

Promoting Better WTO Interparliamentary Cooperation

Paper prepared for the EP Committee on International Trade in preparation of the 12th session of the Steering Committee of the Parliamentary Conference on the WTO on 22-23 June 2006

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Formal interparliamentary cooperation originated in the late 19th century and coincided with the advent of functional international organizations. Although the possibilities always existed for Inter-Parliamentary Union (IPU) activities focused on such international organizations, little of that transpired in the IPU's first century. When the Covenant of the League of Nations was drafted in 1919, there was some discussion of what the parliamentary role should be at the League, but nothing specific was agreed to, although it was recognized that a government's representatives on the League Assembly could include parliamentarians.

The doctrines of international law presume that states are the main (or only) subjects of international law, and therefore ideas about piercing the state to consider the separate roles of the three branches of democratic government have been slow in developing. Everyone, of course, knew that a national parliament could dash the hopes of an executive to bring a country into an international organization (e.g., the US Senate's refusal to approve several early arbitration treaties and then later to approve the entry of the United States into the League and the Permanent Court of International Justice), but that recognition did not lead to new conceptions of a more active role for parliaments in negotiating treaties or administering them. Even today, the dominant concept of an international organization is that of connecting states through their executive rather than through their legislative or judicial branches.

Interparliamentary activism directed at trade policy is fairly recent. As far as I know, there was no interparliamentary activity in the League of Nations conferences of 1927 on trade and none at the conferences of 1946-48 that drafted the General Agreement on Tariffs and Trade and the Charter of the International Trade Organization. Thus, the first inter-parliamentary meeting on trade which was held in Seattle in 1999, came well after international parliamentary cooperation began in other fields.

A number of WTO-related interparliamentary conferences have now been held, most recently at Hong Kong in December 2005. That Conference produced a Declaration that offers advice to negotiators on both substance and process. The Conference received remarkably little publicity despite its provocative suggestion of a tax on airline tickets to fund programs to combat pandemics.

The parliamentarians at Hong Kong recommended that the Ministerial Conference declare approval for "associating parliaments closely" with WTO Activities

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(Declaration, para. 25), but that recommendation was not accepted (or even acknowledged) by trade negotiators. The next session of the Steering Committee of the Parliamentary Conference on the WTO is to be held in Geneva in late June 2006, and in preparation for that, a workshop is being organized by the European Parliament in Brussels. This paper has been invited to put forward ideas for that workshop about how WTO parliamentary efforts could be improved.

This paper has two sections: Section 1 discusses the normative basis and need for a WTO parliamentary dimension. Section 2 presents an agenda for WTO parliamentary cooperation and ends with some pragmatic suggestions.

1. Why is a WTO parliamentary dimension needed?

Various rationales have been put forward for why a WTO parliamentary dimension would be constructive, yet so far these ideas have not permeated deeply into the WTO epistemic community. So without attempting to evaluate the various explanations that have been put forward, let me offer my own justification for this project. Currently, WTO negotiators are poorly performing the task of completing the Doha Round, and the opportunity costs of their failure loom large. They need help in building a stronger base for the trading system.

Although there are surely problems with the procedures being used in the negotiations, the greater problem is the lack of political will in the national capitals for completing the round. If one believes, as I do, that there are positive sum solutions on the negotiating table that could be attained by negotiators acting rationally in favor of their own national interests, then one's attention is inevitably drawn to the nature of the political constraints at home and how to overcome them. These political constraints often reside in changing parliamentary coalitions and anticipated domestic elections. Given this common national problem, one wonders whether an initiative of direct dialogue between parliaments might help in building political and public confidence about the benefits of new WTO agreements.

In my view, there is ample justification for an experiment in enhancing interparliamentary cooperation on trade. Although the exact situation in each country is different, all governments are faced with similar challenges arising out of the WTO and international trade. To wit, how to gain support for trade liberalization when there are vested interests enjoying the status quo, how to expand exports, how to correct laws and regulations found to violate WTO rules, and how to protect culture and values threatened by globalization. Protectionism arises when governments seek to solve their national economic and social problems at the expense of other countries. The antidote for that is to understand that countries face *common* problems which can often best be solved by cooperative solutions. Now that parliamentary democracy has become the dominant political model, if there is not an understanding by parliaments that international economic and social coherence is essential, then it won't matter how clever, cosmopolitan or secretive national diplomats and negotiators are, they won't be able to achieve sustainable agreements in the WTO (or in many other functional

organizations). As the parliamentary Hong Kong Declaration stated, “the days when trade policy was the exclusive domain of the executive branch are over” (para. 25).¹

A skeptic might agree that interparliamentary cooperation can be potent, but worry that far from promoting more open trade, getting parliamentarians together may reinforce public choice problems if politicians agree among themselves that they share an interest in maintaining import protection and domestic subsidies so that they can keep intact the respective coalitions that elected them. Such a pessimistic scenario seems unlikely to me however, and has not occurred with other interparliamentary activities.

