Autonomy and Domination within the Global Trade System: Developing Countries in the Quest for a Democratic WTO

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Anna Lanoszka
University of Windsor

Institute on Globalization and the Human Condition
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PREFACE

Since its creation in 1995, political activists, non-governmental organizations, and some WTO member states among others have criticized the World Trade Organization (WTO) as being "undemocratic"? But what does the term "democratic" mean when one is speaking about a legally autonomous intergovernmental organization like the WTO? Anna Lanoszka focuses on this question in this working paper. She argues that one needs to distinguish between the internal democracy of an organization, meaning its internal procedures and rules and how competition takes place based on those procedures and rules, and external democracy. External democracy refers to whether the decisions agreed to by the member states respond to the needs and concerns of their domestic populations. Professor Lanoszka suggests that these two forms of democracy are often confused, leading some to overlook some of the enhancements to internal democracy that came when the WTO replaced the temporary and weak internal organization that supported its predecessor organization, the General Agreement on Tariffs and Trade.

In this respect, she stresses the importance of judicial equality within the WTO. With each member state being legally equal to each other state, the dynamics of competition within the global trade regime have changed drastically. She sustains this argument by noting the increased influence and power of developing countries within the regime and the consequent decline in the ability of the most powerful and wealthy countries to control political and legal change to it. These changes, however, might be seen as bringing political decision-making in the WTO to a complete standstill as the wealthy states refuse to yield on entrenched positions and begin to seek regional agreements outside the WTO to address their interests. In tracing these developments, Professor Lanoszka leaves us with much to consider when it comes to the future of the global trading system as well as democracy itself.

William D. Coleman
Editor
McMaster University

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Anna Lanoszka, University of Windsor

Introduction

Liberty has to be relentlessly pursued, it cannot be just owned.
— Czeslaw Milosz, The Nobel Prize Winner for Literature 1980

Power relations shape the world economy. The system of international economic transactions has been persistently asymmetrical as it consists of highly industrialized states as well as of many poorer countries at different levels of economic development. The dominant position of the rich developed countries cannot be simply assumed away, even in the rules-based World Trade Organization (WTO) guided by the principles of international law.

The establishment of the WTO has been widely considered to be a globalizing moment in the history of international institution building. The new organization is meant to overcome the ideological divide of the past and thus offers membership to all states, which makes it, in principle, global and universal. More importantly, however, it is the first formal organization framed by the legal agreements, where each Member is given equal judicial recognition. This change from a diplomatic power-based forum for negotiation to a judicial rules-based international organization has offered previously inaccessible opportunities to developing countries.

Armed with the opportunities provided to them by the legal framework, developing countries have started to assert their autonomy when it comes to the decision making in the WTO. A critical threshold on this path was reached at the 1999 WTO Ministerial Meeting in Seattle. This meeting was the first where the developed nations proved to be ineffectual both as leaders and as agenda-setting players, while developing countries maintained their unified opposition. It was a peculiar stage in the life of the WTO since at this very meeting the organization also became a target of criticism by many disillusioned NGOs and individuals who considered it to be part of a destructive globalization scheme. Gradually the WTO started to symbolize everything that was wrong with the global economy. In this paper, we are particularly interested in one of the main indictments against the WTO — the one that accuses it of being undemocratic.

I argue that the use of the term "undemocratic" is questionable in this context. The term misses the view from inside the WTO, and what is missed relates to a significant, and largely unexpected, turn that the organization has taken under the influence of developing countries. Instead, the paper suggests a competitive model along the Schumpeterian line of competitive democracy as the appropriate lens for studying the WTO. This model focuses on the enhanced autonomy of individual Member states as it pushes us to look inside the WTO and examine opportunities that actually exist for dealing with the broader challenges posed by domination embedded in the trading system.

Recognizing that democratic competition is taking place inside the WTO, however, does not mean that we judge the organization in positive terms. To the contrary, even if developing countries feel more able than ever to pursue their own objectives within the WTO, they must engage in a relentless struggle to secure their autonomy. This constant struggle creates a potentially detrimental condition for the WTO, by negatively influencing its efficiency as a forum for negotiations and as a place to settle trade

disputes. Furthermore, some developed countries frustrated with the new competitive environment inside the WTO, which is eroding their previously unchallenged autonomy, are now turning their attention towards bilateral and regional alternatives. By doing so they may be suggesting a reduced role for the WTO in the global economy. Paradoxically then, the increased autonomy of many historically vulnerable WTO Members may have undermined the organization that has itself, nevertheless, become internally more democratic.

The Promise of the Global WTO and Judicial Equality

Legal experts and trade policy practitioners hoped that the WTO would introduce predictability and equity to the world trading system because of its new status as a formal institution consisting of legal agreements and guarded by its dispute settlement mechanism based on the principle of compulsory adjudication (Marceau 1995). Despite its promises, however, the birth of the WTO was not enthusiastically embraced by all the actors involved. Still, the final outcome of the Uruguay Round of negotiations was presented as a potentially balanced solution. The developed countries were pleased to have agreements on trade in services (GATS) and intellectual property (TRIPS) included within the WTO, while developing countries were hopeful about: a) an agricultural agreement, which offered a promise of reforming this traditionally distorted area of trade; b) a new agreement on trade in textiles and clothing, which promised to eliminate the quota restrictions of the Multi Fibre Agreement;[1] and c) the new legal form of the organization, which offered a promise of equitable rules. Even so, the WTO remained an unfinished project when it was officially inaugurated on 1 January 1995. There were several specific areas where the fate of the new organization was left to legal interpretations, implementation, and future negotiations.[2] It would take a few years however, before the implementation of the existing commitments would be recognized as posing a considerable "development challenge" for developing and transition economies (Finger and Schuler 2003).

Many impending problems were not apparent when the frantic negotiations stopped in December 1993.[3] However, by 1999 the outcome of the Round would increasingly be considered a bad deal by developing countries (Ostry 2001, 364; Mukerji 2000, 39-40). While the Uruguay Round created a sea change in the world trade system, "the implications of the transformation of the system were not well understood by either side" (Ostry 2002, 288). Nonetheless, one of the main achievements of the Uruguay Round was the enlargement of membership and the inclusion of developing countries in the newly established and legally strengthened organization on equal terms (Lanoszka 2004; Whalley 1996).

