

“Authentic in English Only”: The Necessity of Trilingual System in the WTO

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Abstract: This review paper questions the necessity of trilingual system in the World Trade Organisation (WTO), inspired by the “authentic in English only” on the cover of the US’ submission in the US-Gambling case. WTO, as the delegation of more than 160 countries, its official languages (i.e., English, French, Spanish) are rather Euro-centric. Even though the WTO has trilingual corpus and database, its trilingual systems face many problems, such as discrepancies in law translations, incoherent references, and the dominance of English usage. This review also mentions other international organisations which have multiple official languages and puts forward some possible approaches to improving the language diversity in the WTO. One of the measures is to start from establishing other languages (e.g., Arabic and Chinese) corpus and database, and interpretation and translation working station of other languages as a trial. The language data from both sides can serve each other, paving the way to the future language prosperity.

Keywords: trilingual, WTO, interpretation of treaties, English dominance

1. Introduction

Founded in 1995, the World Trade Organisation substituted the General Agreement on Tariffs and Trade (GATT) after rounds and decades of negotiations. It represents a global multilateral trading system, stands for free trade but also supports trade barriers in some cases, e.g., protecting the environment or consumers. From 130 parties in 1998 to 164 members in 2023, WTO now speaks for 98% of world trade [1,2].

The WTO operates in three languages, English, French and Spanish, so as to be compatible with a large and diverse group of members. Despite the fact that WTO has three official languages, the distribution of each language version is not exactly simultaneous all the time. According to its language and documentation services division, most official documents are distributed in English first or in other language version when English is not available. If it is the former case, French and Spanish versions are translated and disseminated later than the English one [3]. There are also exceptions with “Daily Bulletin” and CVs of Panelists which are distributed in English only [3]. Besides, to help everyone who is interested in international trade, the WTO established a public trilingual corpus and a terminology database with the growing importance of natural language processing and for the benefits of linguists and translators [4, 5]. Many disputes raised in the WTO are related to language issues. In the US-Gambling case, the US said “authentic in English only” on its cover of submission.

Inspired by this case, this report primarily focuses on the trilingual system of WTO and investigates the related issues.

Regarding multiple languages, the Vienna Convention on the Law of Treaties (VCLT) provides a general guidance on multilingual divergences in Article 33 when there are two or more languages in authenticated treaties. It explicitly rejected the hierarchy of texts in different language versions by stating that a treaty in each language is equally authoritative unless particular circumstances (i.e., the speciality of a treaty or the agreement among parties). When there is difference, it pointed out that the texts should be expressed in the best meaning that reflect the object and purpose of the treaty. It is worth noting that this circumstance is only allowed when Articles 31 and 32 of VCLT fail to eliminate the differences.

The translation process, as it reflects the interpretation of the treaty, should obey the general and supplementary mechanisms of interpreting Articles 31 and 32 of the VCLT. One of the essences is to interpret treaties “in good faith”, which means to benefit human being through practice with kindness. Together with context, the interpretation of treaties should consider object and purpose which reveal the initial intention of creating the treaties, it should be reflected in the interpretation of the treaties. With regards to context, the VCLT lists its concrete scope, including the preamble, text and annexes. Other things taken into account are subsequent agreement and practice and relevant laws among parties. To remove ambiguity and the possibility of absurd and unreasonable result, the preliminary preparations for the treaties and the specific circumstances under which to apply the treaties shall be considered.

While the treaty takes attention to solving multilingual divergences, in the course of conducting the study, it is found out that few papers focus on the language issues in the WTO and not many countries present their attitudes towards the Eurocentric trilingual system. The lack of research further indicates the necessity of discussing the language system in the WTO. This review firstly introduces the current trilingual system of the WTO, and briefly summarises the articles in VCLT which guideline the interpretation of treaties. The following findings refer to cases regarding the disequilibrium in meanings among the three official languages and the analysis points out the challenges of the trilingual system. The next section delivers the attitudes towards multilingual system, followed by possible approaches to address the language divergence issues. Lastly, there is a conclusion in the end.

