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PCIJ. Ser. A. No. 1 . (1923) 20. (6)
 [1931] PCIJ, Series A/B, No. 41, 64. (7)
 [1934] PCIJ, Series A/B, No. 63, 132 – " " 134. (8)
 " " 2000/4/11

[1951] ICJ Rep 15, at 23. " (9)
 " (10)
 [1962] ICJ Rep 319, at 327 :"
 [1966] ICJ Rep 6, at 32. : (11)
 " [1970] ICJ Rep 3, at 32 " (4)
 " [1995] ICJ Rep 90, at 102 " (3)
 [1996] ICJ Rep 595, at 616 " 27 (12)
Third Report on the Law of :
Treaties by Gerald Fitzmaurice, UN doc. A/CN.4/115, YILC, Vol. II, 20. 143 ff. (4)
 .2 18 (13)
 .19 (14)
 55 (15) () [2/(1-)]= :

:1998
 The WTO: An Historical, Legal, and Organizational Overview, The George Washington University, Elliott School of International Affairs (1998).
 :
 .<http://www.internationalecon.com/wto/ch1.html>

1994
 (GATT)
 .() 1995
 2000 (4)

Cottier and Nadakavukaren Scefer, :
Non-violation Complaints in WTO/GATT Dispute Settlement: Past, Present and Future, in E.-U. Petersmann (ed.), *International Trade Law and the GATT/WTO Dispute Settlement System* (1997), at

Second Report on the Law of :
Treaties by Gerald Fitzmaurice, UN doc. A/CN.4/107, YILC, Vol. II, 16. 1923 (5)

<i>WTO Obligations Bilateral or Collective in Nature?</i> , 13 EJIL (2003), at 934.	19	(16)
	18	(17)
<i>Canada – Certain Measures Affecting the Automotive Industry</i> , Report of the Appellate Body, 31 May 200, WT/DS139/AB/R, at para. 78.	(32) (iv)19	(18)
2001 (WT/MIN (01) 15. (33) WTO II	19	(19)
www.wto.org/english/tratop_e/devel_e/anexii_e.doc EEC 404/93 of 13 : 14 Feb. 1993, OJ 1993 L 47/1 (WT/MIN(01)16) : 2001	(34)	
<i>US-Import Measures on Certain Products from the EC</i> , WT/DS165/R, 17 July 2000, para. 6.54.		
37 YBILC (1985-II), Part 2, 26. (35)	(1)29	
XXIII SCM (4) (36)		(iii)
E.U. Petersmann, : <i>The GATT/WTO Dispute Settlement System. International Law, International Organizations and Dispute Settlements</i> (1997), at 170.	(GATS)	G. Arangio –Ruiz, : (20)
<i>US-Tax Treatment for ‘Foreign Sales Corporations’ (FSC)</i> , WT/DS108/ARB, para. 5.39, 30 August 2002. (37)		4 th Report on State Responsibility, 44 Yearbook Int’l L Commission (YBILC) (1989 - II) Part I, 33 ff. D. Shelton, <i>Remedies in International : Human Rights Law</i> (1999), at 55 – 56. (21)
<i>Uruguay v. 15 Developed Countries. Recourse to Art. XXIII</i> , 15 Nov. 1962, BISD (11 th Suppl.) 95, at (8)3 99-100. (38)	[1949] ICJ Rep 174, at 182. "	UN Doc. A/56/10 (22)
	30	(23)
		1155 UNTS 331 (24)
(DSU)		(25)
IIEL (Institute for International : Economic Law), George Town University, Law : www.worldtradelaw.adelaw.net/uragreement/dsu.pdf	18	
<i>US-Taxes on Petroleum and Certain Imported Substances</i> , 17 June 1987, BSID (34 th Suppl.) 136, at para. 5.1.9. (39)	UN doc. A/CN.4/507, 10 March 2000, paras. 99-108	(26)
J.H. Jackson, <i>The jurisprudence of GATT and the WTO</i> , (2000), at 176. (40)		(27)
<i>Guatemala - Definitive Anti-Dumping Measures on Gray Portland Cement from Mexico</i> , Panel Report, 17 Nov. 2000, WT/DS156/R, at para. 8.105. (41)		(28)
	.106	(29)
	.92	(30)
	Pauwelyn, A : <i>Typology of Multilateral Treaty Obligations: Are</i>	(31)

