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## Chapter 3

### The WTO and Taxation: Preliminary Observations

Having examined the historical background to the international tax-trade interface, and concluding that the role of international trade law in the field of taxation is undefined from an historical context, this chapter moves on to offer some cursory observations on the present WTO structure. First, the WTO's jurisdictional reach is examined from the perspective of the WTO's impact on domestic and regional legal systems, and the ability of legal actors to access the Dispute Settlement Understanding. The transparency and notification procedures of the WTO will also be highlighted. Secondly, the chapter will survey the frequency and type of tax disputes brought before the GATT 1947 and the WTO dispute settlement system. Collectively, these observations serve to offer some foundational indicators for defining the WTO's role in taxation before embarking on an in-depth analysis of the legal texts.

#### 3.1. The legal ambit of the WTO rules

The legal texts of the WTO are embodied in the Marrakesh Agreement Establishing the World Trade Organization, also known as the WTO Agreement, which acts as an umbrella for 60 agreements, annexes, decisions and understandings – collectively known as the WTO agreements. It is important to stress that the WTO Agreement is a single undertaking:<sup>92</sup> Members cannot opt in and out of their international trade obligations, but commit to all the agreements, declarations, ministerial decisions and protocols as a single treaty. The WTO agreements create rules which are legally binding upon Member States and constitute part of the general corpus of public international law.<sup>93</sup> From a tax perspective, the “singleness” of the WTO Agreement is far-reaching: all Members are automatically bound to all trade obligations, and cannot derogate from these obligations if they feel their tax sovereignty is under threat. There are, however, two significant limitations to the WTO's legal reach: (i) the absence of direct effect, and (ii) the restricted access to the dispute settlement process.

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92. Art. II Marrakesh Agreement. There are three plurilateral (optional) agreements that fall outside the single-undertaking obligations, but do not contain tax obligations.

93. Jackson, *The World Trading System* (n 16) at 25; P.F.J. Macrory, A.E. Appleton & M.G. Plummer, *The World Trade Organization: Legal, Economic and Political Analysis* (Springer 2005) at 1406.

### 3.1.1. The absence of direct effect

The status of the WTO rules within Member States' domestic and regional laws varies from country to country,<sup>94</sup> but generally there is no direct effect; thus, a person may not seek to base a legal claim against another person or a state on the basis of a WTO provision.<sup>95</sup> This absence of direct effect severely limits the reach of any tax-related trade rules, and contrasts with an individual or company's ability to enforce their tax treaty rights in a national court.<sup>96</sup> For the purpose of illustration, the following sections provide a very brief overview of the status of the WTO rules in the European Union and the United States.

#### 3.1.1.1. The European Union

Each European Member State has acted as a GATT Contracting Party in its own right, but since the 1960s, the European Commission has dealt with the GATT 1947 and WTO-related issues.<sup>97</sup> In most disputes, the European Union has acted on behalf of the individual Member State. Thus, Member States have essentially relinquished their individual standing in the WTO, with the European Union bearing their rights and obligations of the GATT.<sup>98</sup> This transfer of rights is incorporated into the Common Commercial Policy, which requires Members to work through the European Commission with respect to GATT-related matters. For matters relating to the GATS and the TRIPS, the European Union and its Member States are jointly competent.<sup>99</sup> This joint competence is important in terms of tax policy as it grants Member States more power over the interpretation and application of the GATS

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94. Details on the legal status of the WTO obligations in 21 countries are discussed in M. Lang, J. Herdin & I. Hofbauer (eds), *WTO and Direct Taxation* (Linde Verlag 2005).

95. The issue of direct effect and the WTO rules is a complex one and beyond the purview of this thesis. For a detailed study on the matter, see T. Cottier, *The Challenge of WTO Law: Collected Essays* (Cameron May 2007) at 305-331.

96. R. Deutsch, R. Arkwright & D. Chiew, *Principles and Practice of Double Taxation Agreements* (BNA International 2008) at 13 (who note: "In most cases, one way or another, DTAs are read into and read as one with the domestic law of the DTA partner country"). The direct effect of tax treaties is also set forth in article 1 of the OECD MTC which extends the application on the treaty to "persons who are residents" of the contracting states.

97. M. Hilf, *The ECJ's Opinion 1/94 on the WTO – No Surprise but Wise?*, 6 *European Journal of International Law* 1 (1995) at 3.

