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The role of non-traditional actors (NTAs) in the design of international economic agreements in the 21st century

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Introduction

Members of the World Trade Organisation (WTO) gathered in Buenos Aires for the 11th Ministerial Conference ('MC11'), in December 2017, with cautious optimism that the MC11 would be the springboard for a reinvigorated multilateral trade system. Cautious optimism was in order as echoes of previous failed attempts to find compromises and forge consensus on perennially thorny issues from the Doha Development Agenda (DDA) linger.[2]

This paper aims at shifting the focus of the debates away from the substantive negotiating issues which dominated the headlines prior to and during the MC11[3] to focus on a more systematic overview of the core values which underpin stakeholder's participation and inclusiveness in the multilateral trade system. A focus on these issues mentioned above is important because there are growing agitations among some trading nations, academic commentators, and various interest groups around the world who are concerned about the continued relevance of the WTO system in particular and liberalism in general as the economic model underpinning the world economy in general. These concerns are partly related to a prevailing perception that the WTO and other liberal economic constructs are undemocratic and closed to counter-narratives which challenge the status quo (Breton, 1996; Hurd, 1999; Esty, 2002; Hannah et al., 2017). These actors, most notably civil societies and

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[2] More reasons for cautious optimism stem from the fact that the MC11 is coming at a time of monumental shifts occurring in world politics. Events such as the on-going exit process of the United Kingdom (UK) from the European Union (EU) and a retreat to protectionism by a Donald Trump-led United States (US) have raised concerns about the current structure of global economic governance. More so, these unfolding events have brought to the fore critical questions about the continued relevance of the post-World War II 'rules-based model' of liberal international economic cooperation.

[3] Topics which featured significantly during the run up to the MC11 include the contested DDA and a push for e-commerce to be added to the negotiating agenda.

sub-national governments, (collectively referred to in this paper as non-traditional actors (NTAs))[4] are exploiting opportunities created by a perceived democratic deficit in the way international trade agreements are conceptualised, designed and negotiated to test established boundaries of international economic relations and assert their influence as a voice for excluded stakeholders in the global economic system (Omiunu, 2017; Paquin, 2013; Kukucha, 2008; Kukucha, 2011; Kukucha 2013; Goff, 2016).[5]

This paper aims at two objectives. First, as a foundational premise, it will be argued in this paper that the multilateral trade system is experiencing a social legitimacy crisis. This legitimacy crisis is linked to the system's inability to forge and maintain a vibrant social dialogue with NTAs who represent sections of society and interests which are sceptical about the value or continued relevance of the multilateral trade system. To establish this point, the paper will analyse the concept of social legitimacy as it pertains to international organisations and the participation of NTAs in global economic governance. Furthermore, this paper will explore the correlations between social legitimacy and the involvement of NTAs in the decision-making process of the multilateral trade system. The second objective is to utilise a complex systems analysis perspective in reframing the debates surrounding these social legitimacy concerns of the multilateral trade system. Focusing specifically on NTAs as excluded and peripheral actors, the central argument which will be put forward is that NTAs are essential nodes in a complex multilateral trade system which can be leveraged to correct some of the pressing social legitimacy concerns about the multilateral trade system. This paper will also attempt to proffer possible entry points from which NTAs can contribute to the broadening of the debates surrounding the multilateral trade agenda and more broadly, set the tone on the way forward for global economic governance in the 21st century.

[4] As a working definition, NTAs are conceptualised in this paper to mean any actor with a vested interest in the workings and outcome of multilateral trade negotiations under the auspices of the WTO. As opposed to traditional actors namely states and international organisations, NTAs are categorised as stakeholders who are not directly involved in the framing, design, and negotiation of international trade. For this discussion, two of these actors will be considered; they are civil societies and sub-national governments (non-central governments).

[5] Given the growing disquiet about the global economic governance regime, NTAs who feel excluded from the process have repeatedly demonstrated their ability to scupper significant initiatives at multilateral and regional levels. For instance, Civil Societies played a significant part in frustrating the negotiations on a Multilateral Agreement on Investment (MAI) within the OECD and more recently Wallonia, a sub-national government in Belgium threatened the ratification of the Canada-EU Comprehensive Economic and Trade Agreement (CETA). These are telling signs that there is a need for re-evaluating the concept of 'involved actors' in international economic relations

Excluding the introduction, and the conclusion, the rest of the paper is structured as follows: section 1 discusses the social legitimacy concerns of the WTO system. Section 2 focuses on the concept of involved actors in international relations. Section 3 explains the leverage points in the WTO system at which NTAs can contribute to creating a reframed multilateral trade process that is more embedded in the societies they serve.

Section 1: social legitimacy concerns of the WTO

This section of the paper provides a information context on the social legitimacy of institutions such as the WTO. It will be argued using the multilateral trade system under the WTO set up, as the primary focus of analysis, that the mode of operations and decision making processes of the WTO have a social legitimacy deficit. It is argued that this social legitimacy deficit is due in part to the fact that the multilateral trade system (which is state-centric and technocratic) was not primarily designed to accommodate a broad scope of actors. It is further argued that the correlation between trade liberalisation (which is one of the primary goals of the system) and globalisation has contributed to this negative perception about the multilateral trade system. The analysis in this section will set the tone for examining the significance of NTAs in addressing these social legitimacy concerns.

1.1 Inclusiveness of the multilateral trade system

There is no doubt that the activities of international organisations such as the United Nations and the WTO have been central to the functioning and stability of the international system both politically and economically in the post-WWII era. However, in the context of world trade the GATT/WTO system has over the years come under intense scrutiny for what is perceived to be a democratic deficit in its setup and processes (Gray, 2006; Stevenson, 2016; Dellmuth and Tallberg, 2015). This perception stems from the fact that the WTO is an international organisation primarily set up to facilitate state-to-state relations as it pertains to the negotiation and regulation of global trade standards. As such, the type of actors permitted to participate in the process is limited and has remained within a closed circle of actors for a long time (Dunoff, 2001; Esty, 2002; Howse, 2003; Hanegraaff et al., 2011).

Given the status quo described above, stakeholders who have interests on the impact of the WTO's activities on their domains have consistently agitated for a more inclusive and transparent system (Scholte et al., 1999; Hannah et al., 2017). Interestingly, the calls for a more inclusive system have not always been a priority to a broader audience, especially

during the early years of the GATT (Esty, 2002; Hanegraaff et al., 2011). However, as the scope of disciplines covered by the GATT/WTO system expanded over the years, concerns over the activities of the WTO have become more prominent (Esty, 2002; Piewitt, 2010; Hanegraaff et al., 2011). Notably, as the system progressively moved away from reductions in tariffs to more in-depth rules and procedures which touch on sensitive subjects such as the management of global commons, more people are interested in the GATT/WTO system. As such, it is not surprising that more actors are questioning and critiquing the activities, purpose structure, representation, decision processes, and legitimacy of the WTO and the broader multilateral trade system (Bodansky, 1999; Stephan, 1999; Esty, 2002).

