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11

**WTO DECISION-MAKING AND
DEVELOPING COUNTRIES**

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SOUTH CENTRE

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PREFACE

The South Centre, with funding support from the UNDP's TCDC Unit, initiated in 1998 a project to monitor and analyse the work of WTO from the perspective of developing countries. Recognizing the limited human and financial resources available to the project, it focuses on selected issues in the WTO identified by a number of developing countries as deserving priority attention. As hoped, the project has helped in establishing a medium term work programme by the South Centre on issues related to international trade and development, which includes several sub-projects on specific WTO Agreements/issues.

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It is hoped that the T.R.A.D.E. working paper series will be found useful by developing country officials involved in WTO discussions and negotiations, in Geneva as well as in the capitals.

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CONTENTS

EXECUTIVE SUMMARY	<i>ix</i>
INTRODUCTION	<i>xiii</i>
I. DECISION-MAKING PROCESSES IN THE WTO: DESCRIPTION AND ANALYSIS	1
II. PROBLEMS WITH WTO DECISION-MAKING PROCESSES : VIEWPOINT OF DEVELOPING COUNTRIES	6
II.1 One-member-one-vote and Consensus Decision-Making.....	6
II.2 Member-driven Character of the WTO.....	7
II.3 Informal Processes in WTO Decision-Making.....	9
II.4 Role of the Secretariat and other Organisational Issues.....	11
III. PROPOSALS FOR INSTITUTIONAL REFORM: ANALYSIS, ASSESSMENT AND ALTERNATIVES ..	14
III.1 The Consensus Principle	14
III.2 Member-Driven Character vs. Executive Board.....	16
III.3 Burden of Increased Transparency: Overloaded Agenda and Capacity-Building.....	18
III.4 Ministerial Conferences.....	19
IV. IMPLICATIONS OF PROPOSALS OF INSTITUTIONAL REFORM FOR THE CHARACTER OF THE WTO AND GLOBAL ECONOMIC GOVERNANCE.....	20
V. STRATEGIES FOR DEVELOPING COUNTRIES	23
VI. CONCLUSION.....	26
REFERENCES	28

LIST OF ABBREVIATIONS

DSB	Dispute Settlement Body
GATS	General Agreement on Trade in Services
IFIs	International Financial Institutions
LDCs	Least Developed Countries
NGOs	Non-Governmental Organizations
NTBs	Non-Tariff Barriers
TPRM	Trade Policy Review Mechanism
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Aspects of Intellectual Property Rights

Organizations

EU	European Union
GATT	General Agreement on Tariffs and Trade
ICITO	Interim Commission for the International Trade Organisation
ICG	Informal Consultative Group
IMF	International Monetary Fund
LMG	Like-Minded Group
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

EXECUTIVE SUMMARY

Since Seattle and its aftermath, unprecedented attention has been devoted to the processes of operation of the World Trade Organisation (WTO). Debates have raged over the subjects of internal and external transparency of WTO processes, the accountability and legitimacy of the institution, and possibilities of institutional reform. This paper addresses one key question that underlies many of the debates and provides the first and crucial hinge on which all other issues of institutional democracy, accountability, legitimacy, and the very functioning of the WTO depend. It asks to what extent have the decision-making processes of the WTO affected (facilitated, impeded, or been neutral to) the participation of the majority of its members, namely developing countries? This question is addressed using a comparative and historical perspective.

Section I of the paper identifies and analyses four tenets that underlie WTO decision-making processes: one-member-one-vote principle, consensus-based voting, member-driven character, and the importance of informal processes. The latter three features explain why developing countries have found it difficult to make use of their apparent equality of representation with the developed countries and the strength that comes from large numbers. The first section also illustrates that in terms of these essential characteristics of decision-making processes, the WTO is very similar to its predecessor -- the General Agreement on Tariffs and Trade (GATT) -- in which the participation of developing countries was extremely limited. However, while decision-making processes remain largely unchanged, the mandate of the WTO is far more expansive and also goes much deeper than its predecessor's. It is within this backdrop, that the question of decision-making processes becomes an especially urgent one, for the only hope that developing countries have of working this elaborate and powerful system of rules is through active participation in the rule-making and rule-enforcement processes of the WTO. To some extent, developing countries have themselves illustrated recognition of this through their increased vigilance and participation in the WTO. Unfortunately, an increased participation does not necessarily translate into an *effective* participation.

Section II finds that all the four tenets (discussed in section I) are fraught with problems for developing countries. The principle of one-member-one vote may allow a theoretical equality to developing countries with their more developed counterparts, but the consensus-based method of decision-making assumes the informed presence of developing countries in all meetings. Many developing countries find that they are unable to fulfil this requirement and find themselves considerably disadvantaged in comparison to the developed countries that have large and well-prepared delegations. The member-driven character of the WTO means that the Secretariat is neither mandated to nor capable of giving developing countries the representation and assistance they need to be on par with the developed countries. As a result, the power asymmetries outside the institution also get translated into the decision-making processes of the WTO. The importance of informal processes in building consensus among over 140 members offers some important advantages, but also produces additional costs for developing countries. These costs include lack of transparency in extending invitations to small group meetings, certain protocols of interaction that have led delegates to speak of the 'English Club atmosphere' of the WTO, excessive reliance on the chairpersons as mediator and facilitator of the negotiations in the absence of rules and so forth. Finally, procedural issues, such as the timing and venue of the Ministerials, the nature of technical assistance, and problems of both omission and commission that derive from the nature of the WTO Secretariat also affect the participation of developing countries in an adverse way.

Section III deals specifically with proposals of institutional reform, and particularly reform directed to improving the participation of developing countries. First, it finds that in spite of the problems with the consensus principle, the alternatives would only worsen the position of developing countries. However, the paper suggests retention of the consensus principle with some modification, together with reform of some of the other features of decision-making to enhance developing country participation.

Proposals for a limited membership governing/advisory body are examined in detail drawing from the experience of the GATT with the Consultative Group of Eighteen, cg-18. This paper finds that reform by establishing an executive board of any kind would be highly ill-advised, most importantly because it would only permanently institutionalise the existing hierarchies of the WTO, besides precipitating additional problems of legitimacy and functioning of the institution. Much more useful is reform that has partly begun through attempts to increase transparency of the small-group meetings and maintain a clear distinction between the processes of consensus-building in the small group meeting and decision-making at the plenary level. However, reform along even these lines is controversial and tension-ridden. Tensions within these proposals are analysed and possible ways of resolving them suggested.

Proposals related to the overloaded agenda of the WTO, new burdens of increased transparency, and capacity-building are also discussed. Here, the tension between assigning greater responsibilities of capacity-building to the Secretariat vs. the limitations of the Secretariat to act as a neutral broker are drawn out. Fourth, on the subject of the Ministerial Conferences, the paper argues for less frequent Ministerials with a more specific agenda. In the light of the US role in the Seattle Ministerial, the paper also discusses options of limiting the choice of the venue of the Ministerials.

Many of the proposals for institutional reform may deal with details of decision-making, but they have far-reaching implications for the character of the WTO and global economic governance, as discussed in section IV. The first such issue is democracy within the WTO. Even after some improvements in transparency, the problems of attendance and knowledgeable participation continue as far as developing countries with small or no delegations in Geneva are concerned. This raises the issue, is the democracy of the WTO actually not much different from the Board-led decision-making of the International Financial Institutions (IFIs), if it is only the already powerful countries which are really able to deal with the ever expanding agenda of the WTO? This in turn leads to the question, to what extent is it the responsibility of the institution to ensure that democracy is actually functional, assuming that the weak find it difficult and the strong are reluctant to ensure this? This question is addressed in terms of the ability of the WTO Secretariat, or any other international organisation, to act as a neutral broker and assume the expanded powers that it would need if it were to carry out the task of ensuring that democracy is actually operational. The paper finds scarce evidence to support the view that any international organisation (IO) is capable of acting as neutral broker and hence favours limiting the powers of the WTO Secretariat. The second issue, namely that of expanding the agenda of the WTO into non-trade concerns is addressed along similar lines. The paper stresses the evolution of parallel systems of legislation in other areas and emphasises that until this happens, it would be foolhardy to entrust one inter-state organisation with the responsibilities of world government. The third issue that emerges from the debates about various reform possibilities is that of the tension between the formal and informal methods of institutional functioning. The paper highlights the advantages and disadvantages of informal methods in a comparative perspective.

