Who is accountable at the World Trade Organization?

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The World Trade Organization (WTO) is widely seen as an important entity in global governance. In modern democratic thinking, such sites of significant public authority ought to be accountable, but a burgeoning literature on accountability in global governance has not reached consensus on what such a claim might mean in practice. The difficulties begin with the definition of “public”, which is usually understood as a domain in the control of a polity instantiated in a state, but we have no global polity. Accountability as such is not mentioned in WTO agreements, and explicit consideration of accountability is rare in the voluminous WTO reform literature. The first step is uncovering who might be accountable at WTO.

The response to the global financial crisis that began in 2008 illustrated a familiar accountability paradox. On the one hand, governments are accountable to their citizens to mitigate the effects of any economic shock using whatever means are thought necessary, regardless of whether the measures would be deemed “protectionist”. On the other hand, consistent with multilateral principles, they ought not to pass the burden of adjustment on to other governments. The Leaders of the G20 largest economies ought also to be accountable for their commitments to resist protectionism (Wolfe, 2011). Here is the paradox: transnational forces can weaken accountability to the extent that they constrain the ability of a state to respond to the wishes of its own populace (Sperling, 2009), yet domestic processes cannot be determinative of the outcome of multilateral negotiations (Scharpf, 2000). Helping states mediate these conflicting domestic and international pressures is a traditional role for international organizations, but if the international organization is itself a site of public authority, ought not it to be accountable? International organizations are traditionally thought to derive their legitimacy in two ways, from the consent of participating governments, and from effectiveness in meeting their objectives. Scholars and civil society organizations now argue that international organizations must also be as accountable as governments (Koenig-Archibugi, 2004; Scholte, 2011). But international organizations are practically immune 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?

Accountability can be conceived as a form of input legitimacy, constraining abuse of power by assuring government by the people. It can also be a form of output legitimacy, ensuring government for the people (Steffek, 2011). As will be shown below, horizontal accountability is the most practical form in global governance, but vertical accountability through civil society organizations helps to ensure that the needs of people not states are the focus.

This paper has a limited ambit. It takes the importance of asking about accountability for granted, and looks only at the WTO. The immediate objective is to ask who might be accountable at WTO, which requires considering what sort of entity WTO is, in the next section, and then extending an analytic framework developed by Jerry Mashaw to uncover the various possible accountability mechanisms, in the subsequent section. Seen in this analytic framework, WTO has numerous “accountability regimes”, which creates a polycentric problem because the regimes overlap and conflict, not least because each matters to a different set of stakeholders. The paper concludes by suggesting that WTO might face an accountability trilemma: efforts to enhance one aspect of accountability might undermine others.

1 (For a recent survey, see Hoekman, 2011; see also Deere-Birkbeck and Monagle, 2009; For one early examination of WTO accountability in comparative perspective, see Woods and Narlikar, 2001).
What sort of entity is the WTO?

To ask about accountability in international organizations implies an assumption that what happens there is in some way consequential. Realists in the international relations literature would not ask about the accountability of the WTO because they see all international organizations as epiphenomenal. Other scholars might not bother because the power and interests of the largest states determine whatever happens in Geneva. If what happens there is consequential, is the WTO a forum to hold governments accountable for their interventions in the market, or an unaccountable constraint on their sovereignty? Should the WTO be understood as a policy making body with a powerful court for enforcement, or is it analogous to a domestic administrative agency?

Notions of accountability are rooted either in democratic theory, or in Anglo-American administrative law. The analytic task for this paper would be simplified, because administrative law concepts would apply, if we see WTO as being like an administrative agency. I think we can, though the domestic coherence between the agencies of the administrative state is not replicated in global governance with its indirect authority and splintered discretion.

I claim that WTO as an administrative agency is a forum, not an actor, one whose practices arise in social interaction (Wolfe, 2005). The formal constitutional language used by lawyers seems discordant with the WTO (Dunoff, 2009), but the absence of a canonical text does not mean that the regime has no constitutive basis. The notion of the WTO and its negotiation rounds as a Single Undertaking is a constitutive metaphor that implies both a definition of the legitimate actors and of the process they use to arrive at collective decisions (Wolfe, 2009). The Single Undertaking shapes collective life in the trading system whether Members are contemplating new negotiations, concluding an agreement, or interpreting the results. Distinguishing between making rules, administering rules and enforcing rules in administrative law, or in political terms between bargaining, monitoring and enforcing, is analytically convenient, but how states do one determines the others. The same people using the same techniques negotiate agreements; bring disputes; raise complaints in committees; and tacitly modify the rules by their practices or acquiescence to matters raised (or not raised) in transparency procedures. Their understanding of the regime, and of their own place in it, is equally seamless.

