On the effects of the design of international institutions

Judicialization and cooperation in the World Trade Organization

by Arlo Poletti and Dirk De Bièvre

Abstract: In the current multilateral trade regime, members often negotiate under the shadow of World Trade Organization (WTO) law. In this article, we develop a systematic explanation of how the legal vulnerability of members' domestic policies affects the prospects for cooperation in the trade regime. First, we show that contrary to conventional wisdom, increased enforcement does not necessarily make actors shy away from further cooperation. Legal vulnerability can ignite a positive dynamic of cooperation because it can increase the set of feasible agreements between WTO members. Subsequently, we examine how the nature of the issue at stake, that is, whether it can be easily disaggregated into negotiable units, crucially determines whether this positive dynamics of cooperation can take place. We illustrate the cogency of the argument by way of four in-depth case studies, which illustrate how potential (or actual) defendants and potential (or actual) complainants in WTO disputes responded to the incentives brought about by legal vulnerability and negotiated during the Doha round.

Keywords: WTO, Trade, Legal vulnerability, Doha Round, Judicialization

1. Introduction

Members of the World Trade Organization (WTO) often negotiate under the shadow of WTO law. For some time, the principal mode of interaction in international trade relations has been reciprocal negotiations. These include negotiations about the reduction and/or elimination of tariffs and quantitative restrictions to trade on goods as well as negotiations to harmonize existing

Arlo Poletti, Department of Political Science, LUISS Guido Carli, Italy – apoletti@luiss.it
Dik De Bièvre, Departmento of Political Science, University of Antwerp, Belgium – dirk.debievre@unianwerpen.be

We would like to thank for their comments on earlier versions of this article Andreas Dür, Leonardo Baccini, Manfred Elsig, Bart Kerremans and the participants to the workshop 'The transformation of international trade governance' at the ECPR Joint Sessions in Antwerp, 11-14 April 2012.We would also like to gratefully acknowledge financial support received from the Research Foundation Flanders (FWO) in the context of the project Investigating how latent and actual WTO disputes can remove barriers to trade.

domestic regulatory practices. However, in the current international trade regime, reciprocal trade negotiations are not the only means through which WTO members can deal with existing trade barriers. The legalization or judicialization of the trade regime, i.e. the replacement of the GATT's model of political-diplomatic dispute settlement with a quasi-judicial model of dispute settlement in the WTO, has strengthened enforcement mechanisms of existing trade rules, and created stronger incentives for WTO members to increasingly resort to the judicial arm of the WTO to challenge trade barriers in foreign countries.

WTO members therefore increasingly negotiate multilateral trade rules from a position of legal vulnerability, i.e. they engage in multilateral negotiations while foreign partners can credibly threaten to resort (or sometimes actually resort) to WTO litigation against them. This has important implications for how WTO members define their positions and policy preferences in such negotiations. It is well established in the literature that the degree to which a prospective agreement can be enforced is a key factor affecting actors' propensity to commit to such an agreement (Fearon 1998; Koremenos et al. 2001). Some authors suggest that a high degree of bindingness of trade rules may decrease the propensity of WTO members to commit to new agreements (Goldstein and Martin 2000) while others have argued in the opposite direction (De Bièvre 2006; Poletti 2011; Rosendorff 2005). However, when negotiating under the shadow of WTO law, members of the trade regime not only face a choice between committing or not committing to a new binding agreement; as members are already committed to binding and highly enforceable agreements, whenever they violate such rules and foreign partners resort to WTO litigation to challenge such illegal measures, the choice these actors face is one between being pulled into litigation by foreign partners or negotiate the legally vulnerable policy in multilateral trade negotiations.

Observers, commentators, and scholars have widely reported that during the Doha round of multilateral trade negotiations, the 'shadow of WTO law' significantly affected WTO members' preferences, strategies, and tactics of parties prior to and during the negotiations. (Blustein 2009; Kelemen 2010; Poletti 2010; Skogstad 2003). Yet, there is surprisingly little systematic research on how the prospect of a WTO dispute affects ongoing multilateral trade negotiations. Existing research tends to focus on the effects of legal vulnerability on the preferences of potential defendants to the exclusion of potential complainants in WTO disputes, making the straightforward point that potential defendants may have an interest in drowning potential disputes in broad-based multilateral negotiations (Poletti 2010). Yet, this does not answer the question as to whether legal vulnerability increases the likelihood of cooperation at the bargaining table of the multilateral trade regime. An exclusive focus on one side of the dyadic relationship begs the question as to why a potential complainant in a WTO dispute would acquiesce to letting rest

a judicial case that it can reasonably expect to win and opt for negotiations with a more uncertain outcome.

This article investigates some of the causal mechanisms that link legal vulnerability (i.e. the credible threat to resort to and the actual use of WTO litigation) and cooperation in the WTO. In a nutshell, we seek to explain why and under what conditions the threat or actual initiation of a WTO dispute while multilateral trade negotiations are ongoing may make successful negotiations more likely. We develop our argument through a two-step process. First, we show that contrary to conventional wisdom, increased enforcement does not necessarily make actors shy away from further cooperation as it can increase the set of feasible agreements of WTO members. Second, we show that the nature of the issue at stake, i.e. whether it can be easily disaggregated into negotiable units or not, crucially determines whether legal vulnerability can trigger this positive dynamics of cooperation. Potential disputants may prefer negotiations over litigation only when issues are relatively continuous such as tariffs, nonzero quotas, and subsidies. When the issues at stake are relatively discontinuous, such as health and safety regulations, product classification issues, bans and the absence of required laws, legal vulnerability does not increase the set of negotiated agreements that the two sides are ready to accept.

More specifically, potential and actual disputants may come to regard negotiations as a strategy that serves their interests better than litigation only insofar as they are able to disaggregate the issue at stake into tradable units, making it possible for the two parties to reach a compromise falling between the preferred outcome of a potential and actual defendant (i.e. the status quo) and the preferred outcome of a potential and actual complainant (i.e. the full removal of WTO-incompatible trade barriers). However, when it is impossible or very difficult to disaggregate the issue at stake into tradable units, the potential for negotiations lapses and the issue at stake is likely to lead to protracted WTO litigation.

We illustrate the strength of this argument in an in-depth qualitative analysis of how potential and actual disputants in the WTO disputes responded to the incentives brought about by legal vulnerability during the Doha round. We look into four instances of interaction in the context of the Doha round of multilateral trade negotiations between pairs of WTO members taking place under the shadow of WTO law. In all cases, we consider two WTO members that are respectively a potential and actual defendant and a potential and actual complainant in a WTO dispute. The first two cases concern negotiations on the reduction of tariffs and domestic support schemes regarding agricultural trade, typical cases of continuous issues, showing how two potential defendants in WTO disputes, the EU and the US, and a potential challenger of their WTO incompatible policies, Brazil, approached agricultural trade negotiations during the Doha round. In the two other cases, we consider discontinuous

issues. On the one hand, we trace negotiations over the WTO-incompatible practice of zeroing in US antidumping policy as challenged by Japan and the EU. On the other hand, we analyze trade-and-environment negotiations between the EU and the US, whereby the EU's health and safety regulations were legally challenged by the US.

2. Legal vulnerability and cooperation

Legal vulnerability arises when cases are brought to policy makers' attention in a given WTO member state by interested private parties mobilizing against losses from WTO-incompatible policies. When existing policies deemed to be WTO-incompatible in foreign countries engender concentrated costs for producers in a given WTO member country, these producers mobilize and exert pressure on their government to take action to try and remove such trade barriers. What then are the effects of legal vulnerability on members' preferences while multilateral negotiations are ongoing? We answer this question by analyzing the likely distributional implications of alternative policy scenarios for different economic groups in potential (or actual) defendant and complainant WTO members, and by speculating on how these are likely to influence decision makers' choices when multilateral negotiations are ongoing.