The Round was long and difficult. The insistence of the developed countries to include agreements on services and intellectual property created hostilities between them and a number of developing countries (Ostry 1997, 184-5). In the final deal, the agreement in agriculture was far weaker than developing countries had hoped. The anti-dumping issues were not resolved, and the market access and preferential treatment issues were left in a state of uncertainty. However, the guarantees embedded within the WTO legal framework turned out to present the best opportunities for developing countries to transform the system: these guarantees ensure that even the weakest WTO Members have equal access in the two governing bodies of the WTO: The General Council and the Ministerial Conference (Matsushita, Schoenbaum, and Mavroidis 2003, 9-11).

In effect, already the road to the Uruguay Round had witnessed a new type of relationship between developing and developed countries. Known as the Café au Lait group, a flexible form of cooperation emerged in 1986 between the so-called G-20[4] group of developing countries and the G-9[5] group of the industrialized countries. This coalition aimed at achieving a consensus about the agenda for the new round of negotiations. The Café au Lait indeed met its objective as the United States, European Community, and Japan entered the talks with the group preparing a draft declaration of 30 July 1986, which provided a basis for the Punta del Este declaration heralding the launch of the Uruguay Round.

The Café au Lait group demonstrated a growing desire of developing countries to be active participants in shaping the international trade agenda (Narlikar 2003, chap. 5).

Despite these early developments, developing countries as a group were not able to achieve what they wanted in the Uruguay Round. Narlikar admits that ultimately: "the consequences of the formation of the Café au Lait were destructive. The coalition had destroyed an old style of diplomacy, without providing developing countries with a viable alternative. Given the dependence of the coalition on external conditions before its strategies could have any effect, the Café au Lait provided an interesting pathway, but not a model" (Narlikar 2003, 171). The dependence on external conditions mentioned by Narlikar meant that developing countries lacked autonomy in pursuing their agenda or in changing the agenda as set by others. The situation was changed under the legal framework of the WTO.

At this point we should summarize the three main institutional guarantees meant to ensure the legal equality of the WTO Members. First, the WTO is a formal Member organization with the status of an international legal entity, it consists of a number of legal agreements, and every WTO Member has to comply with all of these agreements (Marceau 1995). Consequently, to become a WTO Member, a candidate country has to accept all WTO agreements as a single package — a single undertaking (Patel 2003).

Secondly, the Uruguay Round produced a new unified treaty text on dispute settlement, the WTO Dispute Settlement Understanding (DSU).[6] The legal authority of the WTO infuses it with the power to make the results of trade disputes into legally binding decisions. The crucial aspect of the DSU is the automatic acceptance of decisions reached by a dispute settlement panel and, if appealed, the appellate panel. Every WTO Member has equal access to the DSU under the same rules and procedures.

Thirdly, the WTO is a Member-driven intergovernmental organization where any decisions regarding the operation of the organization, its agreements, and its future goals, are reached by all its Members by consensus. The consensus principle has been inherited from the General Argreement on Tariffs and Trade (GATT) (Weiss 2002, 74). In practice, it means that a decision is considered to be taken by consensus if no WTO Member objects to the proposed decision.

The judicial equality of all WTO Members is derived from the above three institutional guarantees. Most importantly, the following provisions in the Marrakesh Agreement Establishing the WTO specifically ensure the judicial equality of all WTO Members, which can be defined as the legally embedded assurance for all WTO Members to have equal access to the decision-making bodies of the WTO: the General Council and the Ministerial Conference. All WTO Members are to be treated as equals when it comes to legal rights and obligations under the common institutional framework of the WTO.

> Article II, Para 1. The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.
>
> Para 2. The agreements and associated legal instruments included in Annexes 1, 2 and 3[7] (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members.
>
> Article IV, Para 1. There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreements.

> Para 2. There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the Committees provided for in paragraph 7.
>
> Article VIII, Para 1. The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions.
>
> Para 2. The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its functions.
>
> Article IX, Para 1. The WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote.

Historically, the industrialized nations had been the primary movers and dealmakers within the GATT. The GATT as guided by the provisional 1947 agreement had clearly institutionalized the hierarchy among its Contracting Parties by relying on diplomatic solutions whereby the poor and developing states had no means of voicing and sustaining their autonomous position.

This is not to say that during the GATT era, the questions about how to address the needs of developing countries were never asked. In fact, the 1958 Haberler Report recognized such needs and even justified the use of import restrictions by developing countries given their often-difficult economic situation. However, instead of bringing the issue of development into the discussions on trade issues in the context of all Contracting Parties, the Haberler Report only resulted in a call for a special and differential system for developing countries. In 1971 a distinctive waiver for all developed countries was established allowing for Generalized System of Preferences (GSP). In 1979 a formal decision was reached known as the "Enabling Clause," under which developed countries could provide "special and differential treatment" to developing countries, which normally has been prohibited under the GATT principle of non-discrimination (Stoll and Schorkopf 2006, 39-40).

This solution did very little to remedy the economic problems experienced by the poor countries. In terms of allowing developing countries to participate in the GATT decision-making processes, it had arguably a reverse effect. As Hart and Dymond observe: "The failure of developing countries to accept disciplines, such as they were, and their insistence on special status gave industrialized countries the excuse to practice real discrimination, even when this was inconsistent with GATT's rules. By insisting they had rights but no obligations, developing countries surrendered their capacity to pursue those rights with any significant results" (Hart and Dymond 2003, 415).

