prosperity and that nondiscrimination is good for stable international relations. This 'compromise of embedded liberalism' (Ruggie, 1983) is not a fixed bargain about levels of social spending or tariff bindings but a dynamic commitment to allowing countries to be different within a multilateral framework. These general

Table 2. The tension between vertical and horizontal accountability at the WTO

Who	To whom	About what	Through what process	Criteria/standard of assessment	With what effects on agents
Members	Members [citizens]	International order Reduce interstate conflict	Consensus Nondiscrimination Inclusive procedures	Collective norms Compromise of embedded liberalism	Withdrawal of esteem Exclusion
(1) Ministers	Citizens	Open markets Policy choice Abuse of power	Voting	Ideology or political preference aggregation	Approval or removal from office
(2) Ambassadors to the WTO	National governments	Implementation and legality Consistency of commitments with the country's interests	Oversight, monitoring	Instrumental rationality	Substitution of alternative decisions Removal from office
(3) Director-General and Secretariat	Ambassadors	Use of funds Appointments, including dispute settlement panelists	Hierarchical managerial oversight Reporting	Conformance with written norms and procedural justice	Substitution of alternative decisions Removal from office

principles of global governance are also constitutive of the norms of the trading system, notably nondiscrimination, transparency and especially the consensus rule: everyone has a right to participate in the making of binding rules.

In a vertical or hierarchical view of WTO accountability, shown on the lower three rows of Table 2, our understanding of accountability changes as we focus on the different relationships involved with the WTO. Some scholars think that basic administrative law concepts can apply to the secretariat and the decision-making process, such as whether the WTO operates in a transparent manner (Esty, 2007). Others focus on the internal accountability of international organizations (Grigorescu, 2008). Table 2 identifies three possible vertical accountability regimes, all of which mix accountability for fulfilling the purposes of the WTO with what Mashaw (2005) calls administrative accountability. In this table, we see that: (1) citizens might hold trade ministers accountable for the substance of policy through voting; (2) governments at home can substitute their judgment for that of their agents in Geneva, or they can remove the agent; and (3) governments through their representatives in Geneva can hold the secretariat accountable. All are forms of supervisory and fiscal accountability that constrain the WTO, as they do other international organizations (Grant and Keohane, 2005, p. 37). These three accountability regimes differ between seeing the WTO as a site for the elaboration of the trade regime (1, 2) and as an agency in itself (3).

Can these vertical regimes be effective? Governments are rarely sanctioned by voters for any multilateral trade policy decision, not least because of the difficulty of demonstrating a causal link between an undesirable state of affairs at home and some decision that a minister allowed to happen in Geneva. (Domestic concerns may well drive trade ministers, hence the Indian desire at the Bali Ministerial Conference in December 2013 to protect their food-security regime from any possible challenge in Geneva; that is accountability for the action at home, however, not for the decisions in Geneva.) The director-general is so tightly constrained in a member-driven organization that it is equally hard to hold him or her accountable for any decisions other than those affecting the administration of the organization itself. Ministers lack the time and expertise to fully monitor ambassadors, a familiar problem in the principal-agent literature. We see little evidence of ambassadors being fired for anything that happens at the WTO, and trying to make ministers or ambassadors accountable for all WTO decisions would paralyze even routine operations.

In contrast, we can easily ask whether members hold each other to account for their mutual obligations, including the obligation to apply certain administrative law standards in domestic trade-related governance (Stewart and Sanchez Badin, 2011). Indeed, much of the

work of the formal dispute settlement system is effectively judicial review of administrative action in the implementation of trade-remedy measures (antidumping, countervail and safeguards). In what Williams (2011) might call an intergovernmental model, accountability relationships are mostly horizontal, when agencies hold each other to account in a peer-review process of some sort. In horizontal accountability, entities independent of the executive government act on behalf of citizens, which is a different conception than notions of a chain of delegation reaching from citizens through elections to office holders. As in networks, reciprocity and mutual appraisal dominate. Members of the WTO are much more comfortable within a horizontal view of accountability given their deeply internalized belief that the WTO is a 'member-driven' organization; hence, only members themselves can hold the organization accountable (Birkbeck, 2010, p. 18). These different forms of horizontal accountability are shown in Table 3.