1.2 The Correlation between globalisation and international trade liberalisation

It is impossible to have a holistic view of the crisis of legitimacy being experienced by the multilateral trade system without briefly touching on the globalisation phenomenon. Globalisation has been at the heart of interests in, and protests against the WTO. This is because; globalisation is usually associated with free trade and neoliberalism (Esty, 2002). More importantly, sections of the world community which have experienced economic dislocation effects related to globalisation tend to point a finger of blame at international trade liberalisation. More so, anti-globalisation activists argue that trade liberalisation has been dominated by multinational corporations who have influenced their national governments to push trade agendas within the WTO which favour profit-making at the expense of equality in wealth distribution, the environment, and labour standards. This negative correlation between international trade and globalisation is unsurprising because, like globalisation, trade liberalisation creates winners and losers (Esty, 2002).[6] Free trade has undoubtedly benefited millions of people in countries which have opened up their markets in the last several decades (Bhagwati, 1993; Anderson and Blackhurst, 1992). However, although trade might have empowered millions of people, it is also common knowledge and

[6] It has been argued that there is a 'globalisation trilemma'(i.e., a scenario where stakeholders the world over are attempting to have the most two of economic integration, national sovereignty, and democracy), which creates a hard choice for all stakeholders involved in the economic liberalisation process. It is further argued that this is however impossible because 'Liberalisation, like many economic shifts, creates winners and losers. Many existing political structures advantage the votes of the losers, giving them, in many cases, the ability to block changes that generate net, though unevenly distributed, benefits. In order to move toward greater liberalisation, then, one either has to ignore popular opinion in these places (abandoning the democracy leg of the trilemma) or change the locus of political decision-making (abandoning national sovereignty).' See Newstex. 'The Economist: Free exchange: Making sense of the Wallonian veto.' Newstex. 24 October, https://www.economist.com/blogs/freeexchange/2016/10/trading-down accessed 06 January 2018.

evident for all to see that the benefits of trade liberalisation have not been fairly distributed in most nations of the world (Esty, 2002:8) In view of this it is difficult to sustain an argument that the protests which have been witnessed over the years at the WTO's ministerial conferences such as in Seattle in 1999 are just a conjecture of disgruntled and misinformed anti-globalisation activists who are looking for a scapegoat to blame for all the woes being experienced in the world today.

The substance of agitations against the WTO has some credibility within the context that the WTO has not given critics and those with a counter-narrative to the status quo much room to debate the value and continued relevance of the multilateral trade system (Hannah et al., 2017). In the subsequent analysis below, it will be argued that the WTO has underestimated concerns about the social legitimacy of the multilateral trade system. This underestimation is plausible because the WTO has over the years retained its normative legitimacy which comes primarily from the member states. With 164 members as of 2017, the WTO has maintained its relevance as a forum for setting global trade standards; even in the midst of challenges arising from the rapid proliferation of Regional Trade Agreements (RTAs) over the years. More so, the WTO has weathered the storm resulting from the power struggle between developed countries and their developing country counterparts over the direction of the trade agenda. Furthermore, with a new direction being taking with plurilateral deals such as the Trade Facilitation Agreement (TFA), it is arguable that the WTO has succeeded in reinventing its strategy without having to change its underlying ethos. However, as recent world events in the US and UK have demonstrated, there is a growing sense of populism and nationalism within societies which is leading to drastic outcomes that would have been unthinkable a decade ago. Abdelal and Ruggie (2009: 153) prophetically summed up the situation just after the 2008 financial crisis thus:

> …our current era of globalization and its neoliberal paradigm has reached the point themselves of suffering from a profound crisis of legitimacy. If that crisis is not resolved by deft policymaking in the United States and around the world, globalization is likely to be undone by national policy reactions driven by societies that have grown increasingly sceptical of newly dis-embedded global markets… …this crisis of legitimacy for globalization has been unfolding since the end of the 1990s.

Given this, it is essential to examine why social legitimacy and inclusiveness is a critical issue which should not be ignored within the multilateral trade system.

1.3 The importance of social legitimacy

According to Dellmuth and Tallberg (2015: 454), social legitimacy can be defined as: 'acceptance of an institution within a given audience.' Dellmuth and Tallberg go on to make an important distinction between normative and sociological legitimacy. According to them, the former 'refers to an institution's right to rule, based on its conformance to certain values and principles' and the latter 'refers to the acceptance of an institution within a given audience.' (ibid.) In this scenario, as it was mentioned previously, the normative legitimacy of the WTO is not the primary concern because the organisation has demonstrated over the years that it has the support of a majority of nation-states in the international system to regulate world trade. This view is supported by the increased membership of the organisation in the WTO era. Furthermore, the WTO system has over the years acquired a '…legitimacy derived almost entirely from its perceived efficacy and value as part of the international economic management structure' (Esty, 2002: 10).

However, the social legitimacy of the WTO is a more nebulous concept compared to its normative legitimacy. This is because social legitimacy is not premised on just the mandate from nation-states nor derived from the WTO's efficacy as a technocratic institution focused on trade regulation. Instead, the social legitimacy of the WTO is predicated on public perceptions (i.e., opinions) about it and the extent to which it's activities are deemed to be embedded within the wider social fabric of society (Abdelal and Ruggie, 2009). Barnett and Finnemore, (2004: 166) support this position arguing that: 'legitimacy of most modern public organizations depends on whether their procedures are viewed as proper and correct and whether they are reasonably successful at pursuing goals that are consistent with the values of the broader community'.

During the GATT era, the international trade regulatory regime was shielded from scrutiny because according to Esty (2002: 10) 'International economics and trade policy-making were highly technical realms best left in the hands of an elite cadre of qualified experts.' However, with the WTO's successes, especially after the Uruguay Round, global trade regulation has been thrust into the limelight. Esty (2002: 10) summarises it thus: '…public perceptions about trade and trade policymaking have changed. Trade is no longer considered to be an obscure policy domain best left to technical experts. Instead, trade issues and initiatives are now a major focus of public attention and discussion across the world...'

Abraham Lincoln stated in 1858 that 'Public sentiment is everything' (Guelzo, 2014), however, the challenge with hinging an institution's credibility on public sentiment is that it is a fluctuating scale which is highly contextual and subjective (Tomz, Weeks and Yari-Milo, 2017). More so, Dellmuth and Tallberg argue that 'The social legitimacy of an IO says little about the actual rightness or goodness of the organisation; [rather] it refers exclusively to the public's acceptance of and support for that organisation' (454). As unfair as it may sound, public opinion just like political will is an important factor which goes a long way in shaping both domestic and foreign policies, especially in democracies. A good example to illustrate this point is seen in the recent election outcome in the US. Donald Trump's foreign policy stance, especially relating to international trade and the 'America first' slogan was an important factor which swayed the election in his favour. This had nothing to do with whether the electorate which bought into his policy stance had the correct facts or whether they fully understood the ramifications of this foreign policy position (Jensen Quinn and Weymouth, 2017; Tomz, Weeks and Yari-Milo, 2017; Rho and Tomz, 2017; Hainmueller and Hiscox, 2006; Mansfield and Mutz, 2009). More importantly, on the strength of this mandate, Donald Trump has made good on some of these electoral promises by pulling the US out of significant trade agreements such as the Trans-Pacific Partnership Agreement (TPP) and the Paris Climate Accord which he argues are detrimental to America's economic interests. His administration has also recently blocked the appointment of new members to the WTO's Dispute Settlement System Appellate Body (The Economist, 2017).[7] However, if Donald Trump is to sustain these anti-multilateralism policies, he must have the American people on his side as his tenure in the White House progresses.

Another important point made by Dellmuth and Tallberg (455) is the notion that: 'the social legitimacy of an International Organisation [is not] necessarily based on a single logic, but may be shaped by multiple sources that make citizens more or less supportive of an organisation.' In the context of the WTO, there are multiple sources of contention, which have fuelled a public distrust of the system. The most obvious factors include the link between the global trade system and the globalisation phenomenon discussed previously in section 1.2 of this paper. Furthermore, the WTO's arm's length reception of NTAs such as civil societies has also been a major sticking point, which has created a negative perception of

[7] https://www.economist.com/news/finance-and-economics/21729462-rules-based-system-trade-faces-threats-beyond-trumps-tariffs-america-holds accessed 06 January 2018.

the institution (Hannah et al., 2017; Hanegraaff et al., 2011). The relationship between the WTO and civil societies is well documented in the literature and will be addressed in the subsequent sections of this paper. However, the critical argument is that the WTO system is perceived to be undemocratic due to the closed nature of the system, which is not accommodating of a broad range of stakeholders (Esty, 2002; Howse, 2003).