The assumption underpinning the analysis is that governments' choices over trade policies can be conceived as a function of the rationally defined preferences of, and resulting political pressures emanating from, key economic interest groups within society (Milner 1988; Rogowski 1989). We thus conceive of political actors as generally not having a specific trade policy preference independent of constituency demands, but rather view them as office-seekers, keen to avoid the mobilization of political enemies. Accordingly, we expect policy makers to primarily seek to satisfy the demands of groups with concentrated interests such as exporters and import-competing groups, on which they want to bestow concentrated benefits in exchange for resources which can be essential for maintaining office (De Bièvre and Dür 2005). Of course, legislators are confronted with often competing demands. When confronted with choices among alternative policies, we expect these policy makers to choose the course of action that ensures the minimal amount of concentrated negative distributional implications for societal groups.

The scope condition of our argument is that the potential or actual complainant possesses credible retaliatory capacity vis-à-vis the potential or actual defendant. In the absence of a complainant's retaliatory capacity, defendant's incentives to comply can be expected to be nearly non-existent. We maintain that credible retaliatory capacity ultimately depends on whether the two sides are in an interdependent trading relationship. Only then do they value each

other's market as a destination for some of their exporters, putting them in a position to pursue, or threaten to pursue, policies that can generate adjustment costs for the other side, either in the form of protectionist WTO-illegal measures or in the form of retaliatory measures[1].

2.1. Constellations of actors' preferences

A potential defendant. Figure 1 shows why it is quite straightforward to expect policy-makers in a potential or actual defendant to prefer negotiations over litigation. If two WTO members were to litigate the matter, two possible scenarios would follow: either the defendant complies with the ruling, or it decides not to implement and face retaliation.

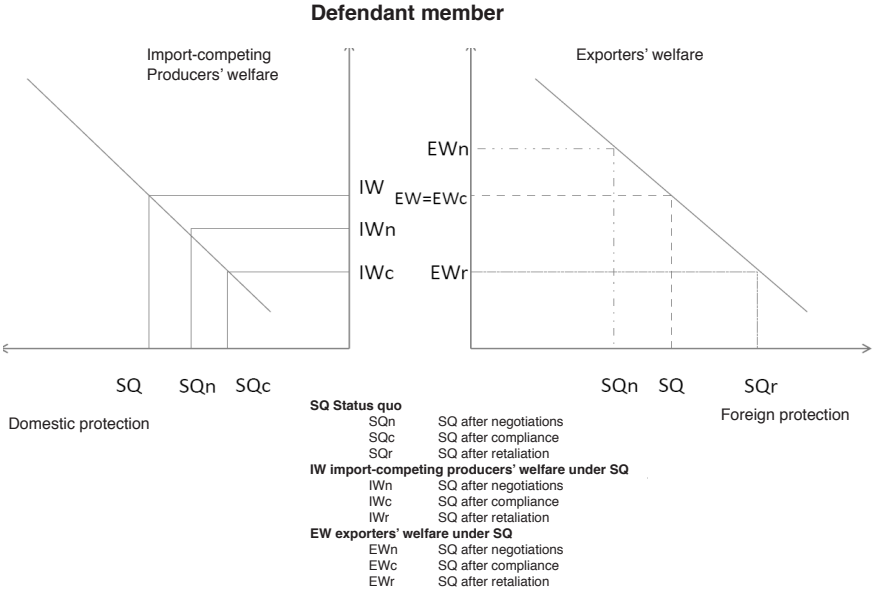

FIGURE 1. *Distributional effects of different scenarios for a potential (or actual) defendant.*

[1] Bernuer and Sattler (2011) argue that power disparities affect the likelihood of dispute initiation between pairs of WTO members. We do not touch upon this issue with regards to the scope condition of our argument for two reasons. First, we focus on cases in which disputes were *actually* initiated. Second, even in the presence of significant power disparities, as long as there is some interdependence, countries can credibly threaten to impose concentrated costs on exporters on the other WTO member, a condition that might induce these groups to exert significant and sustained pressures on policy makers (Goldstein and Steinberg 2008).

In the first scenario, the defendant member lowers the level of domestic protection by SQ-SQc, which leads to a loss for import-competing groups of IW-IWc. In the second scenario, the complainant retaliates by raising tariffs on goods originating from the defendant (SQ-SQr), leading to a reduction of exporters' welfare of EW-EWr. SQ-SQc and EW-EWr are equivalent, since WTO rules require retaliation to have an effect proportional to the adverse effects of the WTO-incompatible measures.

In this context, we can expect domestic producers to have the following order of preferences. Import-competing producers prefer non-compliance in litigation because it allows them to remain protected while exporters bear the costs of retaliation. Their second best option is negotiations. Among the forms these can take, multi-lateral and multi-issue WTO rounds are the most attractive to them, as these settings increase the likelihood that a smaller set of concessions in the vulnerable sector have to be made due to the potential for trade-off deals. Among possible negotiation settings, bilateral single-issue negotiations like consultations in litigation are the least attractive form of negotiations for them. The worst-case scenario for them is compliance.

The defendant's exporters can be expected to prefer negotiations over any alternative scenario in litigation, as there are no costs involved and there is potential for increased foreign market access. Compliance in WTO litigation would equally be costly, but this option does not open up the chance to increase access to foreign markets. The worst-case scenario for them is non-compliance leading to retaliatory measures hurting their exports.

As for policy makers, one can expect them to prefer negotiations as long as SQ-SQn<SQ-SQc. Both scenarios under litigation are equally unpalatable to public decision makers, since proportionality would lead to the same amount of concentrated costs being imposed on exporters in case of retaliation, as on import-competing groups in case of compliance (IW-IWn<IW-IWc=EW-EWr). In addition, during negotiations, the defendant can ask for concessions in areas in which it has offensive interests in exchange for concessions in the area where it has defensive interests and is subject to legal vulnerability, hence also obtaining some gains for its exporters (EW-EWn).

A potential complainant. While it is plausible that a WTO member anticipating they will lose a WTO case has an interest in drowning the issue at stake in broad-based negotiations, it is not obvious that the potential complainant would accept being pulled into negotiations, instead of trying to win a clearly defined legal case.

Figure 2 shows that export-oriented groups face entry restrictions into the defendant's market due to WTO-incompatible measures (SQ-SQc), which leads to a welfare loss of EW-EWc. Their preferred scenario is one in which the controversy is litigated, the complainant wins the case, and the defendant

complies. In this case, exporters are fully satisfied because barriers to entry in the defendant's market are removed. Yet, the defendant may still decide not to comply. In this case, retaliatory measures (SQ-SQr) would hit those sectors where the potential complainant faces competition from the defendant, while not reducing costs incurred by its exporters. In short, retaliation offers no relief to exporters and may even generate a benefit for import-competing groups in the complainant member (IW-IWr).

Import-competing groups in the complainant member country can be expected not to oppose litigation. As argued above, they might even benefit from litigation when non-compliance results in the imposition of retaliatory measures. Conversely, negotiations might lead these groups to incur costs as the defendant is likely to ask for something in exchange for concessions in the sector subject to the dispute.

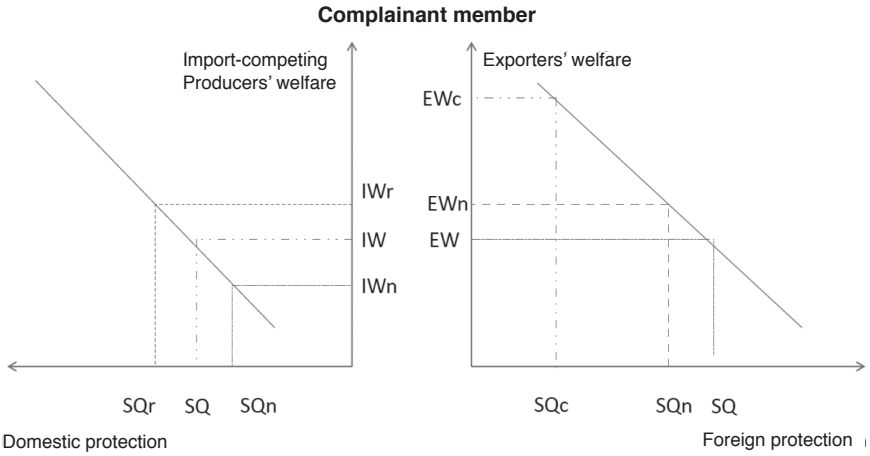

FIGURE 2. *Distributional effects of different scenarios for potential (or actual) complainant.*

2.2. Conditions for cooperation

The reasoning developed so far suggests that during multilateral trade negotiations, when a member state has the option to challenge another member through WTO dispute settlement, the set of feasible agreements for both sides may increase and overlap, strengthening the chance of agreement relative to the *status quo ante* when two crucial conditions are met: a potential or actual complainant anticipates that compliance by the potential or actual

defendant is unlikely, and the issue at stake can easily be disaggregated into negotiable units.

