Chapter 42
Are WTO Sanctions Unjust?

Henri Culot

Abstract This chapter presents a particular problem of justice in the sanction system of the World Trade Organization. After a brief description of the functioning of sanctions in the WTO, I explain (based on the example of the EU) why WTO rules have no direct effect in the member states. The combination of the rules on sanctions and the absence of direct effect implies that sanctions are not suffered by those who benefit from the violation of WTO rules. In practice, this mechanism is unjust: even if we assume that the benefit conferred to some economic agents by violating WTO rules is justified by legitimate wealth redistribution, the burden associated with such benefit falls on other economic agents, chosen independently of distributive justice in the violating state. I finally attempt to generalize my findings by showing that this justice problem can be seen as a consequence of legal personality.

42.1 Introduction

In the context of globalization, international economic relations raise many economic, legal and ethical issues, which are ultimately intertwined. This paper does not present a general theory of any kind, which would encompass the various

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H. Culot (✉)
Université Catholique de Louvain, Louvain-la-Neuve, Belgium
e-mail: henri.culot@uclouvain.be

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aspects of this question.[1] Rather, it is dedicated to one particular problem of justice stemming from the application of trade sanctions in international economic law. It is purposely not technical. The aim of what follows is neither to focus on the details of the law nor to discuss the various theories of international economics.

Section 42.2 briefly describes the World Trade Organization (WTO) sanction system. Section 42.3 explains why WTO rules have no direct effect in the EU. The combination of these rules entails that sanctions are not suffered by those who benefit from the violation (Sect. 42.4). Section 42.5 explains why this mechanism is unjust. Section 42.6 is an attempt to generalize our findings and shows that this justice problem can be seen as a consequence of legal personality.

42.2 Sanctions in WTO Law

The WTO was established by the Marrakesh Agreement of 1994 and succeeds the GATT, a temporary agreement signed in 1947. The WTO aims at enhancing world trade by lowering tariffs and other barriers to trade. Inspired by ideals of free trade in the context of globalization, it opposes protectionism, with the declared goal of increasing welfare, employment and sustainable development. By entering GATT, then WTO, the member states committed to reduce and set an upper limit to most of their tariffs, to suppress many non-tariff impediments to international trade and to avoid discrimination against economic agents of others states (national treatment and most-favoured-nation clause).

A novelty of the Marrakesh agreement was the institution of a mandatory dispute settlement mechanism, designed to rule on the disputes between member states relating to the application of the WTO agreements. The case is first submitted to a panel of independent experts and an appeal may then be formed to the Appellate Body (AB). The reports of the panel and of the AB are adopted by the Dispute Settlement Body (DSB) and thus become binding, except if all states (including the prevailing party) reject them.

Any state found "guilty" of violating WTO rules must, within a reasonable period of time, change its internal laws or practices to make them consistent with the DSB's findings. In many cases, states comply with the DSB decision or negotiate and reach an amicable settlement.

[1] This paper only addresses *one* justice problem of the WTO. A consequence of such a limited approach is obviously that many questions related to justice in international economic relations are not discussed here, including the most fundamental one of the justification of liberalization and free trade. I am not concerned here with the general design of a just economic order, but only with one particular injustice of relatively minor importance in the framework of the existing (albeit imperfect) international trade system.

Sanctions arise when the decision of the DSB has not been implemented at the end of the reasonable period. In this case, the plaintiff may be authorized to retaliate by suspending some of its own obligations resulting from the WTO agreements. In other words, this state is legally entitled to violate the WTO agreements towards the defendant state, for example, by raising some tariffs above their bound rate. The level of this retaliation must not exceed the amount of the trade between the parties that is hindered by the violation. The retaliation is usually considered as an incentive to comply with WTO law,[2] but it is imperfect, since retaliation is limited to an amount equivalent to the trade effect of the violation. It may also have a compensatory effect, although at best an imperfect one too because, amongst other reasons, the damage incurred before the end of the reasonable period is not compensated.