There is a strong correlation between this negative perception about the WTO and the declining effectiveness of the system in recent years. For example, the challenges experienced in the recent negotiating rounds can be traced to the changing dynamics between developing and developed country dominance of the WTO system (Piewitt, 2010; Keck and Low, 2004). In the GATT years and at the inception of the WTO, participation in the multilateral trade system was dominated by the EU and the US (Dunoff, 2001: 275). Dunoff argues that it was only after the Uruguay Round, that the dominance of these 'hegemons' was broken, with developing countries gaining a voice (276). With developing nations gaining ground on their developed country counterparts in the negotiation process, the multilateral trade system has become increasingly factionalised (Michalopoulos, 1999; Dunoff, 2001; Daemmrich, 2010). As such, it has become difficult to find common ground among the member state coalitions with very different perceptions on what should be a priority in the trade negotiation agenda.

Section 2: The Current position on involved actors in international relations

In the previous section, it was argued that the WTO has over the years experienced social legitimacy issues partly due to the closed nature of the system as it pertains to decision making and the agenda-setting for the regulation of world trade. It was identified that the link between international trade liberalisation and globalisation had exacerbated the backlash against the WTO system. The section ended with a connection between the current challenges within the multilateral trade system and the complaints of developing countries that the status quo in the WTO was inimical to their active participation in the multilateral trade system. However, the analysis only made express reference to developing countries as an example of excluded actors who have grown in prominence in the decision-making process of the WTO. This does not give a full picture of the situation because, as developing countries have expanded their capacity to match their developed country counterparts in the negotiation process, the system has become even more cumbersome and sluggish, to say the least

(Murphy, 2012). As such, increased participation of developing countries in the WTO system has not corrected the social legitimacy crisis. Instead, it may have created what was recently described by Pierre Sauvé (a Senior Trade Specialist with the World Bank) at the MC11 Think Academic Conference as a situation of 'too much democracy within the multilateral trade system.' In this section of the analysis, it will be argued that the social legitimacy concerns surrounding the WTO are not limited to just the tussle between developed and developing member states for control of the multilateral trade system but is also correlated to the WTO's interactions with other non-traditional actors (NTAs).

To fully understand the position of NTAs as excluded actors within the multilateral trade system, it is important to first explain the broader concept of involved actors in international relations.

At the inception of the 'Westphalian model' of sovereign statehood in 1648, the international system was primarily configured to facilitate state-to-state relations (Vaughan, 2011; Cf: Croxton, 1999). However, in the post-World War II era, interactions in the international system have progressively deviated from a state-centric model and opened up to an ever-increasing array of actors and influences (Vaughan, 2011; Hayes, 2004; Keller, 2005). Interactions in the international system now include considerations in varying degrees from global administrative actors (international and regional organisations), sub-national actors and non-state actors (civil societies, Multinational Corporations), the media and at the simplest level, the individual.

In the context of international economic relations (i.e., the core disciplines of trade, investment, and finance), the rules-based systems, which emerged out of the post-war Bretton Woods settlement, were primarily designed to entrench free trade and neoliberal trade tenets. However, globalisation which has over the years become associated with the rise of neoliberalism has impacted more than just economic relations. In the latter half of this century, we have witnessed a dramatic restructuring of the dynamics of the international economic system. Notably, multilateralism and its associated principles and processes have led to a rescaling of political and economic power away from the states towards international, regional and supranational organisations (Archer, 2012; Slaughter, 2003; Hayes, 2004; Swyngedouw, 2004). Furthermore, there has also been a noticeable downward rescaling of powers from the State towards local, regional governments and non-state actors (most notably civil, societies and multinational corporations).

Despite a changing profile of stakeholders who have an impact on international relations, the legal position in international law has not shifted significantly over the years to holistically capture the disaggregation of statehood and the new variations within the international system (Hayes, 2004; Jackson, 2003). International organisations have been the most conspicuous challengers to the entrenched position of countries in the international order, while the other actors mentioned above have received at best peripheral acknowledgment as subjects of international law (Omiunu, 2017). As such, when conceptualising the current framework for multilateral trade negotiations, states, and international organisations stand out as the 'traditional actors' in the sense that they are the central loci for the deliberations, which have framed the negotiation agenda over the years. Although NTAs have made a distinct contribution to the debates on the current trajectory of the multilateral trade negotiation agenda, they have mainly influenced the system as 'outliers,' which lie at the periphery of the different forums and clusters which make up the global trade regulatory framework (Dunoff, 2001; Murphy, 2012).

With this foundational premise, the next section of the paper will introduce two NTAs that fit the criteria for excluded or peripheral actors within the WTO system.

2.1 Non-Traditional Actors (NTAs): A Scope for broader inclusion?

2.2 Civil Societies

Civil societies are a broad set of non-governmental actors, which represent a vast array of causes, which could range from environmental, political, business or even religious issues (Burca and Walker, 2003; Mason, 2004). In the context of international trade negotiations, civil societies have been at the forefront of lobbying the WTO to address social concerns, such as environmental and human rights issues as they relate to trade (Dunoff, 2001). In the context of the relationship between the multilateral trade system and civil societies, the participation of civil societies occurs at different levels. Conventionally, civil societies operate within the domestic space of the various WTO member states by engaging with government officials who shape the negotiating agenda of these member states (Putman, 1988; Gray, 2006). Civil societies have also been known to operate at a transnational level, most notably engaging with specific member state coalitions involved in the multilateral trade process (Trew, 2013; Burca and Walker, 2003). However, the relationship between civil societies and the WTO as an international organisation itself is contentious and has evolved

accordingly (Hanegraaff et al., 2011). At the inception of the WTO in 1995, The Marrakesh Agreement (Article v (2)) referred to the WTO's engagement with civil societies (Scholte et al., 1999). Furthermore, under a decision of the WTO General Council, steps were also were taken in 1996 to develop a guide to interacting with civil societies (Mason, 2004). However, it was only after the Seattle Ministerial Conference in 1999 that the WTO as an organisation made concerted efforts to operationalise their engagement with these actors (Hannah et al., 2017; Dunoff, 2001; Scholte et al., 1999). The WTO had initially rebuffed requests for formal involvement by civil societies within the negotiations process at international level on the premise that these actors were meant to engage with individual member states at a national level (Gray, 2006; Murphy, 2012; Dunoff, 2001). Furthermore, the WTO argued that as an international organisation they have a peculiar status, which does not support its ability to accommodate civil societies formally (Murphy, 2012). However, Dunoff (2001) disagrees with this position, citing previous examples during the Uruguay Round where other non-state actors, notably multinational corporations such as Pfizer and IBM were at the forefront of setting the agenda for intellectual property and services negotiations (281). Murphy (2012), on the other hand, argues that there is a misconception about how the WTO/NGO relationship is predicated on the status of the WTO as an international organisation. She instead explores diverse ways in which civil societies contribute to global economic governance despite the institutional constraints they face to formally operate within the WTO system (Murphy, 2012: 450; see also Gray, 2006).