The nature of social interaction in the WTO as a forum is the fundamental accountability mechanism. The foundation of the WTO is not power, but the Single Undertaking, all the way down. Some scholars suggest instead that the Single Undertaking rests on the rock of power (Steinberg, 2002, 342-3). It may be that the EU and the U.S. dominated GATT/WTO decision making in the Kennedy, Tokyo and Uruguay Rounds, despite a consensus rule based on sovereign equality, but the rich countries have not been able to dominate the agenda of the Doha Round, and if they ever wanted an outcome (an open question), they were not able to force one. The growing salience of the Single Undertaking limits everybody’s power, whether compulsory power based on material resources, or institutional power, based for example on the ability to deny consensus (Barnett and Duvall, 2005, 14-5). Powerful states that may want a deal cannot easily dismiss the concerns of any Member, especially Members allied with others in clubs. (No deal is possible, however, if the powerful states do not want one.) The Single Undertaking is part of how the WTO ensures that all Members have a voice and a veto in the evolution of the WTO acquis, thereby flattening, or at least diminishing hierarchies, and creating the possibility of mutual

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2 Institutions all the way down has to be qualified in the same ways as “ideas all the way down,” but the Single Undertaking does shape power and interest. See (Wendt, 1999, 371).
accountability based on diffuse reciprocity. The Single Undertaking does not eliminate power as a factor at the WTO, but it does limit the possibility for its abuse.³

The WTO as a forum is not a legislature with policy responsibilities, despite the frequent characterization of negotiations as a legislative function. The WTO Agreement itself and its covered agreements are entirely procedural. Administrative law concerns can be seen most obviously in Article X of the General Agreement on Tariffs and Trade (GATT) on “Publication and Administration of Trade Regulations”.⁴ The covered trade agreements largely concern the regulation of national trade policy, but do not in themselves make policy. The dispute settlement system, the second mode of WTO action, is most useful for apparent breaches of the rules. Accountability for implementation rests with the committees, rather than the dispute settlement system. WTO Committees meet to discuss whether the rules work, and to discuss the interpretation of existing rules. Here we find the growth of new understandings that will eventually be codified. Here is where we find whether the WTO operates in a transparent and accountable manner, and whether Members hold themselves to account for their mutual obligations.

Consider the example of the Agreement on Sanitary and Phyto-sanitary Measures (SPS). Its objective, as stated in its preamble, is that “no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade” (WTO, 1998). This language is an attempt to specify how the non-discrimination principles of the GATT (Articles I and III) and the general exceptions for domestic public policy (Article XX) should apply in this domain. Distinguishing between a necessary measure, and protectionism is not easy. The WTO has no capacity, or authority, to get involved in the substance of social regulation aimed directly at the actions of individuals and firms, but the administration of these regulations is its domain.

The agreement seeks to resolve the tension between necessity and protectionism, or justifiable and arbitrary measures, in three ways. The first is by encouraging Members to rely on hitherto underutilized international standards because those standards have already passed international scrutiny. Food safety is a domain with many sites of normative authority, including the Organisation for Economic Co-operation and Development (OECD), the Codex Alimentarius Commission, the World Organization for Animal Health (known as the OIE for Office International des Epizooties) and the International Plant Protection Convention. The idea is not to make the norms and standards of other international organizations “enforceable” obligations—it is simply to recognize and validate other sites of normative authority. Since such standards will not always be appropriate, however, the second device is a procedural requirement that any national deviation from an international standard should be based on a

³ It follows that the canonical view of international economic law, seeing the WTO as the ‘trade constitution’ establishing the basis for a ‘rule-oriented’ diplomacy in the face of the stipulated alternative, ‘power-oriented’ diplomacy, is over-simplified (Jackson, 1997).

⁴ Some scholars attribute this text to the US Administrative Procedures Act of 1946, whose language it replicates. But the GATT provisions are traditional. Transparency and independent judicial review had been part of English administrative law since the seventeenth century. By the middle of the nineteenth century, English administrative law had all the features familiar to us today, including independent agencies, regulation-making, and sunset clauses (Arthurs, 1979; Arthurs, 1985).
scientific risk assessment. This device is subject to the dispute settlement system, which has been a source of most of the controversy around the agreement.