While sections III and IV focus on the content and implications of institutional reform, section V suggests strategies that developing countries can adopt to make optimal use of existing WTO decision-making procedures and the informal method of institutional functioning. The first strategy is one that

developing countries also recognise, i.e. national level efforts to improve participatory capacity in the WTO. Second, the paper emphasises the role of coalitions in improving the bargaining leeway and ability of developing countries. Third, the paper highlights the importance of having a positive agenda, but also specifies conditions in which blocking strategies can be effectively used. The fourth strategy offering considerable potential for developing countries is that of building new alliances with civil society groups. Finally, particular care must be taken to ensure that extensive discussion of process and strategy does not deflect developing countries from determining what their priorities are in the actual substance of the negotiations.

In conclusion, many of the tensions and debates addressed in this paper boil down to two very different views of IOs and our expectations of them. From a minimalist perspective, an IO like the WTO can be seen as little more than a forum, which provides an opportunity to all member-states to interact on a multilateral basis. Once minimal conditions to ensure that all members can interact on a relatively equal basis are established (through rules such as one-member-one-vote), it is the responsibility of the members to avail themselves of these opportunities. The second perspective assigns a much bigger role to institutions. For instance, the provision of one-member-one-vote is not enough. Rather, it is the responsibility of the institution to ensure that states are able to exercise that vote by giving the weaker members whatever assistance they might need. Underlying the second view is the assumption that the institution is capable of acting as a neutral broker, and hence capable of taking on its expanded role in an unbiased way. Unfortunately, this paper finds that there is little in the record of the WTO Secretariat (or any other IO) to assure one of this neutrality. Hence this paper argues that once the condition of transparency and openness of decision-making procedures is fully met and the consensus principle is modified, further institutional reform of any kind has to be minimalist. Deeper structural reform (e.g. removal of the consensus principle or replacement of plenary democracy with the Executive Board) could not only institutionalise existing hierarchies but would also import new and deeper imbalances into the WTO at the expense of developing countries. On this basis, the paper puts forth the case of cautious and reasoned institutional reform.

INTRODUCTION

It has been the contention of many Realist/ Neo-Realist theories of International Relations that process is merely the handmaiden of structural power. Whether one agrees with this assertion or not, the study of process in international institutions is of fundamental importance for two reasons. First, process, in itself, in the form of rules and procedures (formal or informal), is a key determinant of the substance of power politics. The bargaining counters that countries bring to the negotiating table in international institutions are decided crucially by their voting power, frequency and venue of the meetings, levels of interaction, scope of the agenda mandated to the institution, nature of coalitions and so forth. Second, if the process of functioning is transparent and accountable, the legitimacy of the organisation and the sustainability of its decisions increase substantially. In the absence of such legitimacy, Prague, Seattle and Genoa are the obvious consequences. Decision-making processes are the most important of these methods of functioning against which the legitimacy of the institution may be rated because they show how the organisation treats its own members and thereby fulfils the first and most minimal level of accountability. In the context of the World Trade Organisation (WTO), where talk of reform of decision-making has become serious enough to lead to proposals for including decision-making reform in the agenda for the forthcoming ministerial, understanding existing institutional processes is even more essential. If issues of decision-making and institutional reform are introduced, whether at the upcoming fourth Ministerial or at a later ministerial, developing countries will have to exercise immense vigilance in ensuring the new reform measures do not become simply a ploy to institutionalise their current marginalisation from WTO processes of decision-making. They will also need to ensure that talk and direction of major reform is not used to divert attention away from substantive issues of interest to them. Hence the subject of this paper.

This paper proceeds in six sections. Section I presents a detailed analysis of the actual rules and procedures of decision-making in the WTO. This analysis is conducted with the help of comparative and historical examples. Section II discusses the problems that developing countries have with these processes. Section III analyses the proposals for institutional reform that have been put forth by academics, member-countries and Non-Governmental Organisations (NGOs). The workability of these proposals is assessed and, where necessary, alternatives are advanced. Many of these proposals have deep and far-reaching implications on the very nature of the WTO and global economic governance. These implications (many of them long-term) are analysed in section IV. Section V offers a set of strategies that developing countries might usefully employ on their own, until and even irrespective of the implementation of proposals for institutional reform that are studied in sections III and IV. Section VI concludes.

I. DECISION-MAKING PROCESSES IN THE WTO: DESCRIPTION AND ANALYSIS

It is possible to trace four main tenets that underlie decision-making processes of the WTO. First, the WTO is a one-member-one-vote organisation. As such, it differs considerably from the international financial institutions (IFIs) i.e. the International Monetary Fund (IMF) and the World Bank, where all decisions are based on weighted voting. For instance, in the IMF, the voting power of member countries is determined by the size of their respective quotas, where quotas are a function of their weight in the international economic system. In contrast, Article IX:1 of the Agreement establishing the WTO states that each member has one vote, thereby allowing equal status to all members irrespective of trade shares or general economic size.¹

The principle of equality of voting status of member-states is clearly borne out in the formal structures of the WTO. The top body of the WTO is the Ministerial Conference, which meets every two years. The day-to-day workings of the WTO are carried out by the General Council, which conducts its meetings in the WTO headquarters in Geneva. Membership of the General Council is open to representatives from all its members. The General Council also meets in the guise of the Trade Policy Review Body and the Dispute Settlement Body (DSB). Below the General Council are the Councils for Goods, Services and Trade Related Aspects of Intellectual Property Rights (TRIPS), along with Committees that report directly to the General Council. Representation at all three levels is open to all members of the WTO. Subsidiary bodies such as committees and working parties operate under the three sectoral Councils (i.e. for Goods, Services and TRIPS). Article IV:6 of the Agreement establishing the WTO states that 'these subsidiary bodies shall establish their respective rules of procedure subject to the approval of their respective Councils.' In terms of actual representation, however, all the committees are open to all members, with the exception of the Textiles Monitoring Body.

While the one-member-one-vote ensures that developing countries, at least formally, share an equal voice with their developed counterparts, irrespective of trade shares, the rule of taking most decisions by simple majority also offers a considerable potential advantage to developing countries. When developing countries comprise about 100 of the 142 members, building a simple majority is not an especially difficult task. Compare the problems of developing countries in influencing decision-making in the IMF where many decisions require 85% majority, giving the US effective veto power due to its voting share of 17.56%,² and the WTO emerges as a terrain much more favourable to developing countries. Situations where the rule of simple majority is not used provide more the exception in the WTO than the rule and are clearly specified in Articles IX and X of the Agreement establishing the WTO or in the relevant trade agreement. Special voting procedures, i.e. not simple majority, apply to three situations. First, in cases of interpretation of the agreements, the decision is to be taken by three-

¹ Of course, it is worth acknowledging at the outset of this paper that the two IFIs represent quite a different genre of institutions from the WTO. For instance, the IMF and the World Bank respectively produce adjustment assistance and development assistance for individual countries, whereas the WTO's main output is 'rule writing and enforcement of an explicit global regime.' While the effectiveness of the Fund and the Bank ultimately stems from an internal knowledge base and conditionalities, the effectiveness of the WTO 'rests upon its combination of a global forum in which rules can be brokered and a dispute settlement process in which they can be enforced.' For further details, see Vines (1998). However, both IFIs and the WTO form a part of the same system of international economic governance and provide us with some revealing comparisons and contrasts on the decision-making processes of inter-state organisations and their different attempts to strike a balance between legitimacy and efficiency.

² Gregorio et al (1999).

fourths majority of the members at the levels of the Ministerial Conference and General Council (Article IX:2). Second, the decision to grant a temporary waiver to a member country from WTO obligations requires a similar three-fourths majority of the membership of the Ministerial Conference (Article IX:3). Finally, amendments, if they cannot be reached by consensus, generally require two-thirds majority. However, amendments to the provisions on amendments and decision-making i.e. Article IX of the Agreement establishing the WTO, Articles I and II of the General Agreement on Tariffs and Trade (GATT) 1994, Article II:1 of the General Agreement on Trade in Services (GATS) and Article IV of the Agreement of TRIPs require acceptance by all members i.e. unanimity.

