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**Breaking Deadlocks:
The Role of Mediators in WTO Negotiations**

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Abstrakt

Práce se zabývá rolí mediátorů ve vyjednávání o obchodu v rámci WTO a zkoumá dopad jednotlivých mediačních strategií na celkový výsledek vyjednávání. Cílem je zjistit, jak mediátoři pomáhají zúčastněným stranám překonat problémy ve vyjednávání a následně dosáhnout dohody. Práce je založena na dvou hypotézách. Zaprvé, vychází z předpokladu, že mediátoři, kteří častěji zasahují do vyjednávání a přitom dbají o zapojení všech zúčastněných stran, mohou zvýšit pravděpodobnost úspěšného výsledku jednání. Zadruhé, má za to, že určité mediační taktiky umožňují zúčastněným stranám ochránit svou reputaci nejen v očích ostatních vyjednávačů, ale především v očích domácí veřejnosti. Na případu přípravných jednání probíhajících v Ženevě a Ministerské konference na Bali práce sleduje jednotlivé mediační strategie, ke kterým se uchýlily osoby předsedající jednáním ve WTO a generální ředitel WTO, a následně vyvozuje dopad těchto strategií na přijetí tzv. balijského balíčku, jenž představuje první multilaterální dohodu uzavřenou pod záštitou WTO. Analýza daného případu závěrem naznačuje, že mediátoři, kteří aktivně zasahují do vyjednávacího procesu a pomáhají zúčastněným stranám snižovat riziko poškození reputace v očích domácí veřejnosti, mohou pozitivně ovlivnit výsledek vyjednávání. Naopak, práce zároveň ukazuje, že dopady inkluzivní mediace jsou značně různorodé a těžko předvídatelné, což otvírá prostor pro další výzkum.

Abstract

This thesis examines the role of mediators in WTO trade negotiations and the impact of individual mediation strategies on the outcome of these negotiations. It seeks to answer the question how mediators can help negotiators to overcome the bargaining problem and reach an agreement. The thesis first presumes that mediators who frequently apply more

interventionist and inclusive tactics can increase the likelihood of a successful outcome of negotiations. Secondly, it presupposes that particular mediation tactics enable negotiators to save their face not only in front of their opponents, but more importantly also in front of domestic constituencies. Using the case of Geneva-based negotiations and the Bali Ministerial Conference, the thesis tracks individual mediation strategies which were employed by WTO chairs or the Director-General to determine their impact on the final adoption of the Bali package, representing the first multilateral trade agreement concluded under the auspices of the WTO. The analysis indicates that mediators who actively intervene in the bargaining process and assist negotiators in decreasing their audience costs may positively influence the chances of reaching an agreement. Contrarily, it shows at the same time that the effects of inclusive mediation are varied and unpredictable, which opens up room for further research.

Klíčová slova

vyjednávání, poškození reputace v očích veřejnosti, mrtvý bod při vyjednávání, mediátor, mediační strategie, vyjednávání o obchodu v rámci WTO, Ministerská konference na Bali

Keywords

bargaining, audience costs, deadlock, mediator, mediation strategies, WTO trade negotiations, Bali Ministerial Conference

Rozsah práce: 157 246 znaků (včetně mezer)

Prohlášení

Prohlašuji, že jsem předkládanou práci zpracovala samostatně a použila jen uvedené prameny a literaturu.

Prohlašuji, že práce nebyla využita k získání jiného titulu.

Souhlasím s tím, aby práce byla zpřístupněna pro studijní a výzkumné účely.

V Praze dne 13. 5. 2016

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Nikola Klímová

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List of abbreviations

BATNA	Best Alternative to a Negotiated Agreement
DDA	Doha Development Agenda
DG	Director-General
GATT	General Agreement on Tariffs and Trade
ITO	International Trade Organization
LDCs	Least developed countries
MDGs	Millennium Development Goals
MP	Member of Parliament
NGO	Non-governmental organization
NTMs	Non-tariff measures
SNT	Single negotiating text
SVEs	Small and vulnerable economies
TNC	Trade Negotiations Committee
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRQ	Tariff-rate quota
UN	United Nations
WTO	World Trade Organization

Introduction

‘People only see us as good as our progress on Doha. That is the reality. And the perception in the world is that we have forgotten how to negotiate. The perception is ineffectiveness. The perception is paralysis. Our failure to address this paralysis casts a shadow which goes well beyond the negotiating arm, and it covers every other part of our work. It is essential that we breathe new life into negotiations. We must send a clear and unequivocal message to the world that the WTO can deliver multilateral trade deals.’¹ In his inaugural speech, the freshly appointed Director-General (DG) Roberto Azevêdo admitted that he had run out of expressions capturing the alarming state of the multilateral trading system. Pledging to make every effort to restore trust in the organization, he inherited the office at the time when it was becoming increasingly difficult to talk about the Doha Round in the present tense.

The current negotiation round, ambitiously named the Doha Development Agenda (DDA), has been ongoing for nearly 15 years. Launched only two months after the September 11 terrorist attacks, it reflected the consensus of member states on the need to involve developing and least developed countries (LDCs) which had been so far playing the role of mere bystanders in the formation of global trade rules.² In spite of high expectations concerning the potential to deliver opportunities for equitable growth across the globe, the negotiations soon ended up trapped in a deadlock.³ Paying the price of the mixed legacy of the Uruguay Round, the DDA was put on hold even before the poorest countries could reap its benefits.

While the negotiations are being increasingly pronounced dead even by WTO members⁴, the same countries are entering into deeper bilateral or regional trade agreements

¹ WTO (2013a).

² Fergusson (2011).

³ The negotiations first collapsed at the Ministerial Conference in Cancún in 2003. After a short period of successful attempts to tackle a number of contentious issues, the talks hit deadlock again in 2005. In 2007, members even failed to convene the regular Ministerial Conference (Elsig and Dupont 2012). One year later, ministers from selected member states held informal meeting to overcome the existing obstacles. However, they eventually did not reach any agreement Blustein (2008). The two subsequent Ministerial Conferences which took place in 2009 and 2011 were widely seen as maintenance talks (Interview, 4 May 2016). In summary, until Bali the progress was hardly visible.

⁴ Since the collapse of the informal ministerial meeting in 2008, there have been lively discussions whether the Doha Round can or should be revived. On the eve of the latest Ministerial Conference in Nairobi, the debate once more entered the scene as the U.S. Trade Representative Michael Froman published a funeral oration for the DDA. Like other developed economies such as the EU or Japan, Froman argued that the original mandate has become a historic relic. From his point of view, adopting pragmatic approaches and finding new architecture is the only route forward (Froman 2015; Donnan 2015). Still, on the other side of the debate, countries such as

than ever before.⁵ In other words, instead of dismantling trade barriers globally, states are becoming more selective when it comes to deciding with which partners to go further. This development, nevertheless, benefits mainly big trading nations and leaves developing economies with no markets to offer behind. From the perspective of multilateralism, the choice of preferential agreements, furthermore, raises concerns about the future of global free trade since it indicates a rise in targeted protectionism and distracts WTO members' attention away from multilateral arrangements.⁶ At the same time, observers point out that the WTO, representing the culmination of a trade liberalisation success story, is running the risk of transforming into a mere administrative body.⁷

To prove that the WTO has not lost its purpose as a viable negotiating forum, the talks needed to break the path of failed opportunities and get back on track. Yet, amid occasional calls to end Doha's life support and cut the losses⁸, the majority of members were desperately seeking momentum to restart the bargaining process. Eventually, in September 2013, the appointment of Roberto Azevêdo as a head of the WTO Secretariat injected new energy and vigour into the round just in time before the upcoming Ninth Ministerial Conference in Bali.⁹ Under his leadership, member states concluded an agreement regarding a small subset of issues representing, however, the first truly multilateral agreement negotiated under the auspices of the WTO. While numerous factors might have contributed to the outcome of the conference, mediation services of WTO chairs and the DG in particular¹⁰ reportedly played an important role in shaping the Bali package. Equally, one member of the Czech delegation to the Ministerial confirmed, "The Bali agreement would not come into existence if it were not for extraordinary negotiation skills of the DG."¹¹

Brazil, China, India and many African WTO members insist that the Doha Round must continue, pointing to the importance of the core DDA issues – namely agriculture, non-agricultural market access and services – for poorer economies (Lester 2016). The divergence over the future of the talks was eventually reflected in the Nairobi Declaration, more specifically in the paragraph 30, reading, '*We recognize that many Members reaffirm the Doha Development Agenda (DDA), and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, and reaffirm their full commitment to conclude the DDA on that basis. Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have different views on how to address the negotiations. We acknowledge the strong legal structure of this Organisation.*'

⁵ The issue of complementarity between multilateralism and preferential trade agreements has been addressed for instance by Lawrence (1996); Buckley, Io Lo and Boulle (2008); Baldwin (2011); WTO (2011).

⁶ See for instance the discussion on the return of protectionism by Thirlwell (2013).

⁷ Jacobsson and Stocchetti (2013).

⁸ See for instance the position of the former U.S. Trade Representative Susan Schwab published in 2011 in Foreign Affairs (Schwab 2011).

⁹ As one former Czech diplomat explained, Azevêdo's predecessor Pascal Lamy had already lost his drive and became more isolated from day-to-day negotiations. Contrarily, Roberto Azevêdo perked up the process with new ideas and approaches (Interview, 4 May 2016).

¹⁰ Lehmann (2013); Office of the United States Trade Representative (2013); WTO (2013b); Sally (2014).

¹¹ Interview, 11 April 2016.

Mediation has been defined as a form of negotiation in which a third-party neutral assists in finding an agreement.¹² With the consent of the parties, mediators try to facilitate communication, identify and reframe disputed issues and find areas of common ground to resolve the conflict of opinions. In the GATT and WTO context, the function has become more institutionalized although the particular organization of mediation services remains an uncodified practice.¹³ The role is concurrently played by ambassadors sitting as chairs of individual negotiating groups, ministers presiding over biennial Ministerial Conferences and the DG who coordinates the work of the whole mediation team.¹⁴ As John Odell notes WTO mediators have limited but still significant capacity to influence the process of consensus building and the resulting distribution of gains and losses.¹⁵ Nevertheless, only little is known about how the role is really played, what mediation strategies they use and with what consequences.

In light of these facts, the thesis will address the following questions.

What were the strategies implemented by WTO mediators during pre-Bali negotiations and at the Bali Ministerial Conference?

How did these strategies help negotiators to reach an agreement?

In summary, the goal of the thesis is twofold. Until now, most IR theorists have devoted their systematic attention to the role of mediators in armed conflicts. On the contrary, only handful of studies has been published about multilateral trade negotiations.¹⁶ In this respect, the thesis has pretensions to fill the research gap and explore the potential of mediation services in this area.

Secondly, to answer the research questions, the thesis tracks individual mediation strategies of the DG and WTO chairs and analyses their impact on the Bali bargaining process. With regard to previous knowledge, two attendant hypotheses were established. The thesis presumes that the Bali Ministerial Conference was more likely to be successful because (1) WTO mediators introduced more interventionist and inclusive mediation tactics, and (2) WTO mediators helped member states to save their face and decrease their audience costs. Drawing on behind-the-scenes reports and interviews with participants of Geneva talks

¹² Bennett and Hermann (1996).

¹³ Odell (2004); Pfetsch (2009).

¹⁴ Ismail (2009); Jones (2015).

¹⁵ Odell (2005).

¹⁶ See the discussion on previous knowledge in chapter 2.1.

and the Bali conference, the thesis offers an interesting insight into the world of multilateral trade negotiations.

The thesis begins with background on basic principles of WTO negotiations and outlines key features of the Bali package. It introduces the history of negotiation rounds under the GATT and goes on to discuss the relevance of current trade negotiations amid the changing reality of the world trade. Furthermore, it explores the road to Bali – explaining what was at stake and which areas formed the core of the package – before moving on to briefly summarize previous knowledge of mediation activities in multilateral negotiations. The thesis then discusses individual theoretical considerations. Here it begins by examining the distribution dilemma and the paradox of bargaining power. Applying Putnam's model of two-level games, it further outlines how domestic constituencies can influence WTO negotiations and why negotiators intentionally build up domestic pressure. The chapter then presents the concept of deadlocks and explores the full range of mediation strategies and individual tactics which have been applied in real-life negotiations. The theoretical section finally concludes with the formulation of research hypotheses and the description of methodology.

The empirical section studies the role of WTO mediators and tests both hypotheses using the case of Bali negotiations. Referring to positive reviews of Azevêdo's performance, the thesis principally focuses on negotiations taking place after he took office. Moreover, the analysis distinguishes between Geneva-based talks and the Bali conference itself since the team of WTO mediators changes depending on individuals serving as chairs. The conclusion of the thesis returns to the original questions and situates the research outcomes into the reality after the latest Ministerial Conference in Nairobi.

1 GATT history and WTO negotiations

WTO embodies a prominent forum for trade negotiations between states; strictly speaking, it constitutes one of the pillars of the contemporary international economic cooperation. Since its creation on 1 January 1995, the organization has been promoting trade liberalization and forming legal ground-rules for international commerce. Nevertheless, the roots of the process of removing protectionist measures date back already to the late 1940s when a group of 23 countries concluded the General Agreement on Tariffs and Trade (GATT).¹⁷ After the failed attempt to create an International Trade Organization (ITO), the GATT – alongside the other two Bretton Woods institutions, the World Bank and the International Monetary Fund – took over the role of the leading multilateral instrument shaping the international trade for about half a century.¹⁸

During the era of the Cold War, the GATT continued its efforts to reduce protectionist barriers through a series of multilateral negotiations known as trade rounds. In the early years, the talks dealt mainly with the question of tariffs reduction with the participation of only a narrow circle of countries. However, in the mid-1960s, the Kennedy Round put on table also the issue of other trade defence instruments such as anti-dumping practices, thus opening the debate on future limitation of non-tariff measures (NTMs). The GATT agenda as well as its membership further expanded throughout the Tokyo Round when 102 countries agreed on major cuts in customs duties in the world's principal industrial markets and adopted a package of codes introducing an advanced regulation of the use of NTMs, including technical barriers or import licences.¹⁹ Despite these achievements, by the early 1980s the GATT got into the slow lane. Firstly, it had to struggle with serious challenges in the form of deteriorating trade policy environment, global economic recession, high rates of unemployment and growing support for protectionism.²⁰ Furthermore, the regime did not respond to the changing reality of the world economy. The globalization was in progress, services were becoming important to more and more countries and cross-border investments multiplied.²¹ All these factors contributed to the general consensus on the need for a comprehensive reform, which resulted in the organization of the Uruguay Round, the longest and the most complex negotiation round in the history of the GATT.

¹⁷ Lowenfeld (2008).

¹⁸ Footer (2006).

¹⁹ Narlikar (2005).

²⁰ Hoekman and Kostecki (2009).

²¹ Strange (2014).

In spite of its troubled progress, the Uruguay Round marked a key milestone in the GATT history. For four years prior to its launch, member states were examining and clarifying individual issues to reach consensus on a negotiating agenda which addressed, in the end, all fundamental problems in the trade policy area.²² The talks were granted the biggest negotiating mandate ever agreed upon as a result of which all GATT articles could be open to an amendment. Nevertheless, the inclusion of new sectors such as trade in services, agriculture, textiles as well as intellectual property did not close the list of reform efforts.²³ GATT members additionally laid foundations of a modern, highly institutionalized multilateral trading system which eventually succeeded the outdated regime in 1995.²⁴

The tradition of multilateral negotiation rounds continued also after the creation of the WTO. Although some countries publicly supported the opening of new talks already in 1996, their calls went unheard until 2001 when the latest round of trade negotiations was launched.²⁵ The Doha Round, unofficially known as the DDA, started only two months after the September 11 attacks with a complex and ambitious agenda on the table. The goal of the meeting in the capital of Qatar was twofold. First, WTO member states intended to express their solidarity with the US and to bolster global cooperation. Secondly, the talks reflected the general consensus on the need for more balanced trade rules contributing to the economic growth in the LDCs.²⁶ Despite high expectations, the Doha Round soon ended up in a deadlock with members' opinions diverging over the precise content of the DDA. The differences were caused by several factors. From the outset of the talks, developing economies advocated major reforms in agriculture, calling for the removal of trade distortions and other barriers imposed by developed countries. According to Doha observers, these policies, nonetheless, belonged to sticking points already during the previous rounds and their resolution would require – considering their politically sensitive nature – making a number of tough calls.²⁷ Further controversy emerged in response to the proposals of large economies arguing that the Doha agenda had to additionally address new issues such as investment, sustainable development or e-commerce, especially with regard to the growing

²² WTO (2008).

²³ Herdegen (2013).

²⁴ The idea to create a formal and institutionalized multilateral trading system was first formulated in 1987 by Canada. However, most of GATT members originally supported only strengthening the GATT Secretariat (Croome 1995).

²⁵ Cooper (2001).

²⁶ Fergusson (2011).

²⁷ Van den Bossche and Zdouc (2013).

role of developing markets in China or India, ranking among the key world's exporters on one hand, yet refusing to cut their export subsidies and import barriers on the other hand.²⁸

From the very beginning, the progress of the DDA has been, moreover, hindered by the procedural setting. In general, WTO negotiations can be described as a highly complex bargaining process taking place at various levels. The highest decision-making body is the Ministerial Conference which usually meets every two years. Representing the full membership, it takes decisions on all trade-related matters under the existing multilateral agreements. In the meantime, the authority to supervise the negotiations is delegated to the Trade Negotiations Committee (TNC)²⁹ chaired *ex officio* by the DG.³⁰ Pursuant to the Doha Declaration, the TNC was further charged to establish subsidiary negotiating groups to handle individual areas and issues.³¹ These bodies are composed of permanent representatives of member states to the WTO in Geneva who appoint one of the ambassadors to sit as a chairperson and lead the talks.³² Finally, it is a common practice in the WTO to appoint Deputy DGs as well as “friends of the chair” who assist the team of WTO mediators. Working under the leadership either of the DG or the chairs of the negotiating groups, they are commonly authorized to conduct private consultations and to set out a strong forward agenda.³³

The decision-making process itself is bound by two principles, namely consensus and “single undertaking”. Although they emerged under different circumstances, both were eventually incorporated into the Doha negotiations, complementing each other. The consensus principle generally implies that all opinions be taken into account. In the WTO context though, unanimity is not explicitly required since in the absence of objections, consensus is assumed.³⁴ The informal rule must be interpreted as a double-edged sword. On one hand, it ensures that no country – irrespective of its political or economic power – can be steamrolled by other members into accepting a disadvantageous agreement. Consensus, on the other hand, is in direct contradiction to the effective decision-making process as it also grants all members the right to veto any decision.³⁵ The “single undertaking” – formally introduced

²⁸ Fergusson (2011); Kleimann and Guinan (2011).