First, the expectations about the likelihood of compliance are key to deriving the preferences of policy makers on the complainant's side. In litigation, the potential complainant faces a choice between a course of action that may provide either full or no relief to its exporters. If however, the complainant's policy makers deem non-compliance to be likely[2], they have incentives to prefer negotiations as they are likely to prefer partial relief to no relief at all. They can expect such a middle-ground negotiated compromise to be achievable as the potential defendant can be expected to prefer a negotiated deal allowing domestic producers in the potential defendant to suffer less concentrated costs than in any possible scenario during litigation (SQ-SQn<SQ-SQc).

To be sure, litigation also allows parties to find a negotiated solution to a dispute in the consultation stage. Yet, single-issue, bilateral negotiations, such as those during early settlement, increase the visibility of the issue to domestic constituencies (Davis 2008) which in turn increases the likelihood that decision-makers will have to posture, making it more difficult to concede (Stasavage 2004). This scenario is unpalatable to both sides as it is particularly difficult to reach a middle ground compromise that would ensure both parties are at an advantage. On the contrary, the institutional setting of multilateral trade negotiations makes it easier for states to overcome the demands of import-competing groups (Davis 2004), increasing the likelihood that the defendant will be able to overcome domestic pressures for protection. In short, the credible threat to, or actual use of, the weapon of litigation while multilateral trade negotiations are ongoing opens a bargaining window as it creates incentives for both parties to strive for a negotiated agreement that can be more beneficial than litigation[3].

Second, the nature of the issue at stake is also key to whether this dynamic will take place or not. As we have shown, negotiations become desirable as an alternative to litigation only when a deal falling within the potential defendant's

[2] Such a complainant's assessment can be based on past experience with the defendant's reform processes, its domestic institutional obstacles to reform, the perceived political influence of the affected constituencies, and the likely salience of the issue for the general public.

[3] We do not consider another possible way to solve the dispute outside the litigation procedure, i.e. negotiations concerning bilateral or regional trade liberalization, as this article concentrates exclusively on how legal vulnerability affects ongoing multilateral negotiations. However, from a theoretical standpoint, it is possible to expect the mechanism outlined above to also play out in the context of bilateral negotiations. Nonetheless, the likelihood of legal vulnerability opening up a bargaining window between disputants is greater in the context of multilateral trade negotiations because this particular institutional setting maximizes the possibility of concessions through issue-linkages (Davis 2004).

range of acceptable agreements also reduces the costs incurred by domestic exporters in the potential complainant. In short, the likelihood of cooperation increases only insofar as the two sides can reach a negotiated deal comprised within the area in which their respective sets of feasible agreements overlap. We represent this change in the range of possible negotiated agreements in Figure 3, which pictures a simple zero sum negotiation game between two WTO members in the absence and in the presence of legal vulnerability.

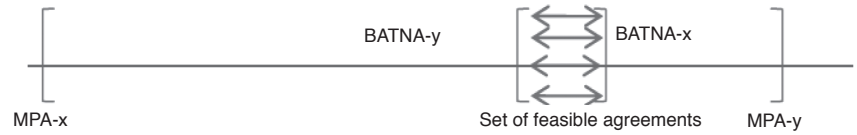

FIGURE 3. *Negotiation game between two WTO members in the absence and the presence of legal vulnerability.*

MPA-x and MPA-y represent the most preferred outcomes of member x (potential defendant) and y (potential complainant), while BATNA-x and BATNA-y represent their best alternatives to a negotiated agreement, i.e. the minimum outcome each actor is ready to accept. Note that the distance between BATNA-x and BATNA-y equals the distance IW-IWc in figure 1 and the distance EW-EWc in figure 2. According to our reasoning, cooperation is only possible when a negotiated agreement can be struck in the shaded area, i.e. the negotiated deal allows both the potential defendant to minimize costs with respect to any possible scenario in litigation (IW>IWn>IWc in Figure 1) and the potential complainant to partially reduce the costs incurred by domestic exporters (EWc>EWn>EW in Figure 2)[4].

However, not all issues can be as easily disaggregated into tradable units to enable transfers between the two parties. Guzmann and Simmons have convincingly shown that issues that have an "all-or-nothing" character, i.e. are discontinuous, are more likely to escalate into a WTO dispute settlement than issues that permit greater flexibility, i.e. are continuous (Guzmann and Simmons 2002). When states negotiate over a dispute at the WTO, their negotiations are focused on the specific sources of the dispute. Representatives indeed lack the authority to make commitments in other areas or extend the

[4] Note that our argument does not suggest that litigation affects the likelihood of success for multilateral trade negotiations. Our analysis is limited to examining how litigation affects the likelihood of agreement in the context of multilateral trade negotiations between two sides involved in a dispute. For this agreement to be actually implemented, the dyad's overlapping set of feasible agreements would have to intersect with the win-set of all other participants – a negotiation outcome analysis that is beyond the scope of this article. Thus, we are more interested in the results of dyadic negotiations than in outcomes *per se*.

potential benefits of trade concessions to other WTO members due to the most favored nation (MFN) clause; further, there is a reluctance in global trade diplomacy to compensate in the form of direct cash payments. All this makes it difficult to engage in transfer payments beyond the subject matter of the dispute. Under these circumstances, the parties can reach a negotiated settlement rather than proceed to a panel only if the subject matter of a dispute has a continuous character and thus can be easily disaggregated into negotiable units (e.g., a tariff). Indeed, by adjusting the relevant policy appropriately, both parties are in a position to construct a transfer payment that would be far more advantageous than proceeding to a panel for both parties. On the other hand, if the subject matter of the dispute features a discontinuous policy (e.g., product and process regulations) it may be very difficult to engage in concession exchanges[5].

This line of reasoning can be extended to the argument about the effects of legal vulnerability on ongoing multilateral trade negotiations. When an issue has a discontinuous character and is therefore extremely difficult to disaggregate into negotiable units, the two parties cannot reach an agreement that reduces costs for a potential defendant and provides relief to exporters in the potential complainant member state. This means that for a potential defendant, IWn will not be situated between IW and IWc but will coincide with either the latter or the former (see Figure 1). Similarly, for a potential complainant, EWn will coincide with either EW or EWc (see Figure 2). Both distances IW-IWc and EW-EWc equal the distance between BATNA-x and BATNA-y in Figure 3. In other words, a necessary condition for a bargaining window to open between the two sides is the possibility to strike a deal in the areas between BATNA-x and BATNA-y. If this condition is not met, however, there is no room for the two sides to attempt to reach a negotiated solution to the dispute in the context of ongoing multilateral trade negotiations.

[5] Of course, empirical reality is more nuanced than our dichotomous analytical distinction between continuous and discontinuous issues suggests. Whether issues have a continuous or discontinuous character is a matter of degrees and empirically, issues can be located in a continuum between these two extreme ideal types. However, we maintain that the cost of reduced empirical accuracy of our choice is worth paying as this dichotomous conceptualization brings about significant benefits from a heuristic standpoint, allowing us to specify with greater clarity how different effects of legal vulnerability can be traced back to a variation in one of our key independent variables.