Horizontal and vertical accountability regimes will be in tension, and it is unlikely that both can be simultaneously successful. The challenge can be posed more sharply: transnational forces can weaken accountability to the extent that they constrain the ability of a state to be responsive to its own populace (Sperling, 2009), yet domestic processes cannot be determinative of the outcome of multilateral negotiations (Scharpf, 2000). Therefore, some scholars and civil society organizations now argue that international organizations must be as accountable as governments (Scholte, 2011). One of the dominant criticisms in the accountability literature based on a conflation of accountability and democracy is that because international organizations are not broadly inclusive of those whom their policy decisions affect, they are not accountable. The World Bank and IMF are criticized for failing to adequately take the interests of citizens in developing countries into account; the WTO is criticized for the power imbalance between developed and developing country member states (Drake, 2012, p. 15). But international organizations are not directly responsive to electoral politics, and how can citizens participate effectively in decisions that affect them when the decision may also affect hundreds of millions of people far away? The bulk of the world's population remain distant from the centers of power, and would lack the complex knowledge needed to join the relative handful of elite officials who dominate international organizations (Borowiak, 2011, p. 177).

Citizens cannot easily hold governments directly accountable for their engagement with international organizations, but civil society organizations acting as their delegates can try – a form of vertical or surrogate accountability (Koenig-Archibugi, 2010). Civil society organizations attempt to hold international organizations to account by acting in some way on behalf of those

Table 3. Accountability for achieving WTO objectives

	Who	To whom	About what	Process	Criteria/standard of assessment	Effects
Commercial policy	Members	Members	Informal principles and norms. Mutual obligations	Transparency (notification) Surveillance (committees) Third-party adjudication (dispute settlement)	Legal texts Diffuse reciprocity Economic values Collective or individual welfare	Mutual adjustment Withdrawal of esteem Exclusion Retaliation Enhance capacity to learn and adapt
Social justice	Members [developed countries]	Members [developing countries]	Special and differential treatment for developing countries	Transparency Surveillance in the CTD	Fairness, equality, legality, social cohesion, safety	Mutual adjustment Enhance capacity to learn and adapt
Sustainable development	Members	Members	Commitments in the Preamble to sustainable development	Discussion in the CTE	Underspecified in WTO	Policy that takes account of other living things and future generations

CTD, Committee on Trade and Development; CTE, Committee on Trade and the Environment.

affected by decisions (Halle et al., 2011; Lloyd, 2008; Pallas and Urpelainen, 2012). They represent citizens as principals assessing the actions of their agents in government: they can assess the official reports, provide additional information and provide alternative interpretations. They can, in other words, act as a corrective to the official story. Civil society organizations may find more or less information on the practices in question, and they may be able to offer compelling alternative interpretations. What is not clear is whether any action by civil society organizations can be seen as a substitute for participation in the WTO by citizens, and whether their engagement in efforts to justify decisions taken by the WTO to people affected by these decisions can be seen as sufficient (Dyzenhaus, 2008, pp. 12–13).

A related challenge is coherence between international organizations. The problem is familiar in the literature on multilateral environmental agreements (MEAs), where it is seen as a problem of regime interaction (Oberthür and Stokke, 2011). The WTO and MEAs do not necessarily communicate directly, nor do they engage the same officials in capitals, but they increasingly seek to limit the negative externalities of obligations in one organization for obligations in another, a form of accountability that featured in the mandate of the Doha Development Agenda (Stewart and Sanchez Badin, 2011; WTO, 2001). One can imagine the accountability problem where a potential trade issue involves other international organizations with different members, different sets of mutual accountabilities and different decision-making procedures. Such a dilemma would create a problem of policy coherence or policy deference

between the trade and other regimes (Bernstein and Hannah, 2012). The question of coherence with other international organizations was discussed in the Uruguay Round of GATT negotiations, and was included in the WTO Agreement. Extensive discussions are now taking place, without illuminating the deeper question of whether efforts to improve accountability in one international organization might undermine accountability in others (WTO, 2011).

Accountability for what at the WTO?

Differing understandings of its objectives affect judgments about the appropriate accountability regime at the WTO, whether seen in horizontal or vertical terms. On the one hand, the WTO is the locus for members holding each other to account for the actions of their national authorities. The implicit and explicit accountability regimes on the first two rows of Table 3 are recognizable to officials involved in Geneva. On the other hand, perhaps members collectively can be accountable for their management of the trading system, even to the people affected by its actions (Scholte, 2011). The accountability regime on the third row of Table 3 would be less recognizable to officials. These models move from a minimalist view that limits accountability to members and those directly responsible for decision making, to a widely expansive view that extends to a global *demos*, which implicates accountability in larger questions of democratic legitimacy.