A preoccupation with adjudication in domestic administrative law means that relatively less attention is devoted to non-judicial institutions of accountability, to other institutions that focus on how governance is exercised, such as a Freedom of Information and Privacy Commissioner, or an Auditor-General, not to mention just also non-governmental institutions as a free press, or an independent bar (Macdonald, 2004; Macdonald, 2005b). The third device used under the SPS Agreement, therefore, is regulatory transparency (Wolfe, 2003). “Transparency” here is a device for managing administrative discretion. It refers not only to Members keeping each other informed about their sanitary and phyto-sanitary measures, but also to ensuring that other Members are able to query whether a given SPS measure is the most appropriate solution to a problem. In the WTO, that means both first generation transparency, or “right to know” procedures, like notification of new trade policy measures, and second generation monitoring and surveillance, a network process where Members hold each other to account (Collins-Williams and Wolfe, 2010).

In sum, the WTO is like an administrative agency. The rules and practices of the WTO are initially a form of administrative law, which means they could be assessed in light of what academics call Global Administrative Law, defined as “the mechanisms, principles, practices, and supporting social understandings, that promote or otherwise affect the accountability of global administrative bodies, in particular by ensuring that they meet adequate standards of transparency, participation, reasoned decision, and legality, and by providing effective review of the rules and decisions they make (Kingsbury, Krisch and Stewart, 2005, 17).” In the next section I develop an analytic framework that can help to illuminate the variety of accountability regimes that might be said to operate at or in the WTO.

**Six questions to ask about any accountability regime**

Accountability is a political project. Attention to its methods matters, but the prior questions are about the purpose to be served and the particular accountability regime chosen (Mashaw, 2005, 16). In liberal states the fundamental accountability relationship is between the people as principals and government officials as their agents. Mashaw argues (2005, 17) that

> in any accountability relationship we should be able to specify the answers to six important questions: 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. These basic features, who, to whom, about what, through what processes, by what standards and with what effects, describe what I will call an “accountability regime.”

Mashaw shows (2005, Figure 2 and passim) that answering the six questions will differ for domestic accountability regimes associated with public governance; those that police the marketplace; and those that inhabit the non-governmental, non-market, social realm. Answers will also differ depending on the device an accountability regime uses. For example, public governance accountability regimes include political regimes that operate through electoral processes; 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, there is
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.

The difficulty of scaling up from domestic accountability regimes to global governance is not new. No external entity can subject the WTO to judicial review, unlike agreements notified to the United Nations where performance is reviewable by the International Court of Justice. So how do we construct ideal-type “accountability regimes” that might apply to the WTO?

Table 1 shows the sorts of issues that might attach to these questions at WTO. Both agents and principals are ambiguous, depending on how one understands the purpose of accountability, and other ambiguities abound. Are Members accountable for meeting the abstract objectives of the Preamble to the WTO Agreement, or for the specific obligations of the covered agreements? Do official delegates represent all principals, or is some form of citizen participation possible? Is the usual accountability concern with constraints on abuse of power salient, or is it more important that Members keep their promises (Najam and Halle, 2010)? Perhaps the hardest question is about the effects on actor behavior, since the usual notion in the literature is that accountability must include some sanction or possibility of redress. The standard approach to accountability in global governance sees it as a remedy for abuse of power (Grant and Keohane, 2005), offering the possibility that those affected by a decision can sanction an office holder (Scholte, 2011). In short, is accountability a good thing in itself, or instrumental to some end?

