II

DECISION-MAKING

1 Introduction

Decision-making is undoubtedly the most important activity in any international institution since it is the process by which the individual wills of Members are coordinated in a given body of an organisation and become the will of the organisation.1 In its broadest context it can be understood as any formulation used to conclude debates in an international institution, irrespective of whether the decision is an institutional one or has, or is intended to have, normative effect. This is because there are a whole range of decisions that are taken by institutional bodies in an international organisation, which are informal and more operational in character and are necessary for the orderly functioning of the organisation. However, in the context of this book, the focus in this chapter is on analysing the process of decision-making, which informs and underpins the institutional and normative acts of the WTO.

The following analysis of WTO decision-making is set against the background of frequently heard complaints that the process is ineffective, lacks transparency and legitimacy. Already at the First Meeting of the Ministerial Conference held in Singapore in 1996,2 there was widespread protest from some Members about the unfair manner of WTO decision-making but arguably it was the Third Meeting of the Ministerial Conference held in Seattle in 1999 that brought matters to a

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The WTO was challenged both internally and externally for the manner in which the Members took decisions that were ‘undemocratic, non-transparent and accountable to none’ and led to questions as to whether the system was ‘reformable’. This critique forms part of the discussion on the reform of global institutions, which is being pursued within the broader framework of international (economic) governance and has partially been taken up in the Report by the Consultative Board to the Director General on The Future of the WTO (The Sutherland Report). While it is not the intention to engage fully in the wider debate on international economic governance, since it would take us beyond the scope of this chapter, the protests that have taken place both within and outside the organisation raise questions as to the precise nature of WTO decision-making in practice.

This chapter therefore analyses, by means of a combination of international institutional law and regime theory, the formal and informal practices in decision-making that exist in the WTO, in addition to the general rules on decision-making.

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