The trading system was explicitly designed to serve the needs of commercial policy, which leads to the

classic understanding of accountability on the first row of Table 3. Do we still need to stress that the WTO is not a free trade agreement? That is, the Agreement Establishing the World Trade Organization and the agreements it covers do not require that all trade be free; they largely concern the regulation of national trade policy, but do not in themselves mandate the substance of policy. The key norm of the GATT is nondiscrimination: whatever the border measures or internal taxes and regulations a member maintains, they should not discriminate between members (Article I on most-favored-nation treatment), nor once admitted to the country should the member discriminate between foreign and domestic products (Article III on national treatment). The GATT is silent on how low or high a tariff ought to be, but specifies how tariffs are to be listed and bound in each member's 'schedules', and how they are to be administered. The 'substantial reduction' of tariffs mentioned in the preamble only comes up explicitly in Article XXVIII bis, where it is qualified by reference to tariffs so high that they discourage the importation even of minimum quantities. If the point of signing trade agreements is that binding commitments reduce policy uncertainty for economic actors, both importers and exporters (Handley and Limão, 2012), then the credibility of those commitments matters. The objective is not so much public accountability by governments, but making the WTO agreements more effective by reducing information asymmetries among governments. In the process column, the highly evolved mechanisms for notification, surveillance and settling disputes all serve this conception of accountability.

Developing countries, especially least developed countries, along with critics of the WTO, think it ought also to serve the needs of social justice, as shown in the second row of Table 3. While this accountability regime is still horizontal, members believe that developed countries are in some sense accountable to developing countries. The WTO agreements have dozens of provisions requiring special and differential treatment for developing countries. Concerns then include the often cumbersome administrative procedures required by the rules and inappropriate obligations, for example with respect to intellectual-property rights. Many developing countries assert that western countries have gained disproportionately from international trade and in some sense 'owe' something to developing countries. In such an accountability regime the intended effects are related both to the outcome (development-enhancing trade) and to process (greater formal and informal participation by developing countries), both of which require nonreciprocity. At its most recent ministerial meeting in Bali in December 2013, WTO members approved a new 'monitoring mechanism' for the Committee on Trade and Development (CTD) where all commitments for special and differential treatment can be

reviewed in one place. Presumably the metric in this new mechanism will differ from review by a sectoral committee, where the concern is whether members meet the objectives of the various agreements, not whether developing countries are given special treatment.

As shown in the third row of Table 3, the preamble of the WTO Agreement places all its objectives in the context of 'allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and enhance the environment' (Agreement Establishing the World Trade Organization, p. 1). This preambular goal remains hard to define in legal obligations. Unlike other WTO committees, the Committee on Trade and the Environment (CTE) is not directly responsible for any WTO agreements, although the CTE mandate includes considering 'the provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects' ("Decision on Trade and Environment" adopted by ministers at Marrakesh on 15 April 1994). Here one might imagine that the WTO as an entity ought to be accountable to everyone affected by what happens there but, as stressed earlier, the WTO has no agency. The WTO may be 'member-driven', but individuals seeking sustainable development are concerned about less immediate issues that transcend the commercial interests of specific states, and that may be potentially trade-inhibiting. This notion of accountability creates a tension between the positive benefit of the WTO for foreign or commercial policy purposes, with its powerful domestic business constituencies, and the lack of a voice for other living things and future generations, except perhaps in domestic procedures for providing instructions to officials attending WTO meetings.

Here is the inherent incompatibility in assessing accountability for the objectives of the WTO: whether seen as horizontal or vertical, these three accountability regimes cannot all succeed simultaneously. Each regime engages different stakeholders, often with incommensurable understandings of appropriate action and of the desired effect on the actors they presume to be accountable. That is, actors and stakeholders differ in who they think the actors are and what they ought to be accountable for. One actor cannot simultaneously be accountable to multiple accountability seekers about different things. The criteria members apply to surveillance of a subsidy notification on the first row may not be the same as the test a civil society organization would apply on the third row. Fossil fuel subsidies, for example, are seen as harmful to the planet by civil society organizations, thus a worthy subject for review by the subsidies committee, but such state support is not necessarily covered by the subsidies agreement (Casier et al., 2013). In the process

column, members have developed sophisticated mechanisms to hold each other to their promises (on the second row); while those mechanisms are relevant on the other rows, imbalances in the ability of members to participate may compromise their effectiveness.

Effects on actors: is accountability just another word for compliance?