While the principle of one-member-one-vote and possible representation by all members -- strong or weak -- in all levels of the organisation suggest a high degree of egalitarianism that would work in the interest of developing countries, it is interesting to note that developing countries themselves show little evidence of having utilised the power of majority votes. Rather than avail themselves of their large numbers in agenda-setting in the GATT, developing countries in fact chose to express their demands in other fora such as the United Nations General Assembly and the United Nations Conference on Trade and Development (UNCTAD). This can be partly explained through the second tenet of GATT/ WTO decision-making, namely that of consensus. This de facto norm of consensus-based decision-making, rather than majority voting, is formally incorporated in Article IX:1 of the WTO which states, 'The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.' Consensus is defined in the following terms -- 'The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is formally taken, formally objects to the proposed decision.' The condition that only the opinion of those present at the meeting will count differs from the requirement of voting, where majority (in all variations) is required relative to all the members of the WTO.³

The origins of the consensus method of decision-making can be traced to the GATT. Even in situations where the GATT rules provided for a formal vote, e.g. granting of waivers, a consensus text would first be reached through negotiation and consultations before the formal vote was held.⁴ Any use of voting at all, in any stage of the negotiation process, was highly unusual. In the pre-launch phase of the Uruguay Round, the US called for a rare postal ballot in 1985. The ballot showed that two-thirds of the contracting parties supported the convening of a special session on services.⁵ The figures became an important pressure device to demonstrate that developing countries were no longer united in their initial opposition to the inclusion of services within the GATT framework. However, even this decisive vote was not used for the actual decision-making process to bring services within the purview of the GATT. Instead, consultations and negotiations continued, and finally a consensus draft was produced to provide for the Punta del Este declaration that inaugurated the Uruguay Round with its two-track negotiating strategy on services.⁶ Consensus was facilitated by another GATT tradition, namely, 'not to allow progress to be frustrated by one party's obstinacy, unless it happened to be one of the major trading powers.'⁷ Article IX:1 of the Agreement establishing the WTO institutionalised this tradition. The costs, benefits and implications of consensus as a decision-making procedure will be discussed in Section III. Suffice it to note at this juncture that the norm of using consensus as the basis of decision-making has meant that the rule of majority voting has never been used and possible majorities of developing countries remain unutilised.

The fact that the WTO is a member-driven organisation provides the third tenet that underlies its decision-making. In part, the member-driven nature of the WTO can be traced to the evolution of the

³ Hoekman and Kostecki (2001).

⁴ Jackson (1997).

⁵ Hart (1995), p. 207.

⁶ Narlikar (2000).

⁷ Hoekman and Kostecki (2001).

GATT, which was not an international organisation at all but a contract. In 1951, in recognition of the fact that the decision-making sessions of the Contracting Parties were not enough, an inter-sessional committee was formed. This was replaced in 1960 by a Council of Representatives -- also a body of national delegates -- with greater powers for the everyday management of the GATT. The Secretariat that was eventually established was formally known as the Interim Commission for the International Trade Organisation (ICITO). The Secretariat of the WTO, while considerably bigger than that of the GATT (at the time of writing this paper official staff positions numbered to 552), is still small compared to the over 2500 strong IMF and nearly 6000 staff-members of the World Bank. It has no decision-making powers.⁸ In the Fund and the Bank, the staff of the organisations work directly with the governments in preparing, monitoring and enforcing conditionalities, with the approval of the Executive Boards, which is seldom withheld.⁹ In contrast, in the WTO, the members themselves take the decisions and enforce them through the DSB if need be, leaving the Secretariat to provide technical and administrative support.

Finally, the equal representation that it allows to all its members and minimal powers to the Secretariat has led the WTO to evolve a fourth tenet of decision-making, namely a reliance on an elaborate network of informal processes that can beat consensus among 142 members into shape. The role of these informal processes is recognised even on the WTO website -- 'Informal consultations in various forms play a vital role in allowing consensus to be reached, but they never appear in organization charts... They are necessary for making formal decisions in the councils and committees.'¹⁰ Informal consultations operate at each level of decision-making of the WTO. Some such informal consultations involve the entire membership of the WTO, e.g. meetings of the Heads of Delegations (HODs). Smaller group meetings are also a commonly used device to reach consensus. Green Room meetings belong to this genre. They are called on the initiative of the Director General and usually include the Quad (US, EU, Canada and Japan), along with countries that express a vital interest in the discussion. The consultations have also usually included countries that have played a leading role in the GATT/ WTO. Examples of developing countries that have been invited to Green Room consultations include India, Brazil, Jamaica, and more recently, Bangladesh as Coordinator of the Least Developed Countries (LDCs). Up to 40 delegates can sometimes participate in Green Room meetings, though the average number is about 20. Informal consultations are also used at the levels of the councils, committees and working parties, again which work partly by invitation and partly by self-selection.

While the onus of decision-making falls on the members themselves, the importance of informal procedures means that the Chairs at all levels have a major role to play in consensus-building. The Chair decides whether to discuss extreme positions separately, whether to include the Secretariat in these consultations and so forth, depending on the particular situation. These procedural matters can sometimes be crucial in deciding whether the negotiation will end in deadlock or not. In recognition of this, Chairmanships are in annual rotation and attention is paid to achieving some regional parity in appointments.¹¹

⁸ The WTO web-site describes the main duties of the Secretariat as follows -- 'to supply technical and professional support for the various councils and committees, to provide technical assistance for developing countries, to monitor and analyze developments in world trade, to provide information to the public and the media and to organize the ministerial conferences. The Secretariat also provides some forms of legal assistance in the dispute settlement process and advises governments wishing to become Members of the WTO.' See http://www.wto.org/english/thewto_e/secret_e/intro_e.htm

⁹ Woods and Narlikar (2001).

¹⁰ http://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm

¹¹ 'A balance which reflects overall membership of the WTO should be achieved in the appointment of officers...'. See Guidelines for Appointment of Officers to WTO bodies, approved by the General Council on 31 January 1995, WT/L/31, 7 February 1995.

At least in terms of standard decision-making procedures, it is noteworthy that all the principles and methods of operation described in the preceding paragraphs were also a part of GATT functioning. It is still the members who interpret the agreements. It is they who must bring instances of violation of the agreements to the DSB; it is they who must enforce sanctions that the DSB allows them; and it is up to them to accept or reject the findings of the DSB (albeit with negative consensus as opposed to the positive consensus that was required for acceptance in the case of the GATT). There is nothing comparable to the Executive Boards of the IMF and the World Bank to which power is delegated. And even in the WTO, whose Secretariat is much bigger than the GATT's, the only direct intrusion of the Secretariat in the internal trade policy of members is through the Trade Policy Review Mechanism (TPRM), and this is only in analytical capacity. The WTO has retained the consensus decision-making procedures as well as the informal meetings of the GATT. Interestingly, however, in spite of the close similarity that WTO decision-making procedures and structures bear with its predecessor, the enthusiastic and fervent participation of developing countries in the WTO presents a far cry from their studied rejection of the GATT as a 'Rich Man's Club.' A large proportion of proposals before Seattle (in fact, over half of the proposals came from developing countries) came from the same countries that had once demanded the establishment of a forum that would provide a rival and alternative to the WTO in the form of the UNCTAD. The reservations of developing countries regarding the GATT were only in part a product of the substance of the agreement.¹² In good measure, they stemmed from decision-making procedures that developing countries believed worked to exclude them. These processes included consensus-based decision-making so that developing countries were unable to use their majority to their advantage, the secrecy and exclusiveness that surrounded Green Room meetings from which many developing countries were excluded, and the club-like atmosphere that further deterred developing country participation in the GATT. As such, decision-making procedures of the WTO remain largely unchanged from those of the GATT and the main sources of the grievances of developing countries remain.