²⁹ The TNC was set up by the Doha Ministerial Declaration to operate under the authority of the General Council. See paragraph 46 of the Doha Ministerial Declaration.

³⁰ Jones (2015).

³¹ See paragraph 46 of the Doha Ministerial Declaration.

³² Odell (2005).

³³ Odell (2004); Pfetsch (2009); Interview, 3 May 2016.

³⁴ Ismail and Vickers (2011).

³⁵ Bellmann, Hepburn and Wilke (2012).

already during the Uruguay Round – became a central point of the Doha agenda.³⁶ In WTO parlance, the practice means that “nothing is agreed until everything is agreed”. The usual justification for this approach is that it facilitates trade-offs across all areas. In practice, member states, nonetheless, frequently overrate their losses and use linkages to hold trade talks hostage.³⁷

In light of these constraints, the character of the Bali agenda followed the notion of a small package – a format originally proposed in 2011 by Azevêdo’s predecessor Pascal Lamy as an attempt to rebuild trust and to pave the way for breaking the deadlock.³⁸ The negotiations focused on three areas: (1) trade facilitation, (2) some agriculture issues, and (3) special and differential treatment for LDCs.³⁹ Although the package was initially believed to raise little controversies, the “early harvest” became a surprisingly difficult task to complete. The situation further aggravated when the Geneva preparation talks hit deadlock and ministers had to leave for the conference with unclear prospects for the Doha future.⁴⁰ Yet, after five days of lengthy negotiations, member states eventually managed to find landing zones and signed off on the first multilateral trade agreement since the creation of the WTO.⁴¹

The most significant part of the Bali package relates to trade facilitation measures seeking to reduce red tape and simplify customs procedures, thus increasing cross-border flows of trade. The legally binding deal also guarantees technical assistance for developing countries with the adjustment of their infrastructure, a concession which has long been a major stumbling block in the talks.⁴² In the agriculture area, the discussions covered three topics, namely public stockholding programmes designed to enhance food security in developing countries, tariff quota administration, and export subsidies.⁴³ Whereas the latter two were – from the outset of the talks – seen as straightforward and achievable proposals, the food security issue played, predictably, a starring role in the negotiations. In fact, the row over public farm subsidies which broke out between the US and India pushed the whole Ministerial to the brink of a collapse. In response to these difficulties, an interim solution

³⁶ Weiss and Wilkinson (2014).

³⁷ Cottier (2009); Van Grassek and Sauv  (2006).

³⁸ Bellmann (2014).

³⁹ WTO (2013c).

⁴⁰ WTO (2013d).

⁴¹ Bali Ministerial Declaration. Adopted on 7 December 2013: WT/MIN(13)/DEC.

⁴² Trade Facilitation Agreement, Ministerial Decision. Adopted on 7 December 2013: WT/MIN(13)/36 or WT/L/911.

⁴³ Public Stockholding for Food Security Purposes, Ministerial Decision. Adopted on 7 December 2013: WT/MIN(13)/38 or WT/L/913; Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture, Ministerial Decision. Adopted on 7 December 2013: WT/MIN(13)/39 or WT/L/914; Export Competition, Ministerial Declaration. Adopted on 7 December 2013: WT/MIN(13)/40 or WT/L/915.

in the form of a four-year due restraint mechanism was agreed upon.⁴⁴ Finally, the Bali package laid down a number of commitments within the development agenda, including duty-free and quota-free market access for LDCs, preferential rules of origin for their products, a “service waiver” and a control mechanism monitoring the special treatment.⁴⁵

Officially, Bali was declared a major success for the multilateral trading system. As DG Azevêdo recognized in his closing speech, ‘[F]or the first time in our history: the WTO has truly delivered.’⁴⁶ On one hand, Bali certainly challenged the critical voices reprobating the WTO as a viable negotiation forum and at least partially restored trust in the organization. Furthermore, after more than a decade of negotiations which are generally seen as having extensively departed from the development content, the Bali package reflects the essence of the original DDA mandate, which makes its conclusion all the more remarkable.⁴⁷ On the other hand, the importance assigned to the final deal should not be excessive since it is far from a signal that the Doha Round will cross the finish line or that the inequities of the past will eventually be corrected.⁴⁸ In fact, the package is a modest down payment reflecting what could be negotiated instead of what ought to be delivered. As observers noted, ‘The symbolism of the Bali declaration is perhaps more important than the outcome.’⁴⁹ In this regard, the Bali package represents only a small step forward. Contrarily, the real challenge for WTO members will be to start outlining a clear post-Bali road map to address Doha “unfinished business”.

⁴⁴ ICTSD (2013a).

⁴⁵ Duty-Free and Quota-Free Market Access for Least developed countries, Ministerial Decision. Adopted on 7 December 2013: WT/MIN(13)/44 or WT/L/919; Preferential Rules of Origin for Least developed countries, Ministerial Decision. Adopted on 7 December 2013: WT/MIN(13)/42 or WT/L/917; Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least developed countries, Ministerial Decision. Adopted on 7 December 2013: WT/MIN(13)/43 or WT/L/918; Monitoring Mechanism on Special and Differential Treatment, Ministerial Decision. Adopted on 7 December 2013: WT/MIN(13)/45 or WT/L/920.

⁴⁶ WTO (2013n).

⁴⁷ Wilkinson, Hannah and Scott (2014).

⁴⁸ Bellmann (2014).

⁴⁹ Overseas Development Institute (2013).

2 Theoretical and methodological framework

2.1 Previous knowledge

The literature on mediation of multilateral negotiations is truly rare; works dealing with mediation in multilateral trade negotiations are nearly non-existent. The pioneering analysis of mediators' activities in GATT negotiations was published by Gilbert Winham who highlighted the role of the GATT Secretariat in major rounds. For Winham, the key contribution of mediators resides in their organizational skills. On the contrary, psychological expertise is described as less important.⁵⁰ A series of studies of WTO negotiations was introduced by John Odell who carried out an in-depth exploratory research based on interviews, mapping various functions of WTO chairs and Secretariat leaders acting as intermediaries during individual sessions of negotiations. He concluded that despite obvious limits, the presence and activities of WTO chairs increased overall efficiency of negotiations as well as legitimacy of the distribution of gains and losses.⁵¹ His collected data will be used as a supportive reference material in the theoretical part of the thesis. The role of WTO chairs was examined also by Frank Pfetsch who assessed the impact of individual mediation tactics on the outcome of negotiations. In his research, Pfetsch illustrated in detail the importance of more interventionist mediation approaches for reaching an agreement, with the single negotiating text (SNT) being in the lead.⁵² An opposite effect of mediators' interventions was, however, demonstrated in the study by Faizel Ismail who came to the conclusion that imbalanced and biased SNTs increase the likelihood of failures.⁵³ Finally, addressing the issue of information asymmetry, Peter Drahos presented an interesting discussion on inequality of bargaining power between developing and large developed countries. In his paper, he suggests that a more formal structure of negotiating groups would help developing countries to increase their monitoring and analytical capacity as a result of which they could achieve fairer deals.⁵⁴ Nevertheless, the supply of information or assistance in data assessment are not exclusively reserved only to formal coalitions but they might as well constitute an integral part of mediators' work portfolio.

Mediation activities in multilateral negotiations form focal points of a few studies from other related fields. In his article on institutional bargaining, Oran Young clarified

⁵⁰ Winham (1979).

⁵¹ Odell (2004, 2005, 2009).

⁵² Pfetsch (2009).

⁵³ Ismail (2009).

⁵⁴ Drahos (2003).

the concept of individual leadership by distinguishing its three main forms – structural, entrepreneurial and intellectual.⁵⁵ The leadership issue was also addressed by Jonas Tallberg who examined how individuals presiding over negotiations overcome collective-action problems. According to the outcomes of his research, negotiators prefer to entrust chairs with agenda management, brokerage or representation since decentralized bargaining decreases the likelihood of reaching a deal. Tallberg further assumes that the source of chairs' influence lies in their asymmetric control over the bargaining process and in their knowledge of parties' preferences.⁵⁶ Finally, the entrepreneurial dimension of chairs' interventions also attracted attention of Blavoukos and Bourantonis who analysed the relationship between organisational features such as mandate, resources or formal constraints and chairs' potential.⁵⁷

The growing importance of multilateral negotiations has also spurred research on miscellaneous strategies in mediation aiming at breaking deadlocks. Antrim and Sebenius introduced the practice of the chair Tommy Koh who made a significant contribution to the positive outcome of the Law of the Sea Conference.⁵⁸ Similarly, the article by Stefan Persson demonstrates that various negotiation techniques dealing with deadlocks were applied already during the Paris Peace Conference in 1919.⁵⁹ The study of negotiations in Bosnia by Michael Watkins offers another valuable perspective on the discussed issue. Based on his findings, Watkins proposes several approaches to strategic simplification which should represent an initial step towards managing complexity in negotiations.⁶⁰ As for another relevant contribution to the debate, an interdisciplinary insight into the deadlock problem was provided by a collective monograph edited by Amrita Narlikar.⁶¹

In contrast to poor research records on the process of structuring deals, the examples of mediation of violent armed conflicts have been extensively cited in the IR literature.⁶² In this field, Jacob Bercovitch, I. William Zartman and Michael Watkins belong definitely to the most prolific authors.⁶³ Certainly, a lot of ideas from such studies are not relevant and hence cannot be applied directly within the trade domain. Parties involved in violent conflicts

⁵⁵ Young (1991).

⁵⁶ Tallberg (2002, 2010).

⁵⁷ Blavoukos and Bourantonis (2011).

⁵⁸ Antrim and Sebenius (1992).

⁵⁹ Persson (1994).

⁶⁰ Watkins (2003a).

⁶¹ Narlikar (2010b).

⁶² This distinction was introduced by Raiffa, Richardson and Metcalfe (2002).

⁶³ Bercovitch and Rubin (1992); Bercovitch (1996); Bercovitch and Houston (2000); Bercovitch (2002); Touval and Zartman (1985a); Touval and Zartman (1985b); Zartman (1994); Rosegrant and Watkins (1994); Rosegrant and Watkins (1995); Rosegrant and Watkins (1996); Watkins (1999); Watkins (2003a); Watkins (2003b); Watkins and Lundberg (1998).

are frequently isolated from each other and the key function of mediators is transmitting messages between them. In this regard, mediators who are charged to deal with armed conflicts might consider communication the most decisive strategy to be applied. Contrarily, mediators facilitating trade talks often go beyond the minimal action as they do not have to focus on establishing the contact between parties. In multilateral trade negotiations, parties do not refuse to come to the negotiating table and communicate with their counterparts. Here, the principal problem resides in their reluctance to show their cards. Still, despite these differences, some findings in the conflict resolution literature might have universal value for understanding mediators' influence in general.

The material aspect of WTO negotiations and the content of the DDA have been subjects of hundreds of other studies. The body of literature can be divided into four groups. Firstly, Doha's development essence spurred research related to the impact of trade negotiations on developing economies. Recalling the imbalances of GATT rounds, the studies critically evaluate the ongoing marginal position of developing and LDCs in the talks, presenting ideas for breaking the existing pattern.⁶⁴ The second category covers studies dealing with the role of individual countries or coalitions in the negotiations and the contribution of WTO policies to the development of domestic markets. Overall, their research scope diverges depending on countries' preferences and activities.⁶⁵ In light of the troublesome progress, researchers have also turned their attention to the future of the DDA. Examining the causes and consequences of Doha deadlocks, they put forward a number of proposals on the reconstruction of the WTO foundations.⁶⁶ Lastly, the most abundant group of literature reviews the WTO negotiations with regard to individual topics. The studies range over cotton trade, intellectual property, internet and digital products, finance, trade competition, sustainable development, investment or trade in services, with agriculture leading the list.⁶⁷

⁶⁴ See for instance Narlikar (2003); Hertel and Winters (2006); Van Dijck and Faber (2006); Crump and Maswood (2007); Kategekwa (2009); Srinivasan (2009); Rolland (2012); Wilkinson and Scott (2013).

⁶⁵ See for instance Mattoo and Stern (2003); Bhattasali, Li and Martin (2004); Rutherford, Tarr and Shepotylo (2005); Siddique (2007); Van Vooren, Blockmans and Wouters (2013); Baldwin, Kawai and Wignaraja (2014).

⁶⁶ See for instance Moore (2004); Lal Das (2005); Lee and Wilkinson (2007); Davey and Jackson (2008); Jones (2010); Martin and Mattoo (2011); Richter (2014); Jones (2015).

⁶⁷ See for instance Key (2003); OECD (2003); Ingco and Nash (2004); Sampson (2005); Anderson and Martin (2006); Anderson and Valenzuela (2006); Díaz-Bonilla, Frandsen and Robinson (2006); Wunsch-Vincent (2006); Heath and Sanders (2007); Hoda and Gulati (2007); Koning and Pinstrup-Andersen (2007); McCalla and Nash (2007); Kern and Mads (2008); Stoll, Busche and Arend (2009); Orden, Blandford and Josling (2011); Yamane (2011).

2.2 Bargaining problem

The founding father of the contemporary bargaining theory John Nash described bargaining as a process when rational players with different sets of preferences have the opportunity to cooperate in many ways, yet they cannot agree on a mutually beneficial outcome.⁶⁸ The problem is particularly striking within multilateral trade negotiations when parties take great pains to reach a comprehensive deal but at the same time haggle over the concrete distribution of its benefits. Since all negotiators prefer at least some gains to no agreement⁶⁹, they try to surmount the distribution dilemma through dynamic negotiations with a sequence of offers and counteroffers, secretly hoping that the other party will eventually make concessions and settle for a smaller part of the pie.⁷⁰ From this perspective, individual moves of players in the bargaining process are based on purely subjective anticipations of their potential gains as well as losses and on expectations of what the adversaries will accept.⁷¹ However, as negotiations progress, uncertainty soars and players' prospects gradually deteriorate until one of them decides to back down. Why would he reappraise his position and chances in the bargaining game? Because he was still interested in the deal but his opponent has left a strong impression that he would prefer further escalation of demands despite the risk of no agreement.⁷² Now the question is how does a player persuade his counterpart about the intention to stand his ground even at the cost of jeopardizing the agreement? Thomas Schelling proposed a solution by introducing the paradox of bargaining power. From his point of view, the outcome of negotiations is strongly influenced by the power of parties to bind themselves and sacrifice their right of choice. As he put it, 'in bargaining, weakness is often strength, freedom may be freedom to capitulate, and to burn bridges behind one may suffice to undo an opponent.'⁷³

The concept of bargaining power is closely related to the ability to commit oneself to a certain position and to fool the other party into thinking that this was the bottom line. Nevertheless, no bluffs are effective until they are credibly communicated to the opponent. In other words, a player pretending to be resolved has to persuade the others that he is not lying. In negotiations, finding effective means for making a convincing commitment might be very difficult as it will be highly dependent on the institutional and structural characteristics

⁶⁸ Nash (1950).

⁶⁹ Schelling (1960).

⁷⁰ Rubinstein (1982).

⁷¹ Fearon (1998).

⁷² Schelling (1956).

⁷³ Schelling (1956: 282).

of the talks⁷⁴. Generally, parties communicate their incentives through a series of threats. Yet, to be plausible, a threat must incur some cost or risk that the sender would be reluctant to bear.⁷⁵ The principal way to generate costly signals in negotiations is to put reputation visibly at stake and create audience costs, that is, the costs imposed either by domestic or international political audiences.⁷⁶

2.3 Audience costs

The desire to boost support for the demands and consequently gain an advantage over the adversaries encourages negotiators to tie their hands during the bargaining process.⁷⁷ This tactic relates to actions which are taken for the purpose of increasing the costs of backing down. In most cases, negotiators turn to threats, reputational arguments or declarations referring to national prestige to gain leverage. Nonetheless, negotiations taking place behind closed doors do not enable parties to convince opponents that their own statements concerning the points of resistance and bottom lines are not a cheap talk.⁷⁸ Therefore, negotiators go public and advance their demands in front of the audience. By binding themselves publicly, they send a clear message that they are prepared to (or at least they pretend to be prepared to) face the costs associated with a potential failure. Fearon models the situation as a ‘war of attrition’ as each step generates further costs⁷⁹ and parties risk hardening their positions to the point that they would prefer no agreement to cooperation.⁸⁰

The power of publicity resides in the crucial influence of the audience over the bargaining position of negotiators. Taking into account the logic of two-level games⁸¹, audience costs have both an international as well as a domestic element. On the international level, reputation constructs first-order beliefs about country’s credibility.⁸² Accumulation

⁷⁴ Schelling (1956) argues that the commitment tactic is easily applicable in negotiations with the following characteristics: (1) parties are represented by bargaining agents with strict instructions; (2) bargaining process is public; (3) parties are involved in parallel and continuous negotiations; (4) the bargaining agenda clears the way both for compensatory and for retaliatory moves.

⁷⁵ Fearon (1992).

⁷⁶ Martin (1993); Fearon (1994).

⁷⁷ Apart from tying hands, Fearon (1997) argues that states can also signal their incentives through sunk costs. This technique corresponds to actions taken *ex ante*, irrespective of the fact whether the party makes concessions later or not. In this case, the player pays the cost when it sends the signal. By contrast, the tying-hands tactic gives rise to costs only if the player pulls back.

⁷⁸ Jeong-Yoo (1996).

⁷⁹ Empirical analyses on the effects of audience costs were published by Tomz (2007, 2009). In his work, he also examined the increase of audience costs with the level of escalation and verified the correlation between audience costs and types of political regimes.

⁸⁰ Fearon (1994).

⁸¹ Putnam (1988).

⁸² Brutger and Kertzer (2015).

of foreign-policy failures to live up to its commitments is particularly harmful, yet costs inflicted by international audience take longer to realize. By contrast, the effects of costs imposed by the domestic public are quite instant⁸³, which might explain why state leaders are more concerned about losing face on home ground. On this point, Fearon further notes that considering the fact that incumbent state leaders are far more likely to lose power due to the competitive practices of the national political opposition than by international pressure, domestic audience significantly contributes to their resolve to protect their state's reputation also internationally.⁸⁴

The awareness of the threat of punishment by domestic audience is deeply rooted in the minds of all negotiators. However, as Putnam observes such a constraint can be easily turned to a strategic advantage. Through deliberate reduction of the potential win-set on the national level (Level II), negotiators might directly influence the distribution of benefits in their favour on the international level (Level I).⁸⁵ In the words of a British diplomat, complaining about the domestic constraints with which one must struggle is the natural beginning of tough negotiations.⁸⁶ However, the leverage effect is not the only implication of the correlation between audience costs and bargaining power. With respect to their signalling and commitment value, audience costs show a great deterrence potential in international bargaining in two ways. Firstly, states which are able to generate larger audience costs may need fewer escalatory moves to make credible commitments and scare off the opponents. Secondly, politicians coming from countries with higher sensitiveness to audience costs will be less willing to concede as they would face more severe punishment for undermining their credibility.⁸⁷

While a moderate use of audience costs poses a low risk to a fruitful outcome of negotiations, their excessive escalation might be highly detrimental to the bargaining process. Once the costs reach a specific level, negotiators become firmly locked in their positions and are not able to concede. At this point, negotiations run the risk of a complete breakdown which can be, nevertheless, averted with the aid of a third party entering the talks. As previous research suggests, mediators have the capacity – through a wide range of tactics – to undo commitments and decrease audience costs of involved parties.⁸⁸ By assuming the responsibility for concessions and trade-offs, they enable negotiators to reach

⁸³ Partell and Palmer (1999); Tomz (2007).