98. J.H.J. Bourgeois, *The European Court of Justice and the WTO: Problems and Challenges* in J.H.H. Weiler, *The EU, the WTO and the NAFTA: Towards Common Law of International Trade* (OUP 2001) at 72.

99. ECJ Opinion 1/94 of the Court of 15 November 1994 [1994] ECR I-5276.

(which has regulatory tax provisions), and also grants greater bargaining power in future trade rounds.

Within the EU legal order, the Marrakesh Agreement is accepted as an integral part of the *acquis*, conforming to the international rule of *pacta sunt servanda*.<sup>100</sup> As international agreements are regarded as supreme over secondary Community law,<sup>101</sup> it follows that secondary Community law and Member States' domestic laws should be in conformity with the tax provisions found in the WTO agreements.<sup>102</sup>

The question arises as to whether the WTO agreements, as integrated obligations of EU law, create a system of direct effect.<sup>103</sup> As such, can a corporate entity or individual affected by an *unfair* tax practice under EU secondary legislation or national legislation find recourse in the WTO law? For example, if the European Union affords fiscal subsidies to certain industries and these rules are legitimized under State aid rules, but breach the WTO subsidy rules, can individuals or corporate entities challenge and enforce WTO law via the ECJ? In short, the answer to this question is no – the ECJ has denied direct effect to both the GATT 1947 and the later WTO agreements. In the context of the GATT 1947, the ECJ has consistently held that the text was “insufficiently precise and conditional” and “allowed for too great a degree of flexibility”.<sup>104</sup> With the advent of the WTO, and the resultant

100. Case C-181/73, *Haegeman v. Belgian State* [1974] ECR 449. Due to the monist nature of the EU legal order there is no additional requirement that the rules of the WTO agreements be ratified in separate agreements for incorporation into EU law.

101. Case C-21-24/72, *International Fruit Company v. Produktschap voor Groenten en Fruit* [1972] ECR 1226.

102. Van Thiel and Steinbach summarize the hierarchy of Community legal order as “primary Community law, international agreements to which the Community is a party, secondary Community law, constitutions of the Member States, international agreements concluded by Member States, domestic legislation of the Member States”; S. van Thiel & A. Steinbach, *The Effect of WTO Law in the Legal Order of the European Community: A Judicial Protection Deficit or a Real-Political Solution, or Both?* in Lang et al. (n 94) at 53-54.

103. There is an abundance of literature on this issue; for example, see G. de Búrca & J. Scott, *The EU and the WTO: Legal and Constitutional Issues* (Hart Publishing 2003) and P.F.J. Macrory et al., *The World Trade Organization: Legal, Economic and Political Analysis* (Springer 2005) at 1481 and references therein.

104. P.P. Craig & G. de Búrca, *EU Law* (4th edn, OUP 2007) at 208, citing Case C-21-24/72 *International Fruit Company* (which denied the direct effect of the GATT 1947). It is worthy to note two exceptions to the rejection of direct effect: the *Nakajima* and *Fediol* doctrines (Case-69/89 *Nakajima All Precision Co. Ltd. v. Council* [1991] ECR I-2069; Case C-70/87 *Fediol v. Commission* [1989] ECR 1781). In *Nakajima* it was held that the WTO can serve as a ground for review in cases where an EC directive or regulation specifically serves to implement a WTO provision, and then the manner of this implementation can fall under judicial review. In *Fediol*, the Court held that the GATT

creation of a “true legal order”,<sup>105</sup> one would assume that the existence of a more sophisticated rule-based system, that is not dependent on political consensus, would reverse the ECJ’s opinion,<sup>106</sup> but in *Portugal v. Council*, the Court reaffirmed its rejection of direct effect with respect to the WTO agreements.<sup>107</sup> While the ECJ has relied upon the political nature of the WTO to deny direct effect, it is questionable how long they can rely upon this line of defence, as the WTO becomes an increasingly sophisticated legal body; thus, the refusal of direct effect for WTO law is not clear-cut and forms an ongoing debate.<sup>108</sup> Assuming direct effect were permissible, the importance of demarcating the reach of the WTO’s rules, particularly in politically sensitive areas such as taxation, will become paramount.