Before concluding, it may be helpful to distinguish my horizontal conception of accountability from the familiar literature on 'compliance', because third-party adjudication is not the only way actors hold each other accountable for playing by the rules. Thinking in this way about accountability at the WTO is part of an attempt to assign the vital dispute settlement system a more modest place in our intellectual landscape by seeing a richer institutional context for monitoring the keeping of promises.

The usual distinction in compliance studies between enforcement (Downs et al., 1996) and managerialism (Chayes and Chayes, 1995) can be too limiting. The kind of monitoring associated with WTO transparency and accountability mechanisms is needed in both approaches; the difference is in who does it, and the consequences. Enforcement stresses coercion, or punishment of cheaters – which is often not observed in practice. Managerialism stresses opportunities for argument and persuasion. The key difference is in the behavioral assumptions. Downs et al. (1996) state that it is about the incentive structure – rewards and punishment – as if material interests trump any sense of obligation (Brunnée and Toope, 2010, p. 12). Chayes and Chayes (1995) posit that a desire to remain a member in good standing motivates compliance.

One of the questions in any international legal regime is the extent to which differing national laws are functionally similar, or recognizably similar. Good faith implementation of international obligations need not and does not result in identical national law. The purpose of transparency and accountability mechanisms is thus to allow verification by other members that national law, policy and implementation are consistent with each member's obligations. The meetings of WTO committees are opportunities for members to learn more about the incidence of a particular policy, and to understand the rationale for their use. As a result of questions and challenge in a committee, a government may provide more information, change policy or pressure other units of government to respond.

All of these institutional forms can be seen as ways in which members are called to account by other members. Even in the dispute settlement system, the desired effect is that action be brought into conformity with obligations. Formal dispute settlement cases are few in number relative to the range of matters covered by the WTO, or the extent of world trade. Rather than being the universe

of collective efforts to monitor implementation and compliance with the agreements, disputes are the small tip of a large pyramid (Horn et al., 2013; Wolfe, 2013). A formal dispute is an admission of failure: when the other parts of the system work, a dispute is not needed.

This constructivist take on accountability is not based on a rationalist logic of 'consequences' but on 'appropriateness', part of a theory of compliance with WTO obligations rooted in an interactional conception of the WTO as a legal system (Wolfe, 2005). In this more sociological approach to institutional analysis, actors are not reduced to their domestic characteristics, however important they may be. Some significant aspect of state action in the trading system is a response to the regime itself, not merely to national interest. State identity is socially constructed within a regime and is not a mere shadow of strategy or utility maximization (Schneiberg and Clemens, 2006, pp. 195–196; Klotz and Smith, 2007). This conception is not hierarchical, although power still matters. Members of the WTO are accountable to each other, but they are not each other's principals or agents, and the purpose is not to ensure that they are able to control each other (compare Borowiak, 2011, pp. 67–70; Elsig, 2011). Rather than seeing contracts as enforceable obligations entered into by rational egoists worried about cheating by their partners, pluralists think that contracts and treaties often furnish a kind of framework for an ongoing relationship, not a precise definition of that relationship.

How, then, do we understand the reciprocal obligation of the trading system? It begins with accepting that reciprocity means that law is not a 'one-way street': it depends on collaboration among actors to build shared understandings (Brunnée and Toope, 2010, pp. 7, 12) and confidence in the (diffuse) reciprocity of the system. Following Fuller's conception of law's 'inner morality' (Fuller, 1969, p. 106), fidelity to law depends on others also having fidelity to law (Brunnée and Toope, 2010, pp. 34, 38, 64, 101). Accountability mechanisms are best understood, therefore, as interactional opportunities for the constant development and affirmation of shared understanding of what fidelity to WTO obligations entails. If a committee makes a series of decisions in a certain way, actors (or at least active participants, admittedly a subset of the membership) know what the WTO law is without codification in the treaty or an appellate body decision. Members hold each other to account for meeting their mutual obligations under the WTO contract, and only members can decide if the explanations and justifications offered are sufficient (Kratochwil and Ruggie, 1986, p. 768). No external entity can subject the WTO to judicial review. In this sense, reciprocity and nondiscrimination are both the ends and the means of WTO: they are its purpose as well as its process. And this process provides few openings in Geneva for citizens or economic actors to vindicate claims for vertical accountability.

Conclusion: an anatomy of accountability at the WTO

My main purpose in constructing this anatomy was to try to understand the conflicting demands for accountability at the WTO. Following Gerry Mashaw, I show that the purpose to be served shapes each accountability regime, and that regimes differ in the answer to his six questions. Variation in 'to whom' members of the WTO are thought to be accountable, and about what, leads to incommensurable accountability regimes.

