Meinhard Hilf, Die Konstitutionalisierung der Welthandelsordnung: Struktur, Institutionen und Verfahren, in: Entschädigung nach bewaffneten Konflikten. Die Konstitutionalisierung der Welthandelsordnung, Berichte DGVR Bd. 40, Heidelberg 2003

## Summary

*The Constitutionalization of the WTO: Structure, Institutions and Procedures*

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1. Constitutionalization is a normative process in which the WTO's fundamental understanding of law and its organisation develop.

2. The WTO faces a crisis of legitimacy visible since Seattle, which could be overcome among other means by a constitutionalization of the WTO.

3. The standards required for a constitutionalization depend on the tasks and powers that have been transferred to the WTO. The WTO mainly serves as a Forum for treaty negotiations; it is further responsible for providing the mechanisms for an effective dispute settlement procedure.

4. Constitutionalization of WTO law within the domestic legal system is left to the Members. Some constitutional weaknesses of WTO law are presently not favourable for the recognition of direct effect of WTO law.

5. Standards for constitutionalization have to be extracted from the body of WTO law. WTO law itself refers to the general principles of international law and those of its Members' legal systems. An analogous application of Art. 23 Grundgesetz to preserve the constitutional principles under national law when transferring sovereignety appears possible. This however would have no direct consequences for the WTO.

6. The present state of development of the WTO allows to conclude that there are six basic requirements for the process of constitutionalization: preserving democratic principles (1) and the rule of law (2), distributing tasks and powers vertically and horizontally (3), preserving efficiency and effectiveness (4) and respecting human rights (5) and solidarity (6).

7. To preserve democracy the WTO should promote transparency and maintain a dialogue with the public.

8. Legitimacy achieved through the rule of law serves the ideal of justice or, in other terms, of integrity. WTO law requires that its Members' domestic trade laws respect the rule of law. It ensures an obligatory dispute settlement system. Need for reforms exists concerning the establishment of a genuine judicial procedure (1), the role of the WTO Secretariat which should be enabled to make submissions (2), third parties' rights of involvement in the procedure (3), interaction with parallel proceedings in the legal system of the Members (4), and finally regarding the mechanism by which sanctions are imposed (5).

9. The horizontal division of power within the WTO is coined by the tension between the weak consensus oriented process of law-making and the effective dispute settlement mechanism. Vertically the principle of subsidiarity is applicable.

10. Effectiveness and efficiency are basic requirements concerning the constitutionalization of international organisations. The WTO meets these requirements in part.

11. The continuing process of constitutionalization needs to take stronger account of aspects of democratic legitimacy and the protection of individual rights