As the former head of the WTO Pascal Lamy has highlighted, world trade traditionally involves state-to-state contracts and is based on an anachronistic “monolocation” production/trade model. It therefore struggles to handle new patterns of trade such as global value chains, which are based on a “multilocation” model. Although it continues to provide world trade on a general level with a powerful heuristic, the traditional “rationalist” approach inevitably leaves certain descriptive and normative blind spots. Descriptively, it fails to explain important ideational factors, such as culture and norms, which can effectively guide the behavior of trading nations with or without material factors such as interests and utilities. Normatively, the innate positivism of the traditional model makes it oblivious to the moral imperatives of the current world trading system, such as development. This book emphatically redresses these blind spots by reconstructing the WTO as a world trade community from a social perspective.

Sungjoon Cho is Professor of Law at IIT Chicago-Kent College of Law, where he teaches international law, international trade law, international business transactions, and comparative law.
As the processes of regionalization and globalization have intensified, there have been accompanying increases in the regulations of international trade and economic law at the levels of international, regional, and national laws.

The subject matter of this series is international economic law. Its core is the regulation of international trade, investment and cognate areas such as intellectual property and competition policy. The series publishes books on related regulatory areas, in particular human rights, labor, environment and culture, as well as sustainable development. These areas are vertically linked at the international, regional, and national level, and the series extends to the implementation of these rules at these different levels. The series also includes works on governance, dealing with the structure and operation of related international organizations in the field of international economic law, and the way they interact with other subjects of international and national law.

Books in the series:

* The Social Foundations of World Trade: Norms, Community, and Constitution
  Sungjoon Cho
* Public Participation and Legitimacy in the WTO
  Yves Bonzon
* The Challenge of Safeguards in the WTO
  Fernando Piérola
* General Interests of Host States in International Investment Law
  Edited by Giorgio Sacerdoti, Pia Acconci, Mara Valenti and Anna De Luca
* The Law of Development Cooperation: A Comparative Analysis of the World Bank, the EU and Germany
  Philipp Dann
* WTO Disciplines on Subsidies and Countervailing Measures: Balancing Policy Space and Legal Constraints
  Dominic Coppens
* Domestic Judicial Review of Trade Remedies: Experiences of the Most Active WTO Members
  Müslüm Yilmaz
International Organizations in WTO Dispute Settlement: How Much Institutional Sensitivity?
Marina Foltea

Public Services and International Trade Liberalization: Human Rights and Gender Implications
Barnali Choudhury

The Law and Politics of WTO Waivers: Stability and Flexibility in Public International Law
Isabel Feichtner

African Regional Trade Agreements as Legal Regimes
James Thuo Gathii

Processes and Production Methods (PPMs) in WTO Law: Interfacing Trade and Social Goals
Christiane R. Conrad

Non-Discrimination in International Trade in Services: 'Likeness' in WTO/GATS
Nicolas Diebold

The Law, Economics and Politics of Retaliation in WTO Dispute Settlement
Edited by Chad P. Bown and Joost Pauwelyn

The Multilateralization of International Investment Law
Stephan W. Schill

Trade Policy Flexibility and Enforcement in the WTO: A Law and Economics Analysis
Simon A. B. Schropp
THE SOCIAL FOUNDATIONS
OF WORLD TRADE

Norms, Community, and Constitution

SUNGJOON CHO
To my family
## CONTENTS

*Preface*  page xi

1  Introduction: reconstructing the world trading system  1
2  Two frameworks on an international organization  44
3  The world trade community  85
4  Norms and discourse: the internal operation of the world trade community  120
5  The world trade constitution: external relationships of the world trade community  164
6  Evaluation: the legitimacy of the world trade community  211
7  Conclusion: building the world trade community  227

*Index*  239
This book is the culmination of what I have tried to convey, explicitly and implicitly, about the world trading system since I began my graduate study in 1996. In a nutshell, this book explores and utilizes a social perspective of the WTO and its operation. Here, WTO members are defined as social, rather than rational, actors. The seed of this perspective was sown in my pre-academic career as a trade official. What I witnessed in Geneva could not be explained exclusively by calculation, strategies, and interests. While these factors did loom large, an undeniably real, if not always overt, social dynamic was also present. Even when driven by strategic considerations, WTO members had to know WTO norms to square their positions within the normative framework. Trade officials were obliged to learn all the relevant WTO agreements, decisions, case law, and other practices, even before they established the strategies. Not every move made by WTO members appeared to be out of calculation: in fact, most members seemed to be doing what they were doing because they took the actions for granted in the most unspectacular fashion. They were speaking the WTO language (norms).

