

Bachelor Thesis

World Trade Beyond Parliaments' Reach?

Assessing the Parliaments' Involvement in European Common Trade Policy

submitted by: Christian Scheper

Examiner: Prof. Dr. Nico Groenendijk

Co-Reader: Dr. Ron Holzacker

Universiteit Twente, Centre for European Studies

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List of Acronyms

CCP	Common Commercial Policy
DSB	Dispute Settlement Body
EP	European Parliament
IMF	International Monetary Fund
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TEC	Treaty establishing the European Community
WTO	World Trade Organisation

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1 Introduction

World trade presents a core issue within the overwhelmingly broad discussion on merits and demerits of Globalisation. For coffee beans, bananas, cotton, or call-centres, national borders seem to have disappeared long time ago. The establishment of GATT and the WTO as international regimes to regulate trade in a way that upholds fairness and reciprocity therefore seems to suggest itself. As a platform of cooperation among elected diplomats the WTO appears to be a great progress for the international community to negotiate on common rules and to peacefully settle disputes in a highly technical and economically important field. Moreover, when looking at the huge decrease of discriminating trade barriers that have disappeared during the last 60 years, one can add that the system has been very successful so far. Why then should one scrutinise the involvement of parliaments, which seem most closely associated with nation states, with Europe at best? And although their competence to act within a nation state is manifold, it is most obviously limited in world trade regulation. However, when looking at Seattle, Cancun, or other places where criticism ended up in violence, people were not criticising tariffs, but claiming the sell-out of education and culture, privatisation of health for commercial purposes, inhumane working conditions, the destruction of environment, and other misgivings that went far beyond trade.

The character and scope of what is negotiated under the umbrella of trade among diplomats on a multilateral stage has become subject to vast changes during the last decade. With an increasing level of regulation and a more stable institutionalisation of international cooperation, especially since the Uruguay Round in 1994, the reach of trade agreements has become wider and deeper, and agreements affect core fields of domestic policy. Thus, the influence exerted by international bargaining under WTO on domestic legislative competences seems to be further increasing. This is important to note as it is probably the most sophisticated example of an international organisation which regulates aspects of core national interests.

But protests among civil society against WTO regulation obviously do not only target substantial policy issues, but criticise procedures and decision-making processes, claiming a lack of transparency, participation, authorisation and accountability, leading to a prominent judgement of WTO as being “undemocratic” and hence “illegitimate”. Although protesters on the streets of Seattle and elsewhere are everything but similar in their motivations and

opinions on world trade, a huge part of the protest obviously has applied national requirements of democracy to a global setting of multilateral cooperation, which people perceived as affecting their own or other peoples lives. The concepts behind criticism usually share a notion of popular authorisation and representation, which is best be described as a *democratic deficit*.¹ Trade apparently has settled down in politics, is producing winners and losers, and aggregates welfare losses and wins.

A broad discussion among civil society, politicians, academics and trade officials has evolved since then, revolving around legitimacy questions of the WTO. One can observe intensified demands for a stronger involvement of civil society which has already led to a stronger cooperation with NGOs, and an enhanced transparency of WTO negotiations seems to be emerging. Another important field in this context centres around the role of popularly elected representatives. Although this seems a very obvious target of analysis from a standpoint of European representative democracies, relatively few academics have focused on this aspect. Mainly politicians themselves have broached this issue and parliamentarians as well as WTO-President Pascal Lamy have demanded enhanced parliamentary participation and transparency within the field of world trade. “In this question we reside in the middle ages”, as Member of the Bundestag Ernst Ulrich von Weizsäcker (2004) has critically asserted.

Much of this discussion refers to the global level of WTO, but another crucial subject of legitimacy targets the supranational governance of trade on the level of the EU. As one of the oldest fields of far reaching exclusive Community competence, one can consider the Common Commercial Policy (CCP) as a role model for successful economic integration. Its bundled trade power adds huge weight to the EU at the global conference table. But the EU also faces an increasingly politicised discourse on its trade position, and at the same time has to cope with conflicting national laws which are rubbed by a new “deep” trade agenda. With a more sophisticated institutionalisation of world trade and the affection of non-economic policy fields, the “permissive consensus” (Katz and Wessels, 1999: 8) in Europe, that relies to a high extend on output legitimacy and is based on the perception of an integrated Europe as serving everybody’s interest in global trade regulation, faces a prevalent suspicion of a lack of public representation. It seems to be falling short of the Union’s regulating and redistributing power.

¹ Scharpf (1996) similarly notes that criticism against a democratic deficit beyond the nation state sometimes is misled by following merely majoritarian ideas of national democracy.

While the discussion on a legitimacy crisis of WTO is wide and many academics and practitioners are looking for an enhanced basis of popular participation, most analyses and claims target the role of civil society. While this focus is essential, another aspect has stayed rather underexposed, which is the role of elected representatives within this newly *political* field. The attempt of this paper is to provide an assessment of the role and actual involvement of parliaments in the process of EU world trade policy. The analysis centres the function of parliaments for democratic legitimacy of world trade agreements and hypothesises that the actual processes that frame EU world trade policy are not fulfilling the requirements of European parliamentary democracies with regard to participation and representation. By exploring the role of core democratic institutions in one of Europe's most centralised and insulated policy fields, the paper aims to contribute to the general clarification of democratic legitimacy of European policies on the one hand and of multilateral world trade agreements on the other. The central research question for the analysis is:

Does the involvement of parliamentarians in European foreign trade policy satisfy the requirements of democratic legitimacy?

Several sub-questions will help to draw near to this:

The first chapter develops a conceptual framework that allows a classification of the role of parliaments, which are usually associated with the level of nation states, for the field of multilateral policy making. Therefore, a theoretical concept of Fritz Scharpf (2006) is followed, which distinguishes legitimacy arguments as *input-oriented* and *output-oriented*.

The central sub-questions hereby are:

- How can normative concepts of democratic legitimacy be applied to the role of elected parliaments within a multilateral framework of trade policy?
- What is the normative role of parliamentarians within this legitimacy concept with regard to European policies?

Based on different normative ideas about legitimacy beyond the nation state, an analytical framework identifies the core aspects of the further analysis.

The second chapter sheds light on the substantial character of world trade policy, and the institutional and procedural shifts which have taken place. The aim is to understand the new political dimension of WTO, which obviously had not been existing under GATT, and which constitutes demands for an involvement of civil society as well as parliaments.

- Which institutional concept and substantial policy focus have structured GATT?
- In how far have changes taken place that politicised trade and have led this setting into a legitimacy crisis?

The third chapter turns to the European dimension. It clarifies the institutional framework of parliamentary involvement within the CCP, and assesses the critical aspects with regard to legitimacy.

- Which actual role do national and European parliaments play for EU trade policy agreements, (how) can they exert influence?
- In how far does this setting guarantee popular authorisation, transparency, and accountability, but also outcome effectiveness?
- Which are the major constraints for a deeper parliamentary involvement in this field?

The last chapter focuses on a potential alternative of parliamentary participation, which lies beyond the familiar institutional establishment of national and supranational parliaments. The chapter focuses on attempts of the Interparliamentary Union (IPU)² and the EU parliament to implement a parliamentary dimension to the WTO and asks for potential prospects of this initiative.

A conclusion will bring together the main findings of the analysis and is supposed to answer the main research question.

The paper is based on a literature review, including scientific readings and official documents, in particular by EU Institutions and IPU.

² IPU as an international organisation has been founded in 1889 as a platform of co-operation among elected representatives around the globe. Its goals in general are the promotion of democracy and human rights, in particular the co-ordination, cooperation and exchange of experience among parliamentarians (see IPU, n.d.). While IPU has stayed relatively unknown in public, it has become an important forum for parliamentarians of 147 member states. One of its current initiatives is led in collaboration with the European Parliament and focuses on a parliamentary dimension to the WTO.

2 Conceptualising the Parliamentary Role for Legitimacy in World Policy

Although the question of democratic legitimacy has been illuminated by political theorists for centuries, a normative concept for the role of elected parliaments within a *multilateral* milieu is not an easy exercise. This chapter provides a normative basis for the analysis and centres the question of how the role of parliaments for democratic legitimacy can be applied to a multilateral governance setting. Furthermore, it is supposed to clarify their role with regard to the European Union as a supranational entity within this multilateral context. Based on a broader normative discussion on legitimacy beyond the nation state, the crucial theoretical assumptions for this analysis will be identified to form an analytical framework.

On the one hand, parliaments are a central requisite for national democratic legitimacy in Europe. On the other hand, the complexity as well as the global breadth and inter-linkage of matters governments have to deal with in contemporary democracies have inevitably led to a shift in the analysis of legitimacy concerns (see Shaffer, 2004: 633). In general, the former focus on *government* with a focus on positive policy decisions being solely in the responsibility of *popularly elected* representatives, has changed to *governance*, a step which allows a wider range of decision-making mechanisms, with a stronger focus on the competence to solve complex problems in an interdependent world. It accounts for the fact that in many fields of international regulation, like world trade under WTO, decision-making “is delegated – whether formally or informally – to non-representative institutions, such as markets, bureaucracies, courts, quasi-public bodies, private companies, and public-private networks” (ibid.). This consequently leads to an adjustment of normative ideas, making them more complex as they are going beyond mere democratic processes of national popular participation and representation.

Accordingly, the underlying argumentations in debates on the legitimacy of international organisations are confusing, and disputes on policies of, for instance, World Bank, IMF or WTO, are based on vastly different normative assumptions. People apparently talk “past each other” (Grant and Keohane, 2005: 29). The reason for such confusion lies in different lines of argumentation. That is, although the basic idea of a legitimate governance solution³ as

³ The notion of “governance solution” hereby simplifies what could be further differentiated as “policy processes, characteristics of the government and characteristics of the regime” (Scharpf, 2006: 2 [footnote]).

ensuring a certain “common good” might be shared among different approaches, there are different underlying assumptions on what major threats to this legitimacy are and how these are overcome. In order to be able to offer a concise framework for the analysis, it is crucial to account for these different notions and thereby “internalise” the sources of confusion.

Fritz Scharpf’s concept of *input*-oriented and *output*-oriented legitimacy is suitable as a normative guideline within this exercise, as it concisely discloses basic differences of argumentation, by analytically distinguishing two adjacent notions of legitimacy. At the same time it offers a high level of generalisation, which allows the application outside of the “familiar terrain” of nation states.