⁸⁴ Fearon (1994).

⁸⁵ Putnam (1988).

⁸⁶ Campbell (1976).

⁸⁷ Fearon (1994).

⁸⁸ Odell (2004).

a compromise and at the same time to save their face in front of domestic constituencies. In summary, mediation provides opportunities to unlock positional thinking and to ease political pressure reducing the potential win-set.

2.4 Deadlocks in international negotiations

All along its history, the Doha Development Round has been struggling with a sequence of deadlocks which have led to the general frustration and scepticism about the future of trade multilateralism. Periods of stagnation are a recurrent problem of collective bargaining, especially when parties negotiate over distributive issues. If successfully surmounted, deadlocks can generate benefits for all participants; contrarily, complete breakdowns bring about only high sunk costs. In other words, their stillness represents both a stepping stone as well as a serious threat.

Despite their variety, deadlocks share several features. First, parties always face a high degree of uncertainty concerning consequences of individual proposals as well as objective chances of concluding an agreement. Negotiators are not only short of information on intentions, preferences and goals of their counterparts but they also cannot determine with certainty whether the standstill is a part of opponent's tactics or a signal that he has hit the bottom line.⁸⁹ Secondly, deadlocks impede any progress in negotiations as parties tend to stand firm on inconsistent positions and neither of them is willing to make further concessions. At these stages, negotiators wait for each other to move in order to save their face, protect reputation and consequently gain a clear upper hand in the bargaining process.⁹⁰ Finally, Amrita Narlikar specifies a third condition to describe negotiations as deadlocked. According to her definition, a deadlock is a specific case of non-cooperation when '[a] landmark moment in the negotiation process – which may be an 'action-forcing event' in the shape of a chair's text or a deadline imposed by a mediator, or may be a natural landmark endogenous to the negotiation and recognised as such by the parties involved – despite having set up expectations towards a compromise, is unable to trigger the necessary concessions to ensure an agreement on the particular issue'.⁹¹

Based on their effects, Narlikar proposes three categories of deadlocks. The first type is conceptualised as a stalemate in terms of movement with a de-escalatory dynamic.⁹² In this case, she elaborates the model of a 'mutually hurting stalemate' by Touval

⁸⁹ Persson (1994); Bercovitch and Lutmar (2010).

⁹⁰ Bercovitch and Lutmar (2010); Elsig and Dupont (2012); Odell (2009); Faure (2005).

⁹¹ Narlikar (2010a: 2-3).

⁹² Narlikar (2010a).

and Zartman which emerges under the following condition: (1) parties refuse to yield; (2) contentious tactics seem unreasonable; and (3) delays are costly.⁹³ With regard to these factors, deadlocks may be regarded as the trigger to make new concessions. However, within multilateral trade negotiations, deadlocks often appear in their second form, an extended delay. The long-term stagnation deepens the existing conflict of interests and increases costs of the agreement. As a result, the impasse produces high costs along with limited benefits and arouses political indifference. Finally, in the worst case, deadlocks can persist for such a long time that parties are encouraged to improve their BATNA (Best Alternative to a Negotiated Agreement) and disengage from the bargaining process. The probability of an agreement approaches zero and negotiations break down completely.⁹⁴

Understanding the anatomy of deadlocks is the first step to raise more sophisticated questions. What makes negotiators opt for bargaining strategies that lead to deadlocks? Which factors increase the likelihood of deadlocks? Finally, to what extent do these factors converge and interact? During negotiations, negotiators are free to pursue a range of strategies which can be adjusted in response to the course of talks. At one end of the spectrum, they can adopt a strictly distributive strategy aiming at claiming values at the expense of their opponents. To get as much of the pie as possible, they start high and refuse any concessions, exaggerate their needs, conceal relevant information, make visible commitments and also issue threats.⁹⁵ Contrarily, bargaining parties can follow purely integrative strategy lying at the opposite end of the scale. In this case, they commit themselves to the process of creating value to the benefit of all participants. The strategy comprises a set of win-win tactics such as information sharing, exchange of concessions or reframing of discussed issues.⁹⁶ Unsurprisingly, the choice of negotiating strategies is directly connected to the occurrence of deadlocks, with higher potential at the distributive end of the spectrum. Yet, the question concerning precise roots of deadlocks remains still open.

A plausible answer was suggested by Bercovitch and Lutmar who classified the relevant factors into two categories: (1) process, and (2) structural.⁹⁷ In general, process

⁹³ Touval and Zartman (1985a); Zartman (1991).

⁹⁴ Narlikar (2010a).

⁹⁵ Lax and Sebenius (1987); Pruitt (1991); Dupont and Faure (1991).

⁹⁶ Odell (2006); Walton and McKersie (1965), Pruitt and Rubin (1986).

⁹⁷ Although Elsig and Dupont (2012) introduce a different classification, they reach very similar conclusions. According to their observations, deadlocks occur because of the following determinants: (1) interests (e.g. superior BATNA or strong domestic group pressure); (2) institutions (e.g. institutional constraints such as voting rules); (3) ideas (e.g. entrenched informal decision-making modes); and (4) information (e.g. the incentives of parties to bluff). On the whole, their observation strongly corresponds to research outcomes of Bercovitch and Lutmar (2010).

variables refer to the development of negotiations by explaining why parties refuse to make concessions. Firstly, deadlocks usually occur if negotiators consider their BATNA superior to the existing proposal made by opponents. In other words, BATNA has a direct impact on the scope of the zone of agreement and discourages parties from making concessions. Secondly, deadlocks are products of mutual distrust which are further fuelled through bluffs and lies. Once negotiators fail to credibly signal their bottom lines, they will be suspected of deliberately deceiving the other parties who may understandably pursue hard line in return. Regarding structural variables, the authors offer three explanations of bargaining impasse. Firstly, power is a shaping factor in making and breaking deadlocks across all types of negotiations. However, individual types of power distribution can lead to highly unpredictable results. In this regard, a perfect symmetry between negotiators can be destructive to the same degree as a striking asymmetry. While equally powerful parties will try to preserve the balance of power at any cost, a predominant player might stonewall in order to push weaker counterparts into the corner. Furthermore, institutional setting can make the bargaining process more deadlock-prone. As outlined in Chapter 1, the WTO procedural rules such as the consensus principle or “single undertaking” belong to shining examples because they grant veto power to each participating country and allow them to take all discussed topics hostage. Finally, the model of two-level games enters the scene, explaining how domestic political structures and interests complicate the conclusion of an agreement.⁹⁸

Now the concept of deadlocks has been introduced, where exactly does the WTO, more specifically the Doha Round, stand? The nature of multilateral negotiations within the WTO is a fertile ground for missed deadlines, failed conferences and brinkmanship approaches. The predominant feature of the talks resides in an extreme level of uncertainty not only with respect to the intentions of others but also in relation to own demands. As one experienced negotiator declared aptly, ‘Most delegations don’t know their own bottom lines.’⁹⁹ Additionally, the decision-making principles which are firmly entrenched in minds and hearts of WTO negotiators have been constantly criticized by analysts and practitioners crying out for a profound reform of the system. Besides these constraints, the Doha Round is being increasingly confronted with several new challenges. Traditional export-oriented countries have been slowly withdrawing their interest from multilateral deals since unilateral liberalization by trading partners along with regional agreements represent viable alternatives

⁹⁸ Bercovitch and Lutmar (2010).

⁹⁹ Odell (2009: 280).

that they can turn to.¹⁰⁰ Put differently, the improved BATNA of key players weakened their support for a multilateral solution. The growing preference of bilateral cooperation initiatives was confirmed already in 2006 by the then U.S. Trade Representative Susan Schwab who noted, ‘Everyone knows that if there is no Doha Agreement, we are perfectly capable of moving ahead on the bilateral track.’¹⁰¹ Apart from that, the balance of power deflected in favour of emerging economies such as Brazil, China or India who completely transformed the dynamics of negotiations. Their expanding role in the global economy secured them a greater voice at the negotiating table which should be – in the opinion of developed countries such as the US – counterweighted with increased responsibility for global free trade.¹⁰² In summary, the argument that the DDA has been highly deadlock prone since its beginning is certainly not exaggerated.

2.5 Role of mediators in breaking deadlocks

Once WTO member states engage in multilateral negotiations, the debates open with purely distributive tactics. State representatives present high demands, commit themselves to extreme positions, link individual issues for the purpose of strengthening their leverage, refuse to accept the demands of their counterparts and misinterpret or manipulate information. At the outset of the negotiations, parties tend to postpone any integrative proposals or concessions and conceal information regarding their bottom lines. At this point, mediation tasks performed by ambassadors, ministers, secretariat leaders or other individuals become relevant.

Mediation can be defined as a form of assistance in negotiations.¹⁰³ The key objective of mediators consists in intervening in bargaining with the consent of the parties and helping them to reach a compromise.¹⁰⁴ As Bercovitch and Houston stress mediation should not be perceived as ‘a linear cause-and-effect interaction; it is a reciprocal process’.¹⁰⁵ In fact, mediation activities reflect the context with regard to involved parties and their moves, procedural dynamics as well as structural constraints. Mediation activities are not restricted to any particular set of techniques; a menu of tactics can be adopted based on the specific needs and circumstances. In the mediation literature, the traditional typology of mediation

¹⁰⁰ Young (2010).

¹⁰¹ Bhagwati, Krishna and Panagariya (2014).

¹⁰² Kirk (2011).

¹⁰³ Bennett and Hermann (1996).

¹⁰⁴ Odell (2004).

¹⁰⁵ Bercovitch and Houston (2000).

strategies introduced by Touval and Zartman and further elaborated by Bercovitch and Odell is frequently cited.¹⁰⁶ The authors classify mediators' activities along a scale ranging from passive to active involvement, in other words, from low to high intervention. At one end of the continuum, mediators assume the role of communicators who focus mainly on channelling information among the parties or facilitating cooperation with little control over the bargaining process. Secondly, mediators may act as formulators who influence the structural aspects of the talks, monitor and regulate information flows and promote innovative solutions by reframing the discussed topics. The most powerful form of intervention is the strategy of a manipulator who uses his authority and leverage to manipulate the parties into an agreement.¹⁰⁷ The next sections will deal with each strategy separately referring to real-life examples of mediation tactics in multilateral negotiations.

2.5.1 Communication strategy

Communication strategy encompasses a set of the most passive tactics which could be collectively described as observation, diagnosis and communication.¹⁰⁸ At this stage, mediators try to make contact with all interested parties, gain their trust by avoiding taking sides and establish themselves as legitimate authorities. The scope of their activities is at first limited to surveying the demands of negotiators, examining potential barriers to the agreement and testing reservation values of all participants. According to the testimony of one negotiator, the described tactics were employed during the drafting of the Dispute Settlement Understanding within the Uruguay Round.

‘Ambassador [Julio] Lacarte [of Uruguay] was a great chair. He listened very carefully. He went to great lengths to give everyone a sense of being included. Then he also called in each delegation, or spokesman for several delegations, for what he called “confessionals.” He also travelled to some capitals. Essentially he said, “Trust me. Show me your cards.” I’m not sure how many really did. But he tried to test, to feel, to probe for where you had

¹⁰⁶ Another frequently used classification has been developed by Kressel (1972) who distinguishes three categories of mediation techniques: (1) reflective behaviour which aims at reducing the degree of complexity, uncertainty, distortion and unrealistic intentions in the negotiation process; (2) nondirective behaviour representing a more proactive involvement that resides in efforts to increase the chance of convergence of interests and demands; and (3) directive behaviour by which mediators advocate a specific solution and directly influence the bargaining process.

¹⁰⁷ Touval and Zartman (1985a); Bercovitch (1996), Odell (2004).

¹⁰⁸ Odell (2004).

flexibility and where you really had none. And once he found something where you really had no flexibility, he took that on board as something you were going to have to have. On other issues, he expected you to sit silently and cooperate when it was something the other guy had to have.’¹⁰⁹

On the other hand, low intervention of mediators should not be confused with complete passivity. In this regard, indifference in relation to the concerns and requests of bargaining parties or reluctance to ask questions and to track the potential zone of agreement illustrate common pitfalls. At the 1999 Ministerial Conference in Seattle, US Trade Representative Charlene Barshefsky, chairing the negotiations, was blamed for being less attentive to the interests of other member states. Her critics complained that she had not put enough effort into private consultations with ministers and even openly advanced US national interests in the capacity of the conference’s leading mediator.¹¹⁰

In view of the fact that multilateral negotiations usually contend with considerable complexity, the supply of detailed information forms a crucial part of mediator’s portfolio. The rationale behind this competence was explained by Touval and Zartman who noticed that mediator’s goals will be successfully accomplished not on the grounds of unbiased or impartial conduct but thanks to possessing relevant resources which negotiators value.¹¹¹ The more resources are available to the mediator, the higher is his entrepreneurship potential. Blavoukos and Bourantonis recognize two kinds of resources being at the disposal, namely information and political capital. During negotiations, mediators can take advantage of existing bureaucratic bodies (such as secretariats) or procedural mechanisms (for example, confidential bilateral meetings) in order to get privileged access to undisclosed information. Consequently, information asymmetry to the prejudice of negotiators enhances mediators’ influence over the deal-making process.¹¹² Records of the Kennedy Round clearly demonstrate that GATT DG Eric Wyndham-White injected new energy into the negotiations drawing on the information on domestic political constraints as well as objections collected by the GATT Secretariat.¹¹³ Similarly, the chair of the Third United Nations Conference on the Law of the Sea Tommy Koh established his own informal secretariat charged

¹⁰⁹ Odell (2004: 11-12).

¹¹⁰ Odell (2002).

¹¹¹ Touval and Zartman (1985b).

¹¹² Blavoukos and Bourantonis (2011).

¹¹³ Tallberg (2010).

to provide in-depth technical and economic expertise, which facilitated the development of a draft agreement.¹¹⁴

In conclusion, the communication strategy enables mediators to bolster their legitimacy and master required know-how. Yet, in most cases understanding the inner detail of the issue and acquaintance with the ‘small print’ mark only the preparatory work followed by more proactive approaches in the form of formulation and manipulation tactics.

2.5.2 Formulation strategy

Mediators commonly go beyond minimal techniques and resort to more creative and interventionist methods. At the earliest stages of the negotiation process, they may choose meeting sites, convene small-group meetings, establish specialized groups, take part in the selection of their chairs, set preliminary deadlines or schedule the agenda.¹¹⁵ Alongside these opening tactics, mediators take orchestrated actions to structure the bargaining process using simple negotiation arithmetic.¹¹⁶ After the setback of the 1999 conference in Seattle, WTO chairs introduced several confidence-building measures including small-group meetings. The model was based on the premises that a substantial amount of work could be completed in private sessions while still preserving the privileged position of the plenary meeting. Despite initial controversies, WTO members eventually complied with the proposed principle of internal transparency by holding specialized meetings with limited attendance and adopting tentative recommendations which were referred to the full membership for further consideration. A similar practice was followed also during the talks taking place through 2004. In order to reach consensus, WTO chairs simplified the structure of participants through private consultations with delegates of individual coalitions who advocated common interests. Yet, the informal procedural rules also guaranteed all coalition members, dissenting from the uniform opinion of their partners, their right to speak on their own behalf in the plenary, which resulted in a sharp decline in complaints about low transparency and disproportionate representation.¹¹⁷

Subtracting parties does not constitute the only tactics aiming at the simplification of complex negotiations. In fact, skilful mediators transform the entire design of the bargaining process and manipulate various structural elements such as parties, issues,

¹¹⁴ Antrim and Sebenius (1992).

¹¹⁵ Odell (2004).

¹¹⁶ Sebenius (1983).

¹¹⁷ Odell (2005).

procedural rules, rounds or linkages.¹¹⁸ The techniques employed by Richard Holbrooke during the diplomatic talks on the war in Bosnia portray a unique approach to managing complexity. Upon his appointment, Holbrooke had to cope with several challenges. Apart from psychological barriers between the combatants intensifying the deep-rooted animosity, the diplomatic efforts repeatedly foundered on the absence of a hurting stalemate. In other words, all parties involved in the conflict preferred violence to a peaceful settlement. To ripen the situation and facilitate the agreement, Holbrooke had to contend with another obstacle – the structural complexity of the negotiations, primarily with respect to the number of parties and the scope of discussed issues. From the outset of the talks, he pursued a split-and-sequence logic, breaking the negotiations into smaller steps and sequentially locking the negotiators in gains. He also put on hold contentious issues such as border delimitation until the parties had invested more in the bargaining process. Finally, weeding out of blocking issues made a significant contribution to the success of the talks but at the same time sowed the seeds of future disputes. On the basis of a detailed analysis, Holbrooke decided that the status of Kosovo would be completely excluded from the Dayton agenda. Nevertheless, the subsequent events have proven that the legal uncertainty sparked off further conflict over the territory only a few years later.¹¹⁹

In the course of the negotiations, mediators can adopt a more subtle approach by introducing an informal SNT serving as a starting point for stagnating discussions. This move usually reacts to the conflicting substantive proposals put forth by negotiators who have not been able to generate support among their peers and consequently reach consensus. First of all, mediator's intention to compile a package deal incentivizes the parties to show flexibility otherwise they might lose control over the bargaining process.¹²⁰ Moreover, the mediator can reframe the ongoing talks by describing the proposed SNT as the ultimate focal point accommodating major needs of all parties. Such pressure alters the perception of negotiators about the benefits and costs of potential rejections.¹²¹ Within the WTO, the tactics has been introduced several times with divergent results. The draft text prepared by General Council chair Harbinson is an illustration of its successful application. During Doha preparations throughout 2001, Harbinson created a checklist of issues to be included in the final declaration. In response to his proposal, member states formed coalitions and participated in informal meetings during which Harbinson examined individual blocking

¹¹⁸ Watkins (2003c).

¹¹⁹ Watkins (2003a).

¹²⁰ Buzan (1981).