The above arguments suggest that there are divergent opinions within the literature about how the civil society/WTO relationship should be conceptualised. Murphy (2012) is content to focus on the practical steps civil societies are taking to impact the global economic system as ‘outliers,' and is less concerned about arguments about their formal participation in the system. Hannah et al., (2017) are more particular about the civil society/WTO Secretariat relationship. They argue that the WTO Secretariat should desist from trying to dictate the relationship and should allow room for open and candid debates; even if these debates provide a counter-narrative to the existing status quo.

From the discussions and analysis above, a point of convergence is that civil societies have a role to play in the agenda of global economic governance. It is also clear that efforts have been made to accommodate civil societies into the WTO process (Hanegraaff et al., 2011; Reiterer, 2009). According to Reterer (2009: 369), ‘Compared to the GATT, the WTO has

already come a long way in increasing transparency, legitimacy and accountability.' However, the pertinent question is whether what has been done till date is sufficient and adequate? Some typical examples cited to justify the position that the WTO's has made reasonable and adequate efforts to accommodate civil societies includes:

1. Allowing civil societies to submit amicus curiae briefs to the WTO Dispute Settlement Panels (Dunoff, 2001, Howse, 2003).
2. The introduction of yearly Public Forum since 2001 (Hannah et al., 2017; Reiterer, 2009).
3. The accreditation of civil society groups to attend Ministerial Conferences as observers.

On the first point of amicus curiae submissions, some commentators have considered this to progress. For instance, Keller (2005) discusses the pros and cons of amicus curiae submissions and suggests in his conclusion that 'great strides have been made' by the WTO DSB in this regard. He, however, argues that there is still room for streamlining the process to attain fairness and meaningful participation for a diverse range of interest groups (Keller, 2005: 469). Also, Marceau and Pedersen (1999) considered the introduction of amicus curiae briefs into the DSB to be ground-breaking. They argued that '…even though the panel ultimately decides not to accept the submission by a non-party, the latter has still been given the fundamental opportunity to put forward arguments that may be taken by the panel' (37). However, Dunoff (2001) cites the lack of consistency in the adoption or rejection of amicus curiae briefs in some cases as evidence that the WTO system is not committed to implementing this position (Howse, 2003). Gray (2006) supports this view that submission of amicus curiae briefs was a political trade-off which was not done in the spirit of openness or with a realisation that the opinions of civil societies were significant (Reiterer, 2009: 369).

On the point of civil society participation in WTO public forums, this is also another commendable effort made by the WTO Secretariat after the Seattle protests. However, Hannah et al., (2017) argue that these public forums are 'stage-managed' by the WTO to follow pre-determined scripts.

On the point of allowing civil societies access to ministerial conferences, Hannah et al., conducted a study in 2017 which indicates from statistics made available by the WTO Secretariat that the participation of civil societies in ministerial conferences has declined over

the years. They further argue that the majority of civil societies which still attend are representing business interests ('non-civil society') or interest groups that conform to the existing status quo.[8] They suggest that this decline in engagement with the ministerial conferences by progressive NGOs and social movements has the adverse effects of:

1. limiting the space for alternative viewpoints
2. Narrowing the range of voices heard at these events, and
3. Reducing the set of ideas that are put forward in response to the questions posed during Public Forums.

These observations made by Hannah et al., were further exacerbated at the recently concluded MC11 in Buenos Aires when some civil society groups were denied entry visas by the host country: Argentina. This incident was bad publicity for the WTO, even though the secretariat apparently had no control over the decision by the Argentine immigration body. This indicates the extent to which the member-states play a crucial role in the inclusiveness or otherwise of the multilateral trade system.

In summary, the views expressed above demonstrate the conceptual, legal, and practical hurdles, which need to be crossed to integrate civil societies into global economic governance. In the last section of this paper, the significance of civil society integration will be revisited from the perspective of leveraging in systems analysis theory.

2.3 Sub-national Governments

Sub-national governments are non-central governments within a sovereign nation-state. Depending on the type of governmental structure in place, a sub-national government could be a constitutionally recognised level of government which has specific powers allocated to it under the constitution; this pattern is mostly found in federal systems. In unitary systems, a non-central government could be an administrative sub-division with devolved or delegated powers from the central government to act on some specific subject matters. The significance of sub-national governments in the international system cannot be underestimated because in the age of globalisation, sub-national governments have unprecedented access to the

[8] According to Scholte et al., (1999: 112) civil societies can be broadly categorised into conformists, reformists, and radicals.

international system. However, in international law, sub-national governments are subsumed under the rubric of the sovereign (Hayes, 2004, Jackson, 2003).

Within the framework of the multilateral trade system and as far back as the GATT era, sub-national governments have always posed a challenge to the system (Bernier, 1973; Jackson, 1967; Hayes, 2004). Especially in the context of federal systems, the general rule which has existed in international law for the better part of the Westphalian era of statehood is that federal systems have a responsibility to ensure that the acts or omissions of their sub-national governments do not infringe on international law obligations which the State is subject to (Meyer, 2016; Hayes, 2004; Bernier, 1963). Within the multilateral trade system, the current position on federal compliance with the WTO/GATT system is expressed in art XXIV: 12 of the GATT 1994. It provides that 'Each contracting party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Agreement by the regional and local governments and authorities within its territories.' Jackson (1967: 304) and Hayes (2004: 21) identify that 'the language of art XXIV: 12 descended directly from language in the draft ITO Charter.' In addition to art XXIV: 12, there are similar provisions across the GATT/WTO agreements which are modelled after art XXIV: 12.[9]

This responsibility as a default rule is not negated even in situations where the internal law of a federal system does not give the central government powers to compel its sub-national actors (Meyer, 2016; Hayes, 2004). This obligation applies as a default rule unless a contrary intention is evidenced in the text of an international treaty (Meyer, 2016; Hayes, 2004). This position relating to the conceptualisation of sub-national governments in international law also applies with much less controversy to unitary governments due to the limited powers sub-units have in unitary systems.

In the history of the multilateral trade negotiations since the inception of the GATT, sub-national governments have always been seeking more significant involvement in the deliberations by their central governments within the multilateral forum. An example, which readily comes to mind, is the relationship between the central government and the provinces

[9] For example, art 2.2 Agreement on Subsidies and Countervailing Measures (1994); art XVI (4) Marrakesh Agreement Establishing the WTO; art 13 Agreement on the Application of Sanitary and Phytosanitary Measures (1994); arts 3.1, 3.4 and 3.5 Agreement on Technical Barriers to Trade (1994); art 1.3(a) General Agreement on Trade in Services (1994).

in Canada. We can trace provincial involvement in Canada's negotiation stance to as far back as the Kennedy Rounds of GATT negotiations in 1962 (Kukucha, 2008). Over time the provinces have been pushing for a more defined role in the negotiation process. In other federal and non-federal system alike, the degree of participation of sub-national governments in foreign relations varies. On a spectrum, Canada falls under the category of liberal states which have progressively developed their consultation processes with sub-national governments on matters relating to multilateral, regional and bilateral trade negotiations. Majority of other trading nations in the multilateral trade system have limited spaces for sub-national involvement in international relations. As such, it is safe to say that these actors are excluded and at best peripheral actors within the multilateral trade system.