#### 3.1.1.2. The United States and the North Atlantic Free Trade Agreement

Turning to the European Union’s major trading partner, the United States, a similar rejection of direct effect is found, but this rejection is articulated on a more explicit basis. The WTO agreements are deemed international obligations, but are not self-executing and, as such, do not have direct effect and do not prevail over American domestic laws.<sup>109</sup> This exclusion is set forth in the Uruguay Round Agreements Act 1994, which states that no WTO provision can operate so as to change prior or subsequent US law, nor can a person, other than the United States itself, have a course of action or defence under the WTO provisions.<sup>110</sup> Thus, no individual or other legal entity, except the United States, may rely on a WTO provision to challenge

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article III prohibition against discriminatory taxes can be used to interpret the use of “illicit commercial practices” under the European Union’s Common Commercial Policy instrument that required compliance with international obligations. Thus, direct effect is valid if a Community act expressly refers to specific provisions of the WTO agreements.

105. P. Lamy, *The Place of the WTO and Its Law in the International Legal Order*, 17 *European Journal of International Law* 5 (2006) 969, at 970.

106. This sentiment was first enunciated in Case T-288/95 *Lehrfreund Ltd. v. Council and Commission* [1996] ECR II-111.

107. Case C-149/96 *Portugal v. Council* [1999] ECR I-8395, para. 47, which held “[H]aving regard to their nature and structure, the WTO agreements are not in principle among the rule in the light of which the Court is to review the legality of measure adopted by the Community institutions”.

108. See, inter alia, J. Wiers, *One Day, You’re Gonna Pay: The European Court of Justice in Biret*, 31 *Legal Issues of Economic Integration* 2 (2004) 143; F. Snyder, *The Gatekeepers: The European Courts and WTO Law*, 40 *Common Market Law Review* 2 (2003) 313.

109. Sec. 102 United States Uruguay Round Agreements Act of 1994.

110. Sec. 102(a), (c) Uruguay Round Agreements Act of 1994.

the actions of the government.<sup>111</sup> To put these rules in practice, a European company who has suffered from the tax subsidies provided to American companies via the Foreign Sales Corporation legislation (a corporate tax break) cannot sue the United States for damages for breaching WTO rules, nor can they sue the European Union for failing to take action against the United States in a timelier manner.<sup>112</sup>

As the United States is a party to the North Atlantic Free Trade Agreement (NAFTA), it is also interesting to look at the status of WTO agreements within this regional trade agreement. Unlike the European Union, the NAFTA does not have international legal personality in the WTO.<sup>113</sup> Therefore, a complaint involving the NAFTA Member countries – Canada, Mexico or the United States – will be dealt with in their own individual capacities. Nonetheless, the NAFTA does display a degree of overlap in competence with the WTO agreements. While there is no indication within the NAFTA as to its hierarchical legal status in relation to the WTO, there are some specific provisions for which Members must act in accordance with the GATT,<sup>114</sup> and a general rule that affirms the Member's existing rights and obligations with respect to the GATT.<sup>115</sup> Yet, within this general rule, there is a caveat that states: "In the event of any inconsistency between this Agreement and such other agreements, this Agreement [NAFTA] will prevail to the extent of the inconsistency".<sup>116</sup> On this basis, it is arguable that the NAFTA does not automatically recognize the obligations of the WTO and to some degree assumes priority,<sup>117</sup> and therefore, a NAFTA investor (national or corporation) would not be able to challenge a NAFTA provision that is inconsistent with a WTO obligation.

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111. J.J. Barceló III, *The Status of WTO Rules in US Law*, Cornell Law School Research Paper (2006), No. 06-004 at 4; Jackson, *The World Trading System* (n 16) at 87.

112. For example, US exporting companies benefited from the Foreign Sales Corporation (FSC) tax breaks from 1984. The FSC legislation was clearly in breach of the new 1995 SCM Agreement (and arguably in breach of the earlier GATT 1947), but the EC did not commence formal litigation against the United States until 1997.

113. F.M. Abbott, *The North American Integration Regime* in J.H.H. Weiler, *The EU, the WTO, and the NAFTA: Towards a Common Law of International Trade* (OUP 2001) at 176.

114. With reference to national treatment, the NAFTA provides for consistency with the GATT in article 301(1).

115. Art. 103(1) NAFTA.

116. Art. 103(2) NAFTA.

117. F.M. Abbott, *The North American Integration Regime and Its Implications for the World Trading System*, Jean Monnet Program, New York University, New York (1999) at part II, sections 1-7, available at <http://centers.law.nyu.edu/jeanmonnet/archive/papers/99/990201.html>.