Scharpf describes legitimacy as following two different lines of argumentation. They are both based on the core normative idea of all governing processes serving a “common good”, contrary to particular group interests or the governors’ self-interest.

The *input*-oriented notion hereby is based on the argument of “trust in institutional arrangements that are thought to ensure that governing processes are generally responsive to the manifest preferences of the governed (‘government *by* the people’)”. (Scharpf, 2006: 1). This notion suggests a government which reflects the “general will”. The solution consequently seeks either for a maximised direct participation of the people, or for a governor who is responsive to the preferences of the people. The most common solution based on this argument within national democracies is the idea of *electoral* accountability with a majoritarian government. But it is important to note that, despite the high familiarity of election and majority rule, these are *not* legitimacy mechanisms *per se*, but require relatively distinct characteristics themselves (ibid: 2). This instance will be further elucidated below, in the context of governance beyond the national level.

The second notion of legitimacy follows the argument of *output*-legitimacy (ibid: 3). The main threat from this point of view is the divergence of governance from the “common good”, caused either by a governor’s self-interest, or by the “tyranny of the majority” (ibid.). Thus, the ideal according to this argumentation is the establishment of a set of governing institutions that protects against *both* threats. This is particularly achieved by dividing competences among multiple actors, which are subject to electoral accountability *separately*; moreover, by the assignment of specialised and clearly defined powers to independent judiciaries to protect these against the interference of political majorities. The concept of veto power becomes essential for limiting the powers of single authorities. *Performance effectiveness*, understood

as a political outcome in accordance with securing a “common interest”⁴, is central in this notion (“government *for* the people”, (Scharpf, 2006: 2); see also Keohane and Nye, 2001: 265, 291; Katz and Wessels, 1999). A solution hereby is always facing the tension between the establishment of institutions with the purpose of prohibiting “wrongdoing” of other authorities (“*power-constraining*”) (Scharpf, 2006: 3; 4), and institutional solutions to foster effective outcomes for a common interest (*action-enabling*) (ibid: 4).

The emphasis of either (output-oriented) effectiveness or (input-oriented) popular representation in fact highly differs within different governance frameworks, and usually there is a tension between the two notions: Whereas an input-oriented argumentation seeks for the public majoritarian support of a policy or a regime, an output-oriented answer could argue that it is exactly an overwhelming influence by the majority that the policy process has to be protected against, in order to follow the common interest efficiently. But, as several scholars have emphasised, legitimate democracy has to satisfy at least a minimum on *both* sides (see e.g. Katz and Wessels, 1999: 5f), as soon as decisions put salient political preferences at stake. This is, where no Pareto-superior decision is possible as there are unavoidable externalities that produce winners and losers. “Both input- and output-oriented legitimating arguments only come into play if a policy violates politically salient constituency interests.” (Scharpf, 2006: 3 [footnote]).

The obviously very general character of this concept seems to be its strength for the analysis, as it allows to account for a variety of different ways to ensure legitimacy, so that an assessment of the parliamentary role within a setting of alternatives can be considered.

In the notion of output-oriented legitimacy, parliaments in modern (Western) democracies primarily offer electoral accountability as a power-constraining institution, adding an essential

⁴ The discussion of what exactly is to be understood by the “common interest” has of course been led by various social theorists throughout centuries. This paper follows Scharpf in his focus on the common interest as being the “social maximum” in an open deliberative bargaining process. Scharpf labels this process as “Coasean bargains”, going back to Coase theorem which presupposes a bargaining process that is ideally characterised by complete information and non-existing transaction costs in exchange processes among bargaining partners. Based on a more sociological perspective of deliberative democracy, one could also consider these deliberative processes as being normatively guided by a Habermasian ideal speech situation, offering an ideal for political communication that includes all affected interests into a deliberative process and thus allows “reasonable and fair results” (Habermas, 1996: 287f.).

veto power within a set of authorities and thus offering a constraint against the abuse of power which leads to a departure from policies for the common interest. In the notion of input-oriented legitimacy, they rather offer a unique mechanism of representing different interests of the constituency. Through the sole accountability mechanism of popular elections, its responsiveness for the “public will” is ensured. The key competences of the parliament within legislation, budgetary and supervisory power ensure the governance process to be constantly influenced by the constituents interests.

An essential confinement of this aspect of representing the “public will” is that it is closely linked to a *majoritarian* rule of decision-making, which requires several features that are characteristic of modern nation states, but which are absent in an international milieu.

The central aspect is the existence of a *demos*, a kind of political collectivity that could form a majority. Furthermore, even if a collective decision could be made, it is unsure whether it is the “common good”, unless there is any kind of *deliberative* process, which identifies a common public will. This requires a *public sphere*, a space for exchanging and deliberately forming ideas and opinions, and a process of will formation and its reflection in the political process, most prominently implemented in modern democracies through democratic parties. World politics lack both a “global community” and multilateral parties fostering a collective will formation.

The traditional conception of the state, in which it is posited as the fundamental unit of world order, presupposes its relative homogeneity, that is, that it is a unitary phenomenon with a set of singular purposes. (Held and McGrew, 2000: 11).

A global public is absent even in a relatively weak sense of an “imagined community” (Anderson, as cited in Grant and Keohane, 2004: 33). Majority voting therefore does neither provide a feasible nor a legitimate mechanism for authorisation and representation in a fragmented world public, which is, to a high extent, still valid for Europe as well (see e.g. Eriksen, 2005; Mair, 2004; Katz and Wessels, 1999; Scharpf, 1996; 2006).

As a consequence, when replicating national solutions to ensure *input*-legitimacy as the “to-be concept” in an international milieu, one is inevitably stuck in the appraisal of a democratic deficit. “There is no simple analogy that can be made between domestic democratic politics

and global politics.” (Grant and Keohane, 2005: 34; see also Shaffer, 2004: 634; Keohane and Nye, 2001; Scharpf, 1996)⁵.

The challenge therefore apparently lies in the quest for alternative mechanisms without giving up the core democratic aspect of electoral accountability⁶, and hence the unique function of parliaments in the notion of input legitimacy. An analysis hence must not stay within the range of possibilities provided by models of parliamentary democracy itself. As for international organisations, it is often argued, that they do not require any parliamentary involvement, moreover that it is not even desired. The normative argumentations behind these assumptions hence have to be taken into account. Three basic lines of argumentation are mostly differentiated in the literature. The first is simply referring to the necessity of legitimacy of certain political decisions, while the other two describe models of legitimacy in an international milieu.

The first argument simply refers to the scope of international decisions. Often people do not consider international negotiations to directly violate politically salient interests, and so requirements for democratic legitimisation are low, as has been mentioned before.⁷ This refers to fields of regulation which do not directly affect essential aspects of life of a majority of people (e.g. the International Convention on Damns), and which are strictly limited to a clearly defined policy field.

⁵ Zahrt illustrates this with the two concepts of republican and liberal democracy. A *republican* concept would especially lack an aspect of “common public ground”, a collectivity from which any governmental action could derive. Attempts to apply *liberal* theoretical approaches will particularly face difficulties by defining a public “programming” of representatives, through majoritarian government, which is not legitimate without any public discourse on an international level, on global issues and in the absence of a global public sphere in general (see Zahrt, 2005: 38f; also Scharpf, 1996). Keohane and Nye (2001: 272) use a similar argument explaining the difficulties to apply national theoretical concepts of „adversary“ versus „unitary“ models of democracy on a global level.

⁶ In this context a vast range of literature has developed, ranging from pessimistic notions of giving up major principles of popular influence of democracy to optimistic ideas of advancing democracy to a global scale (for a discussion see e.g. McGrew, 2000: 417; Katz and Wessels, 1999: 7).

⁷ see Scharpf (2006), who refers to this with regard to European Integration. “What’s the fuss?” as Keohane and Nye (2001: 272) have put it, “International institutions are weak relative to the governments of rich, powerful states.”

Where international organisations and decision making procedures are politically salient, two major underlying ideas of legitimising international politics can be identified that might lead to a similar assumption of a negligible role of parliaments on the international stage. The arguments might find their justification in a certain context and could therefore constitute powerful arguments *against* a parliamentary involvement. For the level of abstraction is inevitably high, the “ideal” types of the argumentation are briefly summarised, which enables a later association with different contextual settings of EU world trade.

According to the first model, *intergovernmental* organisations are considered as a sophisticated form of cooperation among national governments. Since the national representatives themselves are legitimised through domestic procedures of public authorization by an elected parliament and are held accountable domestically, there should be no legitimacy concern in the field of international cooperation (see e.g. Beetham and Lord, 1998: 11; Keohane and Nye, 2001: 272). From this point of view, the WTO in the end is nothing but “a label” (Bacchus, 2004: 668). It is the name chosen by the vast majority of nation states which have agreed on working together under this label and share their efforts for lowering barriers in international trade (see *ibid.*). The democratic character of the organisation thus derives from the nation states’ domestic mechanisms of democratic will formation and representation in parliament, to which the executive is held accountable. Foreign agreements stay within the competence of the executive branch, allowing agreements to international conventions or membership in intergovernmental organisations. Where national legislation is affected, the mechanism of domestic ratification of international signatures ensures a parliamentary control.

Second, in fields beyond the nation state, a technocratic version of legitimacy is used, looking primarily on the performance side of governance in a field where there is a general consensus of a “common goal”. The focus hereby is on a regulatory character of an international regime, ensuring common public interests. In order to secure a benefit for the general public, the decision-making process is legitimately isolated from political influences and hence from rent-seeking interest groups striving for particular interests, or from the “tyranny of the political majority”, which both would not serve a common good (see e.g. Beetham and Lord, 1998: 16; Scharpf, 1996: 4f; Majone, 1996). With respect to European integration, Giandomenico Majone (1996) has most prominently described the EU as being based on a

“regulatory legitimacy”. A technocratic argumentation has become established in monetary policy, where the consensus on the merits of independent central banks is widespread, especially due to the highly technical field of financial regulation, requiring high expertise and a time perspective that reaches further than the next elections. The goal of price stability therefore is often seen as reached best by a technocratic solution. Particularly from this standpoint, a parliamentary or plebiscitary participation is not needed and not even desired, as it is a major purpose of an international regulatory institution to insulate its goals from political contestation by lobby groups and politicians focusing on the next election. A democratisation from this point of view would inhibit the decrease of an already low decision-making effectiveness in multilateralism (output orientation).