Tempted with an option of receiving the benefits of special and differential treatment, developing countries most likely felt a disincentive to become active and demanding participants. Thus, the "Enabling Clause" and the GSP in some respect solidified the hierarchy and the inequality among the GATT's Contracting Parties. This arrangement had consequences. As Debra Steger writes: "In pursuing the agenda of special and differential treatment, developing countries withdrew from the trading system and allowed the development of special trade regimes by the developed countries in agriculture and textiles that were adverse to the interests of the developing countries. As a result, the trading system that evolved under GATT was two-tiered and unbalanced" (Steger 2004, 21). This hierarchy was abolished when the WTO, a formal legal organization was born. It granted each of its Members the promise of an equal playing field despite the persistence of great differences among them. Developing countries

slowly took that promise to be an invitation to assert themselves as autonomous actors inside the WTO decision-making process.

Our understanding of autonomy is grounded in the work of Ludvig Beckman, which stresses its self-governing qualities (Beckman 2003). Consequently, we call state actors autonomous when they are able to act independently, not being bound by the opinions of other state actors and when they can resist domination by other actors either in the form of coercion or in the form of agenda-setting behaviour. This kind of resistance, however, implies vigilant contestation, which becomes the necessary cost of asserting autonomy by the previously weak actors. As a result, the task ahead of us is to probe whether the WTO has been able to minimize domination within the global trading system. We begin this analysis by showing the limited scope of the current debate about the fairness in the WTO. Secondly, we present a theoretical argument about the democratic nature of the WTO decision-making processes. Thirdly, we demonstrate some empirical evidence in support of this argument.

Limitations of the Fairness Discourse

Let us first summarize two immediate challenges faced by the WTO in the context of the fairness debate. The WTO is based on the universal principles of equal rules for all. Yet, the numerous exemptions for special and differential treatment and provisions maintaining the pre-GATT discriminatory practices[8] have always existed in the GATT/WTO system (Stoll and Schorkopf 2006, 12 -13 and 39-41). Therefore, the legal universalism of the WTO agreements is questioned because of the non-universal application of the principle of non-discrimination.

The WTO is said to be a Member-driven organization, which compels self-identification of an individual state's needs, interests, and demands. But under a multilateral system, an arbitrary unilateral action by individual Members is discouraged. The WTO promotes the outcomes that suppose to benefit all WTO Members in the name of a more integrated global economy. However, in the name of national interests, countries present demands that often conflict with those of their trading partners. It is virtually impossible for economically weak countries to advance their interests if they are at odds with the position expressed by the powerful industrialized states.

The above challenges to the WTO are listed to demonstrate that despite the judicial equality of the WTO Members, there should be no illusion that the world trading system has remained fundamentally asymmetrical. And consequently our main focus shifts from being preoccupied with fairness understood in terms of equal outcomes for all WTO Members to minimizing domination in the system. This is why, given the burden of historical legacies and present day economic differences, many scholars believe that equal legal rules greatly matter for the vulnerable countries because they constitute "their best defence against the use of power to settle trade disputes" (Helliwell 2002, 16) and that during the Uruguay Round the weaker countries "recognized that the alternative to a rule-based system would be a power-based system and, lacking power, they had most to lose" (Ostry 1997, 193).

When we focus on the ability of weak countries to reduce domination embedded within the world trade system, what interests us most is the decision making in the WTO. Accordingly, one issue needs to be explained before we present our theoretical argument. It is important to understand the difference between the decision-making processes in the WTO and the WTO trade negotiation processes.

Although, both sets of processes are linked together, they also differ fundamentally. The WTO decision-making process mainly refers to the normal and ongoing operation of the organization centered on two of its governing bodies, the WTO General Council and the WTO Ministerial Conference. The trade negotiations conducted within the WTO framework, on the other hand, represent a special type of process that is institutionally subordinated to the decision-making processes in the WTO.

> Article III, Para. 2 The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.

Trade negotiations in the WTO are either issues-driven negotiations (negotiations on liberalization of trade in services that commenced in 2000) or are round-driven negotiations (the Doha Round of negotiations initiated in 2001). There is also a special case of the WTO accession negotiations. They take place when a number of interested WTO Members negotiate criteria for the accession of a candidate country (Lanoszka 2001).

When it comes to the WTO decision-making process, the decisions are made by consensus. The principle of consensus was developed under the GATT when the membership was so much smaller and where the process was dominated by the industrialized nations. As membership grew under the WTO, the management of the decision-making process slowly became difficult to handle.[9]

Theoretically speaking, the idea of consensus is profoundly democratic since it assumes that a decision can be made only when all Members agree. Democracy bases its legitimacy on consent. Rawls, for example, introduced the idea of an *overlapping consensus* — or agreement on *justice as fairness* between citizens who hold different religious, political, and philosophical views. Justice for Rawls can occur when those with conflicting views and backgrounds reach a consensus on how to cooperate (Rawls 1996). In one of his last works, Rawls tried to formulate the Law of Peoples that once completed: "would also include guidelines for forming organizations for cooperation among peoples and for specifying various duties and obligations" (Rawls 1999, 86). And what is more, out of the three organizations that he had in mind, one was "framed to ensure fair trade among peoples" (Rawls 1999, 42).

However, the idea of transplanting the theory about *justice as fairness* from the domestic into the international level of analysis must be viewed with caution. Despite its reliance on the principle of consensus, the WTO decision-making process is regarded as ineffective, unfair, and hence undemocratic. The reason could be that the critics are focusing on the wrong level of analysis, while attempting to examine the WTO via moral considerations about fairness.

The plea for fairness in international trade was vigorously expressed by Joseph E. Stiglitz who, following the failed Seattle Ministerial, noted: "There are two basic principles that should govern the next set of trade negotiations: fairness, and especially fairness to the developing countries, and comprehensiveness (the need to include issues that are important to developing countries)" (Stiglitz 2001, 11). However, after empirically stating a number of steps that need to be taken in order for these two principles to materialize, Stiglitz never defines the notion of fairness. We can only implicitly sense that he wants to bring a justice dimension into the trade system. The question remains, however, what criteria should be used to assess the fairness especially given the number of diverse actors involved: "Indeed, philosophical abstractions and normative theories about justice and fairness aside, what one regards as a fair bargain depends on several factors: who the actor is, who the other negotiating parties are, and the forum in which negotiations are taking place. Parties can apply different criteria in defining fairness, resulting in claims that are mutually contradictory and yet equally legitimate" (Narlikar 2006, 1005). While Narlikar talks about trade negotiations, she also extends her analysis into the decision-making processes in the WTO with somehow unsatisfactory results.