### 3.1.2. Access to the WTO dispute settlement process

In the absence of direct effect, the issue of the WTO's reach over domestic and international tax policy turns to the question of which legal actors may gain access to the WTO dispute settlement process.<sup>118</sup> The WTO is an intergovernmental political forum and, in consequence, does not offer an investor-state arbitration system as found in bilateral investment treaties, or a taxpayer-country dispute resolution as found in the OECD MTC or UN MTC.<sup>119</sup> Thus, the dispute settlement process is only available to Member States and, consequently, an aggrieved taxpayer, e.g. a private enterprise who feels their trade position is being nullified or impaired by the tax practice of another country must lobby their government to pursue a complaint on their behalf. Clearly, non-state actors, such as multinational companies, will have a greater lobbying power to push forward the initiation of a dispute. Given the intergovernmental nature of the WTO, it is unlikely a Member State will proceed with a taxpayer's complaint unless (i) the alleged inconsistency has a serious impact on trade, and (ii) the Member is confident enough with their legal argument to risk the high cost of rocking the diplomatic boat with a fellow Member State. Nevertheless, this cautious and limited avenue for redress does not mean that the WTO does not have teeth when it comes to challenging tax policy. Once a Member State has decided to pursue a dispute, trade relations move away from political concerns and towards the rule-orientated dispute settlement process – it is here that the WTO becomes a hawkish protector of free trade. In approximately 90% of cases brought before the DSB, the WTO has found in favour of the complainant,<sup>120</sup> and, in cases where a tax measure is central to the dispute, approximately 80% of cases have been found in favour of the complainant.<sup>121</sup> The explanation for this high “win rate” is complex, but undoubtedly it relates back to the argument that a Member State will not pursue a complaint without being confident in their legal action. In this context, the role of the WTO as an international “tax adjudicator” presents a double-edged sword: on the one hand, a Member State can be confident that their tax policy is unlikely to be challenged unless a major trade inconsistency has arisen, but, on the other

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118. For an in-depth description of the WTO Dispute Settlement Understanding, see G. Yang, B. Mercurio & Y. Li, *WTO Dispute Settlement Understanding: A Detailed Interpretation* (Kluwer Law International 2005).

119. Arts. 3(1)(a) and 25(1) OECD MTC and arts. 3(1) and 25 UN MTC.

120. J. Greenwald, *WTO Dispute Settlement: An Exercise in Trade Law Legislation?*, 6 *Journal of International Economic Law* 1 (2003) 113, at 144, note 4; J. Maton & C. Maton, *Independence under Fire: Extra-Legal Pressures and Coalition Building in WTO Dispute Settlement*, 10 *Journal of International Economic Law* 2 (2007) 317, at 328.

121. This statistic is drawn from the dispute data outlined in the appendix.

hand, once the tax challenge enters the WTO dispute settlement process it is highly probable the tax measure in question will be struck down.

### 3.1.3. Notification and surveillance procedures

At this juncture, it is appropriate to note that the WTO does not only offer a formal dispute settlement system, but other policing mechanisms. A basic principle of the WTO is transparency which is enforced via two mechanisms: notifications and the oft-underestimated surveillance mechanism TPRM.<sup>122</sup> Article X of the GATT and article III of the GATS oblige Members to publish all laws, regulations and judicial decisions that pertain to or affect the operation of the agreements. In addition, over 200 notification obligations are found in the WTO instruments.<sup>123</sup> Of relevance to tax measures, a notification obligation (article 25) in the SCM Agreement obliges Members to notify the Subsidies Committee of any subsidy programmes granted or maintained. In 2009, the United States notified no fewer than 380 tax-related subsidies.<sup>124</sup> In effect, the notification procedures prevent Member States from surreptitiously introducing discriminatory trade measures away from the gaze of the WTO.

In addition to the notification procedures, the WTO periodically reviews Members' trade policies and practices with the intention of fostering greater transparency via the TPRM. This compulsory mechanism is not intended to tackle inconsistent trade policies, akin to the dispute settlement process, but instead the open nature of the mechanism "shames" Members into adherence and fosters political opposition to inconsistent trade practices.<sup>125</sup> The TPRM "provides a venue for persuasion and ideological diffusion, for 'teaching' Members norms of appropriate behaviour",<sup>126</sup> and "many potential disputes are defused in informal meetings in Geneva".<sup>127</sup>

Each Trade Policy Review (TPR) requires the production of a policy statement by the Member and a report prepared by the WTO Secretariat. The

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122. TPRM, annex 3 Marrakesh Agreement.