A similar conclusion about the involvement of popular influence is drawn based on a slightly different argumentation, which is led by the idea of a constitutionalisation of basic liberal freedoms and rights. Beyond core fields of human rights, this notion is also applied for basic economic freedoms, as has been prominently done in the field of European integration. The argument focuses on a free movement of goods, services, persons, and capital as essential economic rights which have to be ensured by lifting them on a constitutional level, and hence protect them from easy political contestation (see e.g. Scharpf, 2006: 5). In the context of international trade this idea goes along with a steady tendency of legalisation of world trade regulation.⁸

In both lines of argumentation it becomes obvious that the focus is on the international level, where (input-oriented) participation and representation has not become applicable. *Accountability* therefore becomes a pivotal point for legitimacy in both concepts in order to avoid the abuse of power in world politics (see Grant and Keohane, 2005), as power inevitably has to be delegated to institutions beyond the level of the nation state. “We can distinguish electoral accountability and non-electoral accountability.” (Keohane and Nye, 2001: 283). Insofar as legitimacy depends on processes, accountability is central.” (291). Keohane and Nye identify seven accountability mechanisms, which might prove effective also *without* a parliamentary involvement.

⁸ For a concise discussion of constitutionalism in world trade see Howse and Nicolaidis, 2001.

General types of accountability	Mechanisms of accountability in global politics
Delegation	<ul style="list-style-type: none"> ▪ Hierarchical (subordinate officials are held accountable by leaders of organisation) ▪ Supervisory⁹ (States as members hold multilateral organisations accountable) ▪ Fiscal (Funding agencies hold funded agencies accountable) ▪ Legal (Courts)
Participation	<ul style="list-style-type: none"> ▪ Market (Equity- bondholders, and consumers hold company or government accountable) ▪ Peer (peer organisations) ▪ Public reputational (peers and diffuse public)

Table 1: Seven mechanisms of accountability in global politics (based on Grant and Keohane, 2004: 35).

Grant and Keohane note another constraint against the abuse of power on the global stage that inhibits organisations from an abuse of power, which they label the *negotiation constraint*. It applies when overlapping jurisdictions or actors with different interests have to compromise. This is not a genuine mechanism of accountability, but however it is a constraint for power-wielders (see Grant and Keohane, 2004: 37). It is also typically associated with world trade, a field in which negotiation constraints are most obvious, at least since progress within the Doha Round have become seriously challenged by disputes between developing and developed countries (see Keohane and Nye, 2001; Hocking, 2004). Besides, organisations face constraints through the different standards on which they are judged: “whether they serve the interests of their member states, the purposes for which they were established, and evolving standards of benefits and harms.” (see *ibid.*).

So far these assumptions focus on the international level, but do not shed light on the actual role of parliaments as core derivatives of national democracies. It becomes crucial to clarify the *circumstances* under which these assumptions give sufficient answers to the legitimacy question. Yet, the assumptions do not account for the question of the actual kind of power that is exerted. This causes confusion in a multi-level governance setting (see Hudec, 2001: 295).

⁹ This most notably is associated with the intergovernmental notion of legitimacy. It requires parliaments, but not beyond the borders of the nation state.

A major challenge for the assessment in the context of transnational decision-making is that policy outcomes are usually the consequence of a variety of different actors on different vertical levels, making it primarily difficult to hold the responsible person accountable (see Scharpf, 1996). “Legitimacy is a term typically associated with power” (Hudec, 2001: 295), but on an international stage the exercise of power and its source are undoubtedly vague.

Legitimacy complaints assume a different character depending on the kind of power being exercised. Since affected constituencies are different, those who have standing to complain in each case will be different. (ibid.)

The formation of an analytical framework has to include another aspect. While the normative ideas of legitimacy, as well as the accountability mechanisms offered by Keohane and Nye all refer primarily to the exertion of power on the international level, it is crucial to clarify in how far power actually is exercised by an international organisation itself, or by its members on the multilateral, regional or national level. While in a multilateral organisation the power usually stays on the side of the member states, it might also become a power “on its own”, have its own influential bureaucracy, be able to take internationally binding decisions, or even take its own measures to enforce them. However, this rather stays an exception, or is limited to strictly defined fields of decision-making. Even more, this aspect might usually lack of forces for implementation of policy decisions, as such forces do not yet exist independently from national control. Much more than the possibility of the organisation becoming an autonomous actor in world politics *itself*, another way of power exertion is relevant, which derives from the intergovernmental character. Power exercised by the negotiators through the multilateral platform might lead to an increase of their factual competence within the domestic mechanisms of power sharing (see e.g. Mann, 2004: 660). The expression of supervising “states” in Grant and Keohane’s table covers up the fact that it is actually the *executive* branch that exerts power on an international level. If governments negotiate on an international level and the agreements are supposed to be binding *domestically* and hence affect national legislation, the involvement of national legislators is required in a way which involves a positive policy influence. Usually a mere concept of ratification disregards the requirement of formulating alternatives, and moreover, it does not reflect the reality of constant domestic negotiations among government and influential groups as well (see Putnam, 1988: 436).

Consequently, two levels of power result in the necessity for an analysis of both the international and the domestic level, as well as the vertical interlinkages (see Shaffer, 2004: 630; Keohane and Nye; Hudec, 2001). In the case of the EU, which has its own common position in the WTO, the analysis obviously has to target the national and regional level. This means, parliaments have to be able to fulfil their legislative function within their field of competence. In important fields of legislation which might be affected by international trade, like labour conditions, environment, or food security, European nation states still have the major competence for legislation. Where these legislative fields are rubbed by international negotiations, national parliaments stay the unique source of popular accountability and control (see e.g. Katz and Wessels, 1999). As soon as these different levels of power and accountability mechanisms are included, *transparency* becomes crucial and has to be fulfilled in a way which ensures the legislative branch to effectively assess the multilateral decision process led by the executive branch.

Against the background of these different normative ideas of legitimacy and possible sources of power and constraints, an analytical framework can be formed, which allows an operationalisation of the different ideas for the assessment within the specific context of world trade and parliaments. The crucial aspects will hence be identified for the context of further analysis.

So far, the general notions of input- and output-oriented legitimacy have been completed by two major lines of argumentation in an international context, simplistically labelled the *intergovernmental* and the *technocratic* model. *Accountability* has been identified as the pivotal point on the international level, while (input-oriented) participation and representation are limited to the national level and hence making it stay essential for input-oriented legitimacy concerns, as soon as politically salient issues are at stake. *Transparency* becomes an important pre-condition especially where vertically fragmented government processes are interdependent.

Two main analytical aspects can be derived in order to contextually apply these normative ideas and to clarify the requirements of parliamentary influence in world trade:

- (1) The substantial content and reach of negotiated policies as the parameter for legitimacy requirements (focus on policy field), and

- (2) the institutional source of political power which consequently has to be subject of legitimacy mechanisms, including mechanisms of interference within the vertically fragmented policy arena (focus on institutions and processes).

Based on the democratic notion of input- and output-legitimacy, it can be assumed that parliaments play a crucial role also for international politics as soon as the issues are *political* and legislative in character, as parliaments provide the only feasible institutional way of fulfilling the requirements of an input-oriented popular participation and representation.¹⁰

The level of the nation state hereby has been identified as the sole entity which fulfils the requirements of democratic elections and majority voting. Thus, from an input perspective, the “general will” of the people in a way that positively influences political alternatives, adheres to the influence of national parliaments. From an output perspective, it might form one of several different pillars of power-constraints and offer electoral accountability, but it has become clear that it is not the *only* source of power constraints in world politics. Transparency in this context is a requisite for both accountability-holders on the international level as well as for parliaments on the national level, for being able to hold the executive branch accountable for multilateral negotiations.

As a consequence, if Scharpf’s concept of both input- and output-oriented legitimacy are to be held up *beyond* the nation state, several requirements towards a parliamentary role can be derived: A legitimate solution would have to ensure the legislative competence of a parliament insofar, as positive political decisions which do not offer a clearly definable “common good” would have to stay within the field of influence of the parliament. Where these decisions are delegated to another authority, the effective opportunity to oppose must be given.

¹⁰ The term “political” hereby must not be misunderstood as an aspect which can be qualified with “yes-or-no”, but rather with “more or less”. Similar to the whole debate on democratic legitimacy which cannot be considered as an all-or-nothing-affair (see Beetham and Lord, 1998), the judgement of a decision to be “political” in character might be blurred. However, certain indications can be considered as crucial. If there are “winners and losers” of a decision, or if a decision is made between comparable norms and values within society, especially with regard to life, liberty or property rights (see Scharpf, 2006: 1). Moreover, where the field of negative regulation is left and positive rule-making is established, a political character is increased. Summing these aspects up, one could consider those decisions as political where governors ascribe different weights to legitimate opposing preferences among society.

Besides, the possibility of depriving an authority from power, or a potential change of the legal basis of the institution to which the competence has been delegated to, would provide alternative channels of influence. Where regulatory power is delegated to an independent institution in order to follow an afore defined “common goal”, the possibility of “opting-out” would be required. That is, to redefine the common goal or leave the sphere of influence of the institution. The focus on the parliaments’ role allows the specification of the afore defined analytical aspects (1) and (2) within an analytical framework, based on two guiding fields of analysis. First, theoretical assumptions on legitimacy requirements of EU world trade policy with regard to the scope and political salience of world trade decisions (focus on policy field). This part of the framework and the deriving analytical question are summarised in figure 1.