¹²¹ Bazerman and Neale (1992).

issues and attempted to come up with fitting solutions. Later on at the July plenary meeting, he informed members about the remaining gaps in the agreement and announced his plan to draft the declaration on this own motion. In September, Harbison published a SNT with only few square brackets followed by two special draft ministerial declarations. After the revision of the key text, he referred the SNT to the chair of the ministerial conference. Despite initial reservations, the final declaration shared a common language and copied the structure of Harbinson's draft.¹²² The effectiveness of the SNT tactics was demonstrated also during the climate change negotiations when the conference chair Jean Ripert drew on the information acquired through bilateral consultations with the key players and constructed a balanced draft convention. At the final session, negotiators eventually adopted an agreement broadly corresponding with Ripert's initial proposal.¹²³

2.5.3 Manipulation strategy

At critical moments during negotiations, mediators might decide to take the helm and push individual negotiators in a particular direction. By making use of their leverage¹²⁴ mediators filter information, take responsibility for concessions and trade-offs, give an ultimatum or even issue public threats to press for more flexibility. Essentially, manipulative tactics aim to expand the zone of agreement and persuade the parties of the detrimental effect of the potential breakdown. In the WTO, most of the interventions take place in response to long-term stagnation just prior to the final deadline. A report of the participant in the 1986 conference demonstrates how the chair Enrique Iglesias took control over the bargaining process and compelled negotiators to make concessions.

‘On Wednesday we were still stuck on which of three texts to work on. He took 30 ministers off to the nearby town hall, and basically wouldn't let them go until we settled at least which text to work from. [...] He was a master in knowing when to push and when not to push. I'll never forget we were working on investment. The US had come down a great deal from what they wanted, yet Argentina would not give. Finally he looked over at the Argentine, just like this, and said, ‘Please minister, surely this

¹²² Odell (2009).

¹²³ Tallberg (2010).

¹²⁴ Leverage belongs to the most elusive concepts in mediation. According to Kleiboer (1996: 371), it refers to ‘a mediator's ability to put pressure on one or both of the conflicting parties to accept a proposed settlement’. Fundamentally, it is closely associated with the resources at mediator's disposal which can be used in the form of sticks (negative sanctions) or carrots (positive sanctions).

is something you can give.’ If the minister had replied, ‘absolutely not,’ it would have been a mistake [...].¹²⁵

Besides hardline bargaining approaches, mediators can play their ace in the form of disclosure of information to the benefit of weaker parties. Having privileged access to technical analysis, they can reveal true costs and gains of the respective deal and consequently rectify any harmful power imbalance. This tactic is of special importance within multilateral negotiations addressing a broad range of topics since expanding agenda means that countries have to increase their monitoring and analytical capacities in order to secure fair agreements. At this point, negotiators might either rely on mediator’s assistance or join more or less formalized coalitions that permit a division of labour. As for the latter, the practice of the Cairns Group during the Uruguay Round illustrates how a careful analysis of the costs to US exporters and European subsidized markets altered the content of the final deal.¹²⁶ Equally, the research on patents and trade rules on access to medicines conducted by a group of NGOs and developing countries prior to the Doha Ministerial Conference discredited the position of pharmaceutical corporations and weakened their lobby in TRIPS negotiations.¹²⁷ On the other hand, mediators can also contribute to the balance of information by disclosing real implications of negotiators’ demands. This was the case during the Law of the Sea Conference chaired by Singapore’s representative Tommy Koh. He was acquainted with a computer model developed by MIT researchers which depicted the cash flow output of a hypothetical sea-mining system. Effectively, the model was able to explain how individual economic and technical scenarios proposed by negotiators would influence the economic performance of the project. With regard to its potential, Koh actively encouraged all delegates to attend a seminar during which the MIT team discussed their research results. After the meeting, a few ambassadors expressed their willingness to have their proposals critically evaluated. In response to the analyses, they admitted that a re-consideration might be in order. As a result, the MIT model formed basis for further talks.¹²⁸

Action-forcing events such as deadlines represent another powerful tool for finding the way out of the deadlock. However, the decision about their application requires careful deliberation regarding the ripeness of the bargaining process. Precipitated pushes for a deal

¹²⁵ Odell (2005: 442).

¹²⁶ Drahos (2003).

¹²⁷ Sell (2002).

¹²⁸ Raiffa (1998).

can easily ruin the bargaining process as well as damage mediator's reputation. Regarding the use of deadlines, one negotiator noted,

'The deadline is a great but risky tool. Great because without a deadline it's difficult to end negotiations. [The parties] tend to play more and more and try to squeeze more and more and try to push more and more, because they have time. Risky because if you do not meet a deadline, either the process breaks down or deadlines lose their meaning.'¹²⁹

In the last resort when negotiations are only inches close to a complete collapse, mediators have the capacity to withdraw their mediation, threaten public denunciation of the talks and even impose punishments on the parties.¹³⁰ However, the critical challenge resides in the judgment how long to wait before throwing in the towel. From this perspective, mediators need to follow a cautious policy and evade early interventions. One of the strongest moves of WTO chairs is the threat to terminate mediation. During the Uruguay Round, Julio Lacarte credibly signalled his unwillingness to continue mediation should his proposals not be accepted by the key players. At the private session with the delegates from the EC, the US, India and Brazil, he left a strong impression that the negotiations would not move forward without his assistance. Eventually, his risk paid off as his threats triggered the final compromise.¹³¹ Contrarily, mediator's threats might further lower the odds of agreement by poisoning the overall atmosphere and outraging the membership. At the Seattle conference, the US chair Charlene Barshefsky threatened to impose the agreement upon the participants by declaring, 'If we are unable to achieve that goal, I fully reserve the right to also use a more exclusive process to achieve a final outcome. There is no question about either my right as the chair to do it or my intention as the chair to do it. But it is not the way I want this to be done.'¹³² At the eleventh hour, Barshefsky convened a green room meeting inviting only selected delegates, which fuelled criticism concerning the lack of transparency in the proceedings.¹³³

¹²⁹ Watkins (1999: 260).

¹³⁰ Winham (1979).

¹³¹ Odell (2005).

¹³² Odell (2009: 286).

¹³³ Odell (2009).

2.6 Methodology

2.6.1 Research method and hypotheses

The thesis deals with the impact of mediation strategies and individual mediation tactics on the outcomes of multilateral trade negotiations in the WTO context, more specifically the Geneva-based preparatory talks and the subsequent Bali Ministerial Conference. It draws inspiration from previous research on the role of mediators in multi-party negotiations which suggests that the choice of mediation strategies has substantial implications for the likelihood of reaching an agreement.¹³⁴

The thesis introduces a single-case study of Bali negotiations. On one hand, the selected case shares similar features with previous Doha negotiations. The talks have been taking place between a large number of countries; in fact, the membership increased only by 16 states with the key players – such as the US, the EU, Brazil, China or India – being all present since the launch of the round.¹³⁵ Furthermore, the Doha Ministerial Declaration delimited a complex – and also politically sensitive – negotiation agenda ranging over agriculture, development issues, services, market access for non-agricultural products, intellectual property, investment, competition policy or e-commerce.¹³⁶ The broad scope of negotiations is another recurrent scenario dating back already to the Uruguay Round. Finally, since the Doha beginning, the talks have been bound by an ill-suited decision-making procedure based on “single undertaking” and consensus. As Chapter 1 explained, both principles must be interpreted as double-edged swords since the protection of the member-driven character of the negotiations is in direct contradiction with their efficiency.

On the other hand, Bali deviates from its forerunners in several aspects. The negotiations were generally seen as the last chance to save the DDA.¹³⁷ Yet, the prospects for success were quite pessimistic given the legacy of preceding failures. The crisis began already in 2007 when members failed to convene the regular Ministerial Conference.¹³⁸ One year later, an informal meeting in Geneva with selected member states attempted to overcome some obstacles but in the end, ministers did not reach any agreement.¹³⁹

¹³⁴ Bercovitch (1996); Assal, Wilkenfeld, Young, Quinn, Pate and Beardsley (2002); Odell (2004, 2009).

¹³⁵ WTO (n. d.).

¹³⁶ Doha Ministerial Declaration. Adopted on 14 November 2001: WT/MIN(01/DEC/1).

¹³⁷ Bendini, O’Keefe and Nieminem (2013).

¹³⁸ Elsig and Dupont (2012).

¹³⁹ Blustein (2008).

At the Seventh Ministerial Conference in Geneva in 2009, members even refrained from engaging in any negotiations.¹⁴⁰ In summary, until Bali the progress was rather elusive. Apart from that, Bali negotiations significantly differed from more ambitious WTO formats as they eventually settled for a small package of carefully selected issues, a modest down payment to rebuild trust among negotiators. The new package concept also challenged the prevailing “nothing is agreed until everything is agreed” principle, adding a postscript “to break a stalemate, minor agreements can be concluded in advance”. Finally, the talks transformed also on the fly after Roberto Azevêdo took over the office of the DG. In September 2013, he jump-started the negotiations by altering the traditional format of consultations and using creative tactics to find landing zones.¹⁴¹ The turnaround in the negotiations was confirmed also by one former Czech diplomat who compared Lamy’s and Azevêdo’s practice before the Bali Ministerial Conference.

‘Towards the end of his term, Lamy was rather out of the loop of negotiations at lower levels. By contrast, Azevêdo adopted a different approach. As soon as he felt that members were approaching consensus on a particular issue in smaller groups, he got down to work to find out the opinion of other negotiators. He would run back and forth from one delegation to the other, convene business breakfasts, lunches or dinners, create new small groups and hold consultations with coordinators of individual negotiating groups to make sure that the full membership has a voice. In other words, Azevêdo did his homework and ran errands to make the deal happen.’¹⁴²

In summary, in cooperation with the chairs and the “friends of the chair”, Azevêdo started clearing the draft texts, removing bracket by bracket, to pave the way for Bali success.

To analyse the case, the thesis draws on congruence method and process tracing. As George and Bennett point out the congruence method offers considerable flexibility and adaptability. It enables analysts to examine a possible causal relationship between variables but it does not require, at the same time, finding two cases similar in every aspect but one. The fundamental characteristic of the congruence method is that the analyst first outlines

¹⁴⁰ Interview, 11 April 2016.

¹⁴¹ ICTSD (2013d).

¹⁴² Interview, 4 May 2016.

the theory presuming a relation between the independent and the dependent variable and then evaluates its ability to explain the outcome in the selected case. If the outcome of the dependent variable corresponds with the theory's prediction, the likelihood of a causal relationship between variables is strengthened. In combination with process-tracing, the method is further able to identify a detailed causal chain depicting how the independent variable can lead to the final outcome.¹⁴³

The previous knowledge and the selected case finally lead to the following research questions:

What were the strategies implemented by WTO mediators during pre-Bali negotiations and at the Bali Ministerial Conference?

How did these strategies help negotiators to reach an agreement?

To find plausible answers, the thesis has to first define the features of mediation strategies which affected the outcome of Bali negotiations. The dependent variable is the outcome of the Geneva-based consultations and the Ministerial Conference. The selection of independent variables draws on theoretical conclusions and previous knowledge.

Firstly, previous research suggests that there is a clear pattern demonstrating that the likelihood of achieving successful outcome increases when more interventionist mediation strategies are employed.¹⁴⁴ There are many typologies categorizing individual mediation strategies. The thesis will be based on the typology elaborated by Touval and Zartman¹⁴⁵, Bercovitch¹⁴⁶ and Odell¹⁴⁷ who classify mediators' approaches along a scale ranging from low to high intervention. They identify three types of strategies: 1) observation, diagnosis and communication, 2) formulation, and 3) manipulation. In negotiations, mediators initially endeavour to establish rapport with all parties, gain their trust, collect relevant information and identify key issues. In many cases, they will not be allowed to go beyond the role of a mere communication channel and resort to more decisive tactics. Yet, low control over the bargaining process prevents them from fulfilling their true potential. Contrarily, mediators who can engage in more interventionist strategies such as formulation and manipulation

¹⁴³ George and Bennett (2005).

¹⁴⁴ Bercovitch (1996); Assal, Wilkenfeld, Young, Quinn, Pate and Beardsley (2002).

¹⁴⁵ Touval and Zartman (1985a).

¹⁴⁶ Bercovitch (1996).

¹⁴⁷ Odell (2004).

do not only facilitate communication between parties but they also provide more opportunities for finding landing zones and reaching an agreement.

Nevertheless, the intensity of mediators' intervention is not the only factor influencing the outcome of negotiations. As Odell¹⁴⁸ points out selectivity and low transparency can raise suspicions and resentment of involved parties who might question mediator's credibility and consequently decide to withdraw their support. In this respect, mediation should be also a highly inclusive process enabling all negotiators to exchange their opinions and discuss any objections. Based on these findings, the first hypothesis is established.

Hypothesis 1: The Bali conference was more likely to be successful because WTO mediators did not pursue only communication strategy but they also adopted more interventionist and inclusive tactics.

In the context of this research, more interventionist tactics are defined as mediators' activities falling into the formulation or manipulation strategy as outlined in Chapter 2.5. Regarding the concept of more inclusive tactics, it is defined both positively and negatively. Principally, it implies that individual issues are frequently discussed in open meetings, all proposals are circulated to the full membership and that most delegations are involved in the elaboration of draft texts. Besides, it rules out the practice of shaping deals in small groups with the participation only of selected countries.

Secondly, referring to the logic of two-level games, WTO negotiations are significantly affected by the pressure of domestic constituencies having the power to hold chief negotiators accountable for their political failures. With respect to the persistent threat of punishment, negotiators are motivated to advocate domestic interests and bargain hard at the international level, which leaves only little room for compromise.¹⁴⁹ Furthermore, the range of alternative outcomes of the talks is also influenced by the fact that any agreement must be accepted by the domestic audience. Therefore, a deal will emerge only if the interests of domestic constituencies overlap.¹⁵⁰

However, negotiators have learnt how to turn the domestic constraints into their advantage. By reframing demands as the defence of vital national values and using reputational arguments, they intentionally tie their hands in order to limit the win-set and

¹⁴⁸ Odell (2009).

¹⁴⁹ Fearon (1998).

¹⁵⁰ Putnam (1988).

consequently gain more bargaining power.¹⁵¹ Game theorists describe such bargaining strategies as the creation of audience costs.¹⁵² Understandably, large audience costs reduce the potential zone of agreement and discourage parties from future cooperation. In the end, negotiators end up locked in their positions and are not able to make any further move.

As previous research suggests, mediators can help parties to restart the bargaining process and at the same time protect their reputation.¹⁵³ Through a wide range of tactics, they have the capacity to undo existing commitments and decrease negotiators' audience costs. By assuming the responsibility for concessions and trade-offs, they enable negotiators to reach a compromise and to save their face not only in front of the opponents, but also domestic constituencies. In summary, mediation provides opportunities to unlock positional thinking and to ease political pressure reducing the potential win-set. Based on these findings, the second hypothesis is established.

Hypothesis 2: The Bali conference was more likely to be successful because mediators helped negotiators to save their face and decrease their audience costs.

In the context of this research, audience costs are defined as any public statements of political leaders invoking national or international security, values or obligations for the purpose of pushing adversaries into concessions. Mediators' tactics aiming at undoing the commitments then range over consultations with negotiators and their domestic constituencies, SNTs, proposals of trade-offs and concessions, the supply of information about parties' true gains and losses, public threats highlighting the risk of a collapse and denunciations of gambling with the credibility of the multilateral trading system.

2.6.2 Data collection

With regard to the applied method, data collection was divided into two phases. Firstly, the thesis explores the theoretical discussion on the role of mediators in multilateral negotiations and specifies the basic theoretical presumptions. At this stage, it draws on data gathered by previous research. Secondly, the thesis examines the case of Bali negotiations taking place after Roberto Azevêdo commenced his term as the new DG. The within-case analysis is based on three sources of information. The initial understanding of the research subject relies on the data from two highly specialized periodicals, namely *Bridges* and *Geneva*

¹⁵¹ Schelling (1960).

¹⁵² Fearon (1994).

¹⁵³ Odell (2004).

Watch. Created in 1996, *Bridges* is the publication of the International Centre for Trade and Sustainable Development (ICTSD), an independent non-profit organization promoting sustainable development through trade-related policymaking. *Bridges* publications have been covering the trade landscape since the Singapore Ministerial in 1996. Over the years, the reporting agenda has expanded also to other negotiating forums beyond the WTO to provide a complex overview of the development of international trade. Currently, *Bridges* ranks among the world's leading sources of information on trade negotiations.¹⁵⁴ *Geneva Watch* is a joint project run by Dairy Farmers of Canada, Chicken Farmers of Canada, Egg Farmers of Canada, Canadian Hatching Egg Producers and Turkey Farmers of Canada to report on latest events in WTO negotiations based in Geneva. Published weekly, it provides an in-depth overview of issues discussed by WTO members with a particular emphasis on agriculture talks.¹⁵⁵

After constituting the basic framework of the thesis, further data were collected from WTO sources, including press releases, public statements of WTO chairs and the DG, minutes of the meeting and legal drafts. Apart from these, the WTO database contains work documents stored under the abbreviation JOB which report on the conclusions of private consultations within negotiating groups and record the amendments of discussed draft texts. Since their character is strictly unofficial, they are usually restricted. In light of these limitations, the thesis examines only freely available materials.

Finally, the thesis drew additional information from semi-structured interviews with individuals who participated either in the Geneva-based consultations or in the negotiations at the Ministerial Conference itself. This phase of data collection eventually turned out to be the major weakness of the thesis. Out of 14 WTO members who had been approached, only one responded. In this regard, the acquired data suffer from sampling bias since all four respondents come from the same country, which prevents the thesis from taking more perspectives into consideration.

Overall, four persons gave consent to an interview; two state officials based in Prague were interviewed in person, one Czech diplomat based in Geneva provided information via email and one former Czech diplomat currently working in the non-profit sector in Geneva agreed to a phone call. In conformity with the data collection method of semi-structured interviews, a specific set of questions was prepared in advance for each respondent depending on their expertise. All interviews started with a general overview of the topic and went

¹⁵⁴ ICTSD (n. d.).

¹⁵⁵ Dairy Farmers of Canada (n. d.).

on to explore individual issues in more detail. In this context, the order and content of questions were frequently modified in the course of the talk in order to adapt to new information which had been unexpectedly brought to light.