123. B.M. Hoekman & M.M. Kostecki, *The Political Economy of the World Trading System: The WTO and Beyond* (2nd edn, OUP 2001) at 62.

124. See section 5.1.6.

125. P. van den Bossche, *The Law and Policy of the World Trade Organization: Text, Cases and Materials* (CUP 2005) at 96.

126. A.T.F. Lang, *Some Sociological Perspectives on International Institutions and the Trading System* in Picker et al. (eds) *International Economic Law: The State and Future of the Discipline* (Hart 2008) at 78.

127. Hoekman & Kostecki (n 123) at 35.

usefulness of the TPRM in highlighting potentially inconsistent direct and indirect tax measures has been raised on several occasions by Daly, who has surveyed contentious tax issues arising from TPRs,<sup>128</sup> and observes that the TPR encompasses four key aspects: (i) a description of the tax measure, (ii) the rationale or objective of the tax, (iii) the cost in terms of revenue foregone, and (iv) an economic evaluation of the effectiveness of a tax measure in achieving its objective.<sup>129</sup> The explanation of these elements is relatively brief in the reports and cannot be used as a basis to launch a complaint, but the TPRM incorporates an opportunity for Member States to pose questions on their fellow Member States' policies, and thus may directly question the motives behind a tax policy.

Thus, while the TPRM is not particularly vigorous, it does represent a useful tool for monitoring countries' tax policies and no such equivalent function, which allows for the global exchange of information on tax policy, exists within the international tax system. At the very least, the TPRM provides an additional layer of policing within the WTO infrastructure, and helps prevent Members from initiating tax policies that may later fall foul of the WTO obligations.

### 3.2. A survey of the WTO tax cases

The final section of this chapter moves on to look at the frequency and types of tax disputes that have been brought before the GATT 1947 Council and the WTO DSB. It is interesting to examine the overall landscape of the GATT 1947 and WTO tax disputes as this lends further weight to the argument that an investigation into the WTO-tax nexus is warranted. Tables I and II (in the appendix) set out a survey of all tax complaints initiated under the GATT 1947 and the WTO – each entry highlights the type of tax measure(s) in

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128. M. Daly, *WTO Rules on Direct Taxation*, 29 *World Economy* 5 (2006) 527, at 543-545; M. Daly, *The WTO and Direct Taxation*, WTO Discussion Paper No. 9 (WTO 2005) at 6; M. Daly, *Some Taxing Issues for the World Trade Organization*, 48 *Canadian Tax Journal* 4 (2000) 1053 at 1060-1067. Daly describes a number of potentially incompatible tax measures arising from TPRs, including: border tax issues (the Solomon Islands); export taxes (Indonesia, Papua New Guinea and the Solomon Islands); excise taxes (Korea); border maintenance taxes (the United States); direct taxes as export assistance (Bangladesh, China, India and Malaysia); discriminatory direct taxes for pension and life insurance policies (the European Union); corporate tax relief as a TRIM (Hungary); tax incentives for investment (China and the Solomon Islands).

129. M. Daly, *Some Taxing Issues for the World Trade Organization* (n 128) at 1060-1061.



dispute and the relevant provisions challenged.<sup>130</sup> The primary observations of the survey can be summarized as follows:

#### *Frequency of tax disputes*

A total of 60 disputes initiated under the GATT 1947 and WTO dispute settlement procedures have challenged the tax measures of fellow Member States. Under the GATT 1947, from a total of 124 initiated disputes,<sup>131</sup> 22 tax cases were brought before the GATT Council. Under the WTO DSB, from a total of 402 disputes, a further 38 tax disputes have arisen.<sup>132</sup> These tax disputes represent approximately one in every ten of the total number of disputes brought before the WTO and the GATT 1947.<sup>133</sup>

#### *Types of taxes*

Looking at the frequency of direct and indirect taxes in the disputes, 39 cases involved indirect tax measures and 21 cases involved direct tax measures. The most popular indirect taxes to be challenged were excise taxes, followed by sales taxes and VAT. The majority of direct taxes involve preferential tax treatment on income derived from export activities. Figure 3.1 summarizes the range of different taxes that have been challenged in the disputes under GATT 1947 and the WTO.