Narlikar tries to tackle the issue of fairness first by focusing on outcomes. This approach may be valuable when dealing with negotiations precisely because it stresses the importance of outcomes, if only outcomes can be properly measured, tested, and known to positively benefit all parties involved. In

reality, the task of measuring can present a number of challenges given the diverse nature of the so-called developing countries camp.[10] Most importantly, such an approach does nothing when it comes to testing the democratic nature of the WTO. It is because we ground the democratic discourse about international institutions in the egalitarian liberal vision of justice, which claims that democracy requires equal rights and opportunities but does not necessarily lead to equal outcomes.

Secondly, in discussing Franck's two preconditions of fairness Narlikar makes the mistake of not analyzing his concept of community carefully: "For a discourse on fairness to exist, Franck identifies two preconditions. The first is moderate scarcity: Where allocations are made in zero-sum settings of resources, which are valuable and scarce, fairness discourse is at its most difficult. The second is community: It is only in a community that the bedrock of shared values and developed principles necessary to any assessment of fairness is found" (Narlikar 2006, 1008). For Franck, however, "a community must be based on a common, conscious system of reciprocity between its constituents and this system of reciprocity conduces to fairness dialogue" (Franck 1995, 10). The principle of reciprocity is essential for Franck. It is therefore doubtful whether he would consider vastly diverse (economically and culturally), and often hostile to each other, WTO Members to constitute such a community.

This is important because without a common system of reciprocity the search for fairness in the international realm can be destructive, especially in the context of international institutions. Franck, in fact, has some serious reservations about the concept of judicial equality that the WTO in fact espouses. As he observes: "equality may be the very expression of fairness, or it may be its nemesis" (Franck 1995, 479). When all the WTO Members gather at WTO Ministerial on the General Council — they are all judicially equals. Franck would argue that this creates an unfair forum for discussions since small countries are given the same voice as the big ones. He sounds quite uncompromising: "[t]his problem of unfair equality has become much more pressing as a new wave of tribal nationalism swells the ranks of mini-states, all of them claiming equal voice" (Franck, 1995, 479-80). Franck is essentially saying that we can identify certain decision-making processes as democratic, and yet we still find them unsatisfactory from the point of view of reciprocity and hence destructive for international institutions.

Consequently, we suggest a different set of criteria in assessing the way the decision-making processes in the WTO are evaluated. First, it is argued that many critics overlook the view from inside the organization. Second, they are partial in their understanding of fairness and democracy. The criticisms are routinely grounded either in the deliberative or aggregative traditions of democratic theory and both traditions "overestimate the importance of the idea of the common good for democracy. Instead, democracy is better thought of as a means of managing power-relations so as to minimize domination" (Shapiro 2003, 3).

Reducing Domination in the World Trade System

We argue that those who consider the WTO as undemocratic and lacking legitimacy neglect the internal dynamics in the WTO, namely its decision-making process that already led to reduced domination of the developed countries. This omission can be partially attributed to the level-of-analysis problem that arises when we evaluate the performance of international organizations. Our expectations appear to treat international organizations as if they were mere extensions of our own countries. However, international organizations are entities that, although they are inseparably connected to the domestic sphere of their Member-states, they nevertheless have their own *agoras* where Members (*demos*) gather to engage in the decision-making processes. These processes as examined from within the organization provide an alternative view of what it means for an international organization to be democratic.

To address the fundamental criticism directed towards the WTO, we begin with the critical question: who decides that an international organization is illegitimate and undemocratic? Should only

the Members and their governments make this assessment? Still, the WTO and international trade issues in general influence many aspects of economic activities taking place inside the territory of its Members and hence indirectly touch lives of countless people and communities. Should then the citizens in the countries and territories that belong to the WTO Member states be the judges of the WTO?

Being faced with the above dilemma we make one important distinction before we begin to test the democratic qualities of an international organization. The distinction relates to the delineation of the *demos*. After all, democracy is a form of governance under which the power to govern lies with the people, the *demos*. The *demos* constitutes a community that makes governing decisions and is, in turn, influenced by these decisions. It is difficult to talk about how democratic or undemocratic a particular system is without demarcating its *demos*. Fritz Scharpf identified a similar tension concerning the decision making in the European Union. He thought it was important to make a distinction between input-oriented and output-oriented democratic legitimacy, or between the domestically formulated preferences and the EU institutional-level collectively binding decisions (Scharpf 1999, 6-13).

Therefore, in order to formulate questions concerning the WTO *demos*, we differentiate between what we call the *internal* versus the *external democracy* of an international intergovernmental organization. This distinction serves to further problematize the discussion about international organizations. By making a distinction between *internal* versus *external democracy* we suggest that there are multiple communities that have different stakes in the decision-making processes of an international organization. The following are two working definitions of the terms. First, the *internal democracy* of an international organization has to do with the processes and structures of interaction between the Members of the organization. Consequently, the questions concerning the *internal democracy* should only be asked in the context of the rules and procedures developed by and for the Members of such an organization and their representatives. Second, the *external democracy* of an international organization, in contrast, has to do with the perceived impact that the same organization is having on the constituencies and the stakeholders of the individual Members. Consequently, the questions concerning the *external democracy* should only be asked in the contexts of domestic decision-making processes of the individual Members.

The distinction between the *internal* and the *external democracy* of an international intergovernmental organization is complicated and context specific. In fact, it is possible that an intergovernmental organization can meet all the criteria of one, while failing the test of the other. The simple example would be an international organization where Member states enjoy a fully competitive decision-making environment under the system of optimally designed rules that equally apply to all Members, with no possibility of any of the Members to permanently dominate the system. Here the criteria of internal democracy are met.

Although such an organization may be perfectly democratic internally, it may not be externally. Consider, for example, a scenario when Member states of this fictitious organization are dictatorial and authoritarian regimes whose domestic decision-making processes are conducted on the level of the governmental elites and these elites dominate their societies by force. What view would the majority of disfranchised citizens have of such an international organization when it is operated in isolation by a group of dictatorial leaders, including their own?