Introducing the analysis on sub-national governments to the debate which has predominantly been focused on civil societies is an important contribution of this paper. Conventionally, the contestations surrounding the legitimacy of the multilateral trade system has mainly been predicated on a view that non-state organisations are the main actors who are seeking more participation in the global trade system. However, this is not the case. Sub-national governments, especially in federal systems have also been active campaigners against the lack of transparency in the global economic governance system. However, their interests get drowned out because they situate most of their contestations at the domestic level against their central governments (Hocking, 1996; Putman, 1988). Canada is an excellent example to explain this point. In the history of Canada's involvement in the international trade system, they have had to carry their provincial governments along (Kukucha, 2008, Kukucha, 2009; Goff, 2016, Paquin, 2013). More so, as the scope of global trade regulation has expanded to disciplines which fall under their jurisdiction domestically, the provinces have demanded more input into the negotiating position of the central government (Kukucha, 2008; Fafard and Leblond, 2014). As we would see subsequently in the next section, the provinces being involved in direct negotiation during the Canada- EU CETA process marks a significant transformation in the participation of sub-national actors in the global trade arena.

More so, sub-national governments are usually situated closest to the people at the grassroots within different communities. This makes them strong advocates for a fair and transparent global trade system. Given this, it is suggested that future conceptualisations of NTAs in international economic relations should encompass sub-national actors.

Section 3: the Integration of NTAs into the system: The use of leverage points

In the previous sections of the paper, the emphasis was on establishing whether NTAs have a role to play in addressing the social legitimacy concerns, perceived as a democratic deficit of 21st-century international economic agreements. This question was answered in the affirmative and supported by the evidence within the literature that the WTO has struggled to change perceptions about its inclusiveness as an international organisation. Even in situations where the WTO has embraced change in its relationship with NTAs, (e.g., amicus briefs and public forums) the system, however, has been perceived to be half-hearted (Gray, 2006; Howse, 2003). As such, optimism about future breakthroughs in the negotiating process must take into consideration legitimacy issues raised above. Furthermore, a central argument of this paper is that NTAs can play a significant role in this regard. While NTAs are not the answer to all the problems of the system, but it is evident by the preponderance of the evidence that status quo is no longer fit for purpose.

Given this premise above, in this section of the paper suggestions will be made as to how NTAs can be integrated into the formal design and negotiation of future multilateral economic agreements under the auspices of the WTO. To achieve this aim, the paper will adopt a systems analysis framework developed by Donatella Meadows called 12 leverage points to intervene in a system as a basis for considering how NTAs can effectively intervene in the process.

As a foundational premise, it is therefore essential to explain the theoretical approach being proposed.

3.1 System Analysis: 12 Leverage Points to Intervene in a System

The objective in this section of the paper is to provide a panoramic overview of what complex system analysis is and, with specific reference to the work of Donatella Meadow, to introduce the model of 12 leverage points to intervene in a system.

Complex systems theory is a multidisciplinary approach, which originated in the sciences focusing on the general analysis of complexities in systems. In the world of system analysis, some useful analytic tools have been developed to explore a diverse range of complex problems faced by entities such as corporations, an economy, a living body, a city, or an ecosystem. Utilising theories and models from the natural sciences, complex system theory

scholars aim to approach every day societal challenges from a perspective which identifies and maps out nodes of interconnectivity within the collective sum of a system. The approach begins on the premise that complex systems can be difficult to change. However, there is a firm belief within the discipline that within any complex system, there are places or points of intervention where a slight adjustment or tweak can produce significant changes in everything within the whole system. Modifications can range from tweaking the basic parameters of the system, to creating feedback loops, to changing the rules and overall goals of the system.

Meadows describes the process of identifying leverage points in a complex system as a counterintuitive process because leverage points in a system are usually found in the most unlikely of places (Meadows, 1997). According to Meadows, 'Leverage points are not intuitive. Or if they are, we intuitively use them backward, systematically worsening whatever problems we are trying to solve' (Meadows, 1997: 2). She is suggesting that when the right leverage point is identified in a system, the chances are that the stakeholders to the system may be pushing this leverage point in the wrong direction. This is not a surprise because the idea of leverage points is entirely neutral in that it does not necessarily connote nodes of positive or negative change within a system per se. Instead, leverage points are viewed as points of power, which can be pushed in different directions, which then determine whether the response or impact is positive or negative.

Donatella Meadow introduced the concept of 12 leverage points to intervene in a system (from now on referred to as 12 leverage points) in the 90's. Interestingly, she got the inspiration for the model at a forum where the multilateral trade system was being discussed. Donatella Meadow reportedly formulated the 12 points in reaction to her concerns that the global trade system was a complex entity, which was bound to be unpredictable in how it behaved. More so she was also concerned that the control measures put in place to regulate the multilateral trade system where inadequate. She then proposed 12 leverage points (initially 9) within a system by which a complex entity such as the multilateral trade system could be impacted in increasing order of effectiveness. These are:

12. Constants, parameters, numbers (such as subsidies, taxes, standards).
11. The sizes of buffers and other stabilising stocks, relative to their flows.
10. The structure of material stocks and flows (such as transport networks, population age structures).

9. The lengths of delays, relative to the rate of system change.
8. The strength of negative feedback loops, relative to the impacts they are trying to correct against.
7. The gain around driving positive feedback loops.
6. The structure of information flows (who does and does not have access to information).
5. The rules of the system (such as incentives, punishments, constraints).
4. The power to add, change, evolve, or self-organise system structure.
3. The goals of the system.
2. The mindset or paradigm out of which the system — its goals, structure, rules, delays, parameters — arises.
1. The power to transcend paradigms

On face value, there are correlations between these 12 leverage points formulated by Meadows and the multilateral trade system, which was an inspiration for her model. However, Meadows makes it clear that the model she proposed was inspired by the global trade system but designed to apply broadly to any complex system. More so, in formulating these leverage points, she was drawing on her wealth of experience having studied diverse systems outside of the multilateral trade system.

Despite the caveat above, some of these leverage points can be utilised as a descriptive tool to frame the complexities of the WTO as it pertains to social legitimacy concerns discussed in section 1 of this paper. Furthermore, these leverage points proposed by Meadows can serve as a useful analytic tool to address the issue of excluded and peripheral actors such as NTAs in the multilateral trade system. For the scope of this paper, the focus will be on the last three most effective leverage points proposed by Meadows. These are:

1. The power to transcend paradigms and
2. The mindset or paradigm out of which the system — its goals, structure, rules, delays, parameters — arises.
3. The goals of the system.

The focus is on these last three value-based leverages because the multilateral trade system is at a point of transition, where the changes needed must be radical enough to challenge core values which underpin the system.

1. The power to transcend paradigms

According to Meadow's system typology, the most effective leverage point in any system lies in power to transcend paradigms. According to Meadows, this means, '…to keep oneself unattached in the arena of paradigms, to stay flexible, to realise that NO paradigm is "true," that everyone, including the one that sweetly shapes your worldview, is a tremendously limited understanding of an immense and amazing universe that is far beyond human comprehension' (Meadows, 1997: 19).

The current paradigm which informs interactions in the multilateral trade system is predominantly focused on state-to-state relations, where central governments bear responsibility for international actions of their non-central actors (Hayes, 2004; Jackson 2003; Meyer, 2016). For example, it has become accepted practice in international law over the years that sub-national governments do not have international personality and as such should not be part of deliberations in international fora. Meyer (2016) is opposed to a continued adherence to this strict vicarious liability position under international law arguing that it is a position that does not recognise the important role played by sub-national governments in international affairs today. He further explains that 'Strict vicarious liability pretends that we continue to live in a world in which actions with global consequences originate primarily in national capitals. Yet the nation-state's role has receded in favour of both supranational and sub-national action' (Meyer, 2016: 10).