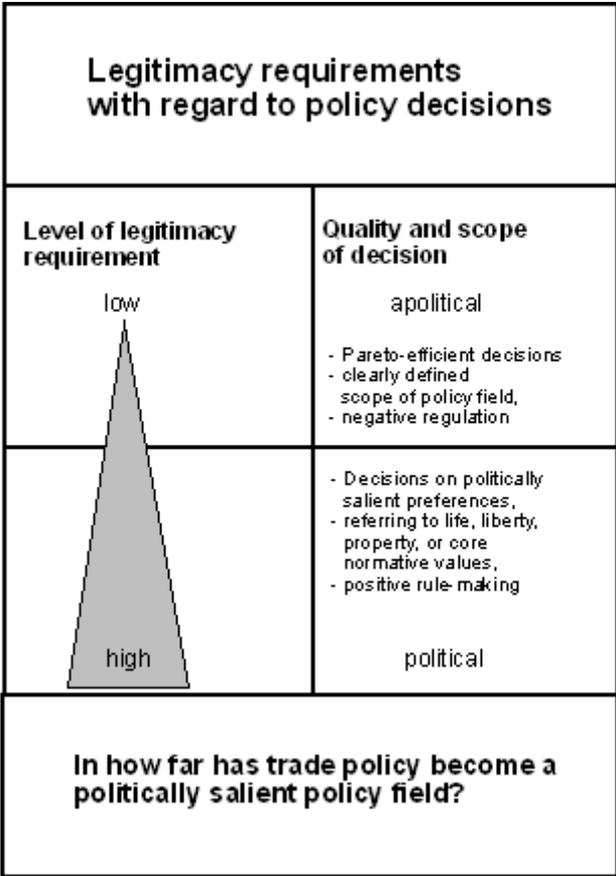


Figure 1: Legitimacy requirements with regard to policy decisions

The second part of the analytical framework is based on theoretical assumptions on legitimacy of EU governance in an international milieu. The deriving analytical questions focus the role of parliaments (focus on institutions and processes). This part of the analytical framework is summarised in figure 2.

Theoretical assumptions on legitimacy of EU policy in an international milieu and deriving analytical questions with regard to parliaments.

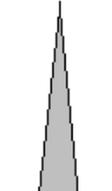
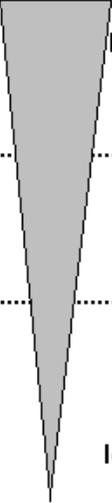
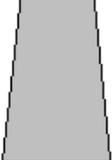
Notion of Legitimacy / Level of Governance	Input-oriented	Output-oriented		
	- Do governing processes reflect the "general will"? - Are governors responsive to the governed?	-Do governing processes ensure an effective outcome in terms of a common good?		
	level of legitimacy mechanism	level of legitimacy mechanism	level of legitimacy mechanism	
Multilateral level	 <p>low</p> <p>weak democratic input, only indirect through national governments, limited to executive branch</p>	 <p>high</p> <p>Action-enabling:</p> <ul style="list-style-type: none"> - Intergovernmental model (global co-operation allows solution for global problems) - Technocratic model (independent experts allow efficient solutions, applies to all levels of governance, but efficiency higher on a higher gov.level) <p>National government unable to cope with global problems</p> <p>low</p>	<p>Power-constraining</p> <p>focus on non-electoral mechanisms</p> <p>Seven mechanisms of accountability*: - Hierarchical, Supervisory, Fiscal, Legal, Market, Peer</p>	
Supranational level	<p>Elected parliament, but weak participation and representation due to fragmented public; indirect input through Council of Ministers</p>		<p>level does not necessarily differ with different governance level.</p>	<p>European vertical and horizontal power-sharing</p>
National level	 <p>high</p> <p>Elected parliaments ensure a strong policy input according to "general will" of constituency</p>		<p>focus on electoral mechanisms</p> <p>National vertical and horizontal power-sharing</p>	
Central analytical question	Do national parliaments influence policy decisions according to the "general will" of constituencies, where national legislation is affected?	Are parliaments able to hold up national electoral accountability, where international policy decisions diverge from the common interest?		

Figure 2: Theoretical assumptions on legitimacy of EU policy in an international milieu

*These mechanisms might work on the national and supranational level as well, but their role for legitimacy is more important on the international level, due to a lack of electoral accountability.

3 From GATT to WTO and The Changing Character of Trade

According to the first field of the analytical framework, the two sections of this chapter analyse the substance of trade decisions on the multilateral level, and specifically the ongoing politicisation of trade under WTO, explaining the subject matter and origin of a shift from “technocracy to politics”. The first section asks for the institutional concept and substantial policy focus of GATT, while the second section identifies those changes from GATT to WTO that have politicised trade negotiations and have led the original setting into a legitimacy crisis. This includes the emergence of new actors and the adjustment of insulated negotiating processes on the multilateral level. The approach is to contrast the post-war GATT conception with the current WTO development and policy conditions. The reason for this approach is to emphasise the original GATT conception and its underlying legitimacy mechanism as having evidently left its mark on the current world trade policy composition. Therefore it forms a major influence on the debate on legitimacy of today’s WTO and the actual and potential participation of democratic representatives. At the same time, demands for a role of parliamentarians and their actual striving for further involvement become clear against the background of changes in substance and reach of trade negotiations within the last decades.

The changes that have taken place, most notably in the 1990s, will be described alongside three different development directions:

- 1) Substantial changes through the emergence of a wider and deeper *trade agenda*, which can be summarised as a shift from mere “at-the-border” issues to “beyond-the-border” issues (see Young and Peterson, 2006; Hocking, 2004: 5).
- 2) Basic institutional and procedural changes, primarily from GATT to WTO.
- 3) The emergence of new contesting actors.

The focus on these aspects has been chosen, because of their direct relevance for the involvement of parliaments. It is assumed, that the substantial changes in the trade agenda have inevitably led to a politicisation and have required an institutional adjustment. The new political character embedded into the original polity design explains the current legitimacy debate. It has furthermore opened the policy field to new actors and has made the involvement of parliaments become a crucial aspect from the perspective of democratic legitimacy.

3.1 *GATT Under “Technocrats’ Heaven”*

Born out of a failed attempt to establish the International Trade Organisation (ITO), the *General Agreement on Tariffs and Trade* (GATT) was the core and bare-bones idea which survived out of the originally much farther reaching „Havana Charta“ (see e.g. Herdegen, 2005: 107f; Wagner, 2003: 76; Howse; Howse and Nicolaidis, 2002: 230). For almost half a century, GATT has functioned as a provisional multilateral regime. The agreement was supposed to foster international trade by facilitating concessions on trade restrictions on a reciprocal basis by nation states and make them binding (see Howse, 2002: 95). In the post-war decades this led to a steady reduction of tariffs at the borders. The negotiation process was entrusted to a specialised policy elite which was insulated from, and “not particularly interested in, the larger political and social conflicts of that age” (ibid.: 98). The negotiators were mostly former or current governmental trade officials, some few employees in the GATT Secretariat, “GATT friendly academics” (ibid.) who often sat on dispute settlement panels, and some officials from other trade-related international organisations, particularly World Bank. The processes were largely invisible to the public, and there was no protest against it. The same was valid for national legislators. Keohane and Nye (2001: 266) have labelled this insulation the “club model”, allowing a relatively small number of cabinet ministers or other experts from a similar background to work together in the same issue-area to “make rules”. After having negotiated in secret and in a quite unchallenged way, they reported results to national legislators and publics. Each regime was operating without close links to other issue-areas. “Trade ministers dominated the General Agreement of Tariffs and Trade (GATT); finance ministers ran the IMF; defence and foreign ministers met at the headquarters of NATO” (ibid.).

The result was a very convenient negotiating environment for trade officials, in which neither the public, nor elected parliamentarians, nor officials from other “trade-and”-areas, like labour, environment, or finance were contesting agreements (ibid.). Furthermore, by selling a complete package to the public, the whole bargaining process and potential political alternatives were not publicly discussed, which made it also easy for governments in domestic ratification.

This depoliticised and insulated process apparently has become possible because of the limited scope of negotiations on tariffs, but also, as Keohane, Nye, and also Howse have noted, due to what John Ruggie has called “embedded liberalism”. The main feature was a well established underlying commitment by major trading players on a specific progressive

and interventionist model of the welfare state, including respect for certain different ways of its implementation in, for instance, the United States, Japan, or European countries. An essential practice was the GATT requirement of “non-discriminatory” national policies, which followed a “negative prescription” (Hocking, 2004: 5). Besides, decisions by the dispute settlement panel were not directly binding, but had to be approved by the GATT council. The shared compromise included increasing economic openness, accompanied by multinational regulatory institutions for finance and trade. (see Howse, 2002; Keohane and Nye, 2001). This “embedded” compromise allowed the system of GATT to stay relatively uncontested in its steady efforts to reduce tariffs, while at the same time keeping a multiplicity of exceptions alive, in respect of national welfare-oriented interventions. This made the whole system of GATT become “complex, multifaceted, and messy” (Howse, 2002: 94).

It becomes obvious that the typical characteristics of low legitimacy requirements according to the first field of the analytical framework have been applied to GATT, due to the identified substance of trade policy:

- No (direct) influence of negotiations on essential aspects of peoples lives,
- a strictly limited scope of policy decisions
- regulation through negative prescription.

Furthermore, the institutional arrangement has been characterised as an insulated “club”, without noteworthy contestation from “outside”. The setting can be localised in the output-oriented technocratic model of the analytical framework.

3.2 *WTO and the Political Avalanche of Trade*

WTO has departed quite far from that insulated club model of the first GATT decades. In general, one has to bear in mind that the mere scale and the impact of global exchange on welfare and economy have heavily increased.¹¹ Besides, the diversity of product exchange has evenly grown, in particular through the expansion of foreign direct investments (FDI) and trade in services during the 1990s.

¹¹ The sum of all world exports have expanded from about 62 billion US-Dollar in 1950 to 7.5 trillion US-Dollar in 2003 (see WTO).

Beyond an overall expansion of scale, the width and depth of the negotiated agenda have been adjusted. In the literature it is also referred to as the inclusion of “trade-and...”-issues, or the emergence of a “deep trade agenda” (see e.g. Holmes; Young and Peterson; Matsushita et. al., 2006). With the advanced elimination of tariffs, the role of *non*-tariff barriers for governments to protect their national economies heavily increased. Export subsidies, countervailing duties, import quotas, anti-dumping regulations, or minimum standards for manufacturing and production requirements of goods became typical examples causing “headaches” in GATT and WTO offices. The effect was that GATT, in order to be able to limit non-tariff barriers, had to reach much further “behind” national borders, and regulate those government measures which served as factual barriers for trade. After first attempts to set frameworks for regulation in the Tokyo Round from 1973 to 1986, the issue of non-tariff barriers was focused in the then following Uruguay Round. For an effective regulation of non-tariff barriers, the depth of the trade agenda inevitably extended into core fields of national regulation.