Accountability can be both a vertical and a horizontal principle. Table 2 illustrates a hierarchical view of WTO accountability, showing how our understanding of accountability changes as we focus on different relationships involved with the WTO. The first two rows are substantive; the other two are what Mashaw call administrative accountability. In this table, we see that citizens can hold Ministers accountable for the substance of policy through voting. Governments at home can mostly hold actors at WTO accountable on what are essentially procedural grounds, but the principals can substitute their judgment for that of their agents, or remove the agent. Citizens cannot easily hold governments directly accountable for their engagement with international organizations, but civil society organizations acting as their delegates can try, which is a form of vertical accountability. The top and the bottom of the table also differ between seeing the WTO as an agency in itself and as a site for the elaboration of the trade regime. In the latter, what Williams (2011) might call an intergovernmental model (Table 3a, accountability relationships are mostly horizontal, when agencies hold each other to account in a peer review process of some sort. As in networks, reciprocity and mutual appraisal dominate. A key dimension here is the interplay between in-house and out-house review – between review of outcomes, and review of processes. Members are much more comfortable with 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 or its Secretariat accountable (Birkbeck, 2010, 18). In a horizontal conception, the question is not constraining the abuse of power, but keeping promises, or accountability for commitment. Horizontal and vertical principles can conflict with each other, if the Executive faces different demands from the Legislature and from other governments, an instance of the embedded liberalism paradox described above.
As shown in Table 3b [about here] the crisis monitoring mechanism can be seen as a horizontal accountability regime, facilitated by the Secretariat. Members are accountable explicitly to each other, and only implicitly to their citizens. Accountability to mandate is a constant: even in their response to the financial crisis they are accountable first for their general WTO obligations to manage the trading system so as to avoid conflict between states, to ensure transparency, and to promote global prosperity. Second, G20 Members are also accountable for their promises, and other WTO Members and Observers were implicitly expected to join the monitoring exercise.

Civil society organizations play an essential role in holding international organizations to account by acting in some way on behalf of those affected by decisions (Drake, 2011). Though still a delegation model—the civil society organizations represent citizens as principals assessing the actions of their agents in government—civil society organizations 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. They may find more or less information on the practices in question, and they may be able to offer compelling alternative interpretations. Vigorous civil society organizations reports may also increase the policy space available to Secretariats, ensuring that Members allow a more ambitious and comprehensive transparency exercise than might otherwise be possible. For example, Global Trade Alert (GTA) implicitly set itself up on a vertical delegation model as an alternative accountability mechanism to assess whether states implemented discriminatory policies in the crisis, as shown in Table 3b. This potentially valuable role can be obscured by disagreement over the many different definitions of accountability. These different definitions affect the scope of accountability, both in terms of the number of people who ought to be held accountable: 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.

When we turn to consider the apparent purposes of the WTO, the picture becomes more complex, illustrating the wisdom of Mashaw’s conclusion (2005, 34) that

beliefs about how administrative decisions should be made, and how they should be made accountable, are parasitic on beliefs about the purposes of programs. And because programmatic purposes are contestable, and accountability regimes have strengths and weaknesses, abstract normative specification of the goodness of one or another accountability regime verges on the useless.

Differing understandings of the substantive role of the WTO affect judgments about the appropriate accountability regime. On the one hand, the WTO is the locus for Members holding each other to account for the actions of their national authorities. On the other hand, Members collectively can be accountable for their management of the trading system, perhaps, Scholte (2011) says, to the people affected by its actions. Accountability runs in many directions to and from capitals. Table 4 [about here] is an attempt to show other accountability regimes centred on the WTO.

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5 While the Secretariat gathered and verified the data, which was subsequently released on the authority of the Director-General, the Members are all accountable to each other, not to the Secretariat. See (Wolfe, 2011).

6 This mandate is found in the norms and practice of the WTO, and in the Preamble of the WTO Agreement.
The different definitions and conceptualizations of accountability—and the different ends to which people use them—underscores that accountability is a political project. Not only is there a lot at stake when there are multiple actors talking about accountability obligations (and sanctions), but if academics, WTO members, and NGOs have different understandings of accountability then they risk talking past each other. If this happens then not only will accountability be compromised, but other goals of global governance could be compromised. This danger is especially pronounced if these different understandings of what accountability entails—and where it “fits” in the larger discourse of global governance—are ones that are not made explicit. It is one thing to disagree on the definition, scope, and mechanisms of accountability in the global context (something that is perhaps inevitable but also something that the parties can work through); it is another thing, however, to start from different premises and, by failing to discuss the concept in a way that is mutually accessible, to talk past each other for want of a common understanding of the terms of the debate.

International relations scholars see international organizations contributing to international order and stability. When the GATT was created after the Second World War, the promotion of trade was seen as essential for peace, but so was leaving the new welfare states scope to develop. Postwar multilateralism was based, therefore, on the compromise of embedded liberalism (Ruggie, 1982). But the trading system was also designed to serve the needs of commercial policy, which would lead to a different understanding of accountability. Perhaps the most important role of the WTO is to reduce the uncertainty facing economic actors entering export markets (Ciuriak, et al., 2011). Developing countries, especially LDCs, and critics of the WTO think it ought to serve the needs of social justice. Concerns then include the often-cumbersome western administrative procedures required by the rules, and inappropriate demands, for example with respect to intellectual property rights. Many academics and civil society organizations 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 non-reciprocity.