()

Bustamante, *The Need for a GATT Doctrine of Locus Standi: Why The United States cannot Stand the European Community's Banana Import Regime*, 6 Minnesota J. Global Trade (1997) 533. (51)

EC-Regime for the Importation, Sales and Distribution of Bananas (Bananas III), Panel Report, WT/DS27/R, at paras. 7.49 and 7.50. (52)

" (53)

33 " (54)

F. Breuss, S. Griller, and E. Vrane (eds.), *The Banana Dispute, An Economic and Legal Analysis* (2003). (55)

Report of the Appellate Body, WT/DS27/AB/R. 9 Sep. 1997, at paras. 136 and 137. (56)

" (57)

EC – Measures Concerning Meat and Meat Production (Hormones), Art. 22(6), WT/DS26/ARB. 12 July 1999, at para 42. (58)

Brazil – Export Financing Program for Aircraft, WT/DS46/ARB, 28 Aug. 2000, at paras. 3.33 - 3.40, 6.1 - 6.5. (59)

US – Tax Treatment for Foreign Sales Corporations, WT/DS108/ARB. 30 Aug. 2002, at para. 5.10. (60)

7 (61)

www.us- : 2003 .mission.ch/press2003/0507DSB.html

Turkey-Restrictions on Import of Textiles and Clothing Products, WT/DS34/R, Panel Report, 31 May 1999, at para. 9.204. (42)

" (43)

Japan – Taxes on Alcoholic Beverages, WT/DS8/Ab/R, 4 Oct. 1996, 16. (44)

' (45)

WT/DS27ARB. 9 : Apr. 1999, at para. 6.3

Brazil – Export Financing Program for Aircraft, Art. 22(6), WT/DS46/ARB. 28 Aug. 2000, at paras. 3.44-3.45. (46)

: Charnovitz, *Rethinking WTO Sanctions*, 95 AJIL (2001) 792, Mavroidis, *Remedies in the WTO Legal System: Between a Rock and a Hard Place*, 11 EJIL (2001) 763, Garcia-Rubio, *Unilateral Remedies as a means of Forcible Execution of WTO Recommendations and Decisions*, in M.L. Forlati and A.L. Sicilianos (eds.), *Economic Sanctions in International Law* (2004), at 445 ff. (47)

" (48)

EC-Regime for the Importation, Sales and Distribution of Banana, Appellate Body, WT/DS27/R, at paras. 132, n. 65. (49)

Davey, *Has the WTO Dispute Settlement System Exceeded its Authority?*, 4 J Int'l Economics and Law (2001) 79, at 97. (50)

Bustamante. 1997. *The Need for a GATT Doctrine of Locus Standi: Why The United States cannot Stand the European Community's Banana Import Regime*, 6 Minnesota J. Global Trade.

Canada–Certain Measures Affecting the Automotive Industry, Report of the Appellate Body, 200, WT/DS139/AB/R.

Charnovitz. 2001. *Rethinking WTO Sanctions*, 95 AJIL.

Cottier and Nadakavukaren, Scefer. 1997. *Non-violation Complaints in WTO/GATT Dispute Settlement: Past,*

Arangio –Ruiz G. 4th *Report on State Responsibility*, 44 Yearbook Int'l L Commission (YBILC) (1989 - II) Part I.

Brazil–Export Financing Program for Aircraft. 2000. WT/DS46/ARB.

Breuss, F., Griller, S. and Vrane E. 2003. (eds.), *The Banana Dispute, An Economic and Legal Analysis*.