It is also true that "democratic legitimacy in the international system, and in international institutions in particular, cannot be guaranteed only through legitimate and democratic decision making within each participating state" (Zampetti 2003, 110). Why should the WTO Members be guided or restrained in their intergovernmental negotiations by the political processes taking place in the territory of other Members just because they are considered democratic?

Keeping in mind these problems, I am mainly concerned here with the notion of *the internal democracy* of an international organization. I specifically probe the internal processes of the WTO,

while leaving aside my doubts relating to the *external democracy* of the WTO. The questions about how the individual Members' preferences and positions within the WTO are shaped by the domestic stage are extremely important. However, they are outside the scope of this paper.

Here, I propose that in order to call an international organization internally democratic, such an organization has to allow for competitive processes to exist in such a way as to prevent permanent domination by any Member or a group of Members. This view is grounded in Schumpeter's theory of competitive democracy, which insists "that power is acquired only through competition and held for a limited duration" (Shapiro 2003, 57). I argue that the principles of legal equality of the WTO allow for such a democratic competition to take place. Critics of the WTO as *undemocratic* tend to ignore the value of competitive democracy in the WTO because they are grounded in the aggregative or deliberative traditions of democratic theory. Shapiro, who criticizes both traditions for not addressing the persistence of power relations, made this distinction. The aggregative tradition strives towards arriving at the common good via institutional mechanisms (constitution). The deliberative tradition, on the other hand, displays "a touching faith in deliberation's capacity to get people to converge on the common good" (Shapiro 2003, 10). Hence both traditions are not helpful when dealing with international institutions because instead of focusing on reducing domination they look for the idea of common good.

Both traditions have their roots in Rousseau's concept of the general will that reflects the common good. In the aggregative tradition the aim is to arrive at the outcome by consensus that is generally acceptable and seen as legitimate due to the observance of the rules that govern the process. Power here is divided among different branches of government (*Federalist Papers, 1788*). If we were to take this tradition seriously in the context of an international organization, we would propose a constitution for the WTO. The argument is made that a constitution would enhance legitimacy of the WTO system as a whole. In addition, those scholars tend to believe that the complicated questions of justice and human rights could also be properly addressed this way (Petersmann 1998, 175-8).

Others remind us, however, that a constitutional drive may actually exacerbate the legitimacy difficulties of the WTO: “Constitutionalization” driven by the judicial branch of the WTO, could be recommended as a strategy for building up pressure for formal institutional change — that is, the creation of an explicit level of federal governance at the WTO, with the regulatory powers required for positive integration. Why this is unlikely to happen, or more precisely the legitimacy difficulties that would arise if it were to happen, is illuminated by developments in the European Union once Europeans became widely conscious that European Community institutions were indeed behaving as an autonomous federal order of governance, acting directly on the citizens of Member states. These developments show the danger of, in Weiler's words, "adopting constitutional practices without any underlying legitimizing constitutionalism" (Howse and Nicolaidis 2001, 241). Given the latest developments in the EU, namely the rejection of the European Constitution by the French and Dutch voters in June 2005, it seems that the future of the aggregative ideal of democracy is not the best option for international organizations. In the context of the WTO, a constitution could in fact preserve domination embedded in the system and narrow the space for contestation.

Theorists of deliberative democracy, in contrast, believe that we can establish democratic institutions if they are agreed upon under perfect deliberative conditions. In some way this proposition is a reaction to the drawbacks of constitutionalism. Deliberative theorists are skeptical of the constitutional arrangements that are said to favour inertia and the status quo, and they believe that an essential prerequisite of a working democracy is deliberation (Habermas 1996). Shapiro's critique of deliberative democracy starts with the question of who decides which issues should be presented for discussions and negotiations (Shapiro 2003, 33). The efforts of democratizing WTO in this tradition propose increasing participation of the maximum number of relevant participants to take part in the WTO decision-making process. But the following dilemmas remain unresolved: 1) how do we establish

who is the relevant participant? 2) who decides when the discussion is over and the optimum outcome of deliberation is reached?

If we were to take this tradition seriously we would see the *demos* of an international organization enlarged indefinitely. Since deliberation should involve all who are concerned, an open door policy would have to be maintained. Yet, to recall the concept of the *internal democracy of* an international organization, this kind of open policy would upset democratic competitive processes taking place inside an organization by giving the voice to the outsiders (non-Members). It would not be democratic, from the Members' point of view, if these self-identified relevant actors, but in effect outsiders, would influence the internal decision-making processes without being accountable for it. This is precisely why developing countries reject the proposition of increasing participation by NGOs in the WTO decision-making processes, especially since a disproportional number of NGOs are based in the industrialized countries (Kahler 2005, 33).

Accordingly, we find both aggregative and deliberative democratic traditions to be unsatisfactory when trying to determine whether the WTO is a democratic organization. As an alternative, we formulate our test of a fair and democratic international institution as the one that minimizes domination by enhancing the autonomy of its Members. It is based on the Schumpeterian competitive democratic method that sees power in a political system acquired in an ongoing competitive process (Schumpeter 1976, 269). We argue that the WTO is the only global organization with an institutional arrangement allowing all its Members to formulate decisions in which they gain their influence and power by engaging in a competitive struggle for shaping the agenda of the WTO.

Only under the multilateral system of equal rules, in which small and big countries are given identical legal recognition, can one observe the surfacing of a competitive democratic zone of intergovernmental participation where equal voice of every member becomes a decision-making right. Under such a competitive democratic environment power relations are constantly negotiated and hence domination is minimized. In short, the democratic competitive behaviour then aims not at establishing some kind of common good but rather it aims at reducing the power previously held unchallenged by the industrialized countries.

If we accept the premise that the central task of a democratic intergovernmental organization is to manage power relations in order to minimize domination we can observe some interesting changes taking place in the world trading system. In particular, we can observe the emergence of the new competitive behaviour within the WTO championed by a number of developing countries. The historically vulnerable developing Members of the WTO have been increasingly autonomous in influencing the agenda of the WTO by taking advantage of the available institutional mechanisms. Their behaviour in the WTO decision-making bodies is vigilant, activist, and unbending, so the power relations are constantly contested, even at the cost of bringing the organization to a standstill.