In principle, retaliation should be aimed at imports of the same sector as the exports affected by the violation. If this is impossible or inefficient, the suspension of obligations should concern the same agreement (GATT, GATS or TRIPS). As a last resort, the prejudiced party may suspend obligations relating to another agreement. These last two possibilities are called cross-retaliation, because the application of one agreement is obtained through pressures exercised in the realm of another sector or agreement.

Despite this three-step mechanism, meant to ensure that sanctions be exercised on products as close as possible to those for which the sanction is authorized, in practice, sanctions always affect other industry branches. As all goods are deemed to form only one sector, any violation of the GATT can be punished with retaliation on any good. The principle of comparative advantage—a major basis of international trade—implies that a country usually does not import the same products as it exports.[3] Since violations occur on exports and retaliation is directed at imports, they rarely, in fact, relate to the same products, not to mention the effects of sanctions on the producers of inputs or of business-related services.

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[2] See, Carmody, C. 2002. Remedies and conformity under the WTO agreement. *Journal of International Economic Law* : 307–329; Charnovitz, S. 2001. Rethinking WTO trade sanctions. *American Journal of International Law* 95(4): 792–832; Grané, P. 2001. Remedies under WTO law. *Journal of International Economic Law* : 755–772; Pauwelyn, J. 2010. The calculation and design of trade retaliation in context: what is the goal of suspending WTO obligations? In *The law, economics and politics of retaliation in WTO dispute settlement*, eds. Brown, C.P., and J. Pauwelyn, 43–56, 64. Cambridge,: Cambridge University Press; Ruiz Fabri, H. 2000 Le contentieux de l'exécution dans le règlement des différends de l'OMC. *Journal du Droit International* : 632. *Contra*: Palmeter, D., and S.A. Alexandrov. 2002. 'Inducing compliance' in WTO dispute settlement. In *The political economy of international trade law—essays in honor of Robert E. Hudec*, eds. Kennedy, D.L.M., and J.D. Southwick, 646–666. Cambridge: Cambridge University Press.

[3] However, intra-branch trade also exists in international economics. See Rainelli, M. 2003. *La nouvelle théorie du commerce international*, 3rd ed., 45–60. Paris: La Découverte.

42.3 Direct Effect of WTO Law: The Example of the EU

As a general rule, private persons (individuals and companies) are not subjects of the international legal order. They cannot be a party to an international treaty[4]. Only states conclude treaties which bind them towards other states, and implement them within their national legislation. Private persons may only invoke, and are only bound by, the internal legislation thus enacted by states as they implement their international obligations.

However, individuals are allowed to invoke some treaty rules directly before national courts. Lawyers call "direct effect" this special property of some international norms. Direct effect is particularly developed with regard to the rules of the European Union.[5] It allows individuals to benefit from the effects of the treaty, even if it has not been implemented (completely) by the national state. Direct effect is therefore, in a sense, a method of private enforcement[6] against the states of their international obligations.

Although this view should be qualified in some respects,[7] it is usually held in the EU (and in the U.S.[8]) that WTO law does not have any direct effect.[9] The member states have to implement the WTO agreement by enacting appropriate national legislation, which will be applicable to private economic agents. The ECJ justifies this position by stating that WTO law is not sufficiently unconditional, because it "accords considerable importance to negotiation between the parties".[10] Another important argument for the ECJ is that some of "the most important commercial partners of the Community"[11] do not recognize direct effect to WTO law, which

[4] Jackson, J.H. 1997. *The world trading system-law and policy of international economic relations*, 2nd ed. Cambridge, MA: MIT Press, 127.

[5] European Court of Justice [E.C.J.], 5 February 1963, *Van Gend & Loos*, 26/62, *Rec.*, 1963, 3; E.C.J., 17 December 1970, *SACE*, 33/70, *Rec.*, 1970, 1213; E.C.J., 30 September 1987, *Demirel*, 12/86, *Rec.*, 1987, 3719, 14.

[6] *Van Gend & Loos*, 26/62.

[7] See E.C.J., 22 June 1989, *Fédération de l'industrie de l'huilerie de la CEE* (*Fediol*), 70/87, *Rec.*, 1989, 1781; E.C.J., 7 May 1991, *Nakajima All Precision Co. Ltd*, C-69/89, *Rec.*, 1991, I-2069.