Figure 1: Respondents who provided information

Country	Institution	Position	Date
Czech Republic	Ministry of Industry and Trade	Senior official	11 April 2016
	Ministry of Agriculture	Senior official	14 April 2016
	Permanent Mission of the Czech Republic to the United Nations Office and other International Organizations at Geneva	Diplomat	3 May 2016
	Permanent Mission of the Czech Republic to the United Nations Office and other International Organizations at Geneva	Former diplomat	4 May 2016

Figure 2: Respondents who did not provide information

Country	Institution	Reason
Brazil	Permanent Mission of Brazil to the United Nations Office and other international organizations in Geneva	No response
Bulgaria	Ministry of Economy	No response
Cuba	Ministerio de Comercio Exterior y la Inversión Extranjera	No response
EU	Permanent Mission of the European Union to the World Trade Organisation	No response
	European Commission, Directorate-General for Trade	No response
France	Permanent Mission of France to the United Nations Office and other international organizations in Geneva	No response
Germany	Permanent Mission of the Federal Republic of Germany to the United Nations Office and other international organizations in Geneva	No response
India	Permanent Mission of India to the United Nations Office and other international organizations in Geneva	No response
	Ministry of Commerce and Industry	No response
Japan	Permanent Mission of Japan to the United Nations Office and other international organizations in Geneva	No response
Nigeria	Federal Ministry of Industry, Trade & Investment	No response
Pakistan	Ministry of Commerce	No response
South Africa	Department of Trade and Industry	No response
Turkey	Permanent Mission of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland	No response
United States	Permanent Mission of the United States of America to the United Nations Office and other international organizations in Geneva	No response
	Office of the U.S. Trade Representative	No response

3 Hypothesis one: Tracking mediation strategies

3.1 Pre-Bali negotiations

The Bali package was originally construed as a down payment to rebuild trust among member states and to provide momentum for the recovery of the Doha Round. After the negotiations on the DDA hit deadlock in 2008, Pascal Lamy was at pains to bring countries back to the negotiating table. In 2011, he introduced the concept of mini-packages which were supposed to focus only on a small subset of issues, commonly referred to as “low-hanging fruit”. The underlying idea was to identify less controversial elements of the DDA and put forth draft texts upon which WTO members could agree.¹⁵⁶ While his proposal was ultimately turned down, the run-up to the Ninth Ministerial Conference in Bali dusted it off as feedback from negotiating groups indicated that consensus was built around three areas, particularly trade facilitation, some elements of agriculture and special treatment for LDCs.¹⁵⁷

The Ministerial itself was preceded by energetic negotiating which saw a substantial number of proposals piling up on the table. However, agenda stacking turned out not to be the most effective method of bargaining. Consequently, before the regular August break, negotiations on all fronts were at a standstill while ambassadors were desperately struggling to cut down hundreds of brackets in the drafts.¹⁵⁸

On 1 September, Roberto Azevêdo formally commenced his term as the new DG, succeeding Pascal Lamy in the office. His appointment raised hopes that a balanced multilateral deal benefiting also to developing countries might eventually be forthcoming.¹⁵⁹ The country of origin, nevertheless, was not the principal reason why Azevêdo eventually won broad support of WTO members. As one former Czech diplomat stressed, the Brazilian ambassador stood out from all candidates thanks to his personal background and connections.

‘There were two factors which worked in Azevêdo’s favour. Firstly, he went through all levels of economic diplomacy and served as a Brazilian ambassador to the WTO for a long time. Therefore, at the time of elections, he knew the ropes and was well acquainted with the negotiations. Also,

¹⁵⁶ Bellmann (2014).

¹⁵⁷ WTO (2012).

¹⁵⁸ ICTSD (2013b).

¹⁵⁹ Leahy and Politi (2013).

he was on friendly terms with other ambassadors who knew him personally and trusted him. Secondly, his professional background earned him a reputation of experienced and respected negotiator. Alongside a degree in engineering, he can boast an exceptional erudition in law and economics. In this regard, he has a complex overview of trade issues. He can examine them from the technical point of view, understands their economic essence and is also able to draft legal texts.’¹⁶⁰

Familiar with the intricacies of Geneva negotiations, Azevêdo declared – in his welcome message – success in Bali his top priority and immediately leapt into the driving seat.¹⁶¹ Unlike his predecessors, he postponed all trips and decided to spend the first few weeks in Geneva holding talks with ambassadors and state officials from capitals.¹⁶² To perk up the negotiations, he completely restructured the bargaining process by introducing new formats and configurations of consultations at all levels. The goal was to make all meetings highly inclusive and to give all members voice on the various issues.¹⁶³ The DG resorted to a three-tier tactics to whittle down the number of gaps. Firstly, he scheduled *ad hoc* sessions with senior officials based in capitals¹⁶⁴ in order to push for more flexible mandates.¹⁶⁵ Secondly, he was chairing regular Room E¹⁶⁶ meetings with about 50 delegations – open though to any other country which asked for invitation – on the most pressing issues from all areas while the chairs of individual negotiating groups were holding separate discussions with ambassadors to complement the process.¹⁶⁷ Finally, Azevêdo convened informal meetings of the TNC to debrief the full membership on the progress.¹⁶⁸ As the DG’s dynamic approach provided a much-needed shot in the arm of Bali preparations, member states started putting forth compromising proposals. In this context, WTO mediators holding positions of chairs or “friends of the chair” – under the leadership of Azevêdo – adopted more interventionist tactics and suggested the direction for future talks. Their activities were particularly noticeable in the two following areas.

¹⁶⁰ Interview, 4 May 2016.

¹⁶¹ WTO (2013e).

¹⁶² Geneva Watch (2013a).

¹⁶³ ICTSD (2013c).

¹⁶⁴ Interestingly, the same approach was promoted also during Nairobi talks when the DG expressly stated that WTO negotiations cannot be isolated from individual capitals (Interview, 3 May 2016).

¹⁶⁵ ICTSD (2013d).

¹⁶⁶ The names of meetings refer to the particular WTO room where they are held.

¹⁶⁷ Geneva Watch (2013b).

¹⁶⁸ Geneva Watch (2013c).

Firstly, concerning the agriculture agenda, the controversy over food stockholding programmes and farm subsidies prompted a few countries from the G-33 group, originally the most enthusiastic proponent of these policies, to reformulate their demands and prepare an unofficial “non-paper” outlining three options for a Bali deal. The submission ranged from an “understanding” on government programmes for food security purposes, a binding “decision” reinterpreting the existing provisions of the Agreement on Agriculture, to a “peace clause” committing WTO members not to take legal actions in this area.¹⁶⁹ In a bid to jump-start the negotiations, the DG indicated that delegations should direct their attention to the last-mentioned concept which apparently represented the most viable solution to the problem. Without raising any objections of member states, the DG, furthermore, charged John Adank, the chair of the negotiating group on agriculture, to elaborate the proposal.¹⁷⁰ Adank initially split the “peace clause” draft into eight sections and launched consultations on less controversial issues such as the automatic character and legal nature of the due restraint mechanism.¹⁷¹ Locking ambassadors in the gains they had achieved, Adank was gradually building momentum for discussions on the real deal breakers, namely the duration and the scope of the “peace clause”. In spite of these great efforts, the negotiations were making little progress since ambassadors kept disputing over the product coverage and the time span. Therefore, Adank eventually created – with the aid of the WTO Secretariat – a draft negotiating text summarizing all points of convergence.¹⁷² Besides that, the DG convened special Room E consultations tackling separately the issue of transparency and safeguard measures, another snag in the agriculture talks. Noting that these elements showed the need for supplementary information from developing countries, the DG created a template which was subsequently circulated to all members. In this, Azevêdo asked developing countries to provide a complex description of their food security programmes and outline mechanisms they wish to apply to ensure that the policies would not have trade distorting effects.¹⁷³ These tactics eventually paid off since soon after the release of the chair’s draft, ambassadors reported on the emerging consensus regarding the limitation of the “peace clause” coverage to traditional staple food crops and introduction of detailed notification and transparency rules.¹⁷⁴

¹⁶⁹ ICTSD (2013d).

¹⁷⁰ Geneva Watch (2013d).

¹⁷¹ WTO (2013f).

¹⁷² ICTSD (2013e).

¹⁷³ Geneva Watch (2013b).

¹⁷⁴ WTO (2013g).

Other difficulties in the agriculture agenda revolved around tariff-rate quotas¹⁷⁵ (TRQs). The proposal had initially been welcomed as one of the most balanced drafts on the Geneva table. Indeed, at the end of September, the DG was still confident of early closing of the TRQ issue. ‘This is a simple and straightforward proposal that most Members tend to find well-calibrated and achievable,’ he said.¹⁷⁶ However, later in October, division between the US and China concerning the removal of import administrative barriers started preventing further progress.¹⁷⁷ The battle flared up because of special and differential treatment of developing countries. The US argued that these should not apply to emerging economies such as India or China who otherwise would not lose much accepting the new TRQ rules.¹⁷⁸ In this context, Azevêdo took chances and convened a series of green room meetings to explore potential landing zones between the countries. On the basis of these consultations, he ultimately prepared a compromise text proposing a six-year sunset period which would provide member states with more time to reach a permanent solution on TRQ administration.¹⁷⁹ Furthermore, he suggested a concession in the form of a special list allowing developed countries to opt out from the obligation to grant enhanced market access after the termination of the sunset period. The list reportedly raised concerns of developing countries fearing that other developed economies – apart from the US – would seek to escape their commitments. Nevertheless, Japan, the EU, Canada and Switzerland flatly dismissed the rumours pointing out that they would comply with the new TRQ rules in exchange for an ambitious trade facilitation deal.¹⁸⁰

This brings us to the second area of the Bali package which was shaped by WTO mediators and the DG to a large extent. Trade facilitation – aiming to simplify customs procedures and reduce inefficiencies affecting cross-border trade flows – did not originally form part of the DDA mandate; yet, it became one of the fastest moving areas in the negotiations over the years. With respect to its promising progress, Pascal Lamy classified the topic as the centrepiece of an “early harvest”.¹⁸¹

¹⁷⁵ Tariff quotas originally formed part of the Uruguay Round agenda. The idea was to grant enhanced market access to foreign exporters by cutting down import duties on quantities within the quotas while leaving the tariff rates high for quantities exceeding the quotas. After the launch of the Doha Round, some countries pointed out that governments were intentionally creating new trade barriers by keeping the quotas under-filled. In this context, the G-20 proposal called for a more effective information-sharing and monitoring mechanism to prevent these protectionist measures (Schnepf 2014).

¹⁷⁶ Geneva Watch (2013c).

¹⁷⁷ ICTSD (2013e).

¹⁷⁸ Geneva Watch (2013b).

¹⁷⁹ Geneva Watch (2013e).

¹⁸⁰ ICTSD (2013f).

¹⁸¹ Bellmann (2014).

Since the beginning of his term, Azevêdo was trying to set trade facilitation into the overall DDA agenda. While the area was of particular importance to export-oriented economies on one hand, it required most concessions from LDCs on the other hand. Therefore, during his early consultations with member states taking place throughout September, Azevêdo focused on exploring potential linkages. The trade facilitation draft text – introduced in December 2009 and elaborated ever since – was divided into two parts. Section I covered specific commitments which individual countries were expected to take to enhance their customs procedure whereas Section II dealt with differential treatment for developing and LDCs.¹⁸² As the DG noted members were clearly divided over whether the final agreement should be legally binding or not. Drawing on information acquired during Room E meetings, he started paving the way for a fragile balance between the sections.¹⁸³ In cooperation with the chair of the trade facilitation negotiating group, Ambassador Eduardo Ernesto Sperisen-Yurt of Guatemala, Azevêdo pushed for more political flexibility and eventually supported the direct trade-off between binding effects of the deal on one hand and technical assistance in capacity-building provided to developing countries on the other hand.¹⁸⁴ This direction raised only little controversies and immediately revived the dialogue on technical arrangements.¹⁸⁵

In the next month, the chair Eduardo Ernesto Sperisen-Yurt took the helm over the negotiations and started reviewing the existing consolidated draft text step by step. However, it became soon clear that his passive strategy could derail the whole run-up to the Ministerial. As one former Czech diplomat noted,

‘Ambassador Sperisen-Yurt was not very skilful chair. He put much emphasis on the member-driven character of the talks and feared criticism for making his own suggestions. The cautious approach was most evident during plenary sessions. The chair read the draft text and once he came across a bracket he would open the deliberation without putting any proposal on the table. Consequently, all members would repeat their objections they had been raising since 2009 and the chair couldn’t do anything else but to declare a deadlock and move on to the next bracket.

¹⁸² ICTSD (2013g).

¹⁸³ ICTSD (2013h).

¹⁸⁴ Interview, 4 May 2016.

¹⁸⁵ ICTSD (2013h).

Later, the situation got even worse since ambassadors started reopening individual articles which had been already settled to add new brackets.¹⁸⁶

In this context, the burden of responsibility for the trade facilitation agreement moved over to the DG and the “friends of the chair”¹⁸⁷ – ambassadors Mario Matus of Chile, Remigi Winzap of Switzerland and Michael Stone of Hong Kong – who launched a marathon of negotiating sessions split into smaller groups which dealt with individual articles to address the most pressing issues in both sections.¹⁸⁸ Ultimately, member states managed to cut down the number of brackets from nearly 2000 to about 50¹⁸⁹ and find landing zones on customs cooperation which had long been a “hard nut to crack”.¹⁹⁰

As the discussions were beginning to hot up, the DG manipulated with another element of negotiations, namely the deadline. Originally, Azevêdo planned to close open issues by the end of October and send all documents to capitals for preliminary approval before heading to Bali.¹⁹¹ In a bid to reward members for their willingness to show flexibility, he, nevertheless, decided to reschedule the evaluative TNC meeting on 12 November at which point he was expected to advise whether a deal was possible or not.¹⁹² Less than a month ahead of the Ministerial, Azevêdo’s announcement left the prospects for an agreement markedly uncertain.

‘It was my sincere hope that by today I would be in a position to tell you that, although we have some difficulties ahead, we are in pretty good shape. Some more blood would have to be shed, but the fighter would not die in this arena. I was hoping I could say that he – or she – would live to fight another day. But I do not think I can tell you that. I think the risk of failure is still present,’

¹⁸⁶ Interview, 4 May 2016.

¹⁸⁷ “Friends of the chair” were first appointed in March 2013 in response to the stagnating facilitator-led bargaining process. They were charged to hold separate consultations with member states on the main points of divergence. Interestingly, the chair did not allow them to present a new draft negotiating text stressing that the bargaining process had to remain member-driven (ICTSD 2013i).

¹⁸⁸ Geneva Watch (2013f); Interview, 4 May 2016.

¹⁸⁹ As one former Czech diplomat explained, most of the brackets were tactical and could be easily removed. Firstly, the “friends of the chair” launched consultations on individual articles to reveal members’ bottom lines. Subsequently, the DG exerted pressure on the capitals to arrange for more flexible mandates of ambassadors. (Interview, 4 May 2016).

¹⁹⁰ ICTSD (2013g); Geneva Watch (2013g).

¹⁹¹ Geneva Watch (2013h).

¹⁹² Geneva Watch (2013i).

he told to the full membership at the TNC meeting, adding that he would extend the deadline for a few more days with the view of overcoming the last hurdles.¹⁹³ On this tactics, though, the DG got his fingers burnt as two issues eventually stood in the way of a successful Bali conference. Firstly, India surprisingly rejected – at the very last moment – the food security draft text to which it had initially given its consent. The government changed its mind in response to the limitation of the “peace clause” coverage to a maximum of three commodities, a condition advocated mainly by developed countries under the leadership of the US.¹⁹⁴ In return for this concession, India called for an extension of the due restraint mechanism until member states reach a permanent solution. Although Geneva negotiators – knowing the risk of a failure – agreed in the end to remove the reference proposing limitations on the number of products covered by the deal¹⁹⁵, Indian state officials insisted on linking the “peace clause” directly with a permanent arrangement.¹⁹⁶ Secondly, the cautious approach of the chair of the negotiating group on trade facilitation did not build momentum for crossing the finish line. Sticking to the principle of member-driven talks, Ambassador Sperisen-Yurt might have missed opportunities to break the impasse and make the last tough calls regarding politically sensitive questions such as transit or the use of customs brokers.¹⁹⁷ A complementary explanation for the impasse of the trade facilitation talks was offered by one former Czech diplomat who noted that many of the remaining brackets were held as a reserve for the final horse-trading at the Bali Ministerial Conference.¹⁹⁸

3.2 Bali conference

At first sight, there was only little difference about the Ministerial Conference. The breakdown of Geneva-based consultations sabotaged DG’s attempts to ensure that Bali would not be a negotiating Ministerial. Equally, the scenario thereafter appeared quite familiar. The opening messages highlighted the need to reach an agreement and the risks for the Doha Round of letting the Bali package slip through fingers.¹⁹⁹ The long series

¹⁹³ WTO (2013h).

¹⁹⁴ Geneva Watch (2013e).

¹⁹⁵ ICTSD (2013f).

¹⁹⁶ Mehra (2013).

¹⁹⁷ ICTSD (2013h).

¹⁹⁸ Interview, 4 May 2016.

¹⁹⁹ Address by H.E. Dr. Susilo Bambang Yudhoyono, President of the Republic of Indonesia. Opening Session 3 December 2013: WT/MIN(13)/15; Address by H.E. Mr Gita Wirjawan, Chairman of the Ministerial Conference. Opening Session 3 December 2013: WT/MIN(13)/16; Address by Mr Roberto Azevêdo, Director-General. Opening Session 3 December 2013: WT/MIN(13)/17.

of statements saw ministers upon ministers express their support for the deal while preparing ground for hard bargaining in the upcoming days. Contrarily, what was not immediately evident was the backstage energy of the DG and the chair, Indonesian Minister Gita Wirjawan, making every effort to pave the way for the deal.

From the very beginning of the conference, the DG and the chair were holding intensive consultations – as urged by a considerable number of countries – in various formats on resistance points of individual member states.²⁰⁰ Difficulties were expected principally in the area of trade facilitation where countries clearly diverged over the commitments in Section I of the agreement. However, it was the G-33 proposal on food stockholding programmes which stole the scene as the backtracking tactics of India put the whole Bali package in danger. In this context, some delegates suggested that agriculture talks should be postponed and the sticking points could be resolved back in Geneva.²⁰¹ According to one member of the Czech delegation, the proposal could at no point win broad support. ‘If the package had not covered at least small bits of agriculture, it would not have come into existence at all. Agriculture is a specific – from the perspective of world trade, though, rather marginal – issue constituting a cornerstone of all Ministerial agreements,’ he said.²⁰² The DG advocated a similar view as he peremptorily refused to break the negotiations into pieces. Returning to his opening speech at the conference, he stressed, ‘This is a single package – you can’t remove a pillar, or even a brick from a pillar, without bringing the whole edifice down.’²⁰³

While members were struggling to squeeze out the last drops of flexibility, Thursday announcement of Minister Anand Sharma proved that the Indian show was far from being over. In his morning message, Sharma drove the conference to the brink of a collapse, saying, ‘It is better to have no agreement than to have a bad agreement.’²⁰⁴ The threat further reinvigorated the activities of the DG and it – additionally – served as an emergency call for assistance from the host country. In response to the difficulties, Indonesian President Susilo Bambang Yudhoyono – in cooperation with the chair Wirjawan – privately contacted Indian Prime Minister Singh to help ease New Delhi’s inflexibilities on food security.²⁰⁵ Secondly, Azevêdo put on table a draft summarizing three alternatives that India could pursue. The proposal reportedly comprised the original Geneva text, an option establishing a more

²⁰⁰ ICTSD (2013j)

²⁰¹ WTO (2013i).