Another justification for a WTO parliamentary dimension is common to all international organizations, which is that they are under pressure for their perceived lack of democratic legitimacy in being far removed from the voters. This situation is said to be inevitable when binding decisions are made above the national level in the absence of an international demos. That criticism does have some validity. Nevertheless, one should remember that in many constitutional democracies, the demos is segmented in a way that a voter has little or no role in electing most of the individuals who govern. (For example, voters of the United States may be a legitimizing demos, but I can only vote for three out of the 535 members of Congress, and my vote for President counts only in Virginia.)

I start from the proposition that international organizations and global administrative law will be needed in an integrated world economy. From this perspective, stakeholders should do what they can to enhance the legitimacy of international organizations, particularly those most vital to economic and social progress. Although I am strongly supportive of the WTO, I do not subscribe to the popular view of visualizing the WTO as a purposive actor in world politics. Instead, I see the WTO as an *arena* where the true actors—government bureaucrats, international civil servants, business, civil society, judges, parliamentarians etc.—should regularly interact with each other. In my view, the outputs of the WTO will be more legitimate when the decision-making processes the WTO uses are rule-based, fact-based, transparent, and inclusive. The WTO gets its legitimacy from the support of its Members, but that support can be shaped by the openness and procedural fairness of the WTO arena.

Sometimes analysts say that the only democratic legitimacy needed for international trade governance is at home to assure that the policies pursued by a country have requisite internal support.² I disagree with that sentiment. It is an unimaginative view of political reality because the true national interest of each country in trade will depend on what other countries agree to, and public discourse can be shaped by ideas of foreign origin.

In the traditional view of international relations, negotiations between states are carried out by a sovereign or by an executive branch. One need not depart from that paradigm to endorse non-negotiating forms of communication, such as transnational

¹A similar statement was included in para. 7 of the Final Declaration of the February 2003 Parliamentary Conference on the WTO held in Geneva.

²See Gregory Shaffer, *Parliamentary Oversight of WTO Rule-Making: The Political, Normative, and Practical Contexts*, 7 J. INT’L ECON. L. 629, 644 (2004) (discussing this view).

debate and dialogue between legislators of different countries. Professor Ernst-Ulrich Petersmann has applied the term “parliamentary deficit” to intergovernmental negotiations and rule-making, and I think he is right to see that a parliament’s discursive role should not stop at a national border.³ By participating in interparliamentary activities, parliamentarians can try to persuade elected officials in other democracies and therefore do a better job of promoting the interests of their own constituents. To me, that is the core normative democratic justification for interparliamentary activities.

Recently, WTO Director-General Pascal Lamy added another point by considering the democratic benefits of interparliamentary activities for the WTO itself. In a speech to the Hong Kong Session of the Parliamentary Conference on the WTO, Lamy said that presence of parliamentary representatives “brings greater democracy and accountability to the WTO as an institution.”⁴

2. An agenda for WTO parliamentary cooperation

Although it is natural for an interparliamentary meeting to produce a declaration, I doubt the efficacy of such an effort with respect to the WTO. The Ministerial Declarations are themselves largely hortatory and I don’t see much purchase in a parallel process by parliamentarians. Instead, I would re-orient the WTO parliamentary process toward improving oversight of WTO negotiations and building capacity in parliaments to improve the accountability of a government’s negotiators. For example, a workshop could be held on best practices for parliaments in setting trade negotiating objectives, monitoring ongoing negotiations, performing economic and environmental reviews of completed negotiations, and ratifying trade agreements.⁵ Capacity building is also needed on techniques for transparency and public participation. As the Report of the Consultative Board on the Future of the WTO (Sutherland Report) noted, “Legitimacy requires, in part, that parliaments be

³Ernst-Ulrich Petersmann, *The “Human Rights” Approach Advocated by the UN High Commissioner for Human Rights and by the International Labour Organization: Is it Relevant for WTO Law and Policy?*, 7 J. INT’L ECON. L. 605, 625 (2004).