This changed the basic character of trade regulation, as technocratic and clearly rules-based decisions do not offer answers to the question whether policies form a legitimate domestic regulation for non-commercial public purposes or are rather illegitimate trade barriers which conflict with treaty obligations. The difficulties emerge where domestic regulations serve a variety of non-commercial and legitimate public interests, but have the same discriminatory trade effects as tariffs or blatantly purposive non-tariff barriers. Where some cases are obviously based on commercial interests,¹² others are solely a consequence of political decisions due to non-commercial interests, norms, values, or traditions within a country, a region or branch, or based on national political culture. The subsidisation or domestic monopolisation of, for instance, an industrial sector will usually discriminate foreign suppliers, as well might high environmental or labour standards inhibit imports from countries with lower legal standards. The decision where to draw the line of compliance and non-compliance with the treaty becomes a political one, not a fact of technical insight or economic science (see also Howse, 2002: 95f).

Individual member state’s perceptions of what policies fall on one side of the line and what on the other are going to vary depending on ideology, regulatory traditions, and so forth, all of which generate institutions about whether someone’s regulatory behavior looks like “normal” or, rather, like something that might only be done in the circumstances for protectionist reasons. (ibid.: 96)

¹² e.g. when Japan demanded standard regulations for American and European skis to be inappropriate for Japan, based on the claim that Japanese snow would be different from other snow (see Vogel, 1992: 145).

One of the most famous cases causing the first huge “outcry” in public was the tuna-dolphin case in 1991. The United States had enacted a ban on imports of tuna from nations whose dolphin protection standards were laxer than those in the United States. The primarily affected country was Mexico, whose tuna fleets had a higher dolphin killing rate than permitted by the United States law, and hence the import was restricted. The GATT dispute panel found that this would violate the U.S. treaty obligation under GATT, as it did not allow an import restriction on the basis of *how* a good is produced outside the legal jurisdiction. The panel’s decision caused furore in the media and outraged environmental organisations claiming that this decisions would through back environmental policies for 10 years (see Vogel, 2000: 73). While this is a prominent but somewhat extreme example, it illustrates the typical dilemma of international trade and national political preferences.

During the Uruguay Round, the range of GATT was fundamentally expanded, which found its formal reflection particularly in the *General Agreement on Trade in Services (GATS)*, and the *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)*. Their agendas under the newly founded WTO became highly political in character. A Pandora’s box had been opened within the field of national service regulation, as not only environment, but other issues like health, working conditions, human rights, education, food security, or intellectual property rights would be affected in similar ways.

Especially GATS coming into effect has led to various disputes on potential merits and demerits, as well as definable winners and losers in case of rigorous implementation of services liberalisation. Concerns and reservation centred, for instance, the treatment of education and culture as a public good versus further privatisation, the competition among hospitals, or the prevention of temporary employees from abroad who would not fall under working conditions of domestic law, or potentially disadvantageous agreements of further liberalisation for least developed countries. One of the apprehensions by many developing countries was the unavoidable opening of banking sectors, which could lead to the vast market expansion of transnational financial investment and credit institutions and inhibit a public regulation or congest the domestic banking market. Given the past financial crisis, especially Asian countries have had deep concerns.

One can conclude that WTO had left the space in which it could be based on a technocratic legitimacy. Based on economics, there is no direct “benefit for all” through an increase in the aggregate domestic welfare from the protection of an intellectual property right. If patents are

protected, some win and others lose, and aggregate welfare might increase or decrease (see Howse, 2002: 102). Thus, trade has quickly entered the field of politics and had to face public discussions on the consequences of GATS, often developing into disputes on the legitimacy of WTO in general. Against the background of complex issues and apparently due to the absence of trade policy in public, discussions were not always qualified, and among protestors in Seattle there were a lot of different and contradictory positions which were often everything but justifiable.¹³ But the vast range of popular scepticism about WTO gave the impression of a lacking tie between WTO negotiations and public interests.

At the same time, the *procedures and the institutional framework* of GATT changed, especially through a more binding character of dispute settlement. Some of the changes have had an impact on the possibilities for “outsiders” to influence trade policy decisions.

One of these trends can be described as the modification of the former “negative prescription” under GATT to a “positive rule-making” under WTO (see e.g. Young and Peterson). This has been formally implemented through the enhanced Dispute Settlement Body (DSB). As a consequence, a former control of the *implementation* side of rules-making through the negotiating level of diplomacy has dropped out. Robert Howse (2002: 108) notes in this context: “consider how much more damage would have been done to system legitimacy had the Tuna/Dolphin rulings not remained unadopted.” If the DSB judges a domestic rule irregular with a treaty obligation, it can decide bindingly on a change of domestic legislation. Parliaments hence face a serious constraint in their ability to steer these influences. Another aspect contributes to this, as through the negative prescription under GATT there had been a natural inclination for members towards negotiation, because the efficacy of a decision would have been limited, if there was a remaining dispute on it. In contrast to that, “agreements based on positive rule-making tend towards litigation” (Hocking, 2004: 5). The genuine political character of this shift towards dispute settlement is to see in the fact that disputes usually have its roots within *national* regulation. With an increasing sensibility in the field of negotiating and a more binding and effective dispute settlement, the politically contested

¹³ Keohane and Nye (2001: 271) openly note: “Behind the protesters’ annoyingly naïve characterizations of the WTO, IMF and World Bank, and their frequent failure to understand even elementary economics, lies a deep concern with democratic procedures.”

issues are shifted to the DSB. The rule of law – with penalties to back it up – had arrived in the WTO.

And with the emergence of new areas of rules (such as technical barriers to trade and trade-related intellectual property), there was plenty of raw meat for the new Dispute Settlement Body to get its teeth into. (Baldwin, 2006: 933)

The new political topics finally made a number of new actors enter the field. First of all on the official negotiating table, where the increase in scale and diversity of global trade and the emergence of new trade powers have led to a much higher involvement of developing countries, which had either been non-contract partners of GATT or members of WTO before, or had been relatively powerless against huge industrial positions of the United States and EU. Through an increasing number of memberships and joint efforts of new relevant trade actors during Doha Development Round, the position of powerful actors and their so far rather simple bargaining position had suddenly been contested. Ambitious and up-coming economies like Brazil, India, China or South Africa and their joint efforts within the G20 gave the developing block a new quality in negotiations (see e.g. van Dijck and Faber, 2006). Developing countries cooperated and raised their voice for the realisation of a “development round” which was supposed to deserve the name.

“Outside” of the WTO official rounds, an exploding number of civil society organisations and movements, labour unions, environmental, developmental, or “trade” NGOs became aware of the policy field as affecting core interests, or they noticed their opportunity to effectively influence the outcomes through an increased public awareness. Consequently, they tried to voice their concerns on a national and global level.

With a more sophisticated and powerful multilateral institution, demands for greater legitimacy have intensified (see Shaffer, 2004: 630). In 1999, protests reached its peak, at least as far as the resort to violence and attraction of media attention are concerned. Actors of civil society have increased their influence to a noteworthy extend since then, as many of them at least are able to keep up a regular dialogue with WTO negotiators (see Chatikul, 2003: 7). Hocking has consequently described the shift within trade negotiation from the “club” to the “multistakeholder model” (Hocking, 2004).

Embedded in the analytical framework, changes under WTO are summarised in figure 3:

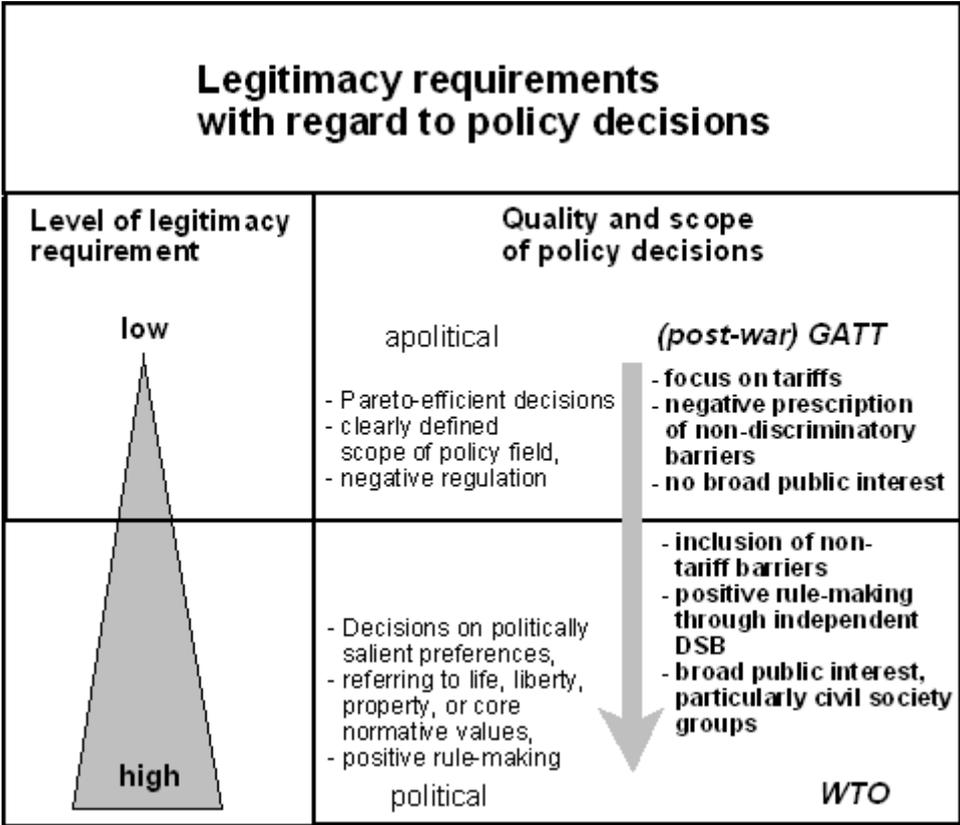


Figure 3: Politicisation of WTO

By “rubbing” against various domestic policy issues, trade negotiations have especially raised the interest of national and subnational jurisdictions as well, which have noticed serious challenges to their own decision making competences (see Young and Peterson, 2006; Hocking, 2004: 5).

The creation of the WTO with its binding rule-making and adjudication powers, and its consolidation and expansion in subsequent years, has not only placed the multilateral trading system at the heart of global governance, but also encroached on some of the traditional prerogatives of legislators as the primary lawmakers in a democratic state. (Chutikul, 2003: 1)

Thus, parliaments have found themselves affected in their competence to act as legislator and as a control of government activity, since core interests of national policy fields seemed to be at stake, but stuck within a structure that had been both one of the most insulated and of the most technical fields of multilateral negotiations.