3. Empirical analysis: negotiating under the shadow of WTO law during the Doha round

In the following empirical sections, we show the plausibility of our argument through four case studies exploring how legal vulnerability affects multilateral trade negotiations. All four case studies meet the scope conditions of our argument as these cases also concern pairs of WTO members with large and attractive markets in a position of trade interdependence. Even though admittedly there are differences in market size of the complainants, in all four cases the complainant is able to impose concentrated costs on some key sectors in the defendant, making its threat of retaliation credible.

All four cases analyze the interactions between a potential or actual complainant and a potential and actual defendant. The four cases thus display similar values on one of the key independent variables we examine, namely the presence of legal vulnerability. However, we have chosen the cases in order to allow for variation on the second independent variable, namely the nature of the issue at stake. Two of the four cases deal with typical continuous issues that can be easily disaggregated into tradable and negotiable units, i.e. agricultural export subsidies and domestic support schemes, while the remaining two cases deal with issues that can be characterized as having a discontinuous character and thus are more difficult to disaggregate into tradable and negotiable units, i.e. consumer and heath safety regulations, and rules concerning anti-dumping. The following empirical narrative lends support to the argument that legal vulnerability generates a positive dynamic of cooperation in the former cases (i.e. typical continuous issues) rather than the latter cases (i.e. discontinuous issues).

3.1. Agricultural negotiations and the pending expiration of the peace clause: the EU and Brazil

Agricultural negotiations of the Doha Round have been approached and conducted by key WTO members under the shadow of WTO law, namely in a position of legal vulnerability. The Uruguay Agreement on Agriculture (URAA) contains a set of clear commitments limiting export subsidies and domestic support, and ensuring market access. While the quantitative impact of market access enhancing tariff reductions in the URAA on agricultural trade was marginal (Tangermann 1999), the agreement was of great importance in that it planted the seeds for further trade liberalization. On the one hand, the URAA included an explicit deadline for further negotiations (the so-called in built-agenda, Art. 20) to resume by the end of 1999. On the other hand, the agreement included a so-called "peace clause" (Art. 13). While granting

immunity to countries against which legal action could be initiated on the basis of the provisions of Agreement on Subsidies and Countervailing Measures (SCM), i.e. domestic and export subsidies, the peace clause was due to expire at the end of 2003. The expiration of the peace clause at the end of 2003 would thus open up the possibility for potential complainant WTO members to successfully challenge agricultural domestic and export subsidies through WTO dispute settlement (Steinberg and Josling 2003; Swinbank 1999).

This prospect was particularly relevant for middle-income agricultural exporting countries such as Brazil, who would reap the largest share of the benefits arising from the elimination of agricultural protectionist policies by high-income developed countries such as the EU and the US (Cairns Group Farm Leaders 1998, 1999a, 2000; OECD 2005). The expiration of the peace clause put countries such as Brazil in a comfortable position as litigation could be used as a threat to extract concessions in future negotiations. Art. 20 of the URAA mandated new negotiations on agriculture to start by the end of 1999. Yet, this did not commit members with agricultural export interests like Brazil to accept a negotiation outcome on unfavorable terms, particularly in light of the fact that both Brazilian farmers and policy makers clearly anticipated that the expiration of the peace clause provided them with the possibility to seek the removal of agricultural trade barriers through WTO litigation (Cairns Group Farm Leaders 2001; Cotta 2005). Unsurprisingly, Brazil approached the Doha round combining calls for the elimination of all trade-distorting subsidies and a substantial improvement in market access with an explicit reference to the prospect that the expiration of the peace clause would eliminate all constraints against the use of the DSM to attack export subsidies and trade distorting domestic support (Cairns Group 2000a, 2000b; Ragawan 2001).

In light of the size of its market and of the large amount of trade-distorting subsidies provided to farmers, the EU was one of the main targets of those potential complainants. Previous research shows that organizations representing European farmers' interests as well as public decision makers in DG Agriculture realized that these domestic policies were indeed likely to be deemed WTO incompatible by an eventual ruling following a dispute in the WTO, and calculated that roughly half of the support provided to European farmers could be expected to become vulnerable to legal challenges by the late 1990s (Poletti 2010).

Given the position of legal vulnerability, European farmers and policy makers came to see multilateral negotiations in the Doha round as a venue that could enable fewer concessions by way of trade-off deals (Brittan 1999; COPA-COGECA 1999a, 1999b; Interview at COPA-COGECA, June 16, 2010).

When a deal on the agenda of the new round of trade negotiations was reached at the Doha WTO Ministerial meeting in November 2001, agricultural

negotiations became part of a single undertaking expected to end by January 2005. The text was understandably vague and ambiguous, yet it already identified the parameters within which both the EU and Brazil would gradually converge towards each other.

During the first phase of negotiations, the two sides took very different positions. The first proposal tabled by the EU in February 2003 was defensive and sought to keep the structure of URAA intact (WTO 2003), whereas the position adopted by Brazil and other members of the Cairns Group was more aggressive, including requests for a complete phasing out of export subsidies, the elimination of blue and amber box direct payments, a tighter definition of green-box payments, significant tariff cuts, and an opposition to any extension of the peace clause (Cairns Group 2000, 2000a, 2000b).

However, two developments strictly connected to the EU's legal vulnerability would soon contribute to moving the EU's positions closer to the positions of countries such as Brazil. First, in late 2002, Brazil initiated a WTO dispute against the EU sugar regime, arguing that the EU was subsidizing exports in excess of the volume and expenditure limits set down in the Uruguay Round (WTO 2002). This dispute was a way for Brazil to communicate to the EU its readiness to use all instruments at its disposal to extract concessions during the Doha round (Camargo 2008). In other words, the sugar dispute enhanced the bargaining power of countries such as Brazil and in turn, weakened the position of countries that proved vulnerable to the disputes, such as the EU (Anania and Bureau 2005, 548).

Second, in parallel and in connection to the developments in the negotiation process described above, the EU began to reform the Common Agricultural Policy (CAP). In June 2003, the structure of CAP was significantly transformed by decoupling most direct aid from production requirements, turning the largest share of potentially actionable policy instruments into WTO compatible ones, while only marginally reducing support provided to European farmers (Swinnen 2008). It is widely documented that overcoming the likely effects of the expiration of the peace clause was a key factor behind this reform, as it had the most pronounced impact on the likely targets of legal challenges in the WTO and was explicitly aimed at transforming large shares of domestic support schemes into WTO-compatible policies[6].

As a result of these developments, the positions of both Brazil and the EU began to converge. Firstly, in August 2003, the EU and the US offered to eliminate export subsidies of particular interest to developing countries. The G20 led by Brazil did not budge and presented a counter-proposal including

[6] For an extensive overview on this matter see Poletti (2012).

drastic measures such as the abolishment of the blue box, a tighter discipline of the green box, and the elimination of export subsidies for all products[7].

In the face of the G20 intransigence, the September 2003 ministerial in Cancun ultimately failed. As a result, the EU decided to put export subsidies on the negotiating table in order to forestall being forced to dismantle these instruments as a result of legal rulings (interview with former DG Agriculture Official, 25 June 2010). In May 2004, in an attempt to re-launch negotiations, the EU stated its willingness to discuss a complete phasing out of export subsidies (European Commission 2004).

Remarkably, and in line with the empirically observable implications of our theory, the EU's offer on export subsidies was supported by European farmers, as the peak association representing the interests of European Farmers COPA-COGECA declared that the July 2004 Framework Agreement allowed European agriculture to be safeguarded and represented a solid basis for the continuation of WTO agricultural talks. At the same time, the deal on export subsidies was greeted by the Brazilian government as a victory that would entail significant reductions of costs for the domestic agricultural industry (Agra Europe 2004).