[8] For a discussion of this issue in U.S. law, see Jackson, J.H. 2000. *The jurisprudence of GATT & the WTO*, 297 sq. Cambridge: Cambridge Univeristy Press and Matsushita, M., T.J. Schoenbaum, and P.C. Mavroidis. 2003. *The world trade organization—law, practice, and policy,* 97 sq. Oxford: Oxford University Press.

[9] E.C.J., 23 November 1999, *Portugal v Council*, C-149/96, *Rec.*, 1999, I-8395; *E.C.J.*, 9 September 2008, *FIAMM & FIAMM Technologies v Council*, C-120/06 and C-121/06, *Rec.*, 2008, p. I-6513. Some authors criticize this case law: for instance, Griller, S. 2000. Judicial enforceability of the WTO law in the European Union—annotation to case 149–96, *Portugal v. Council. Journal of International Economic Law* : 441–472; van den Broek, N. 2001. Legal persuasion, political realism and legitimacy: The European Court's recent treatment of the effect of WTO agreements in the EC legal order. *Journal of International Economic Law* : 411–440. Others are more indulgent (for instance, Eeckhout, P. 2002. Judicial enforcement of WTO law in the European Union—some further reflections. *Journal of International Economic Law* : 91–110).

[10] *Portugal v Council*, C-149/96, 36.

[11] *Portugal v Council*, C-149/96, 43.

raises a problem of reciprocity.[12] If the WTO had direct effect only in the EU, it could be privately enforced in the EU, while other states could violate it without fearing legal action by individuals.

Consequently, individuals and companies may not invoke WTO rules before the national courts or the ECJ to obtain the annulment or the non-application of an inconsistent national measure or even damages for breach by the state of its WTO commitments. If national rules are contrary to the WTO treaty, they are nonetheless applied to individuals.

42.4 Who Is Really Sanctioned?

The combination of the WTO rules on sanctions and the case-law on direct effect leads to surprising results for the nationals of states engaged in commercial disputes.

Formally, the WTO is only concerned with the behaviour of states and only imposes sanctions on states failing to comply with DSB rulings. If a state has blocked the exports of another state, the latter will be authorised to impede the same amount of exports from the former. Leaving aside the particular problem of the lack of retroactive effect, this appears to be, at first sight, an equitable solution.[13]

However, as a WTO panel once noted,[14] states, although they appear in the front line from a legal point of view, are economically in the second line. International trade is primarily conducted by private entities, especially companies. States do not trade (much). They collect taxes and tariffs and otherwise benefit from international trade through the profits made by their residents.

When they violate WTO law, states usually intend to protect a particular branch of industry, for various reasons. Sometimes, this branch is well organized, backed by lobbies or simply close to the ruling class of the country. A violation may also occur in consideration of a broader interest, if the branch of industry is vital to the country's economy or if it employs many workers who risk unemployment. WTO obligations can also be violated, as in the *Hormones* or *Biotech* case,[15] with

[12] On the question of reciprocity in this context, see S. Griller, *op. cit.*: 455 sq.

[13] Sanctions raise other issues of justice linked to their cost and differentiated effects according to the (economic) size of the countries involved (see S. Charnovitz, *op. cit.*: 814 sq.; Mavroidis, P.C. 2000. Remedies in the WTO legal system: Between a rock and a hard place. *European Journal of International Law* : 807; Morgan, T.C., and N.A. Bapat. 2003. Imposing sanctions: States, firms, and economic coercion. *International Studies Review* 5(4): 66, stressing that costs are born mainly by individuals and companies, not by the government).

[14] *United States—Sections 301–310 of the Trade act of 1974*, Report of the Panel, 22 December 1999, WT/DS152/R, 7.73 sq.

[15] *European Communities—Measures concerning meat and meat products* (*hormones*), WT/DS26 and WT/DS48; *European Communities—Measures Affecting the Approval and Marketing of Biotech Products*, WT/DS291, WT/DS292 and WT/DS293.

relatively little protectionist intentions compared to the pressure from the public opinion to ban potentially dangerous products, independently of the effect on trade and prices.