Although the realities on ground indicate a rescaling of power from the nation-state both outwards and inwards, the theories which underpin international relations have been slow to adjust accordingly. In areas such as climate change and development, there has been less resistance to accommodate non-central governments as critical stakeholders in international deliberations. However, in relations to international trade liberalisation, there has been more resistance to the possibility that sub-national actors and other NTAs are potentially crucial actors needed on the international scene. The closest re-conceptualisation of involved actors in international trade relations which reflect the realities on ground are found in multilevel governance theories which try to conceptualise domestic actors operating in multilayered policy environments (Hockings, 1996; Putman, 1988; Gavin, 2006).

However, in light of the legitimacy concerns identified in the previous section of this paper, it is important to maintain an open outlook as to which paradigm informs the concept of involved actors in a transitioning world economic system. In this transitioning phase, it is

imperative that experimentation is allowed. In the specific context of inclusiveness, the previous analysis in section 1.1 and 2.1 was to the effect that the conceptualisation of involved actors in international economic relations has over the years been restrictive. The multilateral trade system has operated for a long time on the notion that the best way to achieve growth through trade was by global rules set by nation-states and technocrats. However, it is suggested in this paper that the multilateral trade system should be opened to NTA participation in this evolutionary phase. The rationale for their exclusion from the formal process of the multilateral trade system is no longer tenable given the fact that these actors may have a critical role to play in legitimising the next set of universal trade rules. More so, if sub-national actors are qualified enough to contribute to international deliberations on climate change, why are they not qualified to contribute to deliberations relating to the international trade system?

More so, the rationale for excluding sub-national governments from the multilateral trade negotiations is also now questionable in light of the recent experimentation during the Canada- EU Comprehensive Economic and Trade Agreement (CETA). In the run-up to the CETA negotiations, a key talking point concerning Canadian central-provincial cooperation was a request by the EU for Canadian provinces to be directly involved in negotiations. It was no secret that the EU insisted on the Canadian provinces being part of the bargaining process because some critical sectors covered by the CETA such as government procurement and agriculture fall within the jurisdiction of the provinces (Goff, 2016; Paquin, 2013; Van Duzer, 2013). There are also suggestions that the EU was keen on provincial involvement during the CETA negotiations in a bid to avoid a repeat of the problems, which arose during the Trade and Investment Enhancement Agreement (TIEA) negotiations between Canada and the EU in 2006. Specifically, Woolock (2011: 27) argues that during the TIEA negotiation, which was a precursor to the CETA, talks were derailed precisely because the EU required full reciprocity from Canada on deep liberalization measures, which the Canadian federal government could not deliver without provincial support (see also D'Erman, 2016: 94).

Aside from the politics behind the provinces invitation to the negotiating table, their very presence at this stage in the negotiation of an international trade agreement of this magnitude has been celebrated as a unique milestone of central-provincial cooperation in Canada. Kukucha commenting during the negotiation stage of Canada-EU CETA stated that:

> In the current Canada-EU negotiations, however, Canadian provinces enjoy an expanded level of engagement. In the early phase of talks, approximately 12 negotiating groups were established, with provinces actively involved in six, and often seven, of these forums. According to provincial officials, this is a significant departure from previous practices and is directly tied to EU demands for a 'meaningful' provincial role in negotiations (Kukucha, 2013: 534).

However, Kukucha then goes on to downplay the significance of this development stating that they '…do not represent a change in the 'culture' of federal-provincial engagement in matters of trade policy (Kukucha, 2011). He argued that the EU did not call for direct provincial participation in all areas of negotiations and that in some cases; the demands by the EU exacerbated federal-provincial tensions when Ottawa's administrative procedures were not consistent with those of the provinces. Other commentators such as Goff (2016) and Paquin (2013) are as sceptical as Kukucha about the CETA model ever becoming the norm for sub-national participation in future international trade negotiations. Paquin commenting in 2013 stated that:

> As of November 2013, Canada has participated in trade negotiations with a total of 64 countries, about one-third of the countries in the world! In none of these negotiations, however, except those with Europe, do the provinces have a seat at any table. That the CETA experience will set a precedent is, therefore, unlikely (551).

Also, Goff concludes in her paper that 'at the end of the day, perhaps the CETA proceedings are more a demonstration of the changing nature of the trade agenda than a revelation of governance innovations in trade negotiations' (Goff, 2016: 8). However, the view in this paper is that the relationship between the changing trade agenda at regional/global level and the innovations in strategy evidenced in the CETA are correlated and not a one-off occurrence. Some arguments are proffered in support of this view.

First, direct access to international trade negotiations for Canadian provinces is a unique milestone in provincial-federal cooperation in Canada, which these commentators may be underestimating. Especially considering that previously, provinces had in previous years attempted to join Canada's negotiating team and were refused direct participation (Anderson

and Lecours, 2006: 22).[10] Having the provinces at the negotiating table for Canada- EU CETA demonstrates that it is not impossible to reconceptualise a new global trade order which is not the exclusive terrain for state-to-state relations. However, this is only possible if we are willing to transcend paradigms about what is acceptable in international relations.

Second, it is important to note that provincial presence at the negotiating table made a significant difference in the outcome of the signed CETA agreement, in that their input is reflected in the substance of the agreement reached between Canada and the EU (Kukucha, 2009: 37).[11] For instance, the EU highlighting the significance of CETA reported that:

> The clear and comprehensive listing of the reservations [by the provinces] provides unprecedented transparency on existing measures, in particular at the provincial level. Canada for the first time includes explicit provincial and territorial reservations, guaranteeing to EU service providers the benefit of the current market access, without risk of future restrictions different or additional to those listed, as well as the benefit of any future liberalisation that Canada may undertake (European Union, 2014) [12]

Furthermore, Côté (2016) has described the CETA as: '… A game changer in that for the first time, Canada agreed to provide a negative list of specific existing non-conforming measures or provinces and territories that are grandfathered, instead of a blanket reservation.'[13] In line with this, on the 8th of July, 2016 provincial trade ministers decided to revise their internal-trade agreement wherein the erstwhile existing 'positive list' of deregulated sectors will now be replaced by a 'negative list, with only a limited number of sectors being exempt from free

[10] For instance, when the provinces sought input into the definition of Canada's negotiating position during the negotiations over the Free Trade Agreement with the United States in the 1980s, Ottawa refused and insisted on maintaining only 'close consultation, but nor an ultimate right of refusal for the provinces.' Eventually, the compromise reached was the establishment of the CCTN.

[11] The most notable achievement by the provinces in this era of negotiation was during the Doha multilateral negotiation and the NAFTA negotiation processes. During these negotiations, the provinces' objection to specific issues such as the original US proposal for art 2.2 of the WTO Agreement on Subsidies and Countervailing Measures (SCM), which Washington intended to use as a limitation on the competitive state subsidies in Canada, was reflected in the final negotiation position adopted by Canada.

[12] European Union (2014) EU- CETA – Summary of the final negotiating results, December 2014, http://trade.ec.europa.eu/doclib/docs/2014/december/tradoc_152982.pdf, accessed 06 January 2018.

[13] Côté, (2016) From Sea to Sea: Regulatory Space of Federal and Provincial Governments in Canada under CETA and TPP Investment Chapters, 18 July 2016, Cote,-A-Mari-Usque-Ad-Mare.pdf, at 23, accessed 03 April 2017. See also, De Mestral who points out that the CETA takes a negative list approach to exceptions, something the EU had been reluctant to adopt until this point.

trade.[14] Also, a new mechanism will be created to harmonise provincial regulations whereby provinces are to offer each other the same access Canada does to countries with which it has trade deals. These changes are not unconnected with the fact that the provinces feel included in the CETA negotiations; hence, they are more willing to make concessions like this. To buttress how significant this is, Brad Duguid, Ontario's minister responsible for trade, has described the agreement reached by the provinces (i.e., the agreement to revise their internal trade agreement) as 'unprecedented.' A caveat here is that this paper does not suppose that the use of comprehensive listing of reservations as against blanket provisions in the CETA is more efficient, as only time will tell.

