

THE FUTURE OF THE WTO: FROM AUTHORITARIAN “MERCANTILISM” TO MULTILEVEL GOVERNANCE FOR THE BENEFIT OF CITIZENS?

*Ernst-Ulrich Petersmann**

ABSTRACT

European economic and environmental law demonstrates that constitutional and cosmopolitan conceptions of international economic and environmental regulation can protect consumer welfare and equal rights of citizens more effectively than “Westphalian conceptions” of “international law among sovereign states”. The obvious “governance failures” to conclude the Doha Round negotiations and prevent the financial crisis since 2008, climate change and unnecessary poverty are due to multilevel “regulatory failures”, including lack of leadership by the G20 countries for protecting the “global public goods” of an efficient world trading, financial, environmental and transnational rule of law system. Mercantilist conceptions of “member-driven governance” and of inadequate “reciprocal concessions” neglect the “horizontal” as well as “vertical” interrelationships between national, regional and global public goods and the need for their democratic support and legitimization by citizens and parliaments. The “systemic failures” of intergovernmental power politics based on “legal nationalism” are discussed by using the analytical tools

* Professor of international and European law and former head of the Law Department of the European University Institute at Florence. Former legal advisor in the German Ministry of Economic Affairs, GATT and the WTO and former German representative in numerous UN and European institutions. This contribution is an updated version of lectures given in October 2010 at Xi'an Jiatong University and Taiwan. The author is grateful for comments from Professors Wenhua Shan and Chang-fa Lo. The author can be reached at Ulrich.Petersmann@EUI.eu.

of “public goods theory” and “constitutional theory” focusing on five “collective action problems” impeding effective protection of interdependent, citizen-driven “public goods”. The main hypothesis of the paper is that efficient and legitimate, multilevel governance of interdependent trading, environmental and development systems requires stronger “stakeholder participation” and protection of transnational “rule of law” for the benefit of citizens as a constitutional restraint on the “rule by men”, their “rule by law” and the “ubiquity” of selfish abuses of public and private regulatory powers.

KEYWORDS: *collective action problems, constitutionalism, Doha Round, European economic law, governance failures, multilevel governance, public goods, rule of law, WTO*