Whatever the intent of the violation, it favours one branch of industry and all its stakeholders, to the detriment of foreign producers and—at least in a short-term and purely economic view—of the population in general, which usually pays higher prices for the products involved.

These “real beneficiaries” of violations should be compared to the “real victims” of the sanctions.

By and large, the retaliating country may choose the products on which it imposes sanctions. Sanctions are rarely directed against foreign counterparts of the prejudiced (domestic) producers. States are concerned about the efficiency of their sanctions and want to induce a swift compliance. Therefore, they may choose to target products that account for a large part of the other nation’s exports towards them, to maximise the deterrence effect. They may also wish to retaliate on products that can easily be imported from another nation, to avoid the “backlash” effect of their own sanctions. Besides these economic considerations, states also use the political effects of sanctions to quicken compliance. For example, similar to their violations of WTO law, they target branches of industry with powerful lobbies, which will convince their government to comply with the ruling and have the sanctions waived.[16]

Again, whatever their particular pattern, sanctions target industries and their stakeholders, which, in most cases, have nothing but nationality in common with the beneficiary of the violations.[17] FIAMM, for example, is an Italian producer of batteries which was hit by US sanctions following violations by the EU of WTO rules in respect of the importation of bananas.[18]

Sanctions also affect consumers.[19] In the “violating country”, prices are supposed to rise on the products unlawfully protected and to fall on products that can no longer be exported due to the retaliation. The situation is opposite in the retaliating country. In the best case, the welfare effects of price variations do not offset fully, since a higher tariff creates an inefficiency resulting in less consumer welfare.

The effect of sanctions is most problematic in the case of a suspension of obligations from the TRIPS agreement, whereby previously protected intellectual property rights are suspended (which is allowed, but has not been implemented

[16] About these strategic considerations in the application of sanctions, already before the WTO, see Boisson de Chazournes, L. 1992. *Les contre-mesures dans les relations internationales économiques*, 128 sq. Paris: Pedone. See also Goldstein, J., and L.L. Martin. 2000. Legalization, trade liberalization, and domestic politics: A cautionary note. *International Organization* : 616 sq.

[17] O’Connor, B. 2004. Remedies in the World Trade Organization dispute settlement system—*the* Bananas *and* Hormones *cases*. *Journal of World Trade* : 260; S. Charnovitz, *op. cit.*: 810 sq.; Dam, K.W. 1970. *The GATT—law and international economic organization*, 357. Chicago: Chicago University Press (under GATT of 1947).

[18] *FIAMM & FIAMM Technologies v Council*, C-120/06 and C-121/06, 1.

[19] T.C. Morgan & N.A. Bapat *op. cit.*: 65.

so far). Individuals or companies are therefore denied the benefits of a subjective right that used to be theirs. This simply amounts to an uncompensated expropriation. They only recover such benefits when their state of origin complies with the DSB's ruling.

This discrepancy between the "real beneficiaries" of the violation and the "real victims" of the sanction could be compensated internally by the state. This would require taxing the beneficiary of the violation and distributing the same amount to the victims of the sanctions. The retaliating state would have to set up a similar compensatory scheme. This is, however, impossible to realize, mainly for political and economical reasons. It would be politically impossible to tax the beneficiaries of the violation, who are often industries of a sensitive branch of the economy. Besides, there would be no sense in protecting them by violating WTO law and then taking away the benefits of this protection. As already stated, an increase in tariffs also generates an economic inefficiency, such that the collected duties would not suffice to compensate adequately the victims of the retaliation. Furthermore, this is supposing that the state has gained money from the violation of WTO law, which is not always the case, for instance, when the illegal measure concerns a non-tariff impediment to trade.

Independently of a compensatory scheme organized by the state, why could the victims (of the violation or of the retaliation) not sue the state for damages? The general conditions for such an action are met: the state violated an obligation and this violation caused an injury to the claimant. Companies have sued the EU for violation of its WTO obligations, but the claims have all been rejected because, in the absence of direct effect, private persons are not allowed to invoke the rules of the WTO or the decisions of its DSB before national courts.[20] This is why the absence of direct effect is linked to the consequences of WTO violations and sanctions.