The unprecedented nature of internal bargaining between Ottawa and the provinces during the CETA negotiation process can be better appreciated as evidence of shifting forms of cooperation in international economic law. For instance, a significant difference between what was obtainable in Ottawa-provincial relations pre-CETA and post-CETA is that the CETA marks a shift in the direction of the negotiation process for international economic agreements in Canada. Pre-CETA, provinces in Canada had 'low level' participation/involvement in a linear process. This occurred only during the consultation phase of trade negotiations, as seen in the era of the CCTN and more recently the C-Trade committees. However, with the CETA negotiations, Canadian intergovernmental cooperation has metamorphosed from 'low level' participation for sub-national governments' to a 'higher level' of participation. It is argued that provincial involvement during CETA negotiations constitutes a greater level of participation because the insistence of the EU on Canadian provinces joining direct talks indicates a new degree of priority attached to sub-national involvement in international trade relations. Furthermore, it underscores a growing realisation in international economic relations that it is no longer plausible to neatly compartmentalise domestic and international policies as separate issues (Putman, 1988; Hocking, 1996; Habegger, 2003).[15] In this regard, a lesson from CETA is that the encroachment of international trade/investment issues under the new models of deep integration PTAs into the

[14] The Economist (2016) Canada's internal trade: The great provincial obstacle course, 23 January 2016, http://www.economist.com/news/americas/21702495-country-far-being-single-market-may-be-about-change-great-provincial, accessed 06 January 2018.

[15] This argument has theoretical support from Robert Putman's 'two-level game' theory which analyses the intersection between domestic and international regimes and its impact on the policy choices made at both the domestic and international levels. Putman focuses on the impact of domestic 'win sets' and the opportunities and constraints, which these factors have in international negotiations.

sphere of provincial jurisdiction in Canada are creating opportunities for sub-national actors to make further inroads into the processes of international economic relations. Some people may argue that the provinces only got a seat at the negotiating table because the EU insisted on this (Woolock, 2011; D'Erman, 2016). However, the bigger picture is that the EU would not have insisted and Ottawa would not have agreed if the dynamics did not favour provincial involvement in the process. It is argued that provincial participation was imperative rather than just permissive because having the provinces on board was crucial to a meaningful agreement being reached. It underscores the relevance of stakeholder's involvement to the legitimacy of norms. As such, the real significance of the CETA case study in this regard is the growing influence of sub-national actors during the negotiation of international economic agreements. Thus, the multilateral trade system can learn from this CETA experimentation.

2. The mindset or paradigm out of which the system — its goals, structure, rules, delays, parameters — arise.

Returning to Meadow's leverage points, she argues that the second most efficient leverage point within a system is the mindset or paradigm out of which the system — its goals, structure, rules, delays, parameters — arises. Within the discipline of complex systems analysis, 'Paradigms are the sources of systems. From them, come shared social agreements about the nature of reality, come system goals and information flows, feedbacks, stocks, flows and everything else about systems' (Meadows, 1997: 17). According to Meadows, 'The shared idea in the minds of society, the great big unstated assumptions — unstated because it is unnecessary to state; as everyone already knows them — constitute that society's paradigm, or deepest set of beliefs about how the world works' (ibid).

In the context of global trade governance, since the end of WWII, a majority of countries in the international system have embraced variants of liberalism as a shared idea on how to avoid another world war and guarantee prosperity for all (Abdelal and Ruggie, 2009). The concept of free trade itself, which is a central philosophy of liberalism, has undergone some changes from classical or economic liberalism (in the pre-World War I era) to embedded liberalism (between 1945 and 1970) to neo-liberalism (1980 – till present). Following this trend, the world economic system has demonstrated in the past an ability to re-invent itself when needed. As such, the pertinent question at this point is whether the current paradigm is due for another overhaul? It is suggested in this paper that important indicators point to an affirmative answer to this question. For instance, Abdelal and Ruggie (2009) had anticipated

the unravelling of the liberalism paradigm even before recent nationalistic and populism trends occurred. They argued that:

…our current era of globalization and its neoliberal paradigm has reached the point themselves of suffering from a profound crisis of legitimacy. If that crisis is not resolved by deft policymaking in the United States and around the world, globalization is likely to be undone by national policy reactions driven by societies that have grown increasingly sceptical of newly disembedded global markets. Policymakers must recognize, moreover, that this crisis of legitimacy for globalization has been unfolding since the end of the 1990s. The crash of 2008 did not cause this crisis but has undoubtedly made it worse (Abdelal and Ruggie, 2009: 153).

These unfolding events described by Abdelal and Ruggie have a profound effect on the WTO system because the legitimacy crisis, which has plagued neoliberalism, is also manifesting itself in the multilateral trade system. This is evidenced by the diversion of attention away from multilateralism to regionalism in the last ten years. It is ironic that the paradigm of neoliberalism, which has been clung to since the fall of embedded liberalism, is itself now a paradigm in transition. This supports Meadows position in the previous analysis that it is essential '…to keep oneself unattached in the arena of paradigms, to stay flexible, to realise that NO paradigm is "true,"' (Meadows, 1997: 19). As Dunoff aptly puts it:

> We should not be surprised to see that the WTO is in transition. Like people, legal rules and institutions have life cycles. They are born because of a practical need. If well designed, they flourish for a time. But changing conditions pose new challenges. When the tensions between a rule and social necessity finally become too intense, the rule dies. It is replaced by another rule that is destined to experience the same fate (Dunoff, 2001: 284).

It is essential to evaluate how this leverage point feeds into the understanding of NTA participation in international economic agreements. The analysis in this regard is similar to the previous leverage point discussed. However, for this particular leverage point, the emphasis is on changing an existing mindset rather than questioning the truth about any specific paradigm. Also, the focus here is on civil societies rather than sub-national governments discussed in the previous section.

In the context of civil societies as involved actors in global economic governance, the collective mindset as it pertains to NTAs has been premised on the assumption that sovereign nations are the competent authorities to engage in international relations. This shared assumption has informed the practice of international relations for over a century. However, with the growing legitimacy concerns about the existing status quo, it is argued that the state-centric mind-set is questionable as the only basis to conceptualise international economic relations (Hayes, 2004). As outliers, NTAs (most especially civil societies) have found intelligent ways to operate despite the restrictions on their involvement in the multilateral trade system (Murphy, 2012). Gray (2006) supports this position that civil society engagement with the processes of global economic governance occurs via diverse ways, which are outside of the established formal institutional framework of the WTO. He also argues that civil societies via these multiple channels of contributing to the global trade agenda are impacting on the process in ways, which have been viewed as critical to advancing trade negotiations and therefore lending it public legitimacy. However, other commentators have argued severally that this is not enough (Hannah et al., 2017). For example, Dunoff points out that there has been progressing made in the WTO's attitude towards accommodating civil society into the multilateral trade system. He argues that this has been as exemplified by the much-celebrated amicus curiae submission during the shrimp-turtle case. However, he is not over optimist that this signals real openness. Dunoff (2001: 277-278 ff279) cites the lack of consistency in the adoption or rejection of amicus curiae briefs in some cases as evidence that the WTO system is not compelling in implementing this position.