While the original problems with decision-making remain, their significance and urgency have increased in an unprecedented way, given the far-reaching mandate of the WTO and the opportunities and constraints it presents. Particularly since the pre-negotiation phase of the Uruguay Round, the concern of the GATT/ WTO with non-tariff barriers (NTBs) to trade has involved increasing intrusion into areas of domestic legislation. In fact, the concern of the GATT with NTBs goes back to the Kennedy Round, which saw the inclusion of an Anti-Dumping Code. Since then, the engagement of the GATT/ WTO with domestic regulatory policies has persisted and increased with the expansion of the GATT agenda through the Tokyo Round codes on technical barriers to trade and government procurement. The mandate of the WTO goes a big step further, first because these NTBs are no longer addressed in terms of codes but the Single Undertaking, and second, because they cover a wider range of measures. For instance, the WTO has rule-making and enforcement capabilities on issues such as food safety and animal and plant health regulations (Agreements on Sanitary and Phytosanitary Measures and Technical Barriers to Trade). The inclusion of TRIPs, Trade Related Investment Measures (TRIMs) and GATS within the framework during the Uruguay Round reinforced the expanding remit of the GATT, which was no longer restricted to border measures but included some key areas where states had traditionally exercised their sovereign rights of legislation. The Single Undertaking meant that all GATT Contracting Parties had to become members of the WTO. Rather than pick and choose, membership of the WTO meant that developing countries were committed to all the agreements of the WTO with the attendant risk of cross-sectoral retaliation in the case of non-adherence. In other words, developing countries find themselves members of an organisation with procedures that were very similar to the GATT's, but whose mandate goes far deeper than its predecessor's. The WTO provides for a rules-based system to which 142 countries are bound. Unlike the IMF and the World Bank which lose their enforcement powers on a country once its debts are repaid, the WTO's members must adhere to its international trade rules in perpetuity. And finally, the

¹² For further details, Narlikar (2000).

WTO can legitimise cross-sectoral retaliation through the Single Undertaking, in a way that is also much more effective than the GATT, due to a strengthened dispute settlement mechanism.

The only hope that developing countries have in working this elaborate and powerful system of rules, which affects them so deeply, is through active participation in the rule-making and rule-enforcement process within the WTO. Hence, somewhat paradoxically, perhaps one possible explanation of more active participation by developing countries in the WTO, despite continuing problems with decision making processes, is the enlarged sphere of the organisation that is enforced through the Single Undertaking and a binding dispute settlement mechanism.

The increased vigilance and participation of developing countries in the WTO, however, does not translate into an increasingly *effective* participation. In fact, the lack of this correlation is almost to be expected, as decision-making procedures remain largely unchanged. Section II examines the problems that developing countries have encountered with decision-making processes of the WTO, in spite of their concerted efforts towards improving their participation.¹³

¹³ Note that the conscious and good-faith efforts by developing countries to enhance their participation in the WTO allow us a better measure of the efficiency and equitability of WTO decision-making procedures, as opposed to the times when developing countries maintained a sullen refusal to participate in the 'Rich Man's Club' of the GATT and then criticised its decision-making processes for being opaque and exclusionary.

II. PROBLEMS WITH WTO DECISION-MAKING PROCESSES: VIEWPOINT OF DEVELOPING COUNTRIES

In spite of the promised equality that the WTO grants to its members, most of the processes described in the previous section have, at best, acted as a double-edged sword. This section finds that all the four tenets of decision-making that were discussed in the previous section generate some serious problems of participation -- direct and indirect -- for developing countries.

II.1 One-member-one-vote and Consensus-based Decision-Making

Since the founding of the GATT, developing countries have never been in a significant numerical minority. Eleven of the original 23 founding Contracting Parties of the GATT were developing countries. Today they comprise over 100 of the WTO's 142 members. This would suggest a decisive and workable majority of developing countries, given the system of one-member-one-vote in contrast with the weighted voting that is used in the IFIs. However, the previous section explained that developing countries have never been able to use the kind of majority they have exploited in the UN General Assembly or the UNCTAD, because WTO decisions are not taken by majority voting, but by consensus.

Consensus-based decision-making not only deprives developing countries from making full use of the equal status that they share with their more developed counterparts as a result of the Agreement; in fact, at times it may be found to actively work to the detriment of developing countries. First, consensus decision-making, as opposed to unanimity, means simply that no decision is formally objected to by any member present at the meeting. However, the key assumption here is presence in the meeting; the consensus-based decision-making procedure 'ascribes considerable importance to having a permanent presence or, perhaps more accurately, an active knowledgeable presence.'¹⁴ It is here that developing countries fail to take part in the WTO's decision-making processes, as is elaborated below.

One study has pointed out that while 65 developing countries maintain WTO missions in Geneva, 26 continue to be represented by missions or embassies elsewhere in Europe, and 7 more list as their representatives people located in their own capitals.¹⁵ Based on the year 2000, the study finds that 24 countries have no permanent presence in Geneva. These countries cannot object to the so-called consensus that various bodies of the WTO arrive at in their everyday workings. Even among the countries that enjoy diplomatic representation in Geneva, the size of their delegations is small. The average size of the developed country delegation is 7.38 delegates per country. In contrast, the average size of the developing country delegation is 3.51. Even this average masks significant differences amongst the actual sizes of developing country delegations i.e. 1 for countries like Bangladesh to 6 for India. This can be a major problem in an IO like the WTO where there are about 1200 events through the year, often resulting in overlaps of meetings. Many developing countries find it difficult to attend the meetings of the WTO, especially if they must also cover all the other international organisations in

¹⁴ Blackhurst et al (1999), p. 6.

¹⁵ Michalopoulos (1999).

Geneva with the same small delegation. The difference in representation between the developed and developing countries works to greatly disadvantage the latter.

The second problem with the process of consensus decision-making is that it is conducted through open discussion i.e. if a country wishes to reject a proposal, it must do so openly and clearly in front of other members present. Many developing countries point out that they often fear the consequences of expressing their objections publicly, and hence choose the alternative option of remaining silent.¹⁶ As the absence of objection is seen as consensus, developing countries end up giving in to decisions that they actually have problems with. If a similar situation were present in a domestic political system, i.e. people were too intimidated to exercise their vote or express their opinions, it is doubtful if the system would be classified as a democracy. Extending the analogy, if consensus is reached because some countries are too afraid to express their dissidence, how democratic is decision-making by consensus? In this context, it may be useful to draw the distinction between active consensus (when members are able to contribute to a genuine consultation and bargaining process by expressing their support, opposition and doubts regarding various aspects of the negotiation, and consensus emerges from such a discussion) and passive consensus (when consensus emerges simply because members remain silent). The sustainability of a passive consensus is also debatable. Even if an agreement is reached on paper because no country objects, the actual implementation of the agreement will be difficult if the members themselves (who implement the agreement) have some fundamental objections with it.

Third, the goal of consensus has often been used by some developed countries to practice small-group consultations that exclude many developing countries and further exercise bilateral pressures on them outside the WTO forum in the name of reaching the multilateral consensus in WTO meetings. One LDC delegation claimed that consensus means little more than steamrolling of smaller powers by the dominant interests at the WTO.

At least some of the problems just described could be mitigated if members received adequate assistance from the WTO Secretariat to allow them the knowledgeable presence that consensus decision-making assumes. Knowledge and research might not completely overcome the problems of power political bilateral pressures that intimidate developing countries from exercising their voice in the consensus decision-making. But they can prove to be a great strength by providing even weak countries a platform from which they can raise objections and alternative proposals. However, the member-driven nature of the WTO places the onus of preparation and research for effective and active participation in the consensus-based decision-making procedures on the members themselves. Many developing countries find that they are unable to fulfil this responsibility and thereby find their participation in the WTO inhibited. It is to this dimension of WTO decision-making that we now turn.

