CHAPTER NINE

THE WTO AND DOMESTIC LEGAL SYSTEMS

The WTO and its legal order are subject to international law. Its activities and effects are, however, closely related to the regimes of its Members. Representation, the competence to negotiate and the competence to conclude agreements, as well as the binding force of those agreements, are substantially based on the national rules of international representation and the conclusion and adoption of international treaties. These rules play a great role in the continuing trade rounds and their future results. Which bodies have to give their consent in the course of proceedings depends on these (national) rules, and this fact in some cases, heavily influences the prospects for success of future negotiations from a political point of view.

Above all, rules and requirements set at the international level must have an effect on the national regimes of the Members and on the regime of the European Union, if such bodies want to enter into private trade transactions and economic subjects to which the WTO chiefly applies. Thus, the question of applicability and implementation of WTO rules and obligations is critically important.

The domestic regimes of Members regulate not only the binding nature and applicability of WTO law but also its enforcement. They govern legal remedies and the legal basis on which individuals – domestic or foreign natural or legal persons – can take action against national or regional trade authorities. Often, these rules of enforcement are based on the principles of the rule of law and legal protection as contained, amongst others, in Art. X GATT 1994. Besides this, national regimes often provide for other opportunities for individuals to sanction measures and the behaviour of other Members. This is usually a procedure whereby such sanctions can be examined on request and whereby the appropriate authority can be obliged to pursue such sanctions on a trans-national basis, especially by dispute settlement.

I. Negotiations and Ratification

The representation of Members in the WTO is governed by the general constitutional rules of each domestic legal order. The same rules apply to the negotiation process and the conclusion of new agreements that require ratification as a precondition for entering into force. The constitutional rules often provide for a power of representation by the government or the President and for the consent to as well as the enactment of corresponding measures for implementation by the parliament.

In the European Union, there is also the question of competence in relation to the Member States. According to Art. 133 ECT, the European Community has the competence for the common commercial policy.