This was not the end of the process of convergence between the EU and Brazil. While the EU had decoupled most direct payments from production requirements subsequent to the Fischler reforms, some domestic support measures remained vulnerable to legal challenge. Unsurprisingly, in subsequent Ministerial Conferences, the EU moved closer to the bold requests advanced by Brazil regarding precisely those policies where the EU remained legally vulnerable, such as with regard to domestic support. In the July 2006 Ministerial in Geneva, EU Trade Commissioner Peter Mandelson *de facto* positioned himself as an ally of the G20, becoming very close to the group's requests concerning domestic support; this lead to Brazil explicitly stating that the concessions it extracted on export subsidies and domestic support were a sufficient basis to strike a deal (Agra Europe 2006; Blustein 2009).

In the end, a deal could not be struck in Geneva – mostly as a result of the US' inflexible position with regards to requesting greater market access concessions to the EU, and refusing to meet EU demands for greater

[7] The URAA codified different types of subsidies to farmers according to their impact on production. Subsidies with minimal linkage to the quantities produced, the inputs used, or prices paid were classified in a 'Green Box', and not subject to reduction commitments. Specific payments that were linked to quantities produced but subject to output controls were classified in the 'Blue Box'; these payments were not subject to production controls. Other subsidies, including market price support, were classified in an 'Amber Box'. Amber box subsidies are subject to an overall limit called the Aggregate Measure of Support (AMS).

domestic support reductions; since this time, negotiations have not made any significant progress[8]. However, the narrative developed so far shows that the two sides were able to move closer to each other through negotiations, and that both in terms of content and timing, such convergence was largely due to legal vulnerability. While a deal concerning agricultural trade liberalization during the Doha round did not materialize, our analysis lends support to the view that the gradual convergence of positions between Brazil and the EU would not have occurred in the absence of the incentives brought about by legal vulnerability.

3.2. Agriculture negotiations and the pending expiration of the peace clause: the US and Brazil

Similar to the EU, a wide array of domestic support schemes for farmers in the US would likely become challengeable by third parties in the WTO after the expiration of the peace clause (Josling *et al.* 2006; Porterfield 2006; Steinberg and Josling 2003).

The 1996 Farm Bill was approved with a view to develop a new approach to agricultural domestic support schemes that would keep the United States far below the $19.1 billion URAA amber box ceiling. However, these estimates proved to be inaccurate, as a collapse of commodity prices in the late 1990s pushed Congress to adopt a series of supplemental bills to increase payments to farmers (Porterfield 2006). In addition, the 2002 Farm Bill further increased agricultural domestic support schemes by about 8 billion US dollars per year above the levels projected by the 1996 Farm Bill and institutionalized additional payments tied to commodity prices, creating larger production incentives (Sumner 2005).

Under this legislation, US domestic farm subsidies were vulnerable to WTO legal challenges. This was made abundantly clear by the famous WTO dispute ruling on US upland cotton subsidies. In 2002, Brazil initiated a WTO dispute against the US involving several substantive challenges to US cotton support programs implemented between 1999 and 2002. A WTO panel decision released in September 2004 and an Appellate Body ruling in 2005 upheld Brazil's claims, finding that the US exceeded the $19.1 billion cap on permissible amber-box support, and that such support had caused prejudice to Brazil's interests in the form of significant price suppression in the world market for cotton (Sumner 2005).

[8] In the Revised Draft Modalities for Agriculture of December 2008, the figures were roughly similar to those identified in the July 2006 Ministerial (WTO 2008).

For the purpose of our analysis, it is important to note that this case can be considered as the first "post-peace clause" challenge to farm subsidies and that the implications of the ruling were not restricted to cotton subsidies alone (Josling *et al.* 2006). Authoritative analyses noted that on the basis of the standards set in the cotton case, policy tools created by the 2002 Farm Bill, such as marketing loan program payments, counter-cyclical payments, and to a lesser extent, direct payments, could also become challengeable under the SCM Agreement (Schnepf and Womach 2007; Steinberg and Josling 2003).

The link between the cotton case and other potential cases against US farm subsidies was very much clear to US policy makers and to policy makers of agricultural exporting countries such as Brazil. After the issuing of the AB ruling in 2005, US Agriculture Secretary Mike Johanns noted that "the US has two choices: it can sit back and watch as our farm policy is disassembled piece by piece, or begin WTO talks on a new policy that would provide a safety net for US producers" (Inside US Trade, 7 October 2005). In parallel, Brazil's government was keen on conveying the message that WTO litigation was a credible and powerful weapon at its disposal. Subsequent to the adoption of the 2005 Appellate Body ruling, Pedro Camargo, the former Brazilian Secretary of Production and Trade in the Ministry of Agriculture, argued that in the face of a US refusal to implement the WTO ruling "the dispute settlement system will again have to produce essential jurisprudence on levels of trade-distorting support acceptable in international competition. Potential cases on rice, wheat, or dairy would also have to go this route" (Camargo 2005, 4).

In line with our theoretical expectations, the US came to consider multilateral trade negotiations as the best venue to deal with its legally vulnerable agricultural trade-distorting policies. In 2004, the US agreed to begin negotiations on the so-called "Cotton Initiative" to deal with questions such as cutting cotton subsidies and tariffs, and assisting farm productivity growth in Africa. The initiative led to two significant commitments by developed countries in the 2005 Hong Kong WTO Ministerial Conference, namely: to eliminate all forms of export subsidies for cotton in 2006, and to provide duty-free and quota-free access for cotton exports from least-developed countries (WTO 2005).

Similar to the EU, the US generally conceived of multilateral negotiations as an opportunity to engage in trade-off deals to minimize concessions on legally vulnerable policies. For instance, in the July 2003 joint EU-US proposal on agriculture in the run-up to the Cancun WTO Ministerial Conference, an expansion of the scope of the blue box was proposed to enable the US to shift some of its previously amber box labeled spending into the blue box (Kerremans 2004). At the same time, while the US had taken a very bold position on market access in these negotiations, it also sought to minimize concessions on domestic support. The proposal presented by the US in

October 2005, three months before the Hong Kong WTO Ministerial Conference, included bold requests on market access such as a 90% reduction in the highest agricultural tariffs and limiting the number of "sensitive products" to 1% of tariff lines. Yet, the proposal was very timid in the domestic support pillar, where it offered to cut its AMS spending by 60% and its *de minimis* spending by 50% (USTR 2005)-concessions that the US' plans would have made possible by shifting most of the previously amber box labeled support into the WTO-compatible blue box.

In line with our argument, Brazil deemed multilateral negotiations as the best strategy with which to deal with US domestic farm subsidies, rather than turning to a fully-fledged litigation strategy, even after the expiration of the peace clause and the victory in the upland cotton case. In the immediate aftermath of the 2005 Appellate Body ruling against the US, Pedro Camargo explicitly stated that negotiations in the present were clearly preferable to litigation in the future (Camargo 2005). As Camargo argues, Brazil had used the cotton dispute more as a tool to demonstrate the unfairness of international agricultural trade and to gain a better deal in Geneva, than as an effective means to achieve agricultural trade liberalization (Camargo 2008). Brazilian officials knew that the road towards implementation of the WTO ruling was loaded with political landmines because of the tremendous political influence of farmers in the US political system and the high profile nature of the cotton issue in the US (Goldberg *et al.* 2004). Given this constellation of preferences, in the aftermath of the cotton ruling, Brazil restated its willingness to seek convergence on domestic farm support rules in the context of the Doha round, rather than resort to WTO litigation (Cairns Group 2007).

This does not mean that Brazil passively accepted the terms of negotiations offered by the US. Indeed, Brazil fought hard to resist the US' strategy of creating new WTO rules that would make trade distorting and legally vulnerable domestic farm subsidies WTO-compatible (Porterfield 2006). Moreover, while siding with the US in its requests for large cuts in agricultural tariffs, Brazil sought to push the US towards greater concessions with respect to the actual percentage reductions in domestic support (G20 2005).