⁴See Speech by Pascal Lamy on 12 December 2005, available at http://www.wto.org/english/news_e/spp1_e/spp114_e.htm. Previous WTO Directors-General have also advocated an international parliamentary role. In February 2000, WTO Director-General Mike Moore stated in a speech that “elected representatives have a responsibility to become more involved, hold hearings, scrutinise where the taxpayer’s money is going and ensure that the great international institutions created to manage global affairs have the moral authority that comes from the ownership and participation of Member governments.” Moore Calls for Closer Parliamentary Involvement in WTO Matters, WTO Press/169 21 February 2000. In October 2004, Director-General Supachai Panitchpakdi gave a speech to the Parliamentary Assembly of the Council of Europe in which he stated that “Parliamentarians in Europe and world over have a crucial role to play in bringing international organizations and people closer together.” “Beyond the Crossroads- Moving Forward on the Doha Development Agenda,” 4 October 2004.

⁵The WTO has stated that WTO “decisions are by consensus [and] Agreements are ratified by parliaments.” See “10. The WTO is Not Undemocratic” in WTO, 10 COMMON MISUNDERSTANDINGS ABOUT THE WTO (2003). This may be right, but I am unaware of any study on the extent to which amendments to the WTO, such as the new TRIPS Article 31 amendment, have to be ratified by national parliaments. For a good case study of Norway, see Oluf Langhelle & Hilmar Rommetvedt, *The Role of Parliament in International Relations and WTO Negotiations: The Case of Norway*, 3 WORLD TRADE REV. 189 (2004). For a broader compilation, see Inter-Parliamentary Union, “Parliamentary Involvement in International Affairs,” September 2005.

associated with the adoption of negotiating positions by governments and WTO rule-making more generally.”⁶

Instead of sponsoring dialogues and panel sessions, future Parliamentary meetings during Ministerial Conferences should hold *hearings* where panels of parliamentarians could pose questions to trade ministers, the WTO Director-General, business leaders, etc. Such hearings, if done well, could attract media attention and could be web-cast. For example, in Hong Kong, hearings could have been held on agricultural tariff negotiations, on progress on GATS Mode 4, or on antidumping abuses. In any hearing, the parliamentarians should invite key governments to testify so that they can be publicly grilled on their positions. Although national parliaments will hold hearings with their own negotiators, it would be hard for a national parliament to hold an oversight hearing of the WTO itself or to invite negotiators from other countries. Thus, there is a role for an international parliamentary assembly in promoting accountability that cannot be performed at the national level.

Another initiative the parliamentarians could take is to promote mutual understanding between national judges and the WTO Appellate Body. It would have been interesting in Hong Kong to see on trade the same type of transjudicial networking that has occurred in other fields of international law. This type of event might be better held in June in Geneva rather than at a busy negotiating Ministerial Conference like the one in Hong Kong.

If the WTO parliamentary project saw its role as holding oversight hearings on the WTO, the project would receive ideas from around the world. One problem that I have noticed involves WTO hiring practices, where the WTO Secretariat discriminates against individuals who are older than sixty-one and refuses to consider them for appointments. Another good opportunity for parliamentarians that was missed in Hong Kong was to hold a hearing on the Sutherland Report which had been released in January 2005. If any parliament held a hearing on this important report, it has not come to my attention, and yet the Report contains important recommendations for all parliaments.

Some Pragmatic Suggestions for June 2006

The June meetings should consider a parliamentary strategy for the long-run but should also consider the small steps that are needed to move forward. In that regard, I would like to make several suggestions.

To start with, the project needs its own website separate from the IPU or the European Parliament. Such a website should contain all of the working papers and documents that have been produced up until now as well as current information on ongoing activities. If funding can be obtained, such a website might also offer opportunities for parliamentarians, NGOs, business groups, and others to post position papers on the WTO. Perhaps some international-minded US foundations could be approached for funding to establish and manage this website.

⁶THE FUTURE OF THE WTO, Report by the Consultative Board to the Director-General Supachai Panitchpakdi, January 2005, para. 204.