It appears, therefore, that the beneficiaries of WTO law violations do not bear the cost of sanctions, neither directly nor as a consequence of an internal redistribution system. Furthermore, those who suffer from sanctions cannot apply for a remedy which would have the effect of shifting this burden onto the whole population.

42.5 Why Is This Unjust?

Liberalization resulting from the WTO agreements shifts the distribution of wealth inside member states (some win, others loose)[21] and arguably produces a surplus. Sanctions cause the opposite move: they suppress the surplus and modify the

[20] For example, E.C.J., 30 September 2003, *Biret International*, C-93/02, *Rec*., 2003, 10497; C.F.I., 20 March 2001, *Cordis v. Commission*, T-18/99, *Rec*., 2001, II-913; C.F.I., 20 March 2001, *T. Port v. Council*, T-2/99, *Rec*., 2001, II-2093; C.F.I., 12 July 2001, *Banatrading v. Council*, T-3/99, *Rec*., 2001, II-2123; *FIAMM & FIAMM Technologies v Council*, C-120/06 and C-121/06.

[21] "To a large extent, a decision by a WTO adjudicating body calling for an end to an illegal trade practice is a decision to redistribute wealth within a particular society" (P.C. Mavroidis, *op. cit.*: 807).

distribution of wealth. As far as the distribution is concerned, therefore, sanctions are per se no more just or unjust than liberalization.

If a state chooses to violate the WTO and to suffer trade sanctions,[22] it intends to confer a benefit to some nationals. The consequence is a suspension of the cooperation, which cancels the cooperative surplus previously benefiting some other nationals. The overall operation can be described as a shift of the distribution pattern among the stakeholders, which does not necessarily imply that violations and sanctions are unjust: those who believe that state intervention in economic matters can be justified would see nothing intrinsically wrong there, even if it leads to an inferior equilibrium. Thus, *in theory*, trade sanctions are not unjust per se.

However, *in practice*, WTO sanctions have all chances to be so.

When the state intervenes to modify the distribution of wealth or decides on the sharing of a cooperative surplus, the effects of the system are deliberate. The government consciously decides how wealth should be distributed or shared, i.e., who should gain and, possibly, who should loose. In doing so, it may take account of the various interests involved and strike an appropriate balance. Depending on the criteria guiding this decision and the various theories of justice one can adhere to, government intervention can be justified.

This is not what happens when WTO rules are violated and retaliation occurs.

First, in many cases, the violation of WTO law is not grounded on an ideal of justice, but on a particular interest. The power of lobbies on decision-makers is felt very strongly in the field of international trade. Power and information asymmetry strongly advantages the lobbies of domestic producers over the lobbies of consumers and foreign companies. The mere fact that a decision is influenced by lobbies does not make it unjust, but it is at least possible, indeed likely, that a powerful lobby could convince a government to violate WTO law in cases where this does not foster overall justice. Furthermore, it is also likely that those able to put such pressure on governments are precisely the winners of the globalized economic system.

Even assuming, *arguendo*, that some WTO rule is violated for the sake of justice, the overall system could only be just if the retaliation also takes the justice dimension into account. However, WTO violations and sanctions do not form an organized system. Violations are decided by one government and sanctions imposed by another. If protectionist measures can have a redistributive (and maybe legitimate) intent, sanctions are motivated by efficiency, deterrence and compliance; their consequences have no chance of coinciding with any theory of a just distribution of wealth. Moreover, although violations and sanctions are each decided on by a different government, they both have effects on the individuals and companies of both countries, and possibly third countries too. In other words, WTO sanctions could only be just by a mere effect of luck, with an infinitely small probability. What impedes violations and sanctions to be just, therefore, is at least the lack of coordination between the two.

[22] This choice is of course a factual and not a legal one.

Two methods could be used for reconciling the decisions about violations and sanctions.