As mentioned in the previous section, the 2006 WTO Ministerial Conference held in Geneva failed to identify a common ground for compromise on agricultural trade liberalization. The lack of an actual agreement in agricultural negotiations however, does not necessarily run counter to our argument. In the end, a successful conclusion of the round requires agreement by all parties not just the dyad considered here. Our argument only relates to the effects of legal vulnerability on the bargaining space between the pair of WTO members affected by the shadow of WTO law. Our narrative suggests that indeed any significant overlap in the negotiating position of the EU and the US would have been even less likely in the absence of legal vulnerability.

3.3. Trade and environment negotiations and the precautionary approaches to food and consumer safety: the EU and the US

As the EU emerged as a global precautionary superpower in the course of the 1980-90s, it became subject to legal vulnerability under WTO rules from 1995 onwards. This is evidenced by the evolution of European food safety regulations and their troubled relationship with the WTO.

In the 1980s, economic and political pressures arose for the EC to adopt common rules on the use of hormones in raising beef that in substance resulted in a ban of all hormones (Princen 2002). Similarly, throughout the 1990s, the EU approved a series of regulations that culminated in the adoption of a tight regulatory structure, ultimately imposing a moratorium on production and import of GM food products (Skogstad 2003).

However, when the enforcement mechanism of trade rules was strengthened with the creation of the WTO, these rules soon became subject to external challenges in the form of actual and threatened WTO disputes. In 1996, the US requested a dispute settlement panel case against the EU, claiming that its ban on hormone-treated beef was inconsistent with the Sanitary and Phytosanitary Standards (SPS) agreement. Both the WTO dispute settlement panel and the Appellate Body supported US claims, in April 1997 and February 1998, respectively. The European moratorium against GM crops in 1997-98 also raised concerns in the US, home to major producers and exporters of GMOs, leading to threats to take legal action in the WTO against the EU's regulatory regime for GMOs on grounds that it provided for unjustified trade restrictions (Kelemen 2010).

Subsequent to the US threatening to initiate a WTO case against the European GMO regulation, farmers' associations started expressing their concerns and asked for new WTO rules. Indeed, expecting the US to take legal action, both small farmer associations and COPA-COGECA took a stance in favor of WTO rules that would immunize the EU from legal challenges and provide guarantees to European consumers (COPA-COGECA 1998, 2000). These producers' requests added up to the pressures coming from environmental NGOs (Friends of the Earth 1999; WWF 1999, 2001).

In 1999, concomitantly with the successful US' dispute on hormones and its threat to initiate legal proceedings in the WTO against European GMOs regulations, trade-and-the-environment become a priority for the EU in the new round of trade negotiations (Poletti and Sicurelli 2012). In line with requests of both farmers and environmental NGOs, the European Commission began to strongly advocate for the integration of environmental principles in WTO rules, which would grant *de facto* immunity from legal challenges against its food and consumer safety regulations (European Commission 1999; WTO 2000).

While in previous sections we have shown that complainants were willing to consider negotiations as an alternative to litigation, in line with our theoretical expectations the US did not accept to start negotiations on the terms proposed by the EU. As the issue at stake had a clear discontinuous character, i.e. the choice was either to allow or restrict US exports from entering the EU market, the US refused to engage in negotiations and relied on WTO litigation. The European attempt to lend legal cover to its domestic rules was clear to US negotiators, as they explicitly expressed their "concern that Europe might use the negotiations in Doha to justify illegitimate barriers to trade, particularly trade in biotechnological products and application of the commercial clauses of present or future multilateral agreements on bio-security"[9].

While agreeing to include a trade-and-environment chapter to the Doha Declaration, the US consequently narrowed the scope of these negotiations by attaching the provision that future negotiations concerning the relationship between WTO rules and Multilateral Environmental Agreements (MEAs) would only affect the parties of MEAs, and by refusing to start negotiations on the incorporation of the precautionary principle in WTO law (Eckersley 2004). With this move, the US made sure that any future agreement on trade-and-the environment would not prejudice its right to challenge WTO members' rules that were not compatible with the SPS agreement and that the US deemed as illegal non-tariff barriers.

Meanwhile, given the strong popular support for existing food and consumer safety rules, and consensual decision-making rules, EU policy makers could not work towards bringing domestic legislation in compliance with WTO rules. The WTO ruling on the EU's ban on hormone-treated beef and the subsequent imposition of retaliatory measures by the US did not lead to substantial policy change in the EU. Indeed, when policy change took place in 2003, the EU simply introduced comprehensive risk assessment procedures, but did not lift the ban (Daugbjerg and Swinbank 2008). Similarly, in 2000 the EU began to reform its regulatory framework for GMOs approvals, which culminated in the adoption of Directive 2001/18 and Regulation 1829/203 which further tightened existing GMO regulations, making things worse for US growers (Pollack and Shaffer 2009).

Although these political developments conveyed that compliance by the EU was not to be expected, the US insisted on relying on WTO litigation rather than seeking a compromise through negotiations. In 2003, the US finally initiated a formal WTO complaint to challenge the EU's *de facto* moratorium due to increased frustration of US producers over lost sales to the EU, and concerns over the impact of EU regulatory restrictions on regulatory

[9] Inside US Trade, 23 November 2001.

developments in third countries. It is important to stress that, unlike Brazil's strategy with the sugar and cotton disputes, the US did not conceive of WTO litigation as a tool to maximize negotiating leverage in negotiations.

In response to the US move, in September 2004 the Trade Commissioner Pascal Lamy tried again to argue in favor of negotiating new WTO rules to allow its members to derogate from WTO obligations when they clash with domestic policies reflecting values that are strongly rooted in a given community, listing environmental protection, food safety, and precautions in the field of biotechnology among Europe's collective preferences (Lamy 2004). Once again the EU was trying to change international trade rules to lend legal cover to its own domestic regulatory framework. However, due to the discontinuous nature of the issue, the US refused to engage in these negotiations given the two sides were not able to reach a compromise; furthermore, the US deemed WTO litigation to be the best tool to achieve its aims. To put it simply, WTO litigation did not trigger a convergence of negotiating positions between the EU and the US because there was no space to reach a compromise due to the character of the issue at stake.

3.4. Rules negotiations and the zeroing practice in antidumping: the US and Japan

In the fourth and final case study, we show how the legal vulnerability of a discontinuous issue failed to create the conditions for complainants and defendants, in actual as well as potential cases, to find an overlapping of win-set and strike a compromise providing some relief for the complainants' exporters, as well as entailing some benefits for the defendants' import-competing sectors.

For many years, US antidumping authorities have used a particular method of calculating antidumping margins, called zeroing, a legally vulnerable practice under extant WTO law. Indeed, the WTO Antidumping Agreement sets limits to the leeway domestic authorities have to find dumping and impose antidumping duties whenever a domestic industry alleges dumping by a foreign exporter. When domestic antidumping authorities investigate whether dumping has taken place, they assess the difference between the price in the home market (the normal price) and the price asked by the foreign exporter (the export price). If the export price is lower than the normal price, then the dumping margin is positive. Authorities calculate this dumping margin by taking the average of all transactions of a particular good and comparing the price levels between the exporting and the importing country. However, zeroing is the practice of counting a margin of "zero" for those transactions where margins were actually negative, i.e. where there was actually no dumping, when averaging all transactions to arrive at a dumping margin.

The method leads to higher dumping margins and thus higher antidumping tariffs. Understandably, exporters to countries that apply this zeroing method disapprove of the method as they suffer concentrated losses from it. For years now, WTO members with many of these exporters have challenged this practice; this lead to the EU discontinuing its use of the simple zeroing method and simultaneously pressuring the US to move along the same path.

Seeing how its zeroing policy was subject to legal challenge by the EU, Japan, Korea, and other WTO members, the US asserted that zeroing should be transformed into a WTO-compatible policy at the Doha multilateral trade negotiations, in an attempt to immunize itself from legal challenges in WTO litigation[10]. Since the 2001 Doha Ministerial Conference decided to clarify and improve disciplines in the WTO Antidumping Agreement[11], the US actively advocated for the so-called Rules Committee to place the "legalization" of zeroing methodology on the negotiating agenda, in order to demine pending WTO cases challenging its policy, forestalling future ones, and catering to the vocal domestic lobby of import-competing industries benefiting from the inflated dumping margins that the zeroing methodology provides.