II.2 Member-driven Character of the WTO

The fact that the WTO is a member-driven organisation is not without advantages. The limited decision-making powers of the Secretariat ensure that it is the members themselves who run the organisation, providing a dramatic contrast to the IFIs that even the most marginalised developing countries in the WTO acknowledge. However, the member-driven character of the WTO and its small Secretariat (with minimal powers of policy making or implementation, in contrast to the IMF and World Bank) also mean that the costs of research and representation must be borne by the members

¹⁶ The consequences can range from retaliation in Geneva in some other negotiation, to bilateral pressures directed at capitals as well as delegations. According to many delegations, often these pressures are used even before the negotiation to ensure that objecting countries exercise restraint.

themselves with little help from the institution. The result is that the power hierarchies outside get translated into the negotiating politics of the WTO, where the most powerful members (e.g. the Quad) are best-equipped and able to negotiate deals to their advantage.¹⁷ For instance, at the time of the Brussels summit in 1990, the US delegation consisted of over 400 delegates which was more than the combined total of the staff of the sub-Saharan African and Latin American trade missions.

Power asymmetries, deriving from the member-driven character of the WTO that attaches critical importance to the availability of diplomatic and research resources, have become even more pertinent today. The agenda of the WTO has expanded into increasingly technical matters. To negotiate these technical issues effectively, the presence of qualified personnel with expertise in the area under negotiation is often essential. Usually, it is only the developed countries that are able to fly in technical experts into Geneva for the given negotiation. Developing countries, even if present at the meetings, are often reduced to watching from the sidelines, as their small delegations are unable to make the informed choices that can present a match for the preparations of the developed countries.

There is a quantitative dimension to the expansion of the WTO agenda, besides the qualitative one described above. Many delegations find the sheer number of meetings that they must attend (vs. accepting a 'consensus' decision that is negotiated and multilateralised in spite of their absence) unmanageable. The numbers have only increased in the run-up to the fourth Ministerial conference. Even if they are able to attend all the overlapping meetings, small, over-taxed delegations find that they are too worn out to make full use of their presence in the consensus-building process. Add the pressure for a new round with new issues to the already hard-pressed delegations negotiating the built-in agenda and attending to issues of implementation, reviews and notifications, and it becomes clear why many developing countries feel that they will be unable to participate unless support from the WTO Secretariat is forthcoming in various forms including, providing research and information and assistance in preparations for future meetings.¹⁸

While the member-driven character of the WTO lays the entire onus of all initiatives on the members themselves, some of the worst excesses of power play could be curbed if certain rules of the game were established. However, the importance of the informal dimension in arriving at consensus introduces an ad hoc-ism and uncertainty to the decision-making procedures and worsens some of the problems just described.

¹⁷ This is not to say that developing countries have no external sources of research, advice or assistance; they certainly do and can choose between a variety of such sources – international organisations like the UNCTAD, NGOs, and even bilateral technical assistance and aid. However, the relevant question here is, irrespective of external factors, does the institution under study, i.e. the WTO, provide a 'level playing field' such that developing countries are not especially disadvantaged in their participation in decision-making processes? In the absence of adequate capacity-building sources at the national level and between the two variables of the member-state and the relevant international organisation, the responsibility of ensuring the effective participation of developing countries falls, arguably, on the WTO Secretariat. The limitations of staff and finances means that the WTO Secretariat is unable to fulfil this function, that at least some developing countries ascribe to it due to their problems of individual participation. In part, this new responsibility that developing countries ascribe to the WTO – and which the WTO too has taken on through its programmes of technical assistance – is also understandable in terms of the potential capability of the staff. The staff officials are the only insiders to some informal meetings, besides the countries themselves who have managed seats in the Green Room for the particular negotiation. It is not surprising that some developing countries feel that the staff can best provide them with information on meetings which they have been unable to attend and also prepare them for forthcoming issues. The IMF and the Bank provide a significant contrast, where the staff of these organisations works directly with governments in preparing enforceable agreements (or conditionalities) and further monitoring and enforcing these agreements. See Woods and Narlikar (2001).

¹⁸ Refer to previous footnote.

II. 3 Informal Processes in WTO Decision-Making

On comparing the rigid memberships and voting structures of the IFIs with the informally constituted and ad hoc Green Room hierarchies of the WTO, at least some advantages of informal decision-making processes become obvious. Countries can choose the level of involvement that they will maintain in a particular negotiation according to their relative interests in the issue, as opposed to pre-determined executive boards that permanently include some members and exclude others (irrespective of their interests and immediate needs). Depending on the extent of disagreement between parties, the frequency of informal meetings and the number of members to be included can be decided. Members can decide to hold meetings among themselves, both within and outside the auspices of the organisation, to build coalitions and conduct research initiatives. Even the excluded members of the WTO recognise the importance of flexibility of agenda and small group membership in reaching consensus among 142 members. Finally, the possibility of inclusion in key participatory processes -- however ad hoc or informal -- is preferable to being permanently excluded from a formally constituted decision-making process that is consistently dominated by the same powerful members. But here, the occasional, potential benefits of informality end and are confronted by a set of certain and perennial costs.

The first and most obvious problem with informal consultations is that they can lack transparency, and most developing countries have argued that such was indeed the case with both the GATT and the WTO. Informal meetings were often by invitation only, or through a process of self-selection by a small clique within the WTO. The most infamous in this genre were the Green Room meetings, where the Secretariat often treated the list of the invitees as confidential in order to avoid a flood of requests for participation from the excluded.¹⁹ The only way of tracing the proceedings of such meetings was through occasional briefings from the invited developing countries. As it was in the Green Room that consensus was negotiated, which was then presented as a *fait accompli* in the formal meetings, exclusion proved especially costly.

In the aftermath of the Seattle Ministerial, some attempts have been made towards addressing the problem of internal transparency associated with the informal dimension of the decision-making process. First, an effort is made to inform all members of the informal meeting that is scheduled, along with the list of invitees. While the Chairman, with the assistance of the Secretariat, selects the potential invitees, members which are not included in the list but believe that they have a strong interest in the discussion can also participate. It is emphasised that the meetings are directed purely towards consensus-building and have no decision-making powers. Finally, minutes of at least some of the informal meetings are circulated among the whole membership so that the dependence of the absentees from second-hand, selective and rare briefings from the invitees declines. It is almost amusing to note that the bad connotations of 'Green Room' diplomacy have led to the replacement of the term with 'small group meetings'. All these are no small corrections, in themselves, and especially in the light of the deeply entrenched traditions of the Green Room. However, three problems remain.

First, many developing countries have not even reached the point of interest identification to use the process of self-selection and claim the right to attendance. Clearer notifications and possibility of self-selection enhance transparency, but to ensure that developing countries are able to make use of these improvements, the problems of meetings overlapping, limited representation and limited capabilities must also be addressed. Second, while the tentative schedule for formal meetings for the

¹⁹ Rege (2000).

year is put up on the WTO's bulletin board, informal meetings (often by their very nature) are still more ad hoc and are called at much shorter notice. Adequate time is hence still not available for planning, preparation and resource allocation. Third, and most important, even if a genuine effort is made to use the small-group meetings for merely consensus-building rather than decision-making, the results of the meetings are presented to the general membership in a relatively final stage of the discussions. It is not easy for developing countries to intervene effectively in this decision-making stage, if they have not participated in the initial discussions and lack a detailed understanding of the issue. It is also not clear at what point does the country's right to object end. Currently, if a country does not raise its objections in the stage of consensus-building, it can do little else but accept the decisions that it is presented with in the final stage and is told that it cannot object in such a late stage of decision-making. The key point here is that the attempt to formalise some of the informal processes through the publication of minutes of informal meetings, while laudable, simply is not enough. An understanding of the technical details, political compromises, trade-offs and cross-issue linkages is necessary to enable effective participation in the final decision-making process. Unfortunately, minutes of informal meetings do not provide information on this. It has also been alleged by some countries that the minutes are biased and further distort information provision.