Finally, 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...” WTO may be “Member-driven”, but individuals seeking sustainable development are concerned about issues that transcend the interests of specific states, issues that are not necessarily an immediate concern 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 and the lack of a voice for other living things and future generations. Negotiations based on the sum of Members’ self-interest and the arguably narrow mandate of the WTO along with its closed participation and consensus decision-making may foster lowest common denominator policy making.

A different principle is horizontal accountability 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). Some scholars have considered the problem of policy coherence or policy deference between the trade and other regimes (Bernstein and Hannah, 2011). The question of coherence with other international organizations was discussed in the Uruguay Round of GATT negotiations, and included in the WTO agreement. The latest Secretariat report details the extensive discussions that take place now, without illuminating the deeper question of whether efforts
to improve accountability in one might undermine accountability in others (WTO, 2011a).

Each of these accountability regimes 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 third parties differ in what they think they are, or ought to be accountable for.

**Reporting on accountability for commitments**

Accountability requires information flowing in many directions—from Members to WTO; from subsidiary bodies to the General Council; from Geneva to capitals; and from the WTO to civil society organizations and the public. Accountability is therefore dependent on all the forms of transparency at WTO, including timely notification. Accountability also depends on reporting. The academic literature to the extent it notices formal reporting requirements is mostly concerned with the rules on financial reporting by agencies that spend significant amounts of public money, but some of the usual questions about transparency would seem to apply to public reporting. Analysts consider five factors in assessing whether transparency can be a useful policy tool in a given context:

1. **Specific policy purpose**: Information works well when users and providers share objectives, but it does not work at all if it is unrelated to anything providers or users can do to change their situation.
2. **Specified discloser targets**: who must provide the information?
3. **Defined scope of information**: what information is needed to address the policy problem?
4. **Evident benefits**: providers of information must see how doing so helps them meet their own objectives. Do they believe that their provision of information will be analyzed, aggregated and disseminated in a way that is helpful to them or crucial for the regime?
5. **Defined information structure and vehicle**: information must be aggregated and presented in useful forms.

Variation on these five factors helps explain why observance of notification provisions in WTO Agreements varies relative to what is being notified and who is the agent of the notification. The clearer and better defined the subject matter of the notification, the more likely WTO Members have been to notify. The nature of the subject matter and its relation to WTO obligations is also an important factor. We observed a difference between notification of a) things that might be relevant to new or ongoing negotiations, b) measures that could be subject to a dispute or questioned in a committee, and c) routine policy change. Differences can also be related to whether the things to be notified have to do with the operation of the regime itself (direct compliance with a WTO rule), some set of government policies or actions (subsidies or regulations), or something about economic circumstances within a Member (statistics).

It follows that reporting for accountability purposes may have different needs in each of the accountability regimes in Table 4. Whatever the metrics, internal needs may differ from external. Some information would help the Secretariat, or a committee, to better meet their goals. Other reporting will be useful to the General Council or capitals or civil society organizations in holding the subsidiary bodies to account. Being clear on the purpose of reporting, and the intended audience, would seem to be vital.

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7 This section is based on (Collins-Williams and Wolfe, 2010).
What then are the questions to ask about public reporting? Do the Secretariat and WTO bodies report on the right things? Is the data complete, and aggregated in helpful ways? Are the reports useful for the various purposes to which they might be put? Having in mind GATT practice, Members discussed the need for annual reporting as soon as the organization was created. Broad instructions to report are contained in an early decision of the General Council, (WTO, 1995). Subsidiary bodies are to report either to the respective sectoral Councils (Goods, Services and TRIPS), or directly to the General Council. The required reports are to be factual in nature, containing an indication of actions and decisions taken.

Committees seem diligent in meeting their reporting deadlines, and failures are noted in the General Council, but in the absence of more specific requirements, each Committee follows its own interpretation of what should be presented in its Annual Report. Some reports are more detailed or technical than others, and they vary widely in length—some are as short as one page. Most reports are low key. Some explain the challenges faced during the year and the actions or inactions taken in response, others do not.

Finding reports on the WTO website can be quite a challenge, especially for novice users. Whether this information is presented in a way that is readily comprehensible by delegates and capitals is separate from whether citizens and civil society organizations acting as their delegates can find it. The WTO website provides a vast amount of information, much of it hiding in plain view.