²⁰² Interview, 14 April 2016.

²⁰³ Address by Mr Roberto Azevêdo, Director-General. Opening Session 3 December 2013: WT/MIN(13)/17.

²⁰⁴ ICTSD (2013k).

²⁰⁵ Saragih and Yulisman (2013); Interview, 11 April 2016.

direct linkage between the “peace clause” and the permanent solution, and an “opt-out” providing India with special treatment. However, delegations eventually saw Sharma leave the conference room without a deal.²⁰⁶

Meanwhile, consultations on Section I were increasingly drawing to a close. The tactics which paid off and saved the talks lay in dropping some sticking points from the Bali agenda. This can be illustrated on marathon debates over transit. In this area, Turkey made a suggestion requiring that WTO members treat all goods in an equal manner and grant foreign exporters the right to freely choose transit routes. Effectively, Turkish government was asking its counterparts to terminate their bilateral transit agreements and remove quotas regarding the number of trucks on their roads. Czech Republic – along with Germany, Austria and Bulgaria – immediately warned that the issue was for many land-locked countries non-negotiable. In light of these differences, the idea to leave transit questions out of Bali received broad support.²⁰⁷

While trade facilitation talks were gradually clearing the way for the finishing tape, the fate of the agriculture deal was hanging by a thread. According to the schedule, the Ministerial was supposed to end on Friday.²⁰⁸ Since members had not managed to wrap up the Bali package by that time, Azevêdo played his two last aces. First of all, he shifted the deadline on Saturday to buy more time for extra round-the-clock meetings.²⁰⁹ Based on the consultations, he ultimately created a draft text which did not reflect entirely his views – as had been the case during previous conferences, and which had provoked controversy²¹⁰ – but instead the landing zones, flexibilities or bottom lines of WTO members.²¹¹ The negotiating text, eventually, marked a turning point in the bargaining process since it encouraged delegations to give Bali another chance. As a result, during the final critical hours ministers set aside their reservations and made the final push for the adoption of the package.²¹² Presented at the informal heads of delegation meeting on Saturday morning, the final draft texts proved that WTO members had not completely forgotten to negotiate. However, it was the DG who reminded them that – although it seemed impossible – they could still deliver.

²⁰⁶ ICTSD (2013k).

²⁰⁷ Interview, 11 April 2016.

²⁰⁸ Arrangements for Conference Sessions and Overall Programme, Note to Delegations. Adopted on 20 November 2013: WT/MIN(13)/INF/13.

²⁰⁹ WTO (2013c).

²¹⁰ Ismail (2009).

²¹¹ Wilkinson, Hannah and Scott (2014).

²¹² WTO (2013c); Interview, 14 April 2016.

4 Hypothesis two: Saving faces and undoing commitments

4.1 Pre-Bali negotiations

The reform of farm trade policies has been considered a deal breaker in all negotiations along the GATT/WTO history. In this respect, the Bali agenda strictly followed the previous scenarios as the talks concerning agriculture brought the ministerial to the brink of collapse.²¹³ In the run-up to the Bali conference, state representatives to the WTO in Geneva were holding intensive discussions on three proposals. Two non-papers – one on export subsidies, the other on TRQs – were submitted by the G-20 group²¹⁴ seeking to reform trade-distorting farm policies across the developed countries. While the discussion on sensitive export subsidies was dealt with through a mere political statement, TRQs remained a rather straightforward technical issue which was eventually resolved through an understanding on TRQ administration.²¹⁵ Contrarily, the third proposal put forward by the G-33 coalition²¹⁶ concerning reforms on public food stockpiling policies has stoked controversy by challenging the existing trade liberalization measures.

The draft was first tabled in November 2012 in an attempt to fast-track the process on the Doha agenda related to developing countries. At the heart of the matter was the call for new rules regulating domestic food aid and public purchases of food. The goal of the group, spearheaded by India²¹⁷, was twofold. Firstly, they sought the extension of general government services listed under the WTO “green box” covering state policies which are exempted from limitations on the amount of public spending due to their minimal

²¹³ ICTSD (2013k).

²¹⁴ G-20 is a coalition of developing countries advocating complex agricultural reforms in developed countries. Current members are: Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, and Zimbabwe (WTO 2016).

²¹⁵ Bellmann (2014); Export Competition, Ministerial Declaration. Adopted on 7 December 2013: WT/MIN(13)/40 or WT/L/915; Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture, Ministerial Decision. Adopted on 7 December 2013: WT/MIN(13)/39 or WT/L/914.

²¹⁶ G-33 is a group of 48 countries supporting the special treatment of developing countries concerning market opening in agriculture. Current members are: Antigua and Barbuda, Barbados, Belize, Benin, Bolivia, Botswana, China, Congo, Côte d’Ivoire, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Republic of Korea, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Chinese Taipei, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, and Zimbabwe (WTO 2016).

²¹⁷ The question of food subsidies formed the core of government’s strategy to win a third term in office, with Indians going to polls in spring 2014. Under the public procurement programme, staple food crops should be purchased from low-income farmers at administered prices to be thereafter held in public stocks (Wilkinson, Hannah and Scott 2014).

trade-distorting effects. Secondly, the proposal supported flexibility in relation to the aggregate measure of support²¹⁸ by allowing developing countries to purchase food from low-income, resource-poor farmers at administered prices.²¹⁹ In response to the draft, some state officials admitted that tough talks could be expected, fearing that the proposal would potentially ‘de-rail the whole build-up for MC9.’²²⁰

After months-long consultations at the Special Session of the Committee on Agriculture presided over by New Zealand ambassador John Adank, some delegates cautiously hinted that the chair might have identified the key ingredients of an eventual deal.²²¹ As trade sources reported, the consensus had been built around three elements. Firstly, negotiators proposed that farm subsidy programmes be incorporated into the “green box” so long as they do not cause severe trade distortions. Secondly, member states elaborated an option outlining a due restraint mechanism that would protect food stockholding policies from legal actions. Lastly, the US suggested that the G-33 proposal should form part also of the post-Bali agenda. Despite the noticeable progress, not all ambassadors shared the general optimism and warned that the G-33 draft text could only be accepted by developing countries ‘releasing some hostages on the trade facilitation front.’²²² Their statements critically reflected the linkage strategy pursued by the Indian government putting up a roadblock on parallel talks on trade facilitation measures.²²³ In summary, shortly before the annual August break and the entry of a new DG, the negotiations on key features of the Bali agenda were subject to arbitrary stonewalling raising concerns that ‘the current pace of work remains too slow to guarantee a harvest [at the Ministerial]’.²²⁴

The jump-start of Roberto Azevêdo in September 2013 was welcomed by the full membership hoping that his driving approach would put the WTO back on track.²²⁵ Immediately after his appointment, the DG launched a ‘rolling set of meetings’ in various formats on all three pillars of the Bali package stressing the indispensability of broad

²¹⁸ The progressive reduction of the domestic agricultural support is part of the Uruguay Round reform programme. The legally binding agricultural package distinguishes between two categories of public policies, namely support with minimal trade distortive effects (“green box”) and measures harmful to agricultural markets (“amber box”). With regard to the latter, states have undertaken to adopt reduction commitments curbing the price support provided either through administered prices or direct subsidies. The aggregate measurement of support covering all public support granted by the government must respect the scheduled maximum threshold. Any WTO member failing to meet its obligation risks legal disputes (Peters, Mashayakhi and Ito 2013).

²¹⁹ WTO (2013j).

²²⁰ ICTSD (2012).

²²¹ Geneva Watch (2013j).

²²² ICTSD (2013l); Bloomberg BNA (2013).

²²³ Schott and Hufbauer (2014); Interview, 3 May 2016.

²²⁴ ICTSD (2013b).

²²⁵ Interview, 4 May 2016.

cooperation among all members.²²⁶ In an effort to bridge the gaps and cut down the amount of open issues within the agriculture agenda, he engaged in bilateral as well as multilateral consultations in Geneva and convened regular Room E meetings, occasionally co-chaired by John Adank.²²⁷ In line with his opening speech at the informal session of the TNC at the end of September, Azevêdo also paid a kick-start visit²²⁸ to the Indian capital to seek support for the global trade deal.²²⁹ Nonetheless, the critical impulse for the restart of the agriculture talks came from a small subset of G-33 members²³⁰ who proposed three versions of the Bali package. The draft ranged from a soft-law “understanding” on public stockholding programmes, a “decision” reinterpreting existing provisions in the Agreement on Agriculture with respect to rising inflation rate, to a “peace clause” provision prohibiting any legal actions to be brought in this area.²³¹ Drawing on information acquired in the course of consultations, Azevêdo recommended member states to focus on the concept of a “peace clause” and passed the baton back to John Adank.²³²

The chair promptly opted for a split-and-sequence tactics to ease the tension among negotiators. Initially, he identified eight components integral to the interim solution of the food stockpiling problem, more specifically its nature, character, scope, duration and review, transparency measures, safeguards minimizing the distorting effects, additional terms and conditions and finally the post-Bali work. As the next step, Adank engaged the WTO Secretariat in the talks by requesting its legal advice on the options for introducing the due restraint mechanism in the form of a “peace clause”.²³³ Ultimately, he launched a new series of meetings with ambassadors on the updated version of the G-33 proposal, starting with less controversial issues to build momentum for critical questions. His tactics paid dividends as the discussions quickly led to convergence on transparency conditions, encouraging the progress in other fields, such as the legal nature and automatic character of the mechanism. Nevertheless, despite the creative approaches adopted by the chair, talks on the most contentious topics, including the precise scope of flexibility measures and their

²²⁶ WTO (2013k).

²²⁷ Geneva Watch (2013b).

²²⁸ It was the first time a DG of the WTO made India his first stop for bilateral talks.

²²⁹ Basu (2013a).

²³⁰ On this point, one former Czech diplomat noted that it was a common tactics of the DG to ask active and respected ambassadors of smaller countries to put forward proposals which had originally reflected DG’s own ideas. These ambassadors then conducted a series of private consultations to probe into members’ reservations and elaborated the proposal together with the DG. Afterwards, the proposal was tabled by the ambassadors on their behalf. Reportedly, Jamaica’s Ambassador Wayne McCook who represented small and vulnerable economies (SVEs) often played this role (Interview, 4 May 2016).

²³¹ ICTSD (2013d).

²³² Geneva Watch (2013d).

²³³ WTO (2013f).

duration, were moving barely forward.²³⁴ In these areas, members advocated two contradictory attitudes. The first group supported a clearly time-bound “peace clause” which would be additionally subject to limitations as for the number of staple crops to be protected. On the other hand, there was a substantial body of opinion calling for an unrestricted application of the due restraint mechanism that would be in force until a permanent solution was agreed upon.²³⁵ Dissensions over these elements were confirmed also by trade sources, stating that members easily found common ground regarding transparency provisions, yet the talks on the product coverage, length of the flexibility period and safeguards were going through hard times.²³⁶

In response to the stagnation, Adank prepared a draft negotiating text summarizing all resolved issues as well as points of divergence.²³⁷ In fact, his SNT became a crucial driving force for the breakthrough in the pre-Bali consultations since shortly after its release, members publicly reported on the emerging consensus on the limitation of the scope of the due restraint mechanism to traditional staple food crops and introduced a set of detailed provisions on notification and transparency obligations.²³⁸ The rapid progress – for which Adank could definitely claim credit – was recognized also by the DG at the TNC informal meeting. In the light of the approaching deadline, Azevêdo at the same time warned though – without further guidance²³⁹ – that there were still some wide gaps to be bridged. In his speech, he pushed all members for flexibility and urged them to solve the remaining brackets in time in order to deliver concrete results for Bali. Ultimately, he told the full membership, ‘We are approaching zero hour. There is simply no more time to keep engineering new and complex solutions.’²⁴⁰

Despite the repeated entreaties by the DG, the agriculture negotiations started collapsing only one month before the Bali conference. Since members were trapped in lengthy debates over how long the proposed “peace clause” would be in place and what safeguards could be adopted to protect foreign producers from trade distortions, Adank agreed to alter the format of talks to Room W meetings of the heads of delegations presided over

²³⁴ ICTSD (2013m).

²³⁵ WTO (2013f).

²³⁶ ICTSD (2013m).

²³⁷ ICTSD (2013e).

²³⁸ WTO (2013g).

²³⁹ According to one delegate, landing zones regarding the safeguard measures as well as the duration of the due restraint mechanism were still beyond reach (ICTSD 2013n).

²⁴⁰ WTO (2013l).

directly by the DG.²⁴¹ Furthermore, in cooperation with Azevêdo, he put forth a proposal concerning the concrete duration of the interim solution under discussion. Although the draft was not published, trade sources privately informed that the term of four years was on the table.²⁴² Being aware of the fact that ambassadors were still toeing a fine line between success and failure, the DG additionally took risky steps to save the Bali package. Firstly, he postponed the deadline for the final evaluation of the agenda, stressing that

‘time remains our biggest problem. But let me be clear: we cannot work right up until the wire. Our deadline cannot be the start of the Ministerial Conference. One of the clearest messages from my consultations with Members is that Bali must not be a negotiating conference. The duration of the flight would be enough time for positions to become entrenched. It would be the surest way to kill this agreement. We have to close this in Geneva.’²⁴³

Secondly, Azevêdo took over the responsibility for concessions and trade-offs, reiterating that the package needed to be put together at all costs. In his words, ‘[I]t is all or nothing now.’²⁴⁴

DG’s “take-it-or-leave-it” approach provoked strong levels of disapproval among Indian farmers. Only two days after Azevêdo’s announcement, Indian Prime Minister Manmohan Singh received a letter signed by 15 farmers’ associations and unions calling for the rejection of the “peace clause” draft.

‘It does not make any sense for India to trade off the very survival of its 600 million farmers and roughly 830 million hungry for the sake of a successful Doha round. India cannot dilute its position on the G-33 proposal and accept a Peace Clause which makes a travesty of the poverty and hunger faced by millions of Indians every day. [...] India should not trade off its food security concerns and the livelihood security of millions of farmers against the trade facilitation agreement. The latter is unfair, biased and forwards

²⁴¹ Contrarily, during subsequent Nairobi talks the DG’s role was only marginal, which was a direct consequence of requirements raised by several members to maintain the member-driven character of the negotiations (Interview, 3 May 2016).

²⁴² ICTSD (2013g).

²⁴³ WTO (2013h).

²⁴⁴ Ibid.

only a developed country agenda as it stands at the moment,' the letter said.²⁴⁵

The domestic pressure from the agricultural sector served New Delhi as a pretext for its subsequent moves. Firstly, Indian Minister of Commerce Anand Sharma sent a letter – whose copy “leaked” online²⁴⁶ – to the U.S. Trade Representative Michael Froman in which he emphasized that the revised draft text, limiting the “peace clause” coverage to a maximum of three products – a requirement advocated by developed economies – fell well short of India’s original demands. ‘Food security is crucial for large developing countries like India with hundreds of millions of people subsisting below the poverty line,’ Sharma wrote. Invoking audience costs, he further argued that ‘protecting the interests of farmers and vulnerable sections of society is a key political imperative for a country like India.’²⁴⁷ According to trade sources, the letter put in jeopardy the complete pre-Bali bargaining process on public food programmes since India unexpectedly questioned the balance of the deal.²⁴⁸

In response to the crisis, negotiators launched a new series of review consultations to help ease India’s inflexibility. In exchange for strict transparency measures and detailed information on the operation of food stockholding schemes, members eventually agreed on removing an earlier reference proposing the restriction of product coverage to selected staple food crops and adopted a new language on safeguards and “anti-circumvention” provisions. They also accepted the proposal of developing countries who called for the extension of the WTO “green box” covering public programmes with minimal trade-distorting effects. The updated draft reflected the support schemes commonly used in developing countries which were related to soil conservation, rural livelihood security, farmer settlement management or flood control.²⁴⁹

With respect to the number of open issues in both agriculture and trade facilitation area, the DG decided to postpone a General Council meeting – scheduled on 21 November – which had originally meant to be a final deadline for the wrapping up of the Bali package. In the opinion of one negotiator, Azevêdo was still confident about the successful conclusion of Geneva-based preparations although he admitted that there were

²⁴⁵ Srivastava (2013).

²⁴⁶ Interestingly, the diplomatic communication had been published before it reached the Office of the U.S. Trade Representative (ICTSD 2013f). Therefore, one might ask to what extent was the leak under control of the Indian government.

²⁴⁷ Chalmers (2013).

²⁴⁸ Geneva Watch (2013e).

²⁴⁹ ICTSD (2013f).

‘a few wrinkles that still need to be ironed out.’ At the same time, several trade sources confirmed that except for minor issues, agriculture negotiations had been nearly completed, ruling out any surprises before the Ministerial. Contrarily, concerning trade facilitation agenda, delegates were reportedly facing a tough call.²⁵⁰

Nevertheless, only two days later, the announcement of the Indian government proved that the expectations were far away from being realistic. Considering the language of the existing draft which guaranteed the interim relief only until 2017, India declared that it would not back up the trade facilitation agreement until a permanent solution on food stockpiling programmes was found.²⁵¹ The primary problem was the ambiguity of the draft text on when the “peace clause” would expire. According to a senior Commerce Ministry official, India could not risk any legal actions related to the implementation of the National Food Security Act, should no permanent solution or agreement be reached in 2017. On this point, Indian Minister of Commerce equally emphasized that ‘[t]he food subsidies under the Food Security Act we are not even discussing...that’s our sovereign space.’²⁵² As a result, a few days before the Ministerial, the DG regretfully informed all members that Geneva consultations had not produced a set of finalised documents to be approved at the conference, leaving the fate of Bali hanging by a thread. In the eleventh hour, Azevêdo had no other choice but to threaten negotiators that their backtracking tactics would have serious consequences not only for the multilateral trading system but also for the reputation of state officials on their home ground. ‘Nothing that is on the table requires any Member to go beyond what is doable. One may not get all that he seeks, but no unmanageable contribution is required from anyone,’ he stressed, closing the preparation talks down.²⁵³

In the meantime, the Indian domestic public fully entered the game pushing the government to stand firm on its demands. In other words, the commitment strategy pursued by India succeeded in triggering general concern for the protection of farm subsidies and food programmes. Confident of their strong position, Indian officials, nonetheless, did not allow for the possibility that audience costs might work also against them. Amid mounting domestic criticism of the “peace clause” provision, mixed reports started appearing in the media that New Delhi had eventually climbed down and opted in to the Geneva draft, which casted a shadow upon the credibility of India’s state representatives.²⁵⁴ Unsurprisingly,

²⁵⁰ Ibid.

²⁵¹ Basu (2013b).

²⁵² Mehra (2013).