The second problem with the importance of informal processes in WTO decision-making is that it places substantial reliance on the role and discretion of the Chairperson as the broker, mediator and facilitator of the negotiations. The chairperson enjoys considerably leeway in setting the perimeters of the agenda and in deciding the frequency and invitations to the informal meetings. Given the frantic pace of meetings and the over-taxed delegations, these decisions are more than ones of mere procedure and can exercise considerable impact on the de facto exclusion of certain members and their interests. To the credit of the GATT and the WTO, a concerted attempt has been made to maintain a careful balance between developed and developing countries in the distribution of the top leadership positions.²⁰ Given the limitations of their resources, developing countries have been more selective in their acceptance of chairmanships of the subsidiary bodies. While this exclusion of developing countries, though based on resource constraints, is voluntary, some LDCs face a different kind of exclusion. The WTO Guidelines for Appointment of Officers state that 'Representatives of Members in financial arrears for over one full year cannot be considered for appointment.'²¹ This automatically disqualifies some of the LDCs. Similarly, a presence in Geneva is almost a necessary condition for appointment, although 'Non-residents may be appointed in exceptional circumstances where the necessary expertise can only be found in capitals.'²² The chairperson can provide the fulcrum of the negotiation, and many LDCs find themselves excluded from this key position. Finally, many developing countries have pointed out that the lack of clarity on the exact procedure for selection of chairs leaves immense scope for engineering Chairmanships to suit the interests of the powerful and exclude the opinions of the weak.²³

The informal component of WTO decision-making and diplomacy has also had an adverse impact on the coalitions of developing countries. Unlike the UNCTAD where the group system forms a part of the institution, the GATT apparatus had prided itself in not allowing group-dominated diplomacy. The non-recognition of coalitions, while extending to developed countries as well, had a much deeper

²⁰ Michalopoulos (1999).

²¹ Guidelines for the Appointment of Officers to WTO bodies, approved by the General Council on 31 January 1995, WT/L/31, 7 February 1995.

²² *Ibid.*

²³ The Guidelines (WT/L/31, 7 February 1995) clearly state that 'There should be no automacity in succession to posts,' but are ambiguous on the actual procedure for appointment. Requirements such as 'Appointments must be acceptable to the membership as a whole and not only to regions or groupings that may have proposed them,' or the importance of consultations on matters of appointment, leave considerable scope for the manipulation of the process of appointment.

and more adverse impact on developing countries and their participation in the GATT. For developed countries, shares in international markets were sufficiently high to allow them a voice as agenda-setters and hard bargain drivers in GATT negotiations. The need for coalitions was not quite as urgent because even a small set of developed country partners could form a dominating coalition in the GATT (e.g. the Quad). High stakes and small numbers meant that coalition creation and maintenance was possible even without institutionalisation. This presented a striking contrast to developing countries, for whom higher numbers were necessary to allow the critical weight necessary for agenda-setting, while the absence of recognition and institutionalisation rendered this construct even more difficult to build and maintain. It is not surprising that developing countries saw the GATT as an especially unfavourable arena for their diplomacy and preferred to direct their precious diplomatic resources and effort elsewhere. Today, the WTO presents a marked improvement to the GATT. Its web-site at least acknowledges the existence of coalitions, and at least some staff-members of the Secretariat recognise that coalition diplomacy might be the best means available to developing countries for dealing with the varied capacity and representation issues. However, most coalitions still have no institutional basis in the WTO comparable to the group system of the UNCTAD and the culture of secrecy surrounding informal meetings has not left the coalition diplomacy of developing countries untouched. The fact that many coalitions of developing countries have operated like secret societies has also affected their institutional momentum, longevity and effectiveness.²⁴

Finally, in the absence of strict rules about the agenda, membership and frequency of the informal meetings, the informal protocols of interaction and culture of the institution assume overwhelming importance. In this context, the ‘almost English Club atmosphere...the codified language,’²⁵ has made the Green Room consultative process daunting and inaccessible to some developing countries even if they are present. Translation services are minimal and can be a huge problem, for instance for the Francophone African countries, necessitating operation in groups where some delegates are fluent in English. While the symbolic move from the Green Room to the small group meetings may have diminished some of these adverse effects, negotiations are still based on what one delegate described as an ‘Anglo-Saxon system of operation’. In this system, simple language barriers and the Gentleman’s Club atmosphere of the informal meetings make it very difficult for some developing countries to participate effectively. Given the problems generated by the ‘informals’ at different levels, many developing countries have invested their hopes of assistance in the Secretariat.²⁶

II.4 Role of the Secretariat and other Organisational Issues

The composition of the Secretariat has attracted the criticism of several developing countries, while the actual scope and debates about expansion of its powers are fraught with controversy. Some point out that the greater proportion of the staff is recruited from developed countries. The numbers do reveal such an imbalance. Of the 512.5 posts in the Secretariat (with 39.5 posts vacant or under recruitment), 410.5 are occupied by individuals from developed countries and 94 from the developing ones. While theoretically, this should not make a difference as the staff is supposed to be ‘exclusively international

²⁴ Interviews with delegates from developing countries which were conducted in the context of another study (Narlikar, 2000). Examples of such short-lived coalitions are innumerable in the context of the Uruguay Round, when a plethora of coalitions with a variety of bases – traditional ‘South’ type, those combining developed and developing countries over a variety of issues, sector-level coalitions and sub-sector level – revealed short lives and limited effect. For a brief description of these coalitions, see Narlikar (2001).

²⁵ Ricupero (1998), p. 15.

²⁶ Interviews with delegates from developing countries.

in character',²⁷ some developing countries have argued that staff parity in representation from developed and developing countries is necessary to ensure that developing country viewpoints are represented. Other developing country members argue that the problem is not so much unequal representation of nationalities as much as ideologies, whereby only certain kinds of professionals are recruited, eg. neo-liberal economists whose views reinforce the interests of the great powers. The extent to which different academic viewpoints can be represented in the Secretarial staff, so that interests of developing countries are also given due consideration, is discussed in section V in the context of institutional reform. The key point to note here is that the staff of the WTO is not seen to be particularly objective by developing countries. Allegations of bias by the staff have been directed at different levels of the WTO's workings, from the more administrative functions of organising meetings, assisting the chairperson in making lists of invitees, setting the agenda and publication of minutes after the meetings, to more substantial functions of giving legal and technical advice (on a case-by-case basis as well as through general technical assistance programmes). Given the importance that procedural matters (e.g. schedules, invitations and publication of minutes) can have on developing country participation, let alone the critical role that technical assistance can play in facilitating effective participation, these are serious allegations.²⁸ A classic example of the Secretariat's bias that is cited is the active promotion of the new round by the Director General (DG). Many developing countries assert that such open advocacy by the Secretariat of a position on which there is no consensus among the majority of the members themselves considerably undermines the status of the WTO Secretariat as a neutral broker.

The substance of technical assistance by the Secretariat has also come under criticism. Most developing countries agree that they are given technical advice on the existing rules and their implementation, but never the sorely needed advice on interest identification and proactive rule formation. Others have pointed out that technical assistance is still sporadic and seldom aimed at capacity-building at the level of the capitals. For instance, technical assistance programmes should have been rigorously pursued immediately after the Seattle debacle. Instead, it is only now that serious initiatives are being taken in this area, when the pressures of the new ministerial are already very high. Developing countries have expressed doubts with both the timing and content of technical assistance programmes in this context. First, they point out that it is difficult for them to digest new information on old issues, when the focus that they need is how to best deal with the forthcoming fourth Ministerial. Second, some see the programmes as a Trojan Horse to drill developing countries with even more pro-liberalisation training bearing the hope that they will give in to the new round along with the new issues that developed countries hope to introduce. The new issues refer not only to issues on which the WTO has been carrying on exploratory work through working groups, e.g. on competition policy, investment, and government procurement, but also issues which at least developing countries see as lying well outside WTO jurisdiction, for example, trade and labour standards.

Just as the schedule of informal and formal meetings produces overlaps and a pace that developing countries find extremely difficult to keep up with, so it has also been argued that the requirement of the Marrakesh Agreement that the Ministerial Conference 'shall meet at least once every two years'²⁹ is proving unmanageable. The built-in agenda, notification requirements and so forth mean that developing countries already have their plates quite full, without needing to add the extensive

²⁷ Article VI.4 of the Agreement establishing the WTO states, 'The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials.'

²⁸ They further emphasise that even a relatively small Secretariat like the WTO's enjoys considerable power that derives from its role as overseer of major processes that underlie its functioning.