The first test of accountability is whether WTO did what it said it would do, that it took the actions it is required to take, and whether Members acted consistently with their obligations. Most WTO reporting is aimed at this objective. To take one example, we have previously looked at public reporting on notifications (Collins-Williams and Wolfe, 2010), which is inconsistent and inadequate. The Secretariat’s annual broad overview on compliance with all notification requirements (WTO, 2011b) is opaque to all but experts. Most committees take general note of compliance with their agreement’s provisions, but Members are loath to direct too much attention to each other’s shortcomings.

A more demanding form of accountability is whether the intended actions had the desired effect, but reporting on outcomes is harder than reporting on actions. This type of accountability poses significant analytic challenges, but the Secretariat does some of this sort of reporting through the Trade Policy Reviews of individual Members and through the annual “Overview of Developments in the International Trading Environment,” which became the vehicle for reporting on the substance of how Members responded to the global financial crisis (Wolfe, 2011).

The accountability trilemma

Accountability regimes do not commend themselves on their technical merits but because of the purposes they serve. The people actually engaging in the process have to see the benefit for their work, otherwise accountability cannot work. That means the process starts with accountability to oneself, and then to one’s peers. Are delegates in Geneva accountable to their principals at home? Are participants in small group meetings in Geneva accountable to the Members they purport to represent? Civil society organizations, business groups, trade unions and other relevant stakeholders seek to influence the on-going 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 the ability of individuals affected by the WTO to even know what is going on. Does the enhancement of any one of these forms of accountability constrain the pursuit of the others? Multiple accountability relationships can mean
that attempts to make an organization accountable can end in them being ignored, or destroying that which it is they seek to make accountable (Black, 2008, 157).

These multiple accountability regimes may overlap, but they have different centres, with different standards of legitimacy at each one. This polycentric problem affects both horizontal and vertical accountability. Mashaw (2005, 13) suggests that

virtually all law and all political institutions face a trilemma of demands for efficacy, responsiveness, and coherence. Put in slightly expanded terms, citizens want administrative action, indeed all public action, to be functionally successful in managing or solving social and economic problems, responsive to the will of the people, and faithful to basic normative commitments that make up the society’s vision of adherence to the rule of law. But in Teubner’s view [...] almost any reinforcement of an institution’s capacity to satisfy one of these demands will have deleterious effects on its capacity to satisfy at least one of the others.

The WTO faces such an accountability trilemma.\(^8\) Consider only the widely accepted values of transparency and participation for now. The WTO is much more transparent than when it began,\(^9\) but further transparency might hurt the WTO if it encourages posturing by negotiators and politicians. If constituents perceive a negotiation as purely distributive, they will be critical of a negotiator who pursues the possibility of an integrative outcome. Thompson (1998, 159) suggests that, given the natural desire to save face, “[n]egotiators who are accountable to constituents are more likely to maintain a tough bargaining stance, make fewer concessions, and hold out for more favorable agreements compared to those who are not accountable.” The transparency that accountable governance demands undermines the privacy essential for negotiations (Stasavage, 2004) and might undermine liberalization, or force protection into less transparent forms (Kono, 2006).

Too much transparency might also undermine accountability. In the case of the SPS committee discussed above, while questions ought to be asked about accountability within this process, in itself the SPS committee contributes to the transparency and accountability of national administration of sanitary and phyto-sanitary regulations (Lang and Scott, 2009). If instead we think that the substance of domestic regulations is determined in meetings of the SPS committee, we would worry more about whether the public a) knows what is going on and b) can be heard—perhaps through civil society organizations. The same thing can be said of the similar process under the Agreement on Technical Barriers to Trade (Howse, 2003, 13). When TBT appears to overturn democratically arrived at domestic regulations, it seems unaccountable. But if the real aim is improving the domestic regulatory process, which can be good for democracy, then the procedures promoted by the WTO can be appropriate in a given context, although the necessary accommodations to domestic legal systems and administrative practices are not necessarily feasible or desirable in all countries. Members can agree on the wording of a standard without having a shared interpretation of what compliance with the standard entails.

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\(^8\) Of course a limitation to just three such demands is arbitrary—an expanded list could include participation, and the sense that the goal being pursued is in some important measure just and fair (or reasonable), and capable of rational justification on a basis that transcends the immediate (Macdonald, 2005a).