- Mavroidis. 2001. *Remedies in the WTO Legal System: Between a Rock and a Hard Place*, 11 EJIL.
- Pauwelyn. 2003. *A Typology of Multilateral Treaty Obligations: Are WTO Obligations Bilateral or Collective in Nature?*, 13 EJIL.
- Petersmann, E.U. 1997. *The GATT/WTO Dispute Settlement System. International Law, International Organizations and Dispute Settlements*.
- Shelton, D. 1999. *Remedies in International Human Rights Law. The WTO: An Historical, Legal, and Organizational Overview*. 1998. The George Washington University, Elliott School of International Affairs.
- Turkey-Restrictions on Import of Textiles and Clothing Products*. 1999. WT/DS34/R, Panel Report.
- Uruguay V. 1962. 15 Developed Countries. Recourse to Art. XXIII*, BISD (11th Suppl.) 95.
- US-Import Measures on Certain Products from the EC*. 2000. WT/DS165/R.
- US-Tax Treatment for 'Foreign Sales Corporations' (FSC)*. 2002. WT/DS108/ARB.
- US-Tax Treatment for Foreign Sales Corporations*. 2002. WT/DS108/ARB.
- US-Taxes on Petroleum and Certain Imported Substances*. 1987. BSID (34th Suppl.) 136.
- Present and Future*, in E.-U. Petersmann (ed.), *International Trade Law and the GATT/WTO Dispute Settlement System*.
- Davey. 2001. *Has the WTO Dispute Settlement System Exceeded its Authority?*, 4 J Int'l Economics and Law 79.
- EC-Measures Concerning Meat and Meat Production (Hormones)*. 1999. Art. 22(6), WT/DS26/ARB.
- EC-Regime for the Importation, Sales and Distribution of Banana*, Appellate Body, WT/DS27/R.
- EC-Regime for the Importation, Sales and Distribution of Bananas (Bananas III)*, Panel Report, WT/DS27/R.
- Fitzmaurice, Gerald, *Second Report on the Law of Treaties*, UN doc. A/CN.4/107, YILC, Vol. II.
- Fitzmaurice, Gerald, *Third Report on the Law of Treaties*, UN doc. A/CN.4/115, YILC, Vol. II.
- Garcia-Rubio. 2004. *Unilateral Remedies as a means of Forcible Execution of WTO Recommendations and Decisions*, in M.L. Forlati and A.L. Sicilianos (eds.), *Economic Sanctions in International Law*.
- Guatemala-Definitive Anti-Dumping Measures on Gray Portland Cement from Mexico*, Panel Report. 2000. WT/DS156/R.
- Jackson, J.H. 2000. *The jurisprudence of GATT and the WTO*.
- Japan-Taxes on Alcoholic Beverages*. 1996. WT/DS8/Ab/R.

The Legal Nature of “WTO” Obligations for Participated Countries

*Yaser Y. Al-Khalayleh**

ABSTRACT

The WTO Agreement is, obviously, a *multilateral agreement*. It has 144 signatories. But what is the nature of WTO *obligations*? Are they of the *bilateral* (or reciprocal) type, in that WTO obligations can be reduced to a compilation of bilateral treaty relations, each of them detachable one from the other. Or are they of the *multilateral* (*erga omnes* or integral) type, in the sense that their binding effect is collective and the different relationships between WTO members cannot be separated into bilateral components.

This paper offers two propositions. Firstly, WTO obligations are bilateral / reciprocal in nature. They are not of the multilateral, integral or *erga omnes* type. In other words, the WTO obligations, albeit enumerated in a multilateral convention, are nonetheless of a nature that do not possess an *erga omnes* nature, and can not be in that sense useful to the states consented to the treaty signed in 15 April 1994, the date of conclusion of the Marrakesh Agreement.

Classifying WTO obligations in either of those two categories has major legal consequences: Firstly, in terms of the state's right to *Locus Standi*, and secondly, in terms of the acceptability of suspension of WTO obligations in response to breach. Thirdly, for the rules on standing to bring a complaint before a WTO panel.

Keyword: International Law, World Trade Organization, Obligations.

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