2. Cases Referring to Three Languages

The function of treaties in trilingual versions is proved to be significant when it comes to solving disputes. According to Condon, Article 33 of the VCLT was used as the reference source in seven case reports by the Appellate Body [6]. In *EC-Asbestos*, it is confirmed by the Appellate Body that the translation of “like” products in French (“*produits similaires*”) and Spanish (“*productos similares*”) are the equally authentic versions [7]. In *EC-Bed Linen*, the Appellate Body applied Article 33(3) by referring that Spanish phrases (“*se han cumplido*” and “*hayan limitado*”) in paragraphs 1 and 4 of Article 9 of *Anti-Dumping Agreement*, English phrases (“have been fulfilled” and “have limited”) and French phrases (“*sont remplies*” and “*auront limité*”) all convey the identical semantic meaning [8]. Particularly in *US-Softwood Lumber IV*, *US-Countervailing Duty Investigation on DRAMs*, *US-Upland Cotton* and *US-Stainless Steel (Mexico)*, as stated by the Appellate Body, the comparison between the texts across languages applies the presumption of Article 33(3), which is argued as an evidence to interpret the English text [9]. However, there are also examples in which the reports compared different language versions without mentioning the Articles of VCLT. Condon listed six cases [6]. In *US-Lamb*, the Appellate Body found that the standard of “serious injury” is higher than “material injury” in both French (“*dommage grave*”) and Spanish (“*dommage important*”) [10]. In *EC-Tariff Preferences*, the French and Spanish versions of paragraph 2(a) and footnote 3 of

the *Enabling Clause* were under discussion by the Appellate Body. It came out the French (“*est défini*”) and Spanish (“*lo define*”) are stronger than English (“as described in”) which further supported that only “generalized, non-reciprocal and non-discriminatory” was considered under the Enabling Clause [11]. The *US-Gambling* case, which cued the initial conception of this paper, might be more complex. The Panel, as well as the Appellate Body, both focused on the meaning of “sporting”. The United States’ GATS Schedule mentioned this lexicon under its subsector 10.D [12, 13]. As a matter of fact, the two investigation groups delved into its meaning in French and Spanish according to the definition in multiple dictionaries. The process thus triggered further discussions on the feasibility of the definitions in the real case. The Appellate Body report on *US-Softwood Lumber IV* is another case. The investigating group carefully examined the meaning of “measures taken in comply” in Article 21.5 under Dispute Settlement Understanding (DSU) with comparison to its corresponding French (“*mesures prises pour se conformer*”) and Spanish versions (“*medidas destinadas a cumplir*”) [14]. The *Argentina-Hides and Leather* case is another example. The elaboration on the meaning of Article III:2 of *General Agreement on Tariffs and Trade* (GATT) 1994 referred to the French text when discussing the difficulty of finding the exact equivalence in French of “directly or indirectly” [15].

3. Challenges of the Trilingual System

The interpretation of understanding treaties in different languages and settings are rather complicated since the parties have to find reliable sources to support their understanding. According to Condon, there are discrepancies in WTO laws [9]. For example, the “and” in English is translated into “or” in Spanish in GATS Article XVII:1. Also, there is difficulty in achieving the identical meaning in translation. As stated by the Panel, the phrase which indicated “like products” under the frame of taxation and other charging systems was translated into “directly or indirectly” products in French in the *Argentina-Hides and leather* case [15]. However, the word “indirectly” could expand the scope of products which is not equivalent to which the appellants referred. The translation process can lead to different replacement of words [9]. Take the cross-linguistic translation in Annex 1.1 of *Agreement on Technical Barriers to Trade* as an example. The English word “requirements” was replaced by “prescriptions” in French and “prescripciones” in Spanish. Nonetheless, it is worth mentioning that the semantic meaning of “prescriptions” and “prescripciones” was beyond the English “requirements” which referred only to labelling.

Apart from the legal texts, the dictionaries which provide the reference sources of certain words may be contradictory. For instance, in the *US-Gambling* case, the US looked into dictionaries to investigate the definition of “sporting” in English. They referred to the *New Shorter Oxford English Dictionary* and the *Merriam-Webster's Collegiate Dictionary* and stated that the “sporting” thus included gambling [12]. However, the European Communities referred to the *Webster's New World Dictionary of American English* and stated that the adjective “sporting” included gambling and this meaning was “Americanism”. Even if the European Communities referred to the same dictionary (i.e., *New Shorter Oxford English Dictionary*), they disagreed with the U.S on the definition by pointing out that adjective “sporting” included gambling only when it referred to a person [12]. Comparatively, the Panel cited the *Penguin Pocket English Dictionary (1988)* and the *New Oxford Thesaurus of English* and concluded that gambling was not included in the meanings of “sporting” [12]. Apart from different conclusions led by different dictionaries, different languages can cause divergence as well. In the *US – Gambling* case, the Panel explicitly mentioned that the French “sportifs” and Spanish “deportivos” did not include gambling related activities while the English definition of “gambling” did based on some dictionaries [12]. In the *Canada – Wheat Exports and Grain Imports* case, the Appellate Body and the US had the disagreement over the consistent meaning of the trilingual versions of subparagraphs (a-c) affiliated to Article XVII:1. To be more specific, the US believed that

the trilingual versions accorded with one another while the Appellate Body came to another conclusion [6, 16].