The first tension is the choice between international obligations and domestic responsiveness. The horizontal and vertical principles of Table 2 can conflict with each other if the executive faces different demands at home from the legislature, and abroad from other governments. Accountability in Geneva can impose requirements that are incompatible with domestic accountability when a democratically determined policy is found to be inconsistent with multilateral obligations, although the greater transparency demanded by Geneva can be useful to accountability seekers at home.

The choice of an accountability regime depends on differing conceptions of the purposes for which the WTO ought to be accountable, shown in Table 3, and of the process through which such accountability can be pursued. Prosperity, justice and sustainable development cannot easily be pursued simultaneously. The processes are different in each case, as is the standard of assessment. Hence when the WTO gives priority to one, the prospects for another are limited. This inherent incompatibility is not easily resolved. Commercial policy is the *raison d'être* for the WTO; we observe explicit accountability of members to each other for the obligations, but that accountability can be undermined by social justice claims for the needs of developing countries, or vice versa. Similarly, attention to claims for sustainable development limits the achievement of other values.

Accountability regimes commend themselves on neither their technical merits nor their democratic virtue, but on the purposes they serve for those seeking accountability and those called to account. The people engaging in the process on both sides have to see the benefit for themselves, otherwise accountability cannot work. That means the process starts with *ex ante* accountability to oneself, and then to one's peers, before considering the possibility of *ex post* accountability to others (Macdonald, 2004). But questions of standing arise quickly. Are delegates in Geneva accountable to their governments at home, to NGOs, to citizens or to future generations? Civil society organizations, business groups, trade unions and other relevant stakeholders seek to influence the ongoing discussions at the WTO, based on their own aims and interests. At the same time, concerns are often expressed about the ability of all members to

participate in the WTO, and about the ability of individuals affected by the WTO to know what is going on. Generating information and discussion aimed at learning by members, and policy improvement, can be compromised by a public process of trying to determine formal compliance with obligations; both might be undermined by a formal process of engagement with stakeholders. These tensions cannot be resolved simply by changing from a state-centric analytic lens to a polycentric lens that includes transnational actors and coalitions, and even networks of public officials (Ostrom, 2010; Skelcher, 2005).

Trying to construct an anatomy of accountability means trying to understand all the legitimate expectations of the WTO. Its rules only apply to the trade policy of governments, but those national trade policies affect citizens and economic actors, who are not appeased when a domestic decision is blamed on an international obligation. They may wish the WTO to make a government implement measures (or remove a measure) to suit their private interests, but only governments can invoke WTO mechanisms. Only members can demand the accountability of the secretariat, and the WTO itself has no agency. The WTO is a forum, not an actor. As currently designed, therefore, accountability at the WTO is horizontal, because only governments have standing.

If we focus on what is the 'right' thing to do rather than on whether an organization does the thing it said it would do, then the organization will be perceived as being unaccountable to the people it supposedly affects. In this view, legitimacy is not just a question of how well an organization works; it is a question of what it works to do. I argue instead that it is one thing to hold members of the WTO accountable for their specific commitments; it is something else to hold the WTO as a putative collective entity accountable for what it ought to have done in terms of its apparent general aspirations. In what sense could members be accountable for those preambular aspirations that are not given explicit textual form in the covered agreements, or other aspirations that one might legitimately have for the trading system? Such expectations might be fair, or might lead to claims that either the WTO should have different purposes or it should adopt processes that are unrealistic in global governance.

My argument, therefore, is not cosmopolitan. Part of the force of Mashaw's questions is lining up who has agency both to demand and to render an account. We must recognize the danger in imagining international organizations being accountable for things beyond the implicit and explicit obligations that members have undertaken, and the tasks that they have assigned to an organization. We risk conflating accountability for doing the right thing (e.g. open inclusive negotiations) with achieving the right thing (e.g. a trading system that would be supportive of sustainable development, or

some other goal), even if some of the goals we seek (like sustainable development) can only be achieved by doing the right thing (like open inclusive negotiations).

These conclusions are not meant to be a counsel of despair. Thinking in this way helps in evaluating the conflicting demands made of the WTO, and may be helpful in thinking about other international organizations. No international organization is a single point. It is only natural that where any of us sits determines where we stand on WTO accountability. Accountability is political; it requires choices. I favor horizontal accountability of members to each other, but my view is inherently partial. Knowing who is accountable at the WTO therefore depends on knowing why you are asking the question.

Notes

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