\(^9\) For analysis of how well WTO is doing, see (Steffek, forthcoming; Williams, 2011).
The tensions inherent in accountability as a polycentric problem can be illustrated by analogy with a spider. Observing the many centres of accountability, Lon Fuller notes that “each crossing of strands is a distinct center for distributing tensions.” Changing particular accountability relations, or pulling on one strand of the spider web, will “create a different complicated pattern of tensions” (Fuller, 1981). In other words, the entire accountability system (the spider web) can change in significant ways as a result of one or two small changes in particular accountability regimes (strands).

Just as transparency can be harmful, so can accountability, if agents face demands from the wrong principals, or if principals monitor the wrong things. Accountability might also be harmful if principals make demands of agents that are beyond the scope of the WTO. It is one thing to hold Members of the WTO accountable for their specific commitments; it is something else to hold WTO accountable for what it ought to have done in terms of its apparent general aspirations. We must recognize the danger in imagining international organizations being accountable for their contribution to the effectiveness, efficiency and legitimacy of global governance if our own understanding of these things goes beyond the implicit and explicit obligations that Members have undertaken, and the tasks that they have assigned to an international organization. We face a risk of 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). Knowing who is accountable at WTO therefore depends on knowing why you are asking the question.

Further work

The goal of IISD’s research within ENTWINED is to consider the role of transparency and accountability in advancing towards the goal of a trading system that meets the needs of the present without compromising the ability of future generations to meet their own needs. This preambular goal of sustainable development remains hard to define in legal obligations, but we think Members can nevertheless hold themselves accountable for progress in this direction—and Members can be held accountable by civil society organizations. We explicitly see accountability, which can celebrate achievement as well as omissions, as an alternative to dispute settlement, which is focused on breaches, not success. Understanding the mechanisms through which accountability is exercised in the WTO, and the role for third parties and the wider stakeholder groups will be central in determining how multilateral trade policy can begin to serve the wider purpose set out in the WTO and to working out how we address policy coherence and policy hierarchy in the search for sustainable development.

The first goal of this paper was to explore the theoretical basis for accountability in order to uncover where accountability might be found at WTO. We have already looked for empirical evidence testing the various accountability mechanisms identified, and we have investigated the role of civil society organizations in ensuring WTO accountability.10 The next step in this project is deepen our understanding how transparency and accountability works, or not, in practice and then how existing WTO mandates can be adapted to address sustainable development. We will then try to make this model sufficiently abstract that it can be applied to multilateral environmental agreements, and to horizontal accountability between regimes.

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10 (Baddeley, Cheng and Wolfe, forthcoming; Halle, Wolfe and Beaton, 2011; Wolfe, 2011; Drake, 2011)
Table 1 Issues attached to the six questions at WTO

<table>
<thead>
<tr>
<th>Who (agents)</th>
<th>To whom (principals)</th>
<th>About what</th>
<th>Through what process</th>
<th>Criteria/ standard of assessment</th>
<th>With what effects on agents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members (officials, ministers, delegates) or Secretariat?</td>
<td>Members, stakeholders or citizens?</td>
<td>Mandate or commitments? Outcomes or actions?</td>
<td>Delegation or participation? Ex ante justification or ex post transparency?</td>
<td>Effectiveness, keeping promises, or abuse of power? Procedural rules or substantive?</td>
<td>Good in itself or instrumental?</td>
</tr>
</tbody>
</table>

11 The questions and the organization of the Tables are based on (Mashaw, 2005, Figure 2).
<table>
<thead>
<tr>
<th>Who</th>
<th>To whom</th>
<th>About what</th>
<th>Through what process</th>
<th>Criteria/ standard of assessment</th>
<th>With what effects on agents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministers</td>
<td>Citizens</td>
<td>Policy choice</td>
<td>Voting</td>
<td>Ideology or political preference aggregation</td>
<td>Approval or removal</td>
</tr>
<tr>
<td>Ambassadors</td>
<td>Politicians, Senior officials</td>
<td>Implementation, legality, Consistency of commitments with the country's interests</td>
<td>Oversight, monitoring</td>
<td>Instrumental rationality</td>
<td>Substitute action</td>
</tr>
<tr>
<td>Director-General</td>
<td>Ambassadors and delegates</td>
<td>Use of funds, Appointment of staff and dispute settlement panelists, Reporting</td>
<td>Hierarchical managerial oversight</td>
<td>Conformance with written norms and procedural justice</td>
<td>Affirmation or injunction</td>
</tr>
<tr>
<td>Secretariat, dispute settlement panelists, others</td>
<td>Director-General</td>
<td>Conformity to norms of behavior</td>
<td>Hierarchical managerial oversight</td>
<td>Legal rules?</td>
<td>Substitution of alternative decisions; removal from office</td>
</tr>
</tbody>
</table>
### Table 3a Horizontal accountability at WTO