If a state does not want or is not able to comply immediately with the DSB's ruling, it can offer compensations to the state threatening retaliation and thus avoid trade sanctions. These compensations have to be agreed upon by the states involved.[23] Compensations are often preferred to sanctions because they imply larger (rather than narrower) market access. However, they may also help avoid the justice problem described above. When compensation is granted, the states jointly decide who will bear the cost of the continuing violation. Compliance or deterrence effects are no longer relevant arguments. The states' agreement is not necessarily just, but at least it has a chance to be, since the states can take into account all the diverging interests and reach whatever balance justice commands.

The other method would involve concentrating all the impact of the violation within one state. Instead of the existing retaliation system, a state violating WTO rules would be obliged to compensate whoever suffers damage abroad.[24] This could be achieved by granting a partial direct effect to WTO rules. The costs and benefits of the WTO violation would be borne by the citizens of one (and only one) country (the violating country). Assuming that this country is able to set up a just system of wealth distribution, it could decide internally on the distribution of benefits and sharing of costs. One single and coherent authority would decide and could take account of all interests at stake. Chances are that, under these conditions, the state would not violate WTO rules in the first place. But this is not the point of the argument, which is only aimed at permitting a coherent distribution of the benefits and burdens of violations and sanctions—coherence being the first step toward justice.

Both methods imply the recognition that the Marrakech agreement is not merely an agreement between states. Its implications on the internal distribution of wealth of individuals are such that they should be taken into account (beyond the search for economic efficiency at the international level) when acting in the field of international trade.

42.6 Attempt of Generalization

The justice problem described in this paper is not specific to the WTO. It results from a discrepancy between the legal system and the economic and philosophical liberal ways of thinking, which both imply methodological individualism.

For technical and practical reasons, remotely, if at all, linked to social justice, the legal system treats some groups of human beings as one single (legal) entity.

[23] Art. 22.1 and 22.2 DSU.

[24] In the present state of international relations, enforcement against the states raises serious difficulties. However, the rule of law in most democratic states implies that states pay damages when their own courts condemn them to do so.

Well-known instances of legal persons are companies, states or international organizations. Liberal lawyers view this as a *fiction* which they accept for its usefulness, not because it is fundamentally justified. Others consider the legal entity as a "reality" and emphasize in particular the existence of an underlying community, by which legal persons (like natural persons) exist even before they are *recognized* by law. For positivists, legal persons are *constituted* by a mere legal technique, with no regard to the (non legal) substratum.

With such a technique, a field of law can consider the corporate entity as the only relevant person, regulate the relations between legal entities and disregard the way individuals are treated *within* the legal entity. For example, the law of commercial contracts regulates how companies trade with each other, without consideration of the effects of this trade on the shareholders. More clearly even, international law applies to relations between states and, at least in its traditional form, is not concerned about the treatment of nationals within states. Thus, by a purely formal operation of law, a separation is created between an "inside" and an "outside," with two (supposedly) independent legal systems applying simultaneously: one for the relations within the legal person and the other for the relations between different legal persons.

In this context, it is tempting to apply the same reasoning to moral matters. All the more so that, just like each domain is governed by different legal rules, so too can it possibly be ruled by diverging principles of justice. One could intuitively agree that principles of justice applied between citizens within a state do not necessarily apply between states in the international realm. What is wrong, however, is to deduce from there that the various domains are independent from one another. The main point of this paper is to show a real-life example of such a link and to describe the justice problems it raises. Thus, is it wrong to consider without further argument that philosophers could also consider legal entities as individuals for purposes reaching beyond strictly legal reasoning, as their creation does not only rely on ethically relevant concerns?[25] This would run contrary to