3. The goals of the system

Finally, the objectives of the system are considered to be an essential leverage point, which goes a long way in shaping most of the other leverages lower down the spectrum. According to Meadows, the goals of a system are a critical lever, which can be pushed in either a negative or positive direction. She argues that whichever direction you push this point, then '…everything further down the list, physical stocks and flows, feedback loops, information flows, even self-organizing behaviour, will be twisted to conform to that goal (Meadows, 1997: 16).

In the context of global trade governance, the goals of the system have been at the heart of everything unique about the WTO. The idea of multilateral rules, which aim to reduce

obstacles to international trade and to ensure a level playing field for all trading nations, remains a worthy accomplishment achieved in the post-WWII era. However, the goals of the system, especially as these goals have grown in scope, are also at the heart of most of the contestations which are fuelling concerns about the social legitimacy of the multilateral trade system. For instance, developing country coalitions have persistently argued that the goals of the multilateral trade system do not accommodate the development disparity within the membership of the WTO (Dunoff, 2001). Furthermore, finding a balance between environmental/human right issues and the aspirations of the global trade system has also been a difficult task (Petersmann, 2006).

Looking at the history of civil society engagement with the multilateral trade system, it is clear to see that civil society interest in the system grew as goals of the GATT/WTO system expanded at the Uruguay Round. Sub-national governments have also become more interested in the activities of the WTO as the multilateral trade disciplines have expanded into areas of their domestic jurisdiction. The argument here is straightforward; NTAs have a legitimate demand to have more access to a system whose goals impact on them directly. As such if the WTO seeks to expand the scope of negotiating issues, then it should also be willing to extend the forum to accommodate all stakeholders who will be impacted by these decisions. Here, the Canada-EU CETA example discussed earlier provides an excellent example of the quid quo pro. The EU was practical in its expectation that negotiating with Canada without the provinces was not sensible. The WTO can only justify any further expansion in its remit if it is also willing to expand the scope for participation of NTAs.

More so, as the goals of the multilateral trade system have changed to reflect a development imperative, it is important to re-configure the relationship with NTAs if there is any sincerity in attaining the DDA. Scholte et al., (1999: 111) identified six potential benefits of the WTO engaging with civil societies. These benefits suggested can become templates for NTA/WTO collaboration on achieving the UN sustainable development goals (SDGs). Scholte et al., argued that:

- Civic associations can provide the WTO with information (both data and analysis) that is useful in policy formulation, implementation, and review.
- Civil society groups can stimulate debate about WTO policies, mainly by offering alternative perspectives, methodologies, and proposals. Such challenges push the WTO better to clarify, explain, justify and perhaps rethink its positions.

- Civic organizations can provide channels through which stakeholders may voice their views on trade issues and have those opinions relayed to WTO staff. With this input, officials can better gauge the political viability of proposed measures or programmes.
- Civic associations can play an important role in democratically legitimating (or indeed delegitimating) WTO activities. For example, civil society can influence the respect accorded (or denied) to WTO views and the ratification (or rejection) of WTO-sponsored trade agreements.
- Civil society bodies can serve as important agents of civic education, increasing public understanding of the WTO and its policies. Many civic associations have in this vein prepared handbooks and information kits, organized workshops, circulated newsletters, written press articles, maintained Internet sites, developed curricular material for schools, and so on.
- Relations between the WTO and civic associations can reverberate to have more general democratizing effects. For example, citizens' groups that are denied access to their national governments may be able to gain a voice through global channels such as the WTO.

These are six potentially useful benefits which the WTO needs to mainstream trade into the UN SDGs. For instance, there are specific civil societies which have resources dedicated to development causes. Such civil societies are best placed to facilitate the synergy between international trade regulation within the WTO and local implementation of policies which impact on growth. However, if there is no policy space for civil societies to operate at a transnational level where trade liberalisation takes place, then they are constrained to reactionary measures emanating from the global trade forum. Furthermore, if only civil societies which conform to the status quo are accommodated or the WTO controls the narrative so as to discourage non-conformist civil societies, this constrains the range and quality of idea that feed into the trade and development nexus.

It is suggested that civil societies should be collaborators with the WTO both as an international organisation and as the aggregate of 164 member states when the goals relating to trade and development are being formulated both domestically and internationally. It is suggested that this should also be the approach with sub-national governments. This is because sub-national governments represent constituencies and communities which are close to the grassroots where development priorities are implemented.

Conclusion

After the establishment of the WTO in 1995, the multilateral trade system recorded significant achievements especially in the area of the dispute settlement process (Elsig, 2007). However, in recent years, the multilateral trade system has found it difficult to regain the initial momentum it had garnered at the conclusion of the Uruguay Rounds. With the expansion of the WTO membership to 164 members, it was inevitable that there would be difficulties in achieving overwhelming consensus on new trade topics. In the area of inclusiveness as a global institution, the WTO in its relationship with NTAs has maintained a mode of operation as an institution which is out of touch with the expectations of the global community. The unavoidable correlation between international trade liberalisation and globalisation has not helped the situation as the WTO has been criticised for favouring the interests of multinational businesses over and above sustainable development imperatives. More so, by initially ignoring the agitations for expanded participation by NTAs which do not represent business interests in the multilateral trade system, the WTO created room for distrust of the system. The WTO has slowly but surely started making amends in correcting the negative perceptions about it. However, the evidence suggests that it is still sluggish in responding to change (Hanegraaff et al., 2011; Hannah et al., 2017). Without a doubt, there are many variables and hurdles to surmount if the multilateral trade system is to accommodate all views and interests within the core forum for trade deliberations (Elsig, 2007, Dahl, 1999).[16] As such, the debates about inclusiveness and transparency are often restricted to the relationship between the WTO Secretariat, the member states, and NTAs as outsiders.[17] The focus under this perspective has been on public relation management which is primarily handled by the external relations division of the WTO Secretariat (Hannah et al., 2017). Very often are the values of the system challenged to suggest an alternate reality where NTAs are not conceptualised as outliers but stakeholder who have as much of a right to co-determine what happens within the multilateral trade system.

This paper selected two NTAs – civil societies and sub-national governments and explored how these two actors have related with the WTO over the years. It was argued that these

[16] According to Esig (2007: 78) 'International relations scholars and regime theorists did not pay particular attention to democratic issues, as cooperation in an anarchic world could not be democratically organized anyhow.

[17] For instance, perusing through the literature on inclusiveness and transparency of global institutions such as the WTO, the impression is that NTAs are best conceptualised as 'outliers'.

actors have a crucial stake in the global economic governance regime due to the expanding scope of the system into areas of their competence, jurisdiction, and interests.

Finally, using the leverage points approach developed by Meadows, this paper explored 3 points of possible intervention within the system where experimentation should be encouraged. These three leverage points focus on values which underpin the multilateral trade system. It has been argued in the paper that there is room for experimentation on how NTAs can be incorporated into the system; however, this will only happen if mindsets are not fixed on values and paradigms relating to involved actors in international law. Relying on examples from the recent Canada-EU CETA and what is obtainable in the international deliberations on environmental issues, there is enough evidence to suggest that NTAs can directly participate in international deliberations relating to trade regulation. As such, if the world trade system is to regain the trust of the global community, it is advocated in this paper that the WTO needs to:

1. Adopt a flexible approach to conceptualising current and alternate paradigms on global trade governance;
2. Encourage experimentation within existing paradigm on global trade governance;
3. Align changing goals of system with new institutional approaches for effectively attaining these goals;

NTAs are not the single solution to WTO legitimacy crisis, but their inclusion can open new possibilities for solutions. In conclusion, experimentation on how to include NTAs in the multilateral trade system is no longer an option but an imperative.

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