Developing Countries Take Advantage of Equal Rules

The turning point for developing countries as influential actors contesting the dominant position of the industrialized countries in the WTO took place on the occasion of the 1999 Seattle meeting. The following ten events are chosen to illustrate the increasingly significant role played by developing countries as a group in the WTO decision-making bodies since that momentous year: 1) the preparation of an agenda for the Seattle Ministerial Meeting, 2) the highly antagonistic 1999 election of the new Director General, 3) the breakdown of the Seattle Ministerial Meeting, 4) the placing of implementation concerns on the WTO agenda 5) the placing of TRIPS-related concerns on the WTO (and global) agenda, 6) the creative cross-retaliation by Ecuador using TRIPS, 7) the Doha Declaration, 8) the collapse of the Cancun Ministerial meeting, 9) the failure of the negotiations on liberalization of trade in services, and 10) the collapse of the Doha talks.

As of the early months of 1999, developing countries became exceptionally active in submitting a large number of proposals (220) to be included in the agenda of the WTO Ministerial Meeting scheduled to take place at the end of that year. Needless to say these proposals were being routinely ignored (Das 2000, 186). What was peculiar about this situation was the inability of the developed countries to override the concerns of the developing countries and forge a workable document. The degree of hostility reached high levels during the General Council Meetings with the developed countries pushing for inclusion of new issues (especially investment and competition policy) and the unwavering developing countries rejecting it while insisting on focusing on problems resulting from the implementation of the WTO agreements. This situation ultimately made it impossible to put forward an organized agenda (WTO 1999a).

Following the departure of Renato Ruggiero, the General Council started a process of electing a new Director General (DG) of the WTO. What was initially expected to be a short event grew into a prolonged contentious dispute. Leading developed countries supported their own candidate Mike Moore of New Zealand. Developing countries, on the other hand, wanted Supachai Panitchpakdi of Thailand. When the impasse appeared to be impossible to solve, WTO Members agreed that the normal term of six years would be divided between the two (WTO 1999b, 7-16). This awkward compromise symbolized the growing divisions in the WTO and the resolve of developing countries. The compromise also weakened the position of the DG and created bureaucratic havoc during what was a crucial period for the WTO.[11] Mike Moore took over the office too late to help prepare for the Seattle meeting and Supachai Panitchpakdi became DG on 1 September 2002, just one year before the failed Cancun meeting.

The Seattle meeting provoked strong reactions on the streets but the mood inside the conference rooms was also very hostile (Odell 2002, 400-1). The meeting exposed many problems within the organization (Das 2000). First, the cost of implementing the new agreements was becoming a serious issue for many poor WTO Members. Secondly, the attempt by the developed countries to talk only with a select few developing countries as the arbitrarily chosen representatives of the developing world (the so-called Green Room option) was flatly rejected. Thirdly, developing countries refused to include any new issues on the WTO agenda and became particularly upset when the US President insisted on including labour standards within the WTO framework. The Seattle Ministerial ended with a show of unity as virtually all developing countries walked out of the meeting (Ostry 2001, 364).

Developing countries came to Seattle unified to demand their place at the steering wheel of the WTO or alternatively ready to stall the talks altogether. In fact, since Seattle developing countries have started to utilize their legal rights to contest developed countries' proposals and to formulate their own initiatives. It took almost twelve months of confrontations and forceful behaviour by a number of developing countries during the post-Seattle Meetings of the WTO General Council to recognize the position of developing countries. Many proposals were submitted. Finally these sustained efforts succeeded. At the momentous Meeting of the General Council in December 2000, WTO Members adopted a resolution firmly acknowledging the demands of developing countries with respect to the implementation process (WTO 2000).

Developing countries have traditionally focused their attention on the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Many developing WTO Members have experienced difficulties with implementing the agreement, due to the high costs of implementation, their lack of previous experience in this legislative area, and the impact of TRIPS on the prices of new technology and inventions (including life-saving medications). The sustained campaign of developing countries resulted in making it one of the top issues for the WTO and for the public global agenda. The final result, the 2001 Doha Declaration on the TRIPS Agreement and Public Health, was an example of how a broad coalition of developing countries was able not only to reframe the issue — which only a few years back was considered a closed subject by the industrialized nations — but also had many of their demands met: "A coalition lacking obvious power achieved significant, unexpected gains despite

careful opposition from powerful transnational corporate firms and their home governments" (Odell and Sell 2006, 85).

In preparation for the Seattle Ministerial developing countries started to question the effectiveness of the WTO dispute settlement system not only because of the issue of sanctions but also because of its cost. Many of the developing countries would not become engaged in a trade dispute because the favourable outcome of the DSU decision could be practically and politically difficult to implement when the losing party is a large industrial state and the winner is an economically vulnerable country. In November 1999 (when the discussions about TRIPS in the General Council were getting frequent) Ecuador decided to use TRIPS as an instrument for enforcement. It meant that Ecuador asked for authorization to suspend some of its concessions and obligations under TRIPS (as well as GATS) as a way of "cross-retaliation" in one of the most prolonged trade disputes (van den Broek 2003, 146). This very creative move unsettled the developed countries, which have championed the strong protection of intellectual property under the enforcement of the WTO. After Ecuador was authorized to proceed with its request, the EU, the losing party in the dispute, agreed to reach a settlement. This outcome demonstrated how a skillful legal maneuver by a relatively economically weak country could force an economic giant to pay attention.

Developing countries continued to be very successful in shaping the agenda of WTO decision making. Once the initial turn was made, the need for even more formal recognition of the developing countries' position at the WTO Ministerial Meeting was becoming urgent. This necessity materialized in the unprecedented Doha Declaration that firmly links the issues of trade and development. In contrast to the GATT era emphasis on the technical side of trade negotiations, the Doha Declaration calls for refocusing of the multilateral trade agenda by stressing the developmental dimension of trade issues.[12] The Doha Declaration was adopted in November 2001 at the WTO Fourth Ministerial Meeting in Qatar (WTO 2001a, 2001b, 2001c). It was an important breakthrough that testified about the growing autonomy of developing countries inside the WTO. Most importantly, the Declaration initiated a new round of trade negotiations that was supposed to focus on the needs of developing countries.