Next, something must be done about the absence of US Congressional participation in the recent parliamentary meetings. I was personally involved in trying to secure US participation for some of the previous Ministerials, and was frustrated by the low level of interest in this activity in the US Congress. The only study I am aware of about Congressional attitudes toward a WTO parliamentary body is the excellent paper by Gregory Shaffer which concludes that members of the US Congress do not see anything to be gained by their participation (in contrast to Members of the European Parliament who are less empowered on trade and therefore do see something to be gained).⁷

This US non-participation presents a double irony. The first irony is that the United States was one of the initiators of the first WTO interparliamentary meeting in 1999, when this effort benefited from the leadership of US Senator Bill Roth. The second irony is that the expiration of US Fast Track negotiating authority, as set by the US Congress, has been accepted by WTO Members as the deadline for the WTO's Doha Round negotiations.⁸ So the institution that determines the timing of negotiations shows no interest in meeting with other parliaments that have to suffer the consequences of that timing.

The official "List of Participants" to the Hong Kong parliamentary meeting excludes the United States as a country, and I think that was a mistake. The list should have included the United States without any participants to demonstrate that the US seats are vacant. The same topography should occur at future interparliamentary sessions; a table and nameplate for the United States should be set up and if it remains vacant that would be a good visual for the news media.

The US seats should not remain vacant however. If elected members of Congress choose not to participate, then the Steering Committee should invite other *elected* parliamentarians from the United States (not Congressional staff or former members of Congress). There are many elected state legislators who would see a reason to participate and could make a constructive contribution. It is true that sub-national elected officials in the United States do not have competence in deciding whether to join the WTO or approve negotiating objectives, but they can be involved in implementing many WTO decisions (e.g., state laws were challenged in the *Gambling* case) and states do author laws that are supervised by WTO rules—for example, GATT Article III, SCM Article 5, GATS Article VI and XVI, SPS Article 5, and the Agreement on Government Procurement. One should also recall that the US Trade Representative (pursuant to statutory authority) has set up an Intergovernmental Policy Advisory Committee on Trade that includes a number of elected state and local officials, many of whom might be available to participate in an international meeting.

Having state-level parliamentarians fill the United States seats could serve two purposes. One is to give the United States some representation in the room which would help the United States and contribute to the overall discussion. Second, my guess is that if the US seats were to be filled by competitor local government officials,

⁷Shaffer, *supra* note 2, at 630.

⁸See WTO Director-General Pascal Lamy's speech to the Committee on International Trade of the European Parliament on 23 March 2006, in which Lamy says that the end date for WTO negotiations corresponds to the expiry of trade negotiating authority in the United States.

then members of Congress might find that they do indeed have time to attend the next meeting.

If the WTO parliamentary effort continues and expands, I am convinced that eventually US participation will be rekindled. The key is to find one or two members of Congress who are willing to be leaders for this effort. As former US Congressman David Skaggs has noted, there are a small but growing number of US parliamentarians with an interest in WTO matters, and these individuals "would likely see a WTO parliamentary entity of some sort as a healthy and appropriate way to address the concerns regarding WTO legitimacy, transparency, and accountability . . ."⁹

Let me also mention a clever idea put forward by European Parliamentarian Erika Mann, namely that all parliaments hold an "International Trade Day" once a year in order to increase awareness of trade issues. A model could be the annual "Earth Day" attention to the environment. Ideally, a World Trade Day could be held on the same day around the world, although not all parliaments will be in session on that day.

Conclusion

Like free trade, a formal parliamentary dimension for the WTO is a good idea whose time has not yet come. At the Steering Committee meeting, the parliamentary delegates can take important steps to promote better interparliamentary collaboration and build a stronger democratic foundation for the trading system.

⁹David E. Skaggs, *How Can Parliamentary Participation in WTO Rule-Making and Democratic Control be Made More Effective in the WTO?*, 7 J. INT'L ECON. L. 655, 656 (2004).



PARLAMENTU EUROPEU EUROPEAN PARLIAMENT EYΡΩΠΑΪΚΟ ΚΟΙΝΟΒΟΥΛΙΟ EUROPEAN PARLIAMENT
PARLEMENT EUROPÉEN PARLAMENTO EUROPEO EIROPAS PARLAMENTS
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT
PARLAMENT EUROPEJSKI PARLAMENTO EUROPEU EURÓPSKY PARLAMENT
EVROPSKI PARLAMENT EUROOPAN PARLAMENTTI EUROPAPARLAMENTET

WORKSHOP

COMMITTEE ON INTERNATIONAL TRADE

Chairman: Mr Enrique Barón Crespo

The Parliamentary Dimension of the WTO



Tuesday, 20 June 2006
9.00 am - 11.00 am
Room ASP A1G-2 - Brussels

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