4 Democratic Requisites or Rubber-Stampers? Parliamentarians in EU Trade Policy

The character and amount of oversight and influence that is actually exerted by parliaments vastly depends on the governance system it is embedded in, particularly on the vertical mechanisms of transparency and accountability of the government and the legal national requirements for multilateral agreements. Therefore, a more detailed analysis of the involvement of parliaments is only possible with respect to the national and regional level. This is done in the following sections for the framework of EU. The supranational character of the negotiating position adds to the new character of trade politics (see e.g. Young and Peterson, 2006). Against the background of the normative notion of input and output legitimacy, one can observe that Europe so far has emphasised the latter aspect, its problem solving effectiveness, or governance *for* the people (see Katz and Wessels, 1999: 6). As a supranational entity in trade negotiations, the EU obviously raises questions of legitimacy and mechanisms of popular participation itself. The following section is to clarify the roles of European and national parliaments for legitimacy. This is guided by the second field of the analytical framework. The guiding sub-questions scrutinise the actual role of national and European parliaments for EU trade policy agreements, and whether they can effectively exert influence. Moreover the chapter asks in how far this setting guarantees for popular authorisation, transparency, and accountability and sheds light on the major constraints for a deeper parliamentary involvement in this field. While the first section concentrates on the interplay of national Parliaments and European Parliament, the second section describes the actual process leading to an EU trade position in WTO negotiations.

4.1 Legitimacy Functions of European Parliament and National Parliaments

When assessing the role of elected parliamentarians within European common trade policy, one might be tempted to focus solely on the EP, for it is the directly elected body associated to the Commission as a control organ, and fulfilling basic parliamentary functions. This suggests itself, as the Commission is the major negotiating party which substitutes the former national executives in representing the governments' position. This would be in line with the notion of Europe as being a federal state ("to-be"), a model which is based on the idea of the

Commission converting to a government, while the elected EP and the European Council as the “federal chamber” form a bicameral legislature (see Katz and Wessels, 1999: 16). This is in contrast to a notion of Europe as a “confederation”, in which the Council forms the powerful federal chamber. While these “visions” are subject to academic discussions, the context of this paper requires an examination of the actually observable roles taken by the parliaments on the European and on the national level.

As for input legitimacy, democratic representation and participation in Europe is still inevitably linked to the national parliaments (Scharpf, 1996; Katz and Wessels, 1999: 1). While the overall capability of national governments to “produce” effective political outcomes has decreased, a potential compensation by the supranational level lacks of input legitimacy. The reason lies in the absence of the essential features of a common *demos* and a public sphere, as has been referred to earlier. Therefore, the gain of authority by the EU could in general compensate for the lower effectiveness on the national level, but due to the lack of input legitimacy, Europe is limited in its “capacity to exercise the power that it has in principle” (Katz and Wessels, 1999: 9). An excess of these limits would particularly not be considered legitimate by citizens in “outvoted” countries (see *ibid.*; Scharpf, 1996). Howse and Nicolaïdis similarly emphasize:

One must take seriously, however, the critique that in Europe the European Parliament is not effective in creating a direct democratic relationship between the European level of governance and individual citizens because there is no European *demos* or democratic community whose considered will the Parliament can express. (Howse and Nicolaïdis, 2001: 242).

Although it is directly elected, the function of a representative body which can take decisions on the basis of majority vote does not meet the requirements of democratic input-legitimacy, unless there is a European public sphere which forms a common electorate. In a fragmented public, a representative parliament is inevitably fragmented as well, which makes majority decisions illegitimate (see Scharpf, 1996).

Another factor lies in the incomplete political integration of the EU. While the European trade policy position, as has been shown, reaches into a variety of fields of intellectual property, services, or investment, these fields do not fall within the political competence of EU, but rest

on the national level (see Baldwin, 2006: 929).¹⁴ Thus, the EP, which holds the Commission accountable, does not serve as an effective control organ.

A third factor is that legitimacy of multilateral negotiation rests to a high extend on the idea that decisions are negotiated among domestically elected government representatives (Council), who are accountable to the national parliaments. These consequently stay an essential requisite for popular participation and accountability in European Policy.

Apart from these aspects that contribute to a limited role of EU institutions for the legitimacy of its trade position, as a regional representative body, the EP has become a relatively powerful source of accountability and control of the Commission's executive power. With legislative, budgetary, and supervisory power it has gained some of the major competences of a national parliament. Particularly, its possibility to veto the appointed Commission has become prominent in the case of the Barroso Commission, which still is less than a usual national parliaments' competence of appointing the executive, but nevertheless has proven to be influential. Besides, it has the competence to censure the Commission with a two thirds majority (which has never occurred so far). It is debatable in how far this has an actual influence on the daily practice of cooperation. Within the "daily business" a lot of the actual amount of influence depends on the policy issue. The following section therefore elaborates on the main procedures and division of competences in trade policy within the EU.

4.2 Effective and Democratic? Shaping EU Trade Policy Making

"The EU and the GATT/WTO tend to be a natural fit." (Baldwin, 2006: 932). After the completion of the common market, the European Union (in this connexion legally known as the *European Communities in WTO matters*) became a member of WTO at 1 January 1995. The European Commission speaks on behalf of all 27 Member States, whereas each State additionally is a member on its own. This individual membership is relevant in a few cases in which domestic laws differ and fall under national legislation, particularly in disputes that are brought forward against an individual Member State's law (see WTO, n.d.). But as for the negotiating position, the common voice of the Commission is crucial. Representing almost 20 percent of the 151 WTO members, the EU is a negotiating "heavyweight". Against the

¹⁴ see also Article 133 TEC

background of common tariffs, it has been apparently reasonable for Europe to negotiate on behalf of the Member States in terms of access, and with the common market it could even stand for a common position in goods and services. Consequently, Europe has been able to benefit vastly from its bargaining position, as far as an effective influence of the outcome is concerned. This is much higher when compared to the alternative of a fragmented solution in which Member States would negotiate individually, and it is more or less the inevitable consequence of the common market.

However, the institutional framework includes some formal insufficiencies, and can currently be characterised as functioning in practice, but mainly on “good-will” of the Commission. Therefore, the analysis combines the actual formal arrangement with the de facto practice of decision making.

According to Article 133 TEC, external trade as part of the common commercial policy, generally falls under exclusive Community competence. The procedure of agreement to a common trade position is based on Art. 133 of the EC Treaty. While the Commission proposes negotiations and represents the EU position within the WTO, the proposal is approved by the Council, which also recommends the common position and approves the WTO agreement. Commission and Member States officially meet once a week within “Committee 133”¹⁵ to discuss the recommendations of the Council, which are then represented by the Commission in the official negotiations. The Council may decide by qualitative majority vote, but in practice decisions are often made unanimously. The consultation of the Council by the Commission plays a crucial role in order to put the Commission in a position to negotiate effectively on behalf of the member states. According to Baldwin (2006: 931), the Commission is always very bent on consulting all Council members ambitiously about the negotiating position. An agreement without unanimous position is rare, but is in fact possible and happens in exceptional cases.

It follows that the Commission had better know where the swing votes are going, and make sure it has them on side. However, and particularly on major issues, the Commission will go a long way to secure consensus, and voting itself is very rare. It is the fact that decisions can, in the end, be taken by majority vote that edges member states towards agreement – at least in some cases. (Baldwin, 2006: 931)

Excepted from the general procedures of Art. 133 are trade in cultural and audiovisual services, educational services, and social and human health services. These areas fall into the

¹⁵ Based on the Article 133 TEC, which establishes a “special committee” for these regular talks.

shared competence of the Community and the Member States. With the Nice Treaty this has been amended insofar, as it assigns the Community to the competence of including services and the *commercial* aspects of property rights within the common position, if there is a qualified majority in the Council, and after consultation of the EP. Also, the whole reach of property rights could be included by Community decision, but unanimous Council decision and EP consultation are required. This shows the general direction of movement of the Community towards a completely exclusive competence in commercial policy. So far, the politically most sensitive areas of services and property rights are still excepted. From the perspective of a strong EU negotiation position, these are the most critical aspects, since here the political constraints in reaching an agreement are extraordinary high on the multilateral level. In 2002, then Trade Commissioner Lamy (2002) notes: “we still live with rules made at the time when trade was about goods, while it is now more about intangibles. The Treaty of Nice has been a step in the right direction, but too many pockets of unanimity survive.”

The striving of the Commission towards a stronger “federal” character is obvious and suggests itself. The reasons apparently are a desired gain in competence by the Community, in order to be able to decide upon “trade-relevant” policy issues, and secondly, an improved bargaining position in WTO rounds through a stable supranational legitimacy base (see Lamy, 2002; Baldwin 2006). As trade agreements have finally to be implemented by the negotiating partners, a strong domestic legitimacy background is essential to exert an effective bargaining position (see Baldwin, 2006: 929). Thus, from the Commission’s perspective, the requirement of legitimacy is to a large extent based on an external motivation. As Lamy (2002) notes:

And contrary to what some believe, legitimacy does not come at the cost of efficiency, it increases the efficiency: if my opponents in a negotiation know that I have the full backing of the directly-elected representatives of 350 and soon 450 million inhabitants, that clearly reinforces my position and the weight of what I say and ask.

In this regard, the Commission has constantly striven towards a Treaty amendment, as also reflected in the proposal for a European Constitution. In these attempts, the Commission has sought to eliminate the requirements of unanimous Council decisions, and at the same time to strengthen the formal role of the EP. So far, it has not succeeded against the Member States’ opposition (see Lamy, 2002). The current Treaty rules of external trade policy do not provide

any formal participation of the EP, except the requirement of consultation in the above mentioned cases of property rights.

Remarkably, but also in line with the Commission's commitment to a stronger EP role ("federal state"), it has become common practice in the process of negotiation to regularly inform and intensively consult the EP, despite the reluctant Treaty provisions. The communication between the Commission and the Parliament on all relevant issues of the common position, so the personal impression of an MEP within the Trade Committee, is regular and vivid, albeit often based on the "initiative" of the EP (Mann, interview). The Commission usually is keen to inform the EP on all important negotiating steps, and to gather the EP's position. This process reflects a quasi-consultative role for EP on all trade issues and a culture of communication and mutual information. This "communicative involvement" hence is based on a judicial vacuum provided by the Treaty. It can be assumed that this vacuum will be filled within future Treaty amendments, possibly through a reissue of a European Constitution. The formal requirement of a regular EP involvement as envisaged by the proposed Constitution would have required a *co-decision* of the Parliament for the implementation of commercial policy, an *information* in the case of authorisation of the Commission to negotiate, and a *consultation* for concluding agreements.