The Doha Declaration weighs heavily on the world trade system. The breakdown of negotiations during the Fifth WTO Meeting in Cancun, in September 2003 could be attributed to the developed countries' refusal to meaningfully address the concerns of developing countries embodied in the Declaration. The Doha Round was revived thanks to the 2004 July Framework Agreement, an initiative of the so-called group of Five Interested Parties (FIPs), which included Brazil, India, the European Union, the United States, and Australia (WTO 2004). This shows the strength of the developing countries' position, which is in sharp contrast to the past when only the developed countries determined the agenda of the GATT.

Still, the road to the Sixth WTO Ministerial Meeting in Hong Kong had been rough. The eventual Hong Kong compromise in December 2005 was an indication of the troubles to come (WTO 2005). First of all, the elimination of export subsidies in agriculture, as demanded by developing countries, was dependent upon the completion of the modalities by the end of April 2006. In addition, WTO Members were to submit comprehensive draft schedules of commitments based on them by 31 July 2006. The text also required WTO Members to develop modalities on food aid, export credit programs, and the practices of exporting state trading enterprises by the end of April 2006, a deadline perceived by many observers as unrealistic. These deadlines were not met and the Doha Round talks were suspended in August 2006.

The meeting in Hong Kong demonstrated the strength of developing countries in shaping the agenda of services negotiations. The Agreement of Trade in Services has long reflected the North-South divide in the WTO. To advance the Uruguay Round commitments under GATS new negotiations started in 2000. Under the Doha Declaration WTO Members were to submit their services request lists by 30 June 2002, and their initial offers of services market access by 31 March 2003. Only a limited

number of developing countries had done so claiming the huge implementation costs and the uncertainly of benefits.

Under the insistence of industrialized nations, the initial draft of the Hong Kong Declaration contained provisions (Annex C) requiring that all WTO Members enter into plurilateral negotiations with a goal of meeting some clearly stated qualitative objectives. As a result of a fierce resistance from developing countries, the language of Annex C has been considerably weakened in stressing the unique position of developing countries. Overall, the Hong Kong Declaration asserts that negotiations are nevertheless to be conducted "with appropriate flexibility for individual developing countries as provided for in Article XIX of the GATS" (WTO 2005, para 26). Hence, developing countries were able to significantly limit the scope of the services negotiations. Given the fact that very little progress has been made, services negotiations are now considered a failure.

The Doha Round talks collapsed in August 2006, leaving the WTO in a state of uncertainty. During the acrimonious General Council meeting when the talks were suspended, it became clear that the developed countries were no longer the dominant players in the WTO. The frustration expressed by the negotiators from the countries that used to control the GATT decision-making processes could, however, signal troubles for the multilateral trade system. It appears that the internal democracy of the WTO does not sit well with the traditionally powerful industrialized countries, which used to be unchallenged when making decisions that often impacted other countries.

Conclusion

Because of the gains derived from the judicial equality of all WTO Members, developing countries have been able to contest the dominant position of the industrialized countries via the democratic competition in the WTO decision-making bodies. The internal democracy of the WTO has reduced the autonomy of the developed countries and curtailed their ability to shape the agenda of the organization. However, because of these developments the traditionally dominant actors in the world economy have not enthusiastically embraced the increased participation of developing countries in the WTO. We may be celebrating the enhanced autonomy of developing countries, it does not mean, however, that the world trade system is operating in any less problematic fashion. Yet, it can mean, that the WTO has become more democratic from the point of view of its vulnerable Members.

The collapse of the Seattle meeting in 1999 signaled a turning point when it comes to agenda setting within the organization. This is when developing countries started to form their firm opposition in response to the attempts of the industrialized countries to control the WTO decision-making process. The issues of implementation were eventually firmly placed on the WTO agenda in December of 2000, which resulted with the Doha Declaration in 2001. The ensuing Doha Round was an outcome of the developing countries' successful drive to prioritize developmental needs of the poorer countries in the WTO. Its breakdown represents a double-edged sword characterized, on the one hand, by a firm position by developing countries to maintain their demands and, on the other hand, by the unwillingness of the industrialized countries to respond to the development challenge of the Doha Round. In the end, the failure of Doha Round is a failure of the promise offered by the WTO to create a more equitable world trading system.

We have made certain assumptions as the starting point of our analysis. We believe that we are dealing with a historically asymmetrical system of international trade. Given this reality, an international organization should be considered internally democratic if it offers opportunity to weak and vulnerable players to become autonomous by providing them with equal judicial rights. Such equal judicial recognition would allow them to resist domination and to influence the decision-making processes, alone or in concert with other disadvantaged Members. This is why the competitive democratic method is so appealing when examining international organizations. It diffuses power

relations within the system by making it permanently unstable and hence difficult to dominate. A competitive democratic model also carries the best guarantees for enhancing autonomy of individual Members.

Upon a closer examination, the WTO is the only international organization that, because of the judicial guarantees of equality discussed in the paper, allows for a competitive zone of democratic interaction among its Members. The remarkable progress that was made by developing countries to transform the world trading system has taken place within the WTO organizational structure. We have witnessed the undeniable change in setting the agenda within the WTO. Developing countries are well positioned to engage in competitive processes in the WTO. The status of the traditionally rich economies is quite uncertain, however.

It is difficult to predict the future of the WTO given its internal democracy. During the ongoing Doha Round, the developed countries were attempting to reclaim their domination within the system by pushing their own agenda and by neglecting the crucial demands of developing countries. Developing countries, on the other hand, were decisively insisting on their initiatives and were firmly resisting the proposals by the industrialized countries. The WTO became paralyzed as a result.