Another limitation of dictionaries is that they did not succeed in explaining the meaning of a specific term in its corresponding settings in the real life. For example, in *EC – Asbestos*, it was mentioned that the dictionary did not list which qualities were important when evaluating two or more products were “like” products [7]. Also, it did not set the threshold above which two or more “like” products should share the characteristics, and the dictionary did not indicate the view from who the products are considered as “like” products [7].

The three official languages, English French and Spanish, of the WTO are apparently Eurocentric whereas many of its 164 members (e.g., Brunei, China, Croatia, Thailand, etc.) do not use English, French or Spanish as their official languages. It may invisibly pressurise, especially, developing countries in their dispute settlement procedure. The process requires the non-English speaking countries to elaborate themselves in English. For example, in *Morocco-Hot-Rolled Steel (Turkey)* case, both the complainant and respondent do not use English as their official languages --Morocco uses Standard Arabic and Standard Moroccan Berber as its official languages and Turkey uses Turkish--whereas their submissions are in English [17, 18, 19].

Furthermore, the three languages do not share an equal status based on the cases mentioned above. English seems to dominate the other two since French and Spanish are only mentioned when the confirmation of the interpretation of English text is required (e.g., *US-Lamb*, *EC-Tariff Preferences*, *US-Oil Country Tubular Goods Sunset Reviews*, *US-Softwood Lumber V*, *US-Softwood Lumber IV*). Such references of French and Spanish put them in the peripheral position. They become the nominal official languages: their translation version is completed after the English one is available, their irreplaceability is reflected only in CVs of Panelists and few meetings are held in language other than English.

The agreed usage of English as “working language” in the WTO indeed brings convenience. However, when discussing the essence of the trilingual system, it is more reasonable to let each language perform their tasks, not limited to the written documentation only.

4. Attitudes Towards the Multilingual System

It seems that the attitudes towards the application of various languages depends on the argument of each party in different cases. In the *US-Gambling* case, Japan, one of the observed bodies, mentioned that it was not logical for the Panel to cite the translations of ‘sporting’ in French and Spanish since the US had declared that the discussion was “authentic in English only” [13]. However, the European Communities stated that the comparison of terms in French and Spanish correctly follows the Article 33 of the VCLT [13]. In *EC-Beef Linen* case, without further comparison to other language versions, Japan as one of the third participants stated using present perfect tense (“have been fulfilled” and “have limited”) was crucially important in paragraphs 1 and 4 of Article 9 under the *Anti-Dumping Agreement* in English version only [8]. Domestically, Japan courts allows interpreters to provide translation service for defendants. However, there were misinterpretations (e.g., mistakes or omissions) during the process and the precise reflection between the legal system and the target language and the professionalism of interpreters remained a problem while the Japanese authorities was trying to overcome the difficulties and improve the quality of public service interpreting and translation [20, 21].

In Hong Kong China, Chinese and English enjoy equal status on court. However, there is an invisible language hierarchy with the lower courts speaking more Cantonese and higher court using more English. Bilingual trials take place in the Court of First Instance, as well as the District Court. Witnesses can speak Cantonese when they are examined whereas in court debate the language chosen by majority is still English [22, 23].

In terms of mainland China, the attitude is continually changing. In 2002, most citizens underestimated the use of English in international trade [24]. In 2007, the Ministry of Education of China launched a plan which contributed to bilingual teaching (i.e., teaching in Chinese and English). One of the courses in law school subjects is the WTO law [25]. The policy helped professors and students increase the familiarity with China's relationship with the WTO. The continuously increasing attention to English reflected China's determination to performing its responsibilities to the best of its competencies in the current multilateral trading system under the structure by the WTO. In 2018, China showed a firm attitude towards supporting the multilateral system, observing and upholding the WTO rules in the white paper, *China and the World Trade Organisation* [26]. Based on these actions, China's efforts presented its supporting to the WTO and its relevant trilingual system.

5. Possible Approaches to Addressing the Issues

It is helpful to use the experience of other multilingual international organisations to improve the language system of the WTO. The United Nations (UN) has six — Arabic, Chinese, English, French, Russian and Spanish, and establishes a comprehensive system for interpretation, translation to eliminate the disequilibrium in meanings. The official UN News website even has translation versions in Hindi, Portuguese and Swahili which are beyond the realm of official languages [27]. The World Health Organisation (WHO) has the same six official languages as the UN, and it allows external entities to handle translations into other languages to disseminate its multilingual information [28]. The European Union probably has the most numerous official languages among international organisations with the number of 24 and three of them (i.e., English, French and German) as working languages. The numerous language versions guarantee the equality but also leads to problems, such as the large expense of maintaining the system (e.g., recruiting) and the “implications of translation and interpretation errors and delays” [29]. Also, the number of translating texts into languages other than English (e.g., French and German) is decreasing [29].