At the same time, the proposal had planned further steps of expanding the Community competence in the field of commercial policy, particularly by exclusively shifting the entire CCP to the Community level. In this case there would be no shared competences anymore.

Noteworthy about the procedures within the EU institutions, in particular with regard to the Commission, is the fact that the policy-making process seems to be far more inclusive and cooperative than the Treaty requires. The importance of the Parliament for the legitimacy of the political issues in trade policy-making is widely acknowledged, so that the EP generally is treated *as if* the Constitution had been implemented. In general, one can say that the Commissions' exclusive competence in fact does not turn out to be a practice of "go it alone". Rather is the necessity of the Commission to have a strong support by the Council and the EP for the negotiated position very apparent, which leads to a continuous effort to be in intensive talks with both institutions. This tendency is in line with the theoretical notion of Europe lacking of input legitimacy and the resulting restrictions in "exercising the power that it has in principle", and is furthermore a consequence of the logical ambition for further steps towards Europe as a "federal state" .

Accordingly, there are no institutional provisions to include the *national* parliaments into the negotiation process. As far as the formal institutional solution is concerned, these do not play any role within trade negotiations on the European level. In accordance with the “striving” for an entire shift of the commercial policy to the Community level, the Commissions efforts to keep in close contact and “informally” consult parliamentarians does only apply to the EP. The flow of information from the Commission usually targets the EP, which then informs national parliaments on an informal basis (Mann, Interview). This includes huge time losses and a principle-agent problem, since the information reaches the national parliaments only indirectly. A second flow of information goes from the ministers to the national parliament, which of course includes the necessity of constant parliamentary enquiries. Here, the problems of information losses and intransparency are evenly high, particularly as the parliaments are only in direct contact with a certain member of the Council, and it is questionable which aspects finally find their way into the Commissions’ position. The following section will shed further light on the critical aspects with regard to legitimacy that emanate from the previous analysis.

4.3 Critical Aspects and Constraints towards Parliamentary Involvement

This chapter elaborates on the critical considerations in terms of parliamentary participation. That is, it particularly emphasises the “problem areas” for democratic legitimacy in the trade system with regard to parliaments. It bundles those factors that derive out of restraints to solve “new” substantial trade issues in a public and deliberate political process. Whereas this builds on the academic analysis of the previous chapters, it combines these with practitioner’s concerns and demands with a view to a critical assessment.

As has become obvious, the formal involvement of parliamentarians on the European level is almost absent, except the so far excluded services, which are under shared competence. Nevertheless, the EP apparently has a “quasi-consultative” status towards the Commission, but this completely rests on a “good-will” solution (Mann, interview). It is questionable, how this judicial vacuum is affecting legitimacy in cases where major political disputes exist. Pascal Lamy (20004: 24) notes: “[I]t is scarcely credible that in 2004, nearly fifty years after the Treaty of Rome, that the European Parliament still has no formal involvement in EU trade

policy.” The weak provisions of the Treaty towards competences of the Parliament turns out to be inappropriate with regard to the highly political issues of current trade debates. This leads to the problem that the output on the one hand is high, as for “dispatching the weekly and monthly business” (Baldwin, 2006: 929) of negotiations, but on the other hand, an effective representation of the European citizens through a European common position is not as high as it is supposed to be, and potentially could be within the same institutional setting.

As efficiency requires that more and more decisions be taken a long way from the citizen, ‘more’ legitimacy is required. The current combination of Commission plus member states does not constitute sufficient legitimacy for the making of EU trade policy. That seems to be the conclusion, at any rate, of successive Commissioners for Trade who have decided to report to the Parliament as if it had Treaty authority (Baldwin, 2006: 929).

As far as the participation in the substantial content of the negotiating position is concerned, it can be assumed that the Parliament has an influence, albeit a very limited. The relatively close and regular communication with the Commission might contribute to a supervision of trade activities. A major function apparently lies in its “mediation role” in order to inform the national parliaments and the public and keep in contact with officials in Geneva (Mann, interview).

According to the analytical framework, one has to note that the contribution of the EP as a “representative” of the “European people” in forming an EU trade position can hardly be considered as a contribution to input-legitimacy. Although there might at least be an informal influence on the formation of the EU position by MEPs, it has been shown that it lacks the basic features of popular representation and majority will formation. The likely formal inclusion of the EP for consultation through a future amendment of the Treaty would improve this mainly in a “psychological” manner. If the EP is officially involved, the general perception of the institutional framework might become more legitimate, but the factual input-lack remains.

As has been shown, input-oriented legitimacy through popular elections can mainly be provided by national parliaments. So far, these have been under-explored in the analytical chapters. The reason is as simple as important for the assessment, as the formal involvement for the EU-position is generally absent. With regard to the political character of today’s trade agenda, a public deliberation and the formation of a representative parliamentary position would meet the normative requirements of input-legitimacy. Although there are some important exceptions within the exclusive Community competence in the field of services in

education, culture, social and health issues, the fulfilment of an effective assessment and will formation of the national parliaments is very questionable. While the situation is different in each Member State, typical problems for the exercise of basic parliamentary functions are briefly shown in the case of the German Bundestag within the process of GATS negotiations. As within GATS the option has been left to WTO members to decide which service sectors should be subject to liberalisation and which should be excluded, the EU Commission sought to decide on the common position of all member states. In practice this has been done through informal consultations on the European level in the run-up to WTO negotiating rounds, leading to an “Initial Draft Offer” for the negotiating position, which then was presented to the member states. In 2003, when the EU attempted to initiate further steps of services liberalisation, the German Bundestag received the Commission’s Initial Draft Offer at 7 February 2003. The Member States had to assess the position and present it at 13 March 2003 (see Deutscher Bundestag, 2003). A public debate on the scope and consequences of the EU position hence did not take place.¹⁶ As stated by Members of the Bundestag, the four weeks period did not leave enough time for the parliamentary trade committee to properly assess the proposed position. The result was an “acceptance with reservation for ratification”, a solution to keep a possible future ratification of the agreement open. (see *ibid.*)

Although one might have the impression of this case to indicate that national parliaments still have the competence to reject the ratification, this procedure generally entails the serious constraint of taking “all or nothing”. This means that the actual input-function of “positively formulating policy decisions” is not fulfilled. Furthermore, there is a serious constraint of not being able to reverse a decision. This could either be desired due to later results of the agreement which have not been foreseen in their consequences, or simply due to a change in political preferences. A ratification of WTO agreements is almost irreversible, usually would require a unanimous agreement of all member states. This would be an even higher requirement than for a constitutional change. This can only be avoided by the hardly feasible “opting out” from the WTO, which of course would be linked to disproportionately high costs and is solely a hypothetical solution.

While many parliaments ultimately ratify trade agreements, more often than not they play little role in defining their scope or content. Once negotiated, trade agreements are brought home to the legislature as an indivisible package deal. (Chutikul, 2004: 6)

¹⁶ The so far confidential EU documents on the common position had been published by an NGO, which led to Europe-wide furore among critics of various aspects within the planned EU position.

Whereas such “reservation” of the German Bundestag had never been done before, this case shows typical problems of the national parliaments to fulfil their basic functions in EU trade policy, even where competence falls under shared competence. Other cases could be mentioned like this, whereas the German Bundestag still has a relatively high level of information, compared to some other Member States (Mann, Interview). One major problem apparently is the lack of *transparency* in the whole run-up of negotiations. Positions are informally negotiated in Brussels among few Ministers, “over dinner, around five times a year to discuss current issues with the EU Commissioner for Trade.” (Baldwin, 2006: 929).

An additional problem apparently is as simple as it is drastic, as there is not enough expertise within the parliaments to keep track with the ongoing highly technical trade issues and it is not equipped with sufficient human resources to keep informed to a satisfying extend (Mann, Interview). There have been several queries and demands from the Bundestag towards the German government to increase transparency and assessment time, and to broach these problems in front of the Commission (see e.g. Deutscher Bundestag 2002). Obviously, the barriers of communication are too high to ensure sufficient transparency allowing parliaments a due assessment and consultation.

As a result of the lack of transparency and the limited opportunities to influence policy-making for national parliamentarians, the negotiations within WTO are legitimised merely on basis of the national ministers as being accountable to the parliament domestically, as has been put forward in the second chapter as the “rationale” of international organisations. However, even this cannot be exercised efficiently, as any effective accountability mechanism would require sufficient transparency of the negotiated content. At the same time, this argument does not take into account that today trade negotiations have high influence on national legislation, so that there is a shift from the legislative to the executive branch (see Mann, 2004: 660).

The days when foreign policy and relationships with multilateral bodies were the exclusive domain of the executive branch are over. The once clear distinction between domestic and foreign policy no longer exists: international relations are shaping domestic events, and external issues and relations have become part of the domestic agenda. (Chutikul, 2003: 4).

Obviously, this trend has not yet found its reflection in the role of national parliaments under the current EU framework.

5 A Parliamentary Dimension to the WTO?

Given the constraints within the EU for institutional adjustments, primarily in view of the refusal of a European constitution and the limited capacities to exert influence in an effective way, parliaments have recently hit another road for participation within the WTO apparatus. This chapter sheds light on current parliamentary attempts to influence trade policy beyond the established institutional framework. It asks for problems and prospects with regard to parliaments' involvement.

The "Initiative for a Parliamentary Dimension to the WTO" has been started in 2002 as a joint effort of the EP and the Interparliamentary Union. It can be seen as a proactive step after several formal attempts by the European Parliament to establish a parliamentary assembly within the WTO had failed (see EP, 2001). The current initiative has been started in 2001 and brings together members of parliaments on a voluntary basis. After some informal provisional meetings of parliamentarians on the topic of transparency and democracy in world trade, parliamentarians of about 70 countries came together in Strasbourg and Geneva. In a subsequent meeting, representatives of about 100 countries met in Doha, where they adopted a Final Resolution which calls for the establishment of a parliamentary dimension to the WTO (see Mann, 2004: 662). The basic idea behind the initiative is the assumption that parliaments have to develop an international dimension to be able to hold up their functions for democracy within increasingly global politics.

I would argue that parliaments must 'go international': To understand the global political process, legislators must have their own network of information sharing and be closely involved in the process. (...) If trade specialists in national and regional parliaments do not keep pace, they will not obtain the first-hand information, insights, and expertise which is necessary to influence their governments and to shape trade policy on the domestic level.