However, a group of 12 WTO members led by Japan vehemently opposed this move, filing briefs to the chair of the Rules Committee as "Friends of Antidumping", while the EU, although not member of that group, also voiced concern. It was eminently clear to the US as well as to many targets of US antidumping duties that zeroing was legally vulnerable. Panels and the Appellate Body had ruled several times against the principle of using zeroing in US antidumping investigations, especially in so-called administrative reviews and sunset reviews (Vermulst and Ikenson 2007). In 2006, the AB ruled against 16 such US administrative reviews on EU products and deemed them to be in violation of the Antidumping agreement. In reaction to these WTO rulings, the US consistently argued it would be better to negotiate rather than litigate about this legally vulnerable part of its AD policy. The opposition, namely the "Friends of Antidumping" led by Japan, remained diametrically opposed to any loosening of WTO disciplines on zeroing, and by mid 2007 no agreement between the two sides could be found.

At the end of 2007, Guillermo Valles, the Chair of the Rules Committee, tried to move his part of the Doha negotiations forward by suggesting a proposal to rule out zeroing methodology in initial antidumping investigations. Flatly rejected by Japan, the negotiations stalled, especially since members of the US Congress were under further pressure from import-competing indus-

[10] Inside US Trade, 3 August 2007.
[11] Inside US Trade, 5 October 2002.

tries, like the steel industry, to constrain the United States Trade Representative (USTR) and not to cave in to demands to end zeroing[12].

As litigation had run its complete course by this point (Prusa and Vermulst 2011), the EU and Japan became entitled to respond to US non-compliance with the imposition retaliatory tariffs against US exports. The US side began investing its time and energy into trying to convince the EU and Japan not to proceed to retaliation, by proposing not to use zeroing in future reviews, while leaving the antidumping tariffs based on zeroing in place, and leaving it open as to whether they would use zeroing in future initial antidumping investigations. At the same time, the US was as unwavering in their position as their opponents, and reiterated its affirmation that all forms of zeroing should be made WTO-compatible through a revision of the antidumping agreement in the ongoing, but by then very moribund, Doha negotiations.

4. Conclusion

In this article, we have investigated how legal vulnerability in the WTO affects the likelihood of cooperation in the trade regime. Increased enforceability of trade rules engenders greater incentives for exporters to mobilize for the targeting of WTO-incompatible trade barriers foreclosing access to foreign markets, creating higher expectations that WTO members pursuing such policies will be challenged and incur costs for their misbehavior. Our argument suggests that when a WTO member threatens another member to legally challenge its WTO-incompatible domestic policies while multilateral trade negotiations are ongoing, the set of negotiated agreements that both parties prefer over litigation may increase. Such an outcome however, depends on the nature of the issue at stake. Legal vulnerability can increase negotiation propensity of WTO members when the issue at stake has a continuous character, i.e. can be easily disaggregated into negotiable units. Only under these conditions does a potential complainant value multilateral trade negotiations as an institutional venue that can facilitate partial concessions by the potential defendant, hence ensuring that at least partial relief for domestic exporters can be achieved.

We conclude by highlighting that our argument has important real-world implications, and casts doubt on whether the expansion of the WTO's regulatory reach is sustainable and hence desirable. On the one hand, our analysis offers empirical evidence that the DSM can be efficient in a very fundamental way. Not only can more disputes be resolved but the mere threat of litigation may ignite a dynamic of cooperation when existing commitments cast the

[12] Inside US Trade, 5 October 2007.

shadow of WTO-law incompatibility on issues that are politically difficult to solve by means of litigation. On the other hand, we have shown that the effects of legal vulnerability on cooperation in the WTO systematically vary across issues. When it comes to regulatory commitments states have subscribed to in the WTO, enforceability of rules cannot be expected to trigger such a self-sustaining dynamic of cooperation. Not only are trade disputes concerning regulatory issues particularly intractable, the legal vulnerability of domestic regulatory arrangements even stalls, rather than fosters the future prospects for further cooperation in the multilateral trade regime.

References

Agra Europe (2004), *EU satisfied with WTO farm deal*, August 6.

Agra Europe (2006), *EU offered WTO farm tariff cut of 48%*, July 28.

Anania, G., and J.C. Bureau (2005), *The negotiations on agriculture in the Doha Development Agenda Round: current status and future prospects*, in «European Review of Agricultural Economics», 32, 4, pp. 539-574.

Blustein, P. (2009), *Misadventures of the most favored nations*, New York, Public Affairs.

Brittan, L. (1999), *The next WTO negotiations on agriculture: a European view*, Oxford, 5 January.

Busch, M. and E. Reinhardt (2000), *Bargaining in the Shadow of the Law: Early Settlement in GATT/WTO Disputes*, in «Fordham International Law Journal», 24, 1-2, pp. 158-172.

Cairns Group (2000a), *Cairns Group Negotiating Proposal on Domestic Support*, G/AG/NG/W/35, 22 September.

Cairns Groups (2000b), *Cairns Group Negotiating Proposal on Market Access*, G/AG/NG/W/54, 10 November.

Cairns Group Farm Leaders (1998), *Communiqué*, Sydney, 31 march.

Cairns Group Farm Leaders (1999), *Proposal of Cairns Group Farm Leaders to the next WTO round of negotiations on agriculture*, Buenos Aires, 28 August.

Cairns Group Farm Leaders (2000), *Cairns Farm Leaders Presentation to Cairns Ministers*, Alberta, 11 October.

Cairns Group Farm Leaders (2001), *Cairns Group Farm Leaders' Statement to Cairns Group Ministers*, Punta del Este, 3 September.

Cairns Group (2000), *Cairns Group negotiating proposal on Export Competition*, G/AG/NG/W/11, 16 June.

Cairns Group (2007), *Communiqué*, Lahore, 16-18 April.

Camargo, P. (2005), *An End to Antidumping Through Domestic Agricultural Support*, in «Bridges», 9, 8, pp. 3-4.

Camargo, P. (2008) *Cotton in the Doha Round: A Lost Opportunity?*, Available at: http://blog.gmfus.org/2008/09/23/cotton-in-the-doha-round-a-lost-opportunity/.

COPA-COGECA (1998), *A revision of the Commission's Agenda 2000 CAP Reform Proposals*, Brussels, 11 September.

COPA-COGECA (1999a), *COPA-COGECA Statement on the WTO Ministerial Conference in Seattle on Behalf of Farmers in the European Union*, 29 November.