In order to put forward possible approaches for the WTO, it is plausible to refer to the UN who successfully operated six official languages. Firstly, similar to the UN, it is possible to more than three official languages in the WTO. Since it already has trilingual corpus, the WTO can start from constructing corpus in other languages (e.g., Arabic and Chinese) to pave the way for the language expansion. Secondly, it is feasible to expand the capacities of the terminology base and the corpus with the help of machine learning and natural language processing. It includes expanding the current capacities and involving other languages in the database. Thirdly, it is acceptable to start to allow delegates to speak in their official language like the UN. It indicates the recruitment of new interpreters and translators. Even if the language is not listed in the potential new official language list, the countries can establish its own language working station at the WTO to help with interpretations, translations and documentations, following the example of German Translation Section in the New York [30].

6. Conclusion

This review starts from the “authentic in English only” in the US-Gambling case, and then seriously investigates into the trilingual system of WTO. The languages system seems to be diverse. However, the languages (i.e., English, French, Spanish) are Euro-centric and English is dominantly used in meetings and documentations. Moreover, the usage of French and Spanish are rather peripheral and most of the times they are referred to for confirming the interpretation of English texts and they should align with the English texts rather than the other way round. This paper then discusses the challenges of the trilingual systems which come from various aspects. The discrepancies in law translations may lead to further divergence when the reference is needed. The differences in interpreting the same

lexicon in different dictionaries are confusing and moreover, the dictionaries cannot provide pragmatic guidance in some cases. The great number of participants of the WTO seems to threaten the stability of the trilingual system since many of them do not use English as their official languages. The situation that non-native speakers communicating in English in the WTO indirectly reflects the dominance of English language and unequal status among English, French and Spanish. In short, despite the active performance of the WTO trilingual system, it fails to present the essence of practical multilanguage application and to some degree puts French and Spanish in a peripheral place. In terms of the attitudes towards the trilingual system, it is difficult to find an explicit statement while many countries and regions respect the rights of defendants and provide interpretation service on court (e.g., mainland China, Hong Kong China, Japan). Moving on to the further improvement of the WTO's current trilingual system, several positive policies can be carried out in the future starting by emulating the language system of the UN.

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Appendix: Short and Full Titles of Disputes in the WTO (in the Alphabetical Order)

Short title	Full case title
<i>Argentina – Hides and Leather</i>	<i>Argentina – Measures Affecting the Export of Bovine Hides and the Import of Finished Leather</i>
<i>Canada – Wheat Exports and Grain Imports</i>	<i>Canada – Measures Relating to Exports of Wheat and Treatment of Imported Grain</i>
<i>Chile – Price Band System</i>	<i>Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products</i>
<i>EC – Asbestos</i>	<i>European Communities — Measures Affecting Asbestos and Products Containing Asbestos</i>
<i>EC – Bed Linen</i>	<i>European Communities — Anti-Dumping Duties on Imports of Cotton-type Bed Linen from India</i>
<i>EC – Tariff Preferences</i>	<i>European Communities — Conditions for the Granting of Tariff Preferences to Developing Countries</i>
<i>Morocco - Hot-Rolled Steel (Turkey)</i>	<i>Morocco — Anti-Dumping Measures on Certain Hot-Rolled Steel from Turkey</i>
<i>US – Counter-vailing Duty Investigation on DRAMs</i>	<i>United States — Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMs) from Korea</i>
<i>US — Gambling</i>	<i>United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i>
<i>US – Lamb</i>	<i>United States — Safeguard Measure on Imports of Fresh, Chilled or Frozen Lamb from New Zealand and Australia</i>
<i>US – Oil Country Tubular Goods Sunset Reviews</i>	<i>United States — Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina</i>
<i>US – Softwood Lumber IV</i>	<i>United States — Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada</i>
<i>US – Softwood Lumber V</i>	<i>United States — Final Dumping Determination on Softwood Lumber from Canada</i>
<i>US – Stainless Steel (Mexico)</i>	<i>United States — Final Anti-Dumping Measures on Stainless Steel from Mexico</i>
<i>US – Upland Cotton</i>	<i>United States — Subsidies on Upland Cotton</i>