²⁹ Article IV.1, Agreement Establishing the WTO.

preparatory work that has to be put in before the Ministerial. Some scholars have noted that some developed countries effectively use these meetings to pressurise developing countries into accepting new obligations that they are ill-prepared and unwilling to accept.³⁰ Perhaps if developing countries had adequate time between two ministerials, they would be better able to stave off these pressures and also participate in the ministerial with a positive and specific agenda. It is worth noting that the General Council has the authority to take any decision according to any agreement, that could otherwise be taken at the Ministerial level. The issue of the venue where ministerials are held has also generated considerable controversy, especially in the light of the Seattle experience. Taking into account the attempt by the Clinton administration to include labour issues, allegedly to win the support of labour lobbies before the forthcoming presidential elections, some have argued that all Ministerial conferences be held in Geneva.³¹

Finally, the deeply intrusive nature of some WTO agreements accompanied by the recent activism by civil society has raised some fundamental questions about the very basis of organisation of the WTO. At least some scholars have begun to point out that stakeholders in the WTO go beyond the nation-state. One set of these non-state stakeholders are represented by the corporate sector, and already exercise considerable influence in the GATT/ WTO, through national delegations, at the level of domestic policy and through independent presence in Geneva. The other set of non-state stakeholders, namely the NGOs (civil society and public interest groups), have not found comparable influence. Issues of external transparency form the subject of an independent study in itself. This paper limits its enquiry to the issue of internal transparency and addresses proposals of institutional reform from this angle in the next section.

³⁰ Rege (2000)

³¹ Rege (2000)

III. PROPOSALS FOR INSTITUTIONAL REFORM: ANALYSIS, ASSESSMENT AND ALTERNATIVES

In response to many of the problems outlined above, the last two years (and especially immediately after the Seattle Ministerial in 1999) have seen a deluge of reform proposals. These proposals range from 'fine-tuning' to radical restructuring of WTO decision-making procedures, address different sets of interests (e.g. of developed countries, developing countries, Northern NGOs, Southern NGOs, the corporate sector and so forth), and come from diverse sources (e.g. NGOs, academics, individual member-states of the WTO, coalitions of member-states). This section examines the sub-set of proposals of institutional reform, which pertains specifically to improving the participation of developing countries.

III.1 The Consensus Principle

In spite of the problems that the consensus principle is said to harbour, proposals for reforming it have come mainly from academics.³² Most member states themselves -- developed and developing -- do not support its replacement with majority voting or even any significant qualifications to the full consensus principle. There is considerable theoretical expertise to back up this support. Consensus-based decision-making is supposed to increase loyalty of stakeholders and enhance the legitimacy of the institution. This is because, in contrast to voting, which presents a win-lose situation (e.g. attaining a majority might result in 49% of stakeholders disagreeing with the outcome), consensus is reached by incorporating the inputs of the parties so that eventually they all agree to at least "live with" a situation.³³ In practical terms as well, it is not scarcely surprising that developed countries express support for retaining the consensus principle. The retention of the consensus principle is valuable to the developed countries in that it provides a guard against the bloc voting by developing countries that majority voting has yielded across institutions. Hence statements in the past such as, 'if you want to ruin GATT, the best way to do it is to speak in blocs'.³⁴ But the willingness of developing countries to retain the consensus principle is more interesting.

Even after considering the disadvantages of the consensus principle, in terms of depriving developing countries to exploit their majority as well as the fact that decision-making can become very cumbersome when such a multitude of members is involved, most developing countries have advanced the position that retention of the practice is both necessary and non-negotiable. This acceptance is based more on the practical consideration that members who find themselves in a minority position would never accept the deep and legally binding obligations of the WTO. The entire edifice of the WTO would be threatened if members were coerced into decisions that are made by a 'tyranny of the majority'. Further, developing countries know from experience that their bloc opposition to a position supported by some developed countries prompts their threat of taking their demands to an alternative

³² E.g. Jackson (1999) proposes the development of certain practices about consensus that would lead members to restrain from blocking a consensus in certain circumstances and in certain conditions. For instance, a 'vital national interest' declaration could become a condition for blocking consensus, but such declarations would be subject to 'inquiry, debate and criticism.'

³³ Richman (1999).

³⁴ 'US frowns on any Third World grouping in GATT', SUNS, no. 1245, 14 May, 1985.

forum where developing countries exercise even lesser or no presence, or even effective withdrawal from the GATT/ WTO. For instance, the US put such threats to effective use in the Uruguay Round by brandishing the alternative of regional arrangements to which the Americans would resort if services were not included. Clearly, formalising blocking by allowing majority voting would only heighten the frequency and possible implementation of such threats. Consensus, on the other hand, at least allows a politically viable negotiating process of give-and-take to emerge.

Besides the unworkable alternative of majority voting, two other possibilities remain. First, several proposals have been advanced to deal with the problem of large numbers in the consensus-building process through the creation of an Executive Board. These proposals are examined in detail in section III.2. The second possibility would be to vote through special majorities, so that the tyranny of the majority is avoided but decision-making is formalised through a voting system that minimises decision-making in corridors and green rooms that characterise the consensus-building process. The biggest problem with this method is that voting requires greater formality of rules. The merits of formal vs. informal systems are examined in section IV. But even at this point, it may be noted that the entire structure and workings of the WTO rest on bargaining, consultation, negotiation and compromise -- something that formal voting procedures render extremely difficult, if not impossible. In the long term, a possible combination of methods may be used.³⁵ As far as the short to medium term goes, realistic and workable reform will have to be organised within the constraints of the consensus principle. Note, however, that the consensus principle allows room for modification in its everyday workings. Some possible modifications are suggested below.

Any modifications of the consensus principle need to be directed towards transforming the 'passive consensus' into an 'active' one. Reform along such lines, while still minor in that it works within the perimeter of the consensus principle, would involve a re-definition of consensus such that it requires an active endorsement of the proposal under discussion, rather than simply the lack of objection.³⁶ Note that the requirement of active endorsement to define consensus differs from the requirement of unanimity, in that the latter requires endorsement by the entire membership, while the former would require the active support of those present. To ensure that such a system does not work to the deliberate exclusion of members with minimal presence in Geneva (i.e. simply reproduce some of the problems with the current system), all members would need to be clearly informed of the timing and agenda of meetings in which consent (or otherwise) is assessed. It is also worth considering if members with minimal or no presence in Geneva could formally express their wishes through mail or other mechanisms, if they are interested in exercising their voice on the issue under discussion and are unable to attend due to resource constraints.

Another possible line of reform would be to evolve a hierarchy of issues with different methods of decision-making applying to each level. Issues involving the actual exchange of concessions, for instance, would continue to be decided on the basis of consensus. More administrative or house-keeping matters could be decided through procedures of voting. Similarly, specific rules of voting could be used in the selection of chairs to reduce some of the ambiguities that surround the process today. Again this reform would not be a fundamental, structural reform in that the WTO already provides for situations where voting may be used. However, in spite of these provisions, voting has never been considered as a practical action in the WTO. Using voting procedures could help in curbing some of the adverse spillovers of the consensus principle. In addition, improvements can continue along lines already in evolution, in terms of transparency and making a clear distinction between consensus-building and decision-making, as well as through further measures that are discussed below.

³⁵ Work in progress, Narlikar and Narlikar (2001).

³⁶ My thanks to Rashid S. Kaukab and Sabrina Varma for extensive discussion on this.