COPA-COGECA (1999b), *COPA and COGECA Present the Key elements for the EU's Approach to Agriculture in the Forthcoming WTO Round*, November.
COPA-COGECA (2000), *Position of COPA and COGECA on the use of gene technology in agriculture*, 21 January.
Cotta, F. (2001) *Presentation at the Forum Permanente de Negociacoes Agricolas Internacionais*, Buenos Aires, 22-24 May.
Daugbjerg, C. and A Swinbank (2008), *Curbing Agricultural Exceptionalism: The EU's Response to External Challenge*, in «The World Economy», 31, 5, pp. 631-52.
Davis, C. (2004), *International Institutions and Issue Linkage: Building Support for Agricultural Trade Liberalization*, in «American Political Science Review», 98, 1, pp. 153-68.
Davis, C. (2008), *The Effectiveness of WTO Dispute Settlement: an Evaluation of Negotiations versus Adjudication Strategies*, Paper presented at the Annual Meeting of the Political Science Association, Boston.
De Bièvre, D. and A. Dür (2005), *Constituency Interests and Delegation in European and American Trade Policy*, in «Comparative Political Studies», 38, 10, pp. 1271-1296.
De Bièvre, D. (2006), *The EU Regulatory Trade Agenda and the Quest for WTO Enforcement*, in «Journal of European Public Policy», 13, 6, pp. 847-62.
Eckersley, R. (2004), *The big chill: the WTO and MEAs*, in «Global Environmental Politics», 4, 2, pp. 24-50.
European Commission (1999), *Communication from the Commission to the Council and to the European Parliament: The EU approach to the Millennium Round*, COM (99) 331 final, 08.07.1999.
European Commission (2004), *The EU and the WTO: EU Ready to Go Extra Miles in Three Key Areas of the Talks*, 10 May.
European Services Forum (1999), *Declaration of the European Services Industries for the Third WTO Ministerial Conference Towards the Millennium Round*, Brussels, 25 October.
Falkner, R. (2007), *The Political Economy of «Normative Power» Europe: EU Environmental Leadership in International Biotechnology Regulation*, in «Journal of European Public Policy», 14, 4, pp. 507-526.
Fearon, J. (1998), *Bargaining, Enforcement, and International Cooperation*, in «International Organization», 52, 2, pp. 269-306.
Friends of Earth (1999), *Free trade at what cost? The World Trade Organization and the environment*, 19 October.
G20 (2005), *G20 Proposal on Domestic Support and G20 Proposal on Market Access*, 12 October.
Goldberg, R.A., R. Lawrence and K. Milligan (2004), *Brazil's Cotton Case: Negotiation Through Litigation*, in «Harvard Business School Case 905-405».
Goldstein, J. and L. Martin (2000), *Legalization, Trade Liberalization and Domestic Politics: a Cautionary Note*, in «International Organization», 54, 3, pp. 603-632.
Goldstein, J., & Steinberg R. (2008), *Negotiate or Litigate? Effects of WTO Judicial Delegation on US Trade Politics*, in «Law and Contemporary Problems», 71, pp. 257-282.
Guzmann, A. and B. Simmons (2002), *To Settle or Empanel? An Empirical Analysis of Litigation and Settlement at the WTO*, in «Journal of Legal Studies», 31, 1, pp. 205-227.

Josling, T., L. Zhao, J. Carcelen, and K. Arha (2006), *Implications of WTO Litigation for the WTO Agricultural Negotiations*, Washington DC, International Food and Agricultural Trade Policy Council.

Kelemen, D. (2010), *Globalizing European Union Environmental Policy*, in «Journal of European Public Policy», 17, 3, pp. 335-49.

Kennedy, K. (2008), *The Doha Round Negotiations on Agricultural Subsidies*, in «Denver Journal of International Law and Policy», pp. 335-343.

Kerremans, B. (2004), *What Went Wrong in Cancun? A Principal-Agent View on the EU's Rationale Towards the Doha Development Round*, in «European Foreign Affairs Review», 9, 3, pp. 363-393.

Koremenos, B, C. Lipson and D. Snidal (2001), *The Rational Design of International Institutions*, in «International Organization», 55, 4, pp. 761-799.

Lamy, P. (2004), *The Emergence of Collective Preferences in International Trade: Implications for Regulating Globalisation*, Mimeo.

Milner, H. (1988), *Resisting Protectionism*, Princeton, Princeton University Press.

OECD (2005), *OECD Review of Agricultural Policies: Brazil*, Paris, OECD Publishing.

Poletti, A. (2010), *Drowning Protection in the Multilateral Bath: WTO Judicialisation and European Agriculture in the Doha round*, in «British Journal of Politics and International Relations», 12, 4, pp. 615-633.

Poletti, A. (2011), *WTO Judicialisation and Preference Convergence in EU Trade Policy: Making the Agent's Life Easier*, in «Journal of European Public Policy», 18, 3, pp. 361-382.

Poletti, A. (2012), *The European Union and Multilateral Trade Governance: the Politics of the Doha Round*, London, Routledge.

Poletti, A. and D. Sicurelli (2012), *The European Union as a promoter of environmental norms in the Doha Round*, in «West European Politics», 2, 4, pp. 911-932.

Pollack, M. and G. Shaffer (2009), *When Cooperation Fails: The International Law and Politics of Genetically Modified Foods*, New York, Oxford University Press.

Porterfield, M. (2006), *US Farm Subsidies and the Expiration of the Peace Clause*, in «University of Pennsylvania Journal of International Economic Law», 27, 4, pp. 1002-1042.

Princen, S. (2002), *EU Regulation and Transatlantic Trade*, The Hague, Kluwer Law International.

Prusa, T. and E. Vermulst (2011), *United States – Continued existence and application of zeroing methodology: the end of zeroing?*, in «World Trade Review», 10, 1, pp. 45-61.

Raghavan, C. (2001), *Agri-Talks Mark Time: For End of Peace Clause or New Round?*, Geneva, 25 July.

Rogowski, R. (1989), *Commerce and Coalitions*, Princeton, NJ, Princeton University Press.

Rosendorff, P. (2005), *Stability and Rigidity: Politics and the Design of the WTO's Dispute Resolution Procedure*, in «American Political Science Review», 99, 3, pp. 389-400.

Sattler, T. and T. Bernauer (2011), *Gravitation or discrimination? Determinants of litigation in the World Trade Organization*, in «European Journal of Political Research», 50, pp. 143-167.

Schnepf, R. and J. Womach (2007), *Potential Challenges to US Farm Subsidies in the WTO*, Congressional Research Service Report to Congress, Washington DC.

Skogstad, G. (2003), *Legitimacy and/or Policy Effectiveness? Network Governance and GMO Regulation in the European Union*, in «Journal of European Public Policy», 10, 3, pp. 321-338.
Stasavage, D. (2004), *Open Door or Closed Door? Transparency in Domestic and International Bargaining*, «International Organization», 58, 4, pp. 667-704.
Steinberg, R. and T. Josling (2003), *When the Peace Ends: the Vulnerability of EC and US Agricultural Subsidies to WTO Legal Challenge*, in «Journal of International Economic Law», 6, 2, pp. 369-417.
Sumner, D. (2005), *Boxed In: Conflicts Between US Farm Policies and WTO Obligations*, Washington DC, Cato Institute.
Swinbank, A. (1999), *EU agriculture, Agenda 2000 and the WTO Commitments*, in «The World Economy», 22, 1, pp. 42-54.
Swinnen, J. (2008), *The Perfect Storm: the Political Economy of the Fischler Reforms of the Common Agricultural Policy*, Brussels, Centre for European Policy Studies.
Tangermann, S. (1999), *Europe's Agricultural Policies and the Millennium Round*, in «The World Economy», 22, 9, pp. 1155-1178.
Tiberghien, Y. (2009), *Competitive Governance and the Quest for Legitimacy in the EU: the Battle Over the Regulation of GMOs Since the Mid-1990s*, in «Journal of European Integration», 31, 3, pp. 389-407.
USTR (2005), *US Proposal for Bold Reform in Global Agricultural Trade: Doha Development Agenda Policy Brief*, Washington DC, Office of the United States Trade Representative.
Vermulst, and D. Ikenson (2007), *Zeroing under the WTO anti-dumping agreement: Where do we stand?*, in «Global Trade and Customs Journal», 2, 6, pp. 231-242.
WTO (2000), *Resolving the relationship between WTO rules and MEAs. Submission by the European Community*, WT/CTE/W/170.
WTO (2001), *Ministerial Declaration*, WT/MIN(01)/DEC/1, 20 November.
WTO (2003), *A Proposal For Modalities In The WTO Agriculture Negotiations, Specific Drafting Input by the EC*, JOB(03)/12, 5 February.
WTO (2005), *Doha Work Programme – Draft Ministerial Declaration*, WT/MIN(05)/W/3/Rev.2.
WTO (2008), *Revised Draft Modalities for Agriculture*, TN/AG/W/4/Rev.4
WWF (1999), *WWF urges urgent WTO reform*, 11 March.
WWF (2001), *Can the World Trade Organisation live up to the challenges of a globalizing world?*, Position statement, October.