It appears that by becoming more democratic internally WTO decision making became characterized by relentless struggle — possibly an inevitable outcome given the existing contradictions between the principle of judicial equality in the WTO and the asymmetrical nature of the world trading system. In a broader sense, we consider the necessity to constantly reassert one's autonomy to be one of the characteristics of globalization. Understood as the spread of transplanetary (the globe as an arena of social life) and supraterritorial (transcending territorial geography) connectivity, globalization, as a political process, "is about contests between interests and competing values"(Scholte 2005, 83). Globalization challenges a growing number of contemporary conditions and processes. Such fluid circumstances call for contestation of the existing power relations, which have become unstable and hence provoke even greater need for autonomy. Because of the uncertainly of surroundings, however, the need to maintain one's autonomy becomes a relentless, and often destructive, struggle.

The birth of the WTO was a globalizing moment that triggered novel dynamics among the Members of the new organization. It permitted the previously powerless states to become increasingly more autonomous decision-makers inside the WTO and it offered the opportunity to transform the system. Developing countries indeed have gained some significant influence when it comes to shaping the agenda of the WTO. Yet the organization has made very little progress when it comes to meeting their key demands. So far, the WTO has failed as a multilateral forum aimed at ensuring cooperation and reciprocity among all trading nations.

The struggle inside the WTO will continue until there is recognition by all Members that no longer can any state or group of states act as fully autonomous decision-makers, that is to say, pursuing unilateral decisions without taking into account the positions of other countries. There is an urgent need that all WTO Members recognize each other's autonomy and learn to negotiate under the new realities that discourage domination but invite cooperation. Then again, another possibility is that some countries unhappy about the current competitive democratic environment in the WTO will abandon it all together. They can pursue regional or bilateral options, which offer them positions of power that will remain unchallenged in contrast to the competitive democracy inside the WTO.

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NOTES

1. The Multi Fibre Agreement was introduced in 1974 by a group of industrialized countries and unilaterally imposed quotas restricting the amount that developing countries could export. Under the Uruguay Round deal the MFA was to be eliminated by 2005.
2. The Uruguay Round agreement specifically stipulates that new negotiations on agriculture and on services must begin within five years (by the end of 2000). It also calls for future considerations on investment and other issues like competition policy.
3. The US President requires trade promotion authority (TPA) to negotiate international trade agreements. TPA gives countries negotiating with the United States the assurance that Congress, in a straight up or down vote without amendments, will consider any deals they reach with the Administration. Historically, without TPA, the United States's trading partners would not negotiate a deal because of the risk that Congress would not ratify it. The 1974 Trade Act granted TPA (fast-track) authority to the President for five years. The Trade Agreements Act of 1979 extended the authority another eight years. The Omnibus Trade and Competitiveness Act of 1988 renewed the TPA authority until May 1993.The 1988 Act was amended to extend fast-track authority for Uruguay Round agreements reached before 16 April 1994. As there was no hope that TPA would be renewed again, the Uruguay Round negotiations had to be finalized in December 1993.
4. The G-20 group included: Bangladesh, Chile, Colombia, Hong Kong, Indonesia, Ivory Coast, Jamaica, Malaysia, Mexico, Pakistan, Philippines, Rumania, Singapore, Sri Lanka, South Korea, Thailand, Turkey, Uruguay, Zambia, Zaire.
5. The G-9 group included: Austria, Australia, Canada, Finland, Iceland, New Zealand, Norway, Sweden, and Switzerland.
6. Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes, in *The Results of the Uruguay Round of Multilateral Trade Negotiations. The Legal Texts*, The GATT Secretariat, Geneva, 1995.
7. Annex 1 contains: a) Multilateral Agreements on Trade in Goods, b) General Agreement on Trade in Services (GATS), and c) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Annex 2 contains Dispute Settlement Understanding (DSU). Annex 3 contains Trade Policy Review Mechanism.
8. PART II of the GATT 1947 allowed keeping the existing legislation (grandfather rights) even if it was inconsistent with the GATT principles of non-discrimination. Part II was to be suspended with the establishment of the International Trade Organization (ITO). Since the Havana Charter establishing ITO was never ratified, under the provisional GATT

agreement a number of countries continued to use GATT-inconsistent legislation. The most notorious example had been the US Countervailing duty law.

9. As of August 2006, the WTO had 149 Members.

10. Under the label of developing countries, many scholars habitually bring together such economically diverse countries like Bangladesh, Brazil, Cambodia, China, Guatemala, Indonesia, India, Kenya, Madagascar, Morocco, and South Korea, just to name a few. Over 100 countries (developing, less developed, and least developed) are often brought together for analytical purposes when discussing the developing countries in the WTO.

11. Once the General Council elects a new DG of the WTO, what follows is a difficult process of electing four Deputy-Directors and other auxiliary staff.

12. Because the GATT was predominantly signed by the industrialized countries, the agreement only vaguely recognized the needs of poor countries and there was no commitment for addressing them. In summary, the Contracting Parties to the GATT only agreed that: "There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development (GATT 1947, Article XXVI, Para 3)".

Institute on Globalization and the Human Condition

The Institute on Globalization and the Human Condition was created in January 1998 following the designation of globalization and the human condition as a strategic area of research by the Senate of McMaster University. Subsequently, it was approved as an official research center by the University Planning Committee. The Institute brings together a group of approximately 30 scholars from both the social sciences and humanities. Its mandate includes the following responsibilities:

- a facilitator of research and interdisciplinary discussion with the view to building an intellectual community focused on globalization issues.
- a centre for dialogue between the university and the community on globalization issues
- a promoter and administrator of new graduate programming

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To reach the IGHC:
1280 Main Street West
Hamilton, ON L8S 4M4, Canada
Phone: 905-525-9140 ext. 27556
Email: globalhc@mcmaster.ca
Web: globalization.mcmaster.ca

McMaster University

Autonomy and Domination within the Global Trade System: Developing Countries in the Quest for a Democratic WTO

Anna Lanoszka
Associate Professor
University of Windsor
Department of Political Science
Chrysler Hall North
401 Sunset Avenue
Windsor, Ontario N9B 3P4
Canada

alanos@uwondsor.ca