²⁵³ WTO (2013d).

²⁵⁴ Compare for instance Basu (2013c).

the general unease strengthened the voice of opposition parties attempting to win votes ahead of the upcoming national elections. Questioning the competence of political authorities, Arun Jaitley, the Leader of Opposition in the upper house of the Parliament, warned that there was no room for compromise regarding the subsistence of local farmers. From his point of view, 'India needs to comprehensively protect these subsidies [introduced by the Food Security Act] on a permanent basis if there is to be sincere and meaningful food security for Indians'.²⁵⁵ In a bid to allay the fears and soothe political adversaries, Minister Sharma sent a formal letter to the Members of the Parliament (MPs) to reaffirm his strong commitment to the protection of poor and vulnerable sections of the society. While admitting that the country was running the risk of infringing the WTO subsidy cap, he dismissed rumours that Indian delegates in Geneva had been instructed to back down.²⁵⁶ Additionally, shortly before his departure for Indonesia, Sharma publicly reported on his ideas of a fair Bali deal. He revealed that he would seek further support for India's demands at the G-33 meeting to be convened in Bali just before the Ministerial. Portraying India as the leader of neglected developing countries, he thus sent a clear message that the food security issues were non-negotiable.²⁵⁷

In conclusion, Indian delegation left for the conference with more entrenched positions than those it held at the beginning of pre-Bali talks. In this context, one might wonder whether the "game of chicken" was still under India's control or to what extent the government eventually succumbed to the unanticipated pressure of domestic public and opposition parties.

4.2 Bali conference

On the eve of the Ninth Ministerial Conference, the entire G-33 group assembled at a special meeting, chaired by Indonesian Minister of Trade Gita Wirjawan, to coordinate the negotiation strategies of individual countries. The question of food security and public support programmes attracted full attention of all participants who expressed deep disappointment with reference to the outcomes of the Geneva process. According to the Ministerial Communique, the vast majority of coalition members also shared doubts on the latest outline of the "peace clause" and urged their counterparts to elaborate the original G-33 draft proposing a permanent exception for the public stockholding policies of developing countries.²⁵⁸ Overall, the initial opinion of the G-33 group clearly reflected the line of reasoning advanced by India whose representatives encouraged participants

²⁵⁵ New Indian Express (2013).

²⁵⁶ Economic Times (2013).

²⁵⁷ Ministry of Commerce and Industry of India (2013a).

²⁵⁸ G-33 Ministerial Communique, Bali. Adopted on 2 December 2013: WT/MIN(13)/11.

to remain united in order to illustrate the centrality of agriculture talks within the Doha Round. Indian Commerce Minister Sharma also made use of the opportunity to show that New Delhi was not going to waive its demands. In his speech, he stated that

‘[i]t is difficult for us to accept an interim solution as it has been currently designed. As a responsible nation, we are committed to a constructive engagement for finding a lasting solution. But till such time that we reach there, an interim solution which protects us from all forms of challenge must remain intact.’²⁵⁹

The long-awaited arrival of trade ministers at Bali raised mixed comments on the future of the WTO and multilateral efforts in particular. Since the DG announced an impasse of the Geneva talks at the end of November, observers were speculating that the abrupt halt might have spurred members to agree on the first trade deal in nearly 20 years. On the other hand, sceptics had already ruled out any chances of success, some going even further and proclaiming that the WTO was already on life support.²⁶⁰ Bearing on mind the risk the conference was facing, the DG vigorously took the helm and resorted to manipulative tactics. In his opening address, he pointed out that the Geneva drafts were stabilised, yet far from being finalised. Referring to competing projects in the form of regional or bilateral initiatives, he warned,

‘By failing to deliver this package we would fail businesses around the world. We would fail the unemployed and the underemployed. We would fail the poor, we would fail those who rely on food security schemes, we would fail developing country farmers, we would fail developing country cotton growers, and we would fail the least-developed economies as a whole. And that is just through the loss of this Bali package. When you look beyond that, the cost is even greater. What’s at stake is the ability of this institution to support growth and development – the contribution we make to the lives of people on the street around the world. What’s at stake is the cause of multilateralism itself.’²⁶¹

²⁵⁹ Ministry of Commerce and Industry of India (2013b).

²⁶⁰ ICTSD (2013o).

²⁶¹ Address by Mr Roberto Azevêdo, Director-General. Opening Session 3 December 2013: WT/MIN(13)/17.

Equally, the welcome speech of Indonesian president Yudhoyono as well as the opening remarks by the conference chair Gita Wirjawan echoed the resolve to live up to high expectations.²⁶²

The second day of the conference started with strong statements of trade ministers preparing the ground for hard bargaining in the subsequent days. In the light of the breakdown in Geneva, the critical question was how hard India would be willing to push to protect its food stockpiling programme. In his public address to WTO members, Minister Anand Sharma made the Indian strategy completely clear, raising concerns about the outcome of Bali. ‘Agriculture sustains millions of subsistence farmers. Their interests must be secured. Food security is essential for over four billion people,’ he said, calling for a balance in the final package. To increase his bargaining leverage, Sharma, furthermore, highlighted the connection between food stockpiling schemes and UN Millennium Development Goals (MDGs) commitments, concluding that ‘[f]or India food security is non-negotiable. Governments of all developing nations have a legitimate obligation and moral commitment towards food and livelihood security of hundreds of millions of their hungry and poor.’²⁶³

The public stance of the Indian government was a major blow to all Doha Round breakthrough hopes. In the corridors, several negotiators openly admitted that it would be nearly impossible to find common ground. India’s objections were also subject to harsh criticism by some delegations. ‘You come to Bali to make a compromise, not to block the negotiations,’ one African participant noted, being in a sombre mood. Equally, EU Trade Commissioner Karel De Gucht remained deeply concerned about the chances to deliver, telling reporters, ‘I fear [...] the storm clouds of failure are right above us.’²⁶⁴ In spite of a sense from most delegations that Bali was the last opportunity to strike a deal, some countries suggested – in response to India’s announcement – that troublesome agriculture negotiations could be postponed and concluded back in Geneva.²⁶⁵ In his message to WTO members, the DG flatly rejected the proposal, pointing out, ‘We have been negotiating this as a package – a package within the single undertaking. If one of these elements fails, the result will most likely be that everything else fails as well.’²⁶⁶ Similarly, one member of the Czech delegation confirmed, ‘Backtracking on the single package format was on no account

²⁶² Address by H.E. Dr. Susilo Bambang Yudhoyono, President of the Republic of Indonesia. Opening Session 3 December 2013: WT/MIN(13)/15; Address by H.E. Mr Gita Wirjawan, Chairman of the Ministerial Conference. Opening Session 3 December 2013: WT/MIN(13)/16.

²⁶³ Statement by H.E. Mr Anand Sharma, Minister of Commerce and Industry. Adopted on 4 December 2013: WT/MIN(13)/ST/22

²⁶⁴ ICTSD (2013p).

²⁶⁵ WTO (2013i).

²⁶⁶ ICTSD (2013j).

acceptable as half of the delegations would return home empty-handed.’²⁶⁷ Thus, bearing the approaching deadline in mind, Azevêdo continued his efforts to find landing zones during a marathon of private talks with delegates who had pressing issues.

The row over the food stock proposal stole the scene also during the next two days of the conference when Indian Minister Sharma eventually gave hints of a more conciliatory approach in private sessions open to heads of delegations. Indicating that India would be most likely willing to discuss its demands, Sharma, nonetheless, pragmatically reiterated that the G-33 proposal was backed up also by other developing countries, including South Africa. According to trade sources, the delegates were clearly divided over the permanent solution on food stockholding. A clear end date of the “peace clause” was vigorously advocated primarily by the US and other members fearing the misuse of public procurement schemes and resulting trade distortions on farmers outside India. As one negotiator confirmed, the fate of the Bali package was at that time completely in the hands of India and the US.²⁶⁸

Thursday talks turned out to be a “moment of truth”. During the morning press conference, Indian Minister Sharma was expected to report on previous informal meetings with other WTO members and present his idea of a possible deal. Instead, he gave a strong public defence of India’s requirements, noting that ‘[t]here is no dictionary [...] that describes interim as temporary.’ For New Delhi, he stressed, the “peace clause” would have to remain in force until member states find a permanent solution. He went on to argue that India was not fighting a lonely battle, referring to the support of countries which, in his words, ‘account for more than two-thirds of the poor population of the world.’ When confronted with critical voices accusing India of collapsing the Ministerial, he insisted that ‘[i]t is better to have no agreement than to have a bad agreement. Those who are speaking up for the poor and hungry people cannot be blamed.’²⁶⁹ In the end, Sharma was asked if the government was promoting food programmes to gain mileage ahead of the elections. ‘I think this is a misconception. Democracies do have elections but democracies also have principles and convictions,’ he replied.²⁷⁰

While India was holding all negotiations hostage in the morning, the situation started changing dramatically from that time on. Only a few hours after Sharma’s statement, several delegates disclosed that the G-33 coalition was falling apart, with a number of African representatives joining the opposition. ‘African countries don’t always talk with the same

²⁶⁷ Interview, 11 April 2016.

²⁶⁸ ICTSD (2013p).

²⁶⁹ ICTSD (2013k).

²⁷⁰ Business Standard (2013).

voice within the Group,' one member commented.²⁷¹ Similar information soon appeared in the Indian press, revealing that the position of China and Indonesia also substantially diverged from New Delhi. Sources quoted Indonesian Minister Gita Wirjawan who had admitted, 'I think India comes strong in terms of linking the interim solution to the permanent solution, but we also understand where the other guys are coming from. I think there needs to be flexibility from some side for this to work.'²⁷²

India's threats furthermore reinvigorated the activity of WTO mediators. Firstly, the conference chair together with Indonesian President Susilo Bambang Yudhoyono contacted Indian Prime Minister Singh to discuss with him their concerns over India's destructive strategy.²⁷³ Secondly, the DG convened a special meeting with Sharma who was presented with three different wordings of the agreement. The options allegedly covered the original Geneva draft text, a language linking the interim "peace clause" with a permanent solution, and an opt-out clause guaranteeing special treatment exclusively for India. Nevertheless, Sharma rejected all proposals at that moment.²⁷⁴

As the controversy regarding food stockholding programmes was pushing the Ministerial into the eleventh hour, the DG and the chair decided to extend the deadline and continue consultations over the next day and night. 'In the WTO, the concept of time is a flexible one,' WTO spokesman Keith Rockwell explained.²⁷⁵ On the ground of a series of Friday meetings with Sharma and his US counterpart Michael Froman, Azevêdo proposed a new compromise text – returning to the idea of a direct linkage between the "peace clause" and the permanent solution – in a bid to resolve the stand-off. After its circulation among all delegations, the draft was open for further revisions by other ministers.²⁷⁶ As one member of the Czech delegation commented, the situation was extremely tense. 'Round-the-clock talks were held mostly in small formats and conflicting information were leaking out throughout Friday night. I remember us sitting in the foyer at 3.30 a. m., completely exhausted, waiting for official reports on any breakthrough.'²⁷⁷

Azevêdo's draft eventually worked as the "last call". During the final critical hours, a considerable number of member states started pushing for the adoption of the full package despite their dissatisfaction with some parts of it. Invoking DG's warning messages, they

²⁷¹ ICTSD (2013k).

²⁷² Basu (2013d).

²⁷³ Saragih and Yulisman (2013); Interview, 11 April 2016.

²⁷⁴ ICTSD (2013k).

²⁷⁵ WTO (2013c).

²⁷⁶ ICTSD (2013a); WTO (2013m); Public Stockholding for Food Security Purposes, Draft Ministerial Decision. Adopted on 6 December 2013: WT/MIN(13)/W/10.

²⁷⁷ Interview, 11 April 2016.

stressed that the deal would not only mark a big step for developing countries but it would also provide the much-needed momentum for the Doha Round conclusion.²⁷⁸ According to one Czech negotiator, the combination of these two factors cleared the way for the Saturday morning closing ceremony when ministers formally adopted the Bali package. ‘The role of Azevêdo at the conference was of crucial importance, yet, WTO is a member-driven organization. This means that only member states’ willingness to compromise on individual issues could save the talks,’ he confirmed.²⁷⁹ In fact, the DG arrived at the same conclusion in his closing remark, refusing to claim credit for the outcome. ‘I am delighted to say that, for the first time in our history: the WTO has truly delivered. I challenged you all, here in Bali, to show the political will we needed to take us across the finish line. You did that. And I thank you for it.’²⁸⁰

The Ministerial decision on public stockholding for food security purposes finally put in place an interim “peace clause” and set a four-year target to negotiate a permanent solution. Applying only to public stockholding schemes existing on the date of the decision, it further committed developing countries to provide detailed statistical information on an annual basis.²⁸¹ Understandably, the deal was framed as a victory for the Indian government. On the brink of domestic polls, Congress leaders could officially declare that Minister Sharma had lived up to his promises to Indian farmers and had not succumbed to the pressure exerted by the US. ‘What we give as part of our Food Security programme to the people is essentially a bid towards poverty alleviation and is an essential part of the country’s development. We have always maintained that we are not going to compromise and we have delivered on that,’ they said.²⁸²

From the perspective of the DG though, there is another background story explaining the adoption of the Bali package. Indian requirements were gradually losing support of the G-33 coalition members and the government was desperate to avoid the risk of legal proceedings for breaches following from the implementation of the National Food Security Act. As a result, India’s threats turned out to be a cheap talk and Sharma had to return to the negotiating table and reconsider the options originally presented by Azevêdo to make sure that the national legislation is not legally challenged. Yet, although the DG’s draft

²⁷⁸ WTO (2013c).

²⁷⁹ Interview, 14 April 2016.

²⁸⁰ WTO (2013n).

²⁸¹ Public Stockholding for Food Security Purposes, Ministerial Decision. Adopted on 7 December 2013: WT/MIN(13)/38 or WT/L/913.

²⁸² Chowdhury (2013).

definitely saved government's face in front of the domestic audience, admitting that "a bad agreement is better than no agreement" must have been a bitter pill for India to swallow.

Conclusion

The thesis, along with the attendant research questions, addresses practical intricacies in WTO negotiations. All along its history, the Doha Round has been a fertile ground for squandered opportunities, failed conferences and missed deadlines. Shortly after its launch in 2001, the negotiations hit deadlock which left the DDA paralyzed for nearly a decade. According to observers, the stagnation was a result of entrenched constraints and new challenges.

Firstly, the Doha Round introduced an ambitious and highly complex agenda which reflected the consensus of member states on the need for more balanced trade deals. However, despite the original intention to correct the asymmetries of past rounds, the development mandate was soon contested by large economies, arguing that the WTO had to deal with new issues dominating the global market, such as investment, e-commerce or currency manipulation. The differences among members placed the DDA in jeopardy at a time when considerable energy had been expended on bilateral and regional trade negotiations such as the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP). As one Czech delegate put it,

‘Since the launch of the Doha Round, the character of the world trade has transformed beyond recognition and the WTO failed to respond to this. By contrast, regional and bilateral trade agreements have undeniably taken new issues into consideration and incorporated rules concerning sustainable development, investment flows, competition law or small and medium enterprises.’²⁸³

Secondly, since the DDA launch, the large membership has been contending with an ineffective decision-making procedure guided by the practice of consensual decisions and by the idea that negotiations represent a “single undertaking”. Protecting the member-driven character of the organization and the sovereign equality of its member states, both principles, are, nevertheless, highly inconsistent with efficient bargaining as they provide all countries with opportunities to take all issues hostage or veto any decisions.

The Ninth Ministerial Conference, held in Bali, was the first signal that the DDA was still alive. Delivering the first multilateral trade deal in almost 15 years, it averted the risk

²⁸³ Interview, 11 April 2016.

of a complete collapse of the Doha Round and broke the long series of failure scenarios. Nonetheless, as observers noted, ‘The symbolism of the Bali declaration is perhaps more important than the outcome.’²⁸⁴ In spite of public statements – released after the final ceremony – praising the deal as a major success, Bali represents only a small step forward in the long-stalled negotiations.

This thesis offers two possible explanations for the outcome of the Bali Ministerial.

Hypothesis 1: The Bali conference was more likely to be successful because WTO mediators did not pursue only communication strategy but they also adopted more interventionist and inclusive tactics.

The first hypothesis is partly valid. While the communication strategy still formed the core of mediation activities, WTO mediators frequently resorted to more interventionist tactics by restructuring the agenda, splitting negotiations into small steps, proposing concessions and trade-offs, manipulating with the deadline, projecting SNTs and highlighting the risk of another collapse. The link between more interventionist tactics on one hand and higher chances of reaching an agreement on the other hand was especially illustrated by the Geneva-based negotiations. In the area of trade facilitation, the talks remained primarily member-driven with the chair playing only a passive role of a communicator. As a result, the talks were at a standstill for a long time and the draft text was overflowing with even increasing number of brackets. Contrarily, the chair of the negotiating group on agriculture John Adank was extensively interfering in the discussions. Unlike his counterpart Ambassador Sperisen-Yurt, Adank boldly restructured the agenda and put on table a draft negotiating text which helped members to reach a compromise on several issues. The unexpected collapse of agriculture talks needs to be seen in the context of the last-minute shift in the Indian bargaining strategy rather than as a direct consequence of chair’s low activity.

In line with the common practice in the WTO, Bali negotiations, nonetheless, did not completely depart from the tradition of small meetings behind closed doors. According to one Czech negotiator, there is a highly pragmatic reason for this phenomenon. ‘Azevêdo definitely tried to open the talks to the whole membership. [...] Yet, reaching a compromise among more than 150 countries is always extremely difficult. Therefore, he eventually had

²⁸⁴ Overseas Development Institute (2013).

to convene parallel meetings in small formats to shape a deal.²⁸⁵ As the case study demonstrates, the DG, nevertheless, attempted to balance these deficiencies by circulating all proposals elaborated in small groups to the full membership for a broad discussion. In the words of one former Czech diplomat, ‘Azevêdo did his homework and ran errands to make the deal happen.’²⁸⁶ Equally, the DG’s activities in the final hours of the Bali Ministerial Conference serve as a clear example of this practice.

Hypothesis 2: The Bali conference was more likely to be successful because mediators helped negotiators to save their face and decrease their audience costs.

The second hypothesis is valid. Food subsidies and public stockholding programmes were vigorously advocated by Indian state officials who were trying to win votes ahead of national elections. Invoking the protection of domestic farmers and global food security, the government made repeated public commitments for the purpose of gaining more bargaining power in the Bali negotiations. Shortly before the Ministerial Conference, the Indian public opinion, however, locked the government in its position, ruling out any chance of backing down. The DG helped India to save its face and untie its hands through a full range of mediation tactics. Firstly, he postponed the deadline and bought Indian negotiators more time to strike a deal on agriculture. Secondly, he took advantage of the confidential character of WTO negotiations and conducted a series of private consultations with individual members to find landing zones which could not be otherwise publicly disclosed. Thirdly, Azevêdo used the most powerful tool of WTO mediators and proposed a draft negotiating text paving the way for the conclusion of the Bali package.