#### *Respondents and complainants*

Despite the broad membership of the WTO, the number of Members involved in tax complaints is relatively small with just 17 Member States initiating tax-related complaints since 1947. The dominant forces in the litigation are the European Union and the United States, who have initiated 23 and 21 complaints, respectively, from the total 60 complaints.<sup>134</sup> The United States has seen their tax measures challenged on 9 occasions and EU Members on 14 occasions.<sup>135</sup>

130. Table I: *The WTO Tax Disputes 1995 and Onwards* and table II: *The GATT Tax Disputes 1947-1995* located in the appendix.

131. The total number of GATT 1947 disputes are based on a list of GATT complaints in *WTO Analytical Index: Guide to WTO Law and Practice* (1st edn, WTO Publications 2003) at section V.

132. For the purposes of these statistics, where disputes have been decided jointly by the DSB (e.g. *China – Automobile Parts*), the dispute is collectively counted as one dispute.

133. The data on the WTO disputes is drawn from the *Chronological List of Disputes Cases* available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm).

134. Other initiators of tax disputes are: Brazil, Canada, Chile, Colombia, El Salvador, Guatemala, Honduras, Japan, Korea, Mexico, Norway, the Philippines, South Africa, Thailand and Zimbabwe.

135. This figure includes early GATT 1947 disputes where the EC Members have acted in their individual capacity.

Table 3.1. Taxes arising in GATT 1947 and WTO Disputes

	GATT 1947	WTO
<b>Direct Taxes</b>	Levy on goods (attached to direct tax policy) Income tax exemptions Transfer pricing rules	Income tax on box office receipts Corporate tax exemptions Offshore income tax breaks Transfer pricing rules Income tax exemptions Income tax deductions Tax lease schemes Income tax credits
<b>Indirect Taxes</b>	Consular taxes Excise taxes Consumption taxes Countervailing taxes Special contribution taxes Compensation taxes VAT Sales taxes Luxury taxes Gas guzzler taxes	Sales taxes Excise taxes Statistical taxes Luxury taxes Harbour maintenance taxes Advance turnover taxes VAT Soft drinks taxes Distribution taxes Internal specific taxes

*The outcome of disputes*

Overall, the outcomes of the tax disputes have been relatively successful. On all but two occasions, the Panel and Appellate Body reports have been adopted and resulted in legally binding decisions on the parties, or alternatively, the disputes have resulted in mutually agreed solutions. The two tax disputes that failed to be adopted were initiated under the GATT 1947 when the adoption of reports required unanimous consensus by all Member States. From 1995, the newly enacted WTO Dispute Settlement Understanding radically changed the procedure for dispute settlement. Most prominently, this system shifted from a political-based system that required the unanimous *support* of Members before a decision was adopted, to a rule-based system where the non-adoption of reports requires the unanimous *rejection* from the Member States.<sup>136</sup> This reverse consensus requirement makes the WTO dispute settlement system a powerful judicial body, and has resulted in all Panel and Appellate Body reports being adopted.

These statistics reveal that tax disputes are relatively prolific within the WTO dispute settlement system, and thus, despite the absence of direct effect or an avenue of redress for taxpayers, the WTO dispute settlement process nonetheless plays a major role in regulating international tax matters. The

136. Arts. 16(4) and 17(14) DSU.

disputes also reveal that challenges against direct tax measures are becoming increasingly more common, and the variety of tax measures challenged extends beyond traditional trade taxes.

### **3.3. Conclusion**

This chapter sought to provide some preliminary analysis that helps to lay down the parameters for defining the role of the WTO and the extent to which the legal framework regulates and bears influence on Members' tax policy. It can be said that the WTO's reach in tax matters is severely curtailed by the absence of direct effect and the inability for persons to access the WTO dispute settlement procedure – this, to a large extent, insulates a Member's national tax sovereignty from the outside threat of international trade rules. Nonetheless, at an intergovernmental level, tax disputes are relatively prolific and “win rates” are high, which means a Member's tax sovereignty can certainly be challenged. Outside the dispute settlement system, tax measures are also policed via notifications and TPRM. The frequency of tax disputes brought under the GATT 1947 and within the WTO dispute settlement system reveals that tax-related trade disputes are prolific and the tax-trade nexus should not be overlooked.