Indeed, we can explain the WTO and its operation in a non-rational, non-consequentialist manner. Rather than dismissing rationalism, this alternative – social – framework complements it by offering constructive criticism on the former’s inevitable paradigmatic blind spots. While indubitably beneficial, rationalism might degenerate into scientism if it is not hardened by such criticism. After all, values and ideas are not apologetic epithets, nor should they be equated with simple-mindedness. This book proposes a new optic that spotlights hitherto under-diagnosed problems within the WTO community, such as development failure. From a disciplinary standpoint, this book gathers insights from post-Weberian interpretive sociology, informed by phenomenology, as well as sociology’s recent scholarly reincarnations in the area of International

1 See, notably, Martha Finnemore, National Interests in International Society (1996).
Relations (IR), such as constructivism. Readers might identify in this book footprints of intellectual legacies pioneered by Edmund Husserl, Max Scheler and Alfred Schutz. In addition, this book is inspired by Anthony Gidden’s concept of “structuration,” which Alexander Wendt applied in the IR field. Thus, this book emphasizes the mutual construction of agency and structure. While the social structure represented by the WTO language shapes WTO members’ actions, their interactions simultaneously constitute the very structure of the WTO. As Pierre Bourdieu would have noticed, while the gravitational force from the WTO field wields symbolic power over WTO members, it is the very members that often defy such gravity and reconstruct the field.

This book’s methodological approach is intentionally eclectic. I introduce diverse theoretical lenses that explain particular social aspects of the WTO operation. While this book features each theory’s forte, it also heeds each theory’s inevitable ontological assumptions. For example, Chapter 4, which discusses the intra-community dynamics, relies mainly on symbolic interactionism, developed by George Herbert Mead and Herbert Blumer, as it focuses on interaction in the form of discourse and the accompanying symbolization via norms qua language. In contrast, Chapter 5, addressing the extra-community dynamics, draws on structuralism–functionalism, along the intellectual heritage of Émile Durkheim and Niklas Luhmann, as it deals with the WTO’s configuration with its environment.

At this juncture, a note of caution is in order. Some observations and arguments from the social science literature cited in this book do not necessarily dovetail with the unique context of the WTO. Indeed, social science literature often focuses on particular organizations or events. Although I am fully attentive to the risk of contextual mismatch, I still take a liberal approach in citation, as if a *bricoleur* would. After all, essential paradigmatic insights from social science that this book aims to draw tend to outweigh the risk of clutter. Nonetheless, I tender my apologies if any of such citation does violence to those original works.

As my profuse references indicate, I am not the first one who has brought a sociological inquiry to the world trade system. Nor do I intend

---


to put the last word on this endeavor. My sincere hope is that this work will, in its own right, illuminate parts of the field worth re-examining.

In reaching this point, this book was touched by so many great minds. Joseph Weiler, my mentor and the main supervisor from my doctoral study, taught me the importance of “thinking about thinking” in an osmotic manner and constructed my academic identity. My other supervisors, Anne-Marie Slaughter and William Alford, who later became my good friends, were always sources of backing and encouragement. I also have to thank John Jackson, José Alvarez and Don Regan, my teachers from my years in Ann Arbor, whose excellent teaching and thoughtful guidance empowered me to continue my academic pursuit in Cambridge, Massachusetts. I am so grateful to Alexander Wendt for his special support in this project. As a stranger in the IR field, in particular constructivism, I benefited greatly from his gracious advice in writing this book. My close friend and colleague, David Gerber, took all the trouble to read the whole manuscript and gave me many critical suggestions, which were instrumental in finishing this book. Ever since I began my academic career in the law school, I have turned to David on a wide range of questions. He has always been considerate and supportive. I am blessed that my office is next to his. Moshe Hirsch and Jeffrey Dunoff not only endorsed my thesis in its early stage, but also offered me a number of valuable suggestions throughout the writing process.

I am also indebted to a number of outstanding scholars from whom I learned so much in various venues and occasions. In deep appreciation, I write down their names here, with sincere apologies to those whom I might impudently omit: Harold Koh, Peter Katzenstein, John Gerard Ruggie, Martha Finnemore, Petros Mavroidis, Ernst-Ulrich Petersmann, Steve Charnovitz, David Gantz, Rob Howse, William Davey, Thomascottier, Claire Kelly, Oona Hathaway, John Barceló III, Greg Shaffer, Joel Trachtman, Alan Sykes, Keith Hylton, Tom Ginsberg, Andrew Guzman, Debra Steger, Seung Wha Chang, Joost Pauwelyn, Paul Stephan, Frank Garcia, Larry Helfer, Karen Alter, Richard Steinberg, John McGinnis, Jide Nzelihe, Philip Nichols, Chris Brummer, David Zaring, Rachel Brewster, Anu Bradford, Terry Halliday, Bruce Carruthers, Ian Hurd, Jürgen Kurtz, Susan Frank, Amelia Porges, Mark Wu, Fiona Smith, Julia Qin, Chi Carmody, Lorand Bartels, James Gathii, Padideh Alai, Chantal Thomas, Thomas Lee, Andrew Lang, Tomer Broude, Simon Lester, Won-Mog Choi, Dukgeun Ahn, Jaemin Lee, Markus Wagner, Pasha Hsieh, Joe Conti, Jason Yackee, Elizabeth Trujillo, Sonia Rolland, John Ohnesorge, Sida Liu, and Alex Huneeus.
Additionally, I thank Kevin McClure, Cecilia Suh, Tiffany Eng, Rosalyn Essen, Kathleen Mallon, Jacob Radecki and Laura Caringella for their dedicated assistance in research and proofreading this book. My wholehearted thanks to Kim Hughes and the staff of Cambridge University Press for their patience and hard work. Finally, I dedicate this book to my family, whose love and sacrifices sustain my life.