In the context of Bali negotiations, the thesis revealed several interesting findings. In line with the previous knowledge, it initially confirmed that more interventionist tactics increase the likelihood of concluding an agreement. Nonetheless, the member-driven character of the WTO considerably limits the range of available mediation strategies. In this regard, the analysis suggests that WTO mediators tend to resort most frequently to various formulation tactics with the SNT being the most effective one. Furthermore, the case study demonstrates that WTO negotiations are intrinsically less inclusive and less transparent, which is the direct effect of the large membership. Despite DG’s efforts to root out these traditional features, confidential small meetings obviously form vital parts of the bargaining process since they enable member states to save their face and communicate the bottom lines

²⁸⁵ Interview, 11 April 2016.

²⁸⁶ Interview, 4 May 2016.

without being punished either by the opponents or the domestic public. Apart from that, unlimited transparency and inclusion can push negotiations to the brink of a collapse as we witnessed in the case of the last Ministerial Conference in Nairobi. The observation was confirmed also by one Czech negotiator who explained, ‘During pre-Nairobi negotiations, the DG clearly overstepped the bounds in pressing for extreme transparency and inclusion of all WTO members. In the end, it turned out that an agreement was beyond reach and ministers had to leave for Nairobi without any draft text.’²⁸⁷ With regard to these conclusions, more research will be needed to determine the interplay between inclusive character of negotiations and their outcomes. Finally, the thesis indicates that the Doha Round is gradually abandoning the principle of “single undertaking” in favour of a less ambitious “early harvest”. This trend has serious implications for the future of the Doha agenda since it casts doubt on the conclusion of the DDA in its entirety. In other words, it seems that the Doha Round is standing on the crossroad, looking for new vision and direction. The unclear outlook of the negotiations was equally highlighted by all respondents. In his concluding remarks, one Czech delegate noted, ‘The DDA is certainly not the only way how the WTO can address development issues. In this context, members need to turn to a broad discussion on the future course of the talks.’²⁸⁸

²⁸⁷ Interview, 11 April 2016.

²⁸⁸ Interview, 14 April 2016.

Summary

Mediation is a prominent method of resolving conflicts between two or more parties. Until now, most IR theorists have devoted their systematic attention to the role of mediators in dispute resolution talks. On the contrary, only handful of studies has been published about multilateral trade negotiations and the influence of mediators on this type of bargaining. In light of this research gap, the thesis examines mediators' activities and their subsequent impacts on the outcomes of WTO trade negotiations. The analysis is based on two hypotheses. Firstly, it presumes that mediators who frequently resort to more interventionist and inclusive tactics can increase the likelihood of reaching an agreement. Secondly, it presupposes that through a specific set of tactics mediators have the capacity to undo negotiators' commitments, decrease their audience costs and thus save their face not only in front of their opponents, but more importantly also in front of domestic constituencies.

Drawing on backstage reports, WTO documents and interviews with participants, the thesis analyses the case of Bali negotiations, more specifically the Geneva-based talks and the Bali Ministerial Conference. It first tracks individual mediation strategies employed by WTO chairs or the Director-General Roberto Azevêdo to subsequently determine the impact on the final adoption of the Bali package, representing the first multilateral trade agreement concluded under the auspices of the WTO. The analysis shows that WTO mediators actively intervened in the bargaining process – departing from the passive role of communicators in favour of the more active role of formulators or manipulators – and helped negotiators to decrease their audience costs and save their faces in front of domestic audiences. At the same time, the findings, nonetheless, indicate that inclusive mediation is a double-edged sword since it may increase the legitimacy of the agreement on one hand while undermining the efficiency of negotiations on the other hand. Contrarily, less inclusive approaches enable negotiators to privately communicate their bottom lines without exposing them to the risk of losing face in front of domestic constituencies. In this regard, further research is needed to determine the interplay between inclusive mediation and outcomes of negotiations.

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Master's Thesis Proposal

Univerzita Karlova v Praze

Fakulta sociálních věd

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Projekt diplomové práce

Breaking Deadlocks: The Role of Mediators in WTO Negotiations

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Obor: Mezinárodní vztahy

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Overview and Justification of the Proposed Research Topic

Conflict is an integral part of all social systems, irrespective of their complexity or location in time and space. This is of course true of the current international system as well. Negotiations between states have become one of the most prominent methods how to address joint problems, resolve disputes and make deals. Nevertheless, there is a significant variation in their outcomes. In some cases states manage to reach agreements while other times negotiations end up in deadlock. There is a substantive body of literature on international negotiations proposing a number of ways how to structure talks and set up the bargaining process in order to avoid stalemates. One of the common methods is the appointment of an unbiased third party, a mediator who should help negotiators to discover their zone of agreement.

Most IR theorists have devoted their systematic attention to the role of mediators in bilateral dispute resolution talks. On the contrary, almost nothing seems to have been published about mediation of multilateral trade negotiations which primarily focus on deal making. With respect to this research gap, I will analyse the impact of mediators' presence and activities on the outcomes of multilateral trade negotiations in the WTO.

The WTO is one of the most important institutions which heavily influence the world trade and global economic relations. WTO negotiations are often described as highly complex and challenging bargaining processes which face several problems. First, high number of participating states inevitably leads to representation of clashing interests that at first sight appear to be irreconcilable. From the game theoretic perspective, WTO negotiation rounds resemble situations where there are numerous outcomes that states would prefer to no agreement but they generally disagree in their ranking (Nash 1950, Schelling 1960, Fearon 1998). Secondly, state representatives are instructed to advance national demands and avoid concessions at any cost. Moreover, states often tend to strengthen their bargaining positions by indirectly engaging the domestic public in the whole process. Negotiating states thus purposely increase their audience costs which further support their commitments in the bargaining process (Putnam 1988, Fearon 1994). As a result, negotiations often end up in a deadlock since the combination of the abovementioned factors considerably decreases the chance to find an acceptable compromise.

Since the launch of the Doha Round in November 2001, the WTO has been trapped in a stalemate which undermined its authority and further deepened the crisis of the whole multilateral trading system. Yet, in December 2013, we witnessed a significant sign of movement in the long and, so far, unfortunate story of the negotiation round.

At the 9th Ministerial Conference in Bali, states concluded an agreement regarding a small subset of issues representing, however, the first truly multilateral agreement negotiated under the auspices of the WTO. While numerous factors might have contributed to the outcome of the conference, there are rumours that the role of mediators, especially the Director General Roberto Azevêdo, was of great importance. With regard to this context, two questions arise. First, what impact did mediators' presence have on the outcome of the Bali conference? Second, which strategies did mediators use during the Bali conference?

Research goals

The goal of the thesis is threefold: first, to introduce the potential of mediators in multilateral trade negotiations, which seems to be an unexplored topic in IR theory. Here priority goes to introducing various tactics that mediators can adopt in order to increase the chance of a positive outcome. Second, the thesis will map individual steps taken by mediators during the Bali conference. Finally, the work will seek to explain how mediators contribute to decreasing reputation and audience costs of negotiating parties (face-saving issue).

The thesis will be based on two hypotheses:

H1: The chance to break deadlocks and reach agreements will increase if a mediator adopts bold strategies.

There are many typologies describing mediation strategies and behaviour. The thesis will be based on the typology elaborated by Touval and Zartman (1985a), Bercovitch (1996) and Odell (2004) who classify mediation strategies along a scale ranging from low to high intervention. They identify three types of strategies: 1) communication strategy where a mediator plays only a passive role, 2) formulation (also *procedural*) strategy in which case a mediator exercises more control over the process of negotiations, and 3) manipulation strategy representing the most active approach. In the context of this research, the work will focus mainly on manipulation and formulation strategies as they provide mediators with a large amount of opportunities for interventions. The idea that bold mediation strategies such as manipulation strategy tend to increase the likelihood of a positive outcome and of reaching an agreement is not entirely new. Bercovitch (1996), Assal et al. (2002) and Odell (2009) have already provided an interesting insight into the issue.

H2: The chance to break deadlocks and reach agreements will increase if a mediator can effectively help the parties to decrease their reputation and audience costs.

Face saving belongs to key variables within the bargaining process. Yet, the author of the pioneering work on bargaining in GATT Gilbert Winham argues that multilateral negotiations do not benefit from psychological aspects of mediation on a large scale (Winham 1979). In other words, face saving function of mediators does not seem to be important for him. On the contrary, several IR theorists (Fearon 1994, Fearon 1998, Putnam 1988, Schelling 1960) have pointed out that bargaining positions of states are heavily influenced by fairly psychological factors such as credibility of negotiators in the eyes of their opponents or incentives to misrepresent and bluff, irrespective of the structure of negotiations. It seems thus logical that mediators' ability to save faces of negotiators could be of great benefit.

First, negotiators seek to secure sufficient bargaining power by misrepresenting or overvaluing their interests and by committing themselves to certain positions (Fearon 1998, Schelling 1960). In fact, negotiators put voluntarily their reputation at stake in an effort to gain as much as possible. Nevertheless, extremely high reputation costs might fully ruin the bargaining process as states will prefer stopping negotiations and maintaining the *status-quo* to avoid paying the price for losing.

Secondly, negotiators do not manipulate only with their reputation costs but they can also benefit from the impact of domestic audience costs. If a government is able to generate significant costs on the national level to support its claims, strong domestic audience will allow the state to signal credibly its commitments within the negotiations (Fearon 1994, Putnam 1988). As in the previous case, extremely high audience costs will impede any agreements as states will rather maintain the *status-quo* and sacrifice potential gains from the future cooperation than back down and pay the price for losing.

Previous knowledge

As I have already noted before, the literature on mediation of multilateral negotiations is rare indeed, studies dealing with mediation in multilateral trade negotiations are nearly non-existent. The pioneering study of mediators' activities in GATT negotiations was published by Gilbert Winham who highlighted the role of the GATT Secretariat in major rounds (Winham 1979). For Winham, the key contribution of mediators resides in their organizational skills. On the contrary, psychological skills were described as less important. A series of studies of GATT/WTO negotiations has been published by John Odell who carried

out an in-depth exploratory research based on interviews mapping various functions of GATT/WTO mediators (Odell 2004, 2005, 2009). His collected data will be used as a supportive reference material in the empirical part of the thesis.

Mediation of multilateral negotiations is a focal point of a few studies from other related fields. Oran Young's work offers a relevant clarification of leadership by distinguishing three main categories of this concept – structural, entrepreneurial and intellectual leadership (Young 1991). The issue of formal leadership has been addressed also by Jonas Tallberg who observed how leaders overcome general collective-action problems, namely agenda failure, negotiation failure and representation failure (Tallberg 2010). Finally, the entrepreneurial dimension of chairs has also received the attention of Blavoukos and Bourantonis who analysed the relationship between organisational features such as mandate, resources or formal constraints and chair's potential (Blavoukos and Bourantonis 2010).

The growing importance of multilateral negotiations has also spurred research on universal tactics helping to overcome deadlocks. Antrim and Sebenius introduced the practice of the chair Tommy Koh who made a significant contribution to the positive outcome of the Law of the Sea talks (Antrim and Sebenius 1992). Similarly, the article of Stefan Persson demonstrates that various negotiation techniques dealing with stalemates were applied already during the Paris Peace Conference in 1919 (Persson 1994). As for the most recent contribution, an interdisciplinary insight into the subject of deadlocks has been provided by a collective monography edited by Amrita Narlikar (Narlikar 2010).

The majority of works on international mediation have concentrated on settling military disputes. In this field, Jacob Bercovitch, I. William Zartman and Michael Watkins belong definitely to the most prolific authors.²⁸⁹ It is necessary to mention though that a lot of ideas coming from this literature cannot be applied directly on the trade domain. However, some findings might prove universal value for understanding mediators' influence in general.

Theoretical and conceptual framework

WTO negotiations serve as an outstanding example of bargaining problems that parties must face when trying to reach a mutually beneficial agreement. The theoretical foundations of contemporary bargaining theory were laid down by John Nash who described bargaining as a process when rational players with different sets of preferences have the opportunity to cooperate in many ways, yet they cannot agree on a mutually beneficial

²⁸⁹ Bercovitch and Rubin 1992, Bercovitch 1996, Bercovitch and Houston 2000, Bercovitch 2002, Touval and Zartman 1985a, Touval and Zartman 1985b, Zartman 1994, Watkins 1999, Watkins 2003a, Watkins 2003b.

outcome (Nash 1956). Since all parties prefer at least some gains to no agreement, they try to solve the problem through a sequence of offers and counteroffers (Rubinstein 1982). Each player has his expectations about preferences of his opponents. At the same time, all players will strive to gain as much as possible. As Thomas Schelling argues, gains of individual players will depend on their bargaining power which he defines as “the power to fool and bluff” (Schelling 1956: 282). The goal of fooling and bluffing is first and foremost to persuade opponents that the player is telling the truth. Schelling introduces a method of adopting visible commitments which artificially (but effectively) decrease the number of outcome options in player's favour. Nevertheless, once the player fails to live up to his commitments he loses all credibility in the bargaining process and causes serious harm to his reputation (Schelling 1960, Fearon 1992). The price for not fulfilling commitments made in front of the opponents is defined as reputation costs.

Furthermore, bargaining cannot be understood only as one-level process. On the contrary, negotiations on international level are always affected by the domestic set-up (Putnam 1988). Bargaining states can turn this fact into their advantage as the domestic audience can help them to tie hands credibly and limit the number of possible outcome options in their favour again. By stressing the pressure of the domestic audience, states create artificial audience costs which describe the price for not respecting the preferences of domestic audience during negotiations (Fearon 1994).

If parties increase reputation costs or audience costs too much, they inevitably decrease the chance to reach an agreement, which might in some cases lead to deadlock. While the question how to negotiate wisely has been widely discussed in the literature, there is only a handful of studies dealing specifically with the subject of deadlocks in international negotiations. In this respect, it is not highly surprising that there is no consensual definition of the concept. Stefan Persson sees deadlock as a situation when “the conflicting interests of the parties become so strong that they are not prepared to adjust their proposals toward meeting each other's positions” (Persson 1994: 211). Similarly, John Odell defines it as “a period during a negotiation when parties stand firm on inconsistent positions” (Odell 2009: 274). Amrita Narlikar introduces a more complex view of deadlocks. For her, two conditions must be present:

“1) An extended situation of non-agreement exists, such that parties adopt inconsistent positions and are unable or unwilling to make the concessions sufficient to achieve a breakthrough on the particular issue; and

2) A landmark moment in the negotiation process [...] despite having set up expectations towards a compromise, is unable to trigger the necessary concessions to ensure an agreement on the particular issue” (Narlikar 2010: 2-3).

Apparently, there are two key features of deadlocks which represent *condiciones sine quibus non*: 1) inconsistent positions of the parties, and 2) absence of willingness to make concessions or compromises. Their combination will be applied on the concept of deadlocks in the thesis.

Negotiation theory recognizes various ways how to break deadlocks, mediation being one of them. Since the scope of mediation activities is truly enormous, there are hundreds of definitions which stress diverse aspects of mediation. Doob defines it as “the efforts of one or more persons to affect one or more other persons when [...] the former, the latter or both perceive a problem requiring a resolution” (Doob 1993:1). Mitchell sees it as “any intermediary activity [...] undertaken by a third party with the primary intention of achieving some compromise settlement of issues at stake between the parties” (Mitchell 1981: 287). Folberg and Taylor describe mediation as “the process by which the participants, together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs” (Folberg and Taylor 1984: 7). While most of these definitions follow the practice of mediators dealing with international conflicts, certain features can be employed also in the case of multilateral trade negotiations. First, mediators must be perceived as neutral and impartial persons in order to win confidence of negotiating parties. Secondly, the main task of mediators is to identify problems and assist parties in the search for a compromise. To fulfil their key function, mediators employ three types of strategies: 1) communication strategy used for gaining trust of negotiating parties and facilitating communication between them, 2) formulation strategy which focuses on structuring the agenda, highlighting common interests or proposing alternatives, and 3) manipulation strategy providing the mediator with the power to push negotiation in a particular direction (Touval and Zartman 1985a, Bercovitch 1996, Odell 2004).

Methodology

The thesis will be designed as an exploratory qualitative study analysing a single case – negotiations during the 9th WTO Ministerial Conference which took place in Bali in December 2013. Methodologically, the work will proceed in three steps. The first will be operationalization of reputation costs and audience costs. Starting with audience costs,

the thesis will track whether negotiators referred to any domestic pressure or constraints affecting their bargaining positions. Concerning reputation costs, the scope of tactics is much broader. States might publicly express worries about their positions in simultaneous negotiations if they consent to make concessions. Negotiators also often announce their claims and goals in advance to create credible commitments. During the negotiations, states can publicly refuse any compromise agreements which do not satisfy their preferences. In extreme cases, negotiating parties can threaten to block the agenda or veto any proposals. As the second step, the work will operationalize mediation strategies. Here, John Odell's findings will be followed (Odell 2004, Odell 2005). Finally, the thesis will map how mediators enabled the parties to undo their commitments and consequently decreased their reputation and audience costs during the Ministerial Conference in Bali. The most important tactics which will be analysed are:

A. within formulation strategy:

- proposing a single negotiation text (Odell 2009)
- structuring agenda (Watkins 2003b)

B. within manipulation strategy:

- proposing concessions and trade-offs (Antrim and Sebenius 1992)
- supplying information on discussed issues revealing real gains and losses of individual parties (Drahos 2003)
- exerting pressure on the parties by highlighting the negative impact of another failure of WTO negotiations (Winham 1979, Odell 2005)

The data for the empirical part will be collected from official documents stored in the WTO database, press releases, news articles and government reports. To capture complexly the role of mediators, the thesis will draw complementary evidence from interviews with conference participants.

Preliminary Outline of Work

1 Introduction

1.1 Overview/justification of the topic

1.2 Brief description of WTO negotiation rounds

2 Bargaining theory

2.1 Tying hands and sinking costs

2.2 The role of domestic audience

3 Negotiation theory

3.1 Deadlocks in international negotiations

3.2 The role of mediators in breaking deadlocks

3.2.1 Communication strategy

3.2.2 Formulation strategy

3.2.3 Manipulation strategy

4 Mediators' practice during the 9th Ministerial Conference in Bali

4.1 Overview of applied strategies

4.2 Decreasing reputation and audience costs

4.2.1 Formulation strategies

4.2.1.1 Single-text negotiation strategy

4.2.1.2 Structuring agenda

4.2.2 Manipulation strategies

4.2.2.1 Proposing concessions and trade-offs

4.2.2.2 Supplying information

4.2.2.3 Exerting pressure

5 Conclusion

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