<table>
<thead>
<tr>
<th>Who (agents)</th>
<th>To whom (principals)</th>
<th>About what</th>
<th>Through what process</th>
<th>Criteria/ standard of assessment</th>
<th>With what effects on agents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members</td>
<td>Members</td>
<td>Broad objectives (WTO Agreement Preamble); Mutual obligations under covered agreements; international externalities and spillovers</td>
<td>Transparency; surveillance; third party adjudication (e.g. dispute settlement system)</td>
<td>Diffuse reciprocity; Economic values; collective or individual welfare</td>
<td>Mutual adjustment; withdrawal of esteem; exclusion</td>
</tr>
</tbody>
</table>

### Table 3b Crisis monitoring as accountability regimes

<table>
<thead>
<tr>
<th></th>
<th>Who (agents)</th>
<th>To whom (principals)</th>
<th>About what</th>
<th>Through what process</th>
<th>Criteria/ standard of assessment</th>
<th>With what effects on agents</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>WTO horizontal</strong></td>
<td>G20/ all Members</td>
<td>G20/ all Members</td>
<td>Commercial policy measures taken in response to the financial crisis</td>
<td>Ex post notification and surveillance</td>
<td>WTO obligations; amount of trade affected</td>
<td>Mutual adjustment; withdrawal of esteem</td>
</tr>
<tr>
<td><strong>GTA vertical</strong></td>
<td>G20/ all Members</td>
<td>Economic actors</td>
<td>Commercial policy measures taken in response to the financial crisis</td>
<td>Generation of independent information; peer pressure</td>
<td>Non-discrimination</td>
<td>Resisting protectionism</td>
</tr>
</tbody>
</table>
Table 4 Accountability regimes based on substantive purposes

<table>
<thead>
<tr>
<th>Accountability Regime</th>
<th>Who</th>
<th>To whom</th>
<th>About what</th>
<th>Through what process</th>
<th>Criteria/ standard of assessment</th>
<th>With what effects on agents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreign policy (Intergovernmental)</td>
<td>Members</td>
<td>Members; citizens</td>
<td>Multilateralism; reduce the possibility of interstate conflict; overcome international externalities and spillovers; inclusive procedures.</td>
<td>Single Undertaking as constitutive metaphor requires consensus, reciprocal obligation, nondiscrimination, and transparency. Collective appraisal</td>
<td>Collective norms, consensual understanding Compromise of embedded liberalism</td>
<td>Withdrawal of esteem; exclusion</td>
</tr>
<tr>
<td>Commercial policy</td>
<td>Members</td>
<td>Governments; Economic actors; citizens</td>
<td>Mutual obligations</td>
<td>Transparency and surveillance; third party adjudication</td>
<td>Diffuse reciprocity Economic values; collective or individual welfare</td>
<td>Mutual adjustment</td>
</tr>
<tr>
<td>Social Justice (Supranational?)</td>
<td>Developed countries; WTO as an entity;</td>
<td>Polycentric: Developing countries, LDCs, civil society; citizens anywhere affected by WTO</td>
<td>Social and procedural values (fairness, equality and legality) Continuity/security values (social cohesion, safety)</td>
<td>Monitoring by civil society organizations?</td>
<td>Non-reciprocity</td>
<td>Praise or blame?</td>
</tr>
<tr>
<td>Sustainable development (Cosmopolitan?)</td>
<td>Trading system; WTO as an entity; Members</td>
<td>Polycentric: Citizens and civil society organizations concerned about the planet</td>
<td>Development that meets the needs of the present without compromising the ability of future generations to meet their own needs</td>
<td>Horizontal coherence between the WTO and other international organizations</td>
<td>Non-reciprocity; social, economic or environmental impacts that may transcend countries and generations</td>
<td>Policy that takes account of other living things and future generations</td>
</tr>
</tbody>
</table>
References


Baddeley, Shane, Peter Cheng and Robert Wolfe, (forthcoming) 'Trade Policy Implications of Carbon Labels on Food,' Estey Centre Journal of International Law and Trade Policy