[25] See Michoud, L. 1932. *La théorie de la personnalité morale et son application au droit français*, 3rd ed., 70, 97 (Paris: L.G.D.J.); Dabin, J. 1952. *Le droit subjectif*, 109 (Paris: Dalloz). The difficulty is sometimes overlooked even in philosophical arguments. When presenting the libertarian case in favour of free trade, Frank J. Garcia (Building a just trade order for a new millennium. *George Washington International Law Review* 33(3/4) (2001): 1015) uses such concepts as "free exercise of economic rights by private parties" or "people's entitlements to their bodies and the fruits of their labor" (*Ibid*.: 1047). To prove that free trade can also be defended from a Rawlsian point of view, Garcia argues that free trade would accomplish the principle of equal liberty (i.e., of *individuals*) (*Ibid*.: 1047 sq.) while special and differential treatment (of *states*) is essential for the implementation of the difference principle: "The principle of special and differential treatment accomplishes this [the difference principle] by putting the wealthy markets of well-endowed states in the service of the economic development of the less fortunate states" (*Ibid*.: 1053). Beyond taking the state as morally granted, the difficulty here is doubled by the author shifting without much explanation from a reasoning based on individuals to one taking the states as the relevant units. Garcia, F.J. 2001. Building a just trade order for a new millennium. *George Washington International Law Review* 33(3/4): 1015–1062.

individualism, a basic assumption of liberal theories, which implies that all questions of justice are ultimately to be decided at an individual level.

This being said, groups of people recognized by law (e.g., states) are also a useful tool for the realization of justice inside the institution, albeit excluding at the same time all outsiders from the application of the internal principles of justice. This is so because they create a *demos* in which principles of justice can be debated.[26] This argument acknowledges that legal entities are justified in part because they help to realize justice between individuals. However, it does not justify anything on justice questions outside the entity, let alone between entities. On the contrary, it points to the fact that relations between corporate bodies cannot be evaluated independently from their effects on individuals.

Conversely, legal entities raise problems of governance.[27] For practical reasons (again), power over the corporate entity is entrusted to individuals intended to exercise it for the collective benefit of its members. The danger lies in the possibility that this power be used in some particular interest. This simply means that, rather than possibly serving justice as explained before, institutions may also foster injustice.

Thus, as long as one believes in justice (or indeed economic relations) between individuals, it is not coherent to conceive of legal entities as black boxes, simply ignoring what happens inside. Unless one contends that justice or economics apply in an ultimate manner to legal entities, thereby denying the individualistic principle, one cannot design a theory of international justice or economics while keeping a blind eye on intra-state relations.

Although the division between "inside" and "outside" associated with the notion of legal personality is a founding distinction of their discipline, lawyers in the liberal modern world feel compelled to mitigate the effects of their own theory in order to protect individuals within legal entities. Such rules exist in corporate law, where the interests of shareholders, for instance, are to some extent guaranteed even with regard to deals between the company and some third party.[28] International humanitarian or human rights law is another domain where the existence of legal persons (states) is sometimes disregarded to safeguard the interests of individuals. Interestingly, these are not rules internal to the entity, but external to it: in these instances, criminal (not corporate) law protects shareholders, the same as international (not national) law safeguards human rights.

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[26] As we are talking of legal entities in a very broad sense, the word "*demos*" should be taken in a similarly broad meaning. Of course, the argument does not contend that the *demos* is of the same kind in a state, a company or an international organization, nor that the same principles of justice apply.

[27] On the link between the state system and the "democratic deficit" of international society, see Zampetti, A. Beviglia. 2003. Democratic legitimacy in the World Trade Organization: The justice dimension. *Journal of World Trade* : 109 sq.

[28] See, for instance, Article 492*bis* of the Belgian Penal Code (fraudulent use of corporate property).

This discrepancy could principally be solved in two ways. On the philosophical side, one could try to think of justice in terms of groups, rather than individuals. If one could consider only states, and not their citizens, one main justice problem of WTO sanctions would be solved. This might be advocated by some strong forms of communitarianism, but as such this would hardly realize any form of justice, at least if it is not supplemented by internal principles of justice (with which the problem re-enters by the back door). Non-individualistic versions of economics could exist too, but they would probably put into question the WTO project altogether. The specific question addressed by this paper, therefore, seems bound to be thought and solved within an individualistic framework.

The other way around the difficulty is to find ways of taking into account the interests of individuals within a formally non-individualistic legal system, without loosing the technical advantages of the legal personality of states. This is what lawyers have sometimes done, though not in the case of WTO sanctions. Direct effect, much developed in the European legal systems (EU and EHRC), could be envisaged as a solution.

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