Since this Doha meeting, a "Steering Committee" which consists of parliamentarians of 22 countries meets twice a year, in order to coordinate parliamentary co-operation and prepare an annual "Parliamentary Conference on the WTO". The EP has established an own steering committee to foster co-operation with IPU and parliaments. The Conference usually is supposed to take place alongside WTO Ministerial Conferences. Meetings of the steering

committee as well as the annual Conference regularly include hearings of WTO officials and selectively invited trade ministers to answer queries and give insight on the current negotiations. These talks can be seen as a new dimension of information and transparency for the involved parliamentarians and have already established vivid communicative networks between parliamentarians and trade officials (Mann, interview).

Although this initiative still is in the fledging stages, it interestingly indicates a certain ambiguity in the character of the WTO: On the one hand, its formal institutional character is rigid, especially as member states will not be (unanimously) willing to establish a formal parliamentary assembly (see Chatikul, 2003). On the other hand, as far as informal communication and meetings are concerned, WTO has become much more open and bent on providing legislators with sufficient information (Mann, interview). Accordingly, after parliamentarians within IPU and EU had debated on a potential attempt to establish a formal assembly, they agreed on a strategy of keeping an open-ended flexible and informal character (see Chatikul, 2004). The purpose of the Assembly is to “monitor WTO activities, maintain dialogue with governmental negotiators, and facilitate information exchange and capacity building of national parliaments in matters of international trade, in particular the WTO.” (ibid: 8).

Despite its informal and rather tentative character, this initiative seems promising as it could probably enhance the information flow from the level of the WTO to national parliaments. The problem of time lags and information losses could eventually be decreased. As an international network specialised on trade issues, it could form a regular and comprehensive addition to formal channels of participation on the national or supranational level. Legitimacy would be hardly improved to a noteworthy extend in a direct way, as there is no legal ground for a direct stand on the multilateral level. But indirectly, the dependence on “good-will” by official negotiators of the Commission and trade ministers could potentially be decreased. The initiative seems to be useful regarding the problems which have been identified in the previous chapter, as lacking transparency and informational time lags could be partly overcome.

The probability of a formal parliamentary dimension stays very limited. While European representatives show much effort in this direction, members of the U.S. Congress oppose these attempts. Their influence on the U.S. trade position is essentially high, and a “global

assembly” would probably decrease the influence of the Congress (see Shaffer, 2004: 630). Thus, U.S. representatives have not taken part in the Parliamentary Conference on the WTO, nor within the Steering Committee. As Committee member Erika Mann (2004) notes: “The two seats reserved for the United States are still vacant. I do hope that colleagues from the US Congress will join the Steering Committee in the future.”

Furthermore, several developing countries might be opposed to such a further parliamentary involvement on the global level. As Shaffer (2004: 631) notes:

Most developing countries are at a severe disadvantage on account of their relative lack of resources (both financial and human capital), their lower aggregate stakes in the trading system (even though they may have high relative stakes), and the increasingly complex and resource-demanding nature of the WTO system.

Particularly for European parliamentarians the initiative forms a new dimension of involvement, which is so far limited to informational merits. However, as transparency is a core challenge for the increase of legitimacy, this gain of information on a global communicative platform seems to be a promising supplement to the established institutional framework.

6 Conclusion

Based on a concept of input- and output-oriented notions of democratic legitimacy, the parliamentary involvement within EU trade policy has been analysed. Linked to normative assumptions on legitimacy in an international milieu, an analytical framework has been formed as a guideline for the assessment.

The national level has been identified as the sole governance level where popular elections and majoritarian decisions form an input-oriented legitimacy basis. From an output-perspective, the international level offers the opportunity to effectively exert influence on global issues that exceed the limit of national governance. This means that the *action-enabling* aspects of output-legitimacy can increase on a multilateral and supranational level. The “non-democratic” character of the multilateral level includes alternative *power-constraining* accountability mechanisms, which have been divided into seven mechanisms beyond “electoral accountability”. These aspects foster two major argumentation models of legitimacy in multilateralism, the *intergovernmental* model and the *technocratic* model. It has been emphasised that both models find their limits according to the *political character* of decisions that are at stake. Whereas the technocratic regulation proves inappropriate as soon decisions form trade-offs between different essential preferences, the *intergovernmental* model does not necessarily account for the scope of decisions exerted by the executive branch, which might rub national legislators and their competence to act.

Accordingly, the analytical framework has focused on two fields: First, the political character of trade as a policy field and its deriving requirements for democratic legitimisation; second, the legitimacy of institutions and processes within a vertically fragmented setting of multilateral, supranational and national actors.

As for the first field of the framework, the analysis has scrutinised the shifts in content and scope of trade decisions in the original GATT conception and today’s sophisticated WTO regime. It has become obvious that trade policy has moved from an insulated, technical, clearly limited, and hence apolitical field of tariff reductions, to a complex and highly political field, including discussions on domestic legislation that inevitably tend to deliberate about public political preferences “versus” discriminating trade effects. At the same time, the

decades of post-war GATT have left their mark on the institutional setting, as transparency of negotiations have not changed as drastically as the character and scope of decisions. However, civil society has become much more aware and has gained a stronger influence within trade debates. Furthermore, developing countries have become more influential on the negotiating table, so that the former “club-model” of GATT has been characterised as a “multistakeholder model” under WTO.

As for the second field of analysis, the focus has been on the parliaments’ involvement in the formation of the EU trade position. The analysis has shown that the formal Treaty regulation in Europe does not provide a legal basis for an effective parliamentary influence on trade issues. The CCP falls under far reaching competence of the Commission and the Council. Although some highly political aspects have stayed in shared competence of Community and Member States, like education, social or health services, a lack of information and transparency as well as a lack of expertise and human resources within national parliaments make their influence stay very limited. This decreases their competence to hold the executive accountable for international negotiations and to positively formulate political alternatives in trade policy. With a future Treaty amendment, a further shift of the CCP to the EU level is very likely, as the proposed EU Constitution had already foreseen an exclusive Community competence. The European Parliament on the other hand has become quite influential on an *informal* level. It has become obvious, that the Commission has a genuine interest in a maximisation of acceptance of the common position within the EP and the Council, as this increases its negotiating power on the multilateral level. So far, the EP is consulted regularly on trade issues on a “good-will” basis of the Commission.

The following can be concluded for this field of this analysis: A shift of trade policy to the EU level has decreased the competence of national parliaments in fields influenced by trade. While accountability on the European level is ensured by the EP and further non-electoral mechanisms, a lack of transparency decreases the possibilities of national parliaments to hold their executive accountable for trade decisions on an international level. From an output-oriented perspective, there has been a shift from *power-constraining* electoral institutions (national parliaments holding the executive accountable), towards *action-enabling* non-electoral institutions (strong negotiating position and effective trade regime).

In addition, recent attempts of parliamentarians towards a parliamentary dimension on the WTO have been assessed. The idea of “parliaments going international” seems promising with regard to transparency and first-hand information on an informal basis, rather than on a

formal institutional basis. Against the background of the analysis, the initiative appears to be a reasonable answer to the current institutional situation. As it is still in the fledgling stages, it stays questionable how the initiative further develops, especially whether information and transparency can be ensured on a broad basis, or whether it rather depends on the current officials and their “good-will” to provide information.

The conclusions in both analytical fields allow an answer of the main research question:

The actual parliamentary involvement within European trade policy does not fully satisfy the requirements of democratic legitimacy.

In particular, from an input-oriented perspective, the current setting faces a legitimacy deficit: A politicisation through a higher depth and outreach of trade policy has *not* been accompanied by improved or new input-oriented mechanisms of popular participation and representation. From an output-perspective, the legitimacy deficit seems less distinct, as the effectiveness of international decisions has increased. However, the power-constraining side of output-legitimacy as decreased, on the multilateral level particularly through positive rule-making in dispute cases, on the domestic level especially through a shift of power to the executive branch.

Against the background of this input deficit, it seems understandable that the policy field of world trade faces various attempts of civil society groups seeking to influence policy outcomes. A lack of popular policy influence through the established national channel of parliaments could have contributed to the raise of civil society claims, as well as to public protests by people who experience trade decisions as being isolated from formal channels of influence. The mere *perception* of an inability to contest negotiations that might influence employment, health, education, or other essential aspects of life, lowers the legitimacy and hence the acceptance of trade policies in public. The WTO has consequently followed far reaching attempts to increase its legitimacy by becoming more transparent, especially under the presidency of Pascal Lamy. The provision of information about ongoing negotiation on its public website or regular consultation of civil society groups form examples of efforts to overcome the perception of a legitimacy deficit. But, as the analysis has shown, the problem does not primarily lie within the WTO Secretariat. Rather it can be seen as one aspect of a deep dilemma of WTO regulation. A Pandora’s Box apparently has been opened already with

the inclusion of non-trade barriers. The efficacy of trade-regulations and its democratic legitimacy obviously form a trade-off that becomes increasingly political.

It stays questionable how the substantial outcome of trade policy would change with a stronger parliamentary involvement. While the general impression probably suggests an even more difficult bargaining process, this cannot be taken for granted. As members of the Parliamentary Conference on the WTO note, parliamentarians might also give a positive example of open deliberative processes. Within the Parliamentary Conference, parliamentarians came to agreements on issues which are still unsolved within official negotiations. A stronger influence on the national or European level on the other hand runs the risk of resulting in a very difficult bargaining process in the run-up to official negotiations, leading to an even more deadlocked result in world trade agreements.

In the broader context of European governance, the legitimacy of trade policy forms a critical aspect. The increasing role of trade and the shift towards more exclusive Community competence make this field of European policy become an important “test” for Europe’s political integration. Where economic issues rub social, environmental, or health issues which have not yet fallen under Community competence, integration comes to a halt, requiring sound public deliberation and political debate on further steps of integration. Adequate solutions in trade policy as one of the most advanced fields of Community competence might therefore form an essential step for a new dimension of European political integration.

Several questions in this context request further research. A comparative institutional study of the European parliamentary involvement and other national parliaments, like the US Congress, or of different developing countries might shed light on the question how the policy field changes substantially through the popular influence. Another important field is the role of civil society and its potential to fill an input-oriented legitimacy gap. While this thesis has been based on desk research, a further involvement of expert interviews would offer helpful insights, including trade officials, WTO employees, NGOs, and members of different parliaments, as well as government representatives.

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