III.2 Member-Driven Character vs. Executive Board

Recent discussions on the time-consuming and inefficient nature of consensus-building, particularly when 142 members are involved and each member has one vote, has led to proposals of reforming WTO structures along the lines of the IFIs and the UN Security Council. Canada, for instance, has proposed a new committee with limited membership, comparable to the UN Security Council in regional representation and rotation of non-permanent members. The EU has proposed a body along the lines of the Consultative Group of Eighteen. This proposal has received the support of several academics as well. Japan has favoured the establishment of an Advisory Council. Mexico has suggested a transformation of the Green Room into a 'Glass Room', in which 25% of the WTO's members (34 at the time of the proposal) would participate. Criteria for membership of the glass room are specified. 15 members with the greatest shares in world trade would act as permanent members. The remaining 19 members would be chosen according to regional criteria, where the selection would be made by the countries of the relevant region. A similar proposal has been made by Jeffrey Schott and Jayashree Watal of an informal steering committee of 20 members based on absolute value of foreign trade and geographic representation ensuring representation with at least two members from each region. All these proposals stress that the advisory/ executive/ consultative/ steering board or committee would have only consensus-building and no decision-making powers.³⁷

Before examining the merits of these proposals and suggested alternatives, it is worth recalling that the WTO has already had one experience with a similar consultative body in its predecessor, the GATT, i.e. through the Consultative Group of Eighteen, cg-18. The group was established in 1975 on a temporary basis, and was made permanent in 1979. It included 10 developing country members and was purely a consultative, as opposed to a decision-making, group. While the membership was based on economic weight and regional representation, but other countries could attend as observers, alternates or by invitation. Interestingly, the group operated at the level of senior officials from capitals and provided an opportunity to improve coordination of policies between the national capitals and Geneva. The level of operation is interesting as it might have provided a possible solution for the problem of the perceived lack of accountability of the WTO and its Geneva-based delegations.³⁸ However, the cg-18 held its last meeting in 1987 and was suspended in 1989. The fact that the group was not revived after that might indicate that its formula does not necessarily allow the hope that is invested in it in some accounts today. In fact, one scholar has noted that 'Very soon after its establishment, the member countries found that the deliberations in the Group only resulted in repetition of the points made and the issues raised in other GATT bodies; the forum was often used by developed country members to bring in new issues for rule making and to reiterate their well known positions. The expectations that the discussions in the Group would lead to a dialogue and better understanding of view points and positions of different countries were far from being realised. The result was that there was reluctance on the part of senior officials from capitals to come to these meetings and the meetings came to be attended by officials from Geneva based delegations.'³⁹

Besides the limited successes of the cg-18, there are four more reasons for regarding the establishment of even an advisory executive body with some scepticism. First, the nature of WTO legislation, i.e. its binding character and its intrusive potential, means that few countries would be willing to accept recommendations of a consensus of an advisory inter-state body, especially if the issue under discussion is one in which substantial differences exist. As was argued earlier, there are few

³⁷ Krajewski (2000), Werksman (2000), Schott and Watal (2000), proposals by various delegations and summary proceedings of informal meetings of the General Council.

³⁸ Woods and Narlikar (2001).

³⁹ Rege (2000).

substitutes for actual presence in the meeting when the consensus is being hammered out, and the idea of an executive body only reinforces exclusion. Second, a permanent/ semi-permanent body may have worked partially when the mandate of the GATT was restricted to goods, but today interests of countries differ significantly across issue-areas that are covered by the WTO. It seems simplistic to expect that many countries would find their interests adequately represented according to regional groupings in each issue-area. In other words, executive bodies, if they are to meet the participatory requirements of all or most WTO members, would need to be re-constituted according to the councils and committees, and further with negotiations in each sub-sector as interests of countries are re-aligned. Third, even members that gain a place in such a board might not have the resources or the will to negotiate in all the different areas that a permanent body would demand. As such, it is doubtful if they would be sufficiently representative of the region/ sub-group. Finally, as one group of developing countries has noted, 'Creation of an advisory board would formalise the exclusion of a large number of Members from process of consultations⁴⁰.' Another developing country member notes, 'The proposals for establishment of advisory board or any other exclusionary group, or use of regional groupings would result in rigidity and inefficiency in decision-making processes⁴¹.' While the informality and adhoc-ism of WTO decision-making procedures has invited much criticism, some proposals recognise that the same informality and flexibility can be put to much beneficial use if they are placed within a set of parameters.

The greater majority of developing countries has opposed the establishment of any executive body for consensus-building purposes, for indeed, the process of consensus-building is itself a crucial part of the decision-making process. Across regions and including LDC groupings, developing countries have emphasised that decision-making needs to be member-driven rather than board-led, and further that 'the full participation of Members is fundamental to trust and confidence in the functioning of the Organisation as a Member-driven intergovernmental entity⁴².' While they recognise the necessity of small-group meetings for consensus-building, they argue that institutionalisation of such meetings would have two negative effects: decision-making would become even more exclusionary and would diminish the utility of the small-group by reducing its flexibility and efficiency. But within this broad agreement, two sub-groups are notable. To the first set belong countries that already have access to the small-group meetings, and are hence fairly satisfied with the recent improvements in decision-making procedures that were discussed in II.3. They suggest some additional measures of fine-tuning, such as open-ended meeting to immediately follow the small-group meeting to report on the discussions in the small group. To the second set belong countries to which small group meetings are still not easy to access. They stress the need for some clearer criteria on which the small group meetings are constituted, even while recognising that rigid guidelines for participation in the informal consultations do not seem practical. In addition, one proposal from an NGO emphasises that the mandate of the small group must be specified and clearly delimited.⁴³ This offers three advantages. First, this would allow a better prepared and more effective presence for the smaller delegations. Second, even if some of the smaller delegations are unable to follow up the discussions in the small group, they do not run the risk of endangering their interests in a variety of issue-areas. Third, the system might also prove more efficient as it would be easier for countries to self-select on the basis of vital interest, if the risk of issue-linkages and cross-sectoral/ cross- issue trade-offs is diminished.

One interesting proposal for resolving this tension between the requirements of flexibility vs. certainty and clarity comes from Vinod Rege.⁴⁴ Rege suggests that at the beginning of each year, the

⁴⁰ Pakistan on behalf of Cuba, Egypt, Uganda and Zimbabwe, General Council Informal Meeting 28 March 2000, Job (00)/2331, 14 April 2000

⁴¹ Uruguay, *Ibid*

⁴² African Group, *Ibid*

⁴³ Krajewski (2000).

⁴⁴ Rege (2000).

Chairman, in cooperation with the Chairmen of the Councils of Goods, Services and TRIPs, and with the assistance of the Secretariat will prepare a list of countries which would be invited to the Informal Consultative Group (ICG). Its membership should be representative of the differences in stages of development and interests of the member countries. The ICG would not be a standing body but a mechanism to be invoked when smaller group consultations become necessary. The list will be announced and any country which considers it has vital interests could request participation. After an ICG meeting, other countries will be informed of any developments, either through the circulation of reports or through open-ended meetings to brief the delegations. There are merits in considering this proposal for further refinement, with a view to wider participation.

III.3 Burden of Increased Transparency: Overloaded Agenda and Capacity-Building

Most of the proposals by developing countries to enhance their own participation emphasise greater transparency of proposals rather than institutionalisation of existing hierarchies through executive boards or changing the member-driven character of the WTO. However, the Like-Minded-Group (LMG) has noted that increased transparency, particularly through means such as open-ended meetings after the small group meetings, would increase the number of meetings that the already over-taxed delegations will have to attend. Two sets of proposals become relevant to provide the antidote to this effect and to deal with the already severe problem of meetings that are so numerous that small delegations can neither be physically present in nor adequately prepared for all of them. First, as some developing countries have pointed out, a less ambitious work programme would do a great deal towards helping develop a fairer decision-making system. In part, this refers simply to procedural rather than substantive issues, e.g. scheduling of meetings to ensure minimal overlaps. Hence proposals have been advanced on greater thematic coordination in establishing meeting schedules as well as streamlining WTO operations by reducing the number of some councils, committees and working groups. But beyond a point, the burden of meetings cannot be significantly reduced without a reduction in the substance of issues that are addressed in the WTO. In fact, this has been a concern that developing countries have raised since the Uruguay Round, at the very least;⁴⁵ the same concern was seen at Seattle when developing countries stressed the importance of addressing implementation issues before the new round could be launched. In any case, there are political limitations on the extent to which the process of rule-making can be feasibly decelerated or even stabilised, especially as bargaining in the WTO involves interests of developed countries that have demanded legislation in newer areas. Hence, the second antidote, namely that of capacity-building, becomes crucial to deal with the overload of meetings and the possible increase if some of the proposals for greater transparency are met.

While capacity-building is at least as much a domestic issue as an international, institutional one, it has attracted considerable attention in the light of technical assistance programmes of the WTO. While most countries, NGOs and academics are in agreement that technical assistance needs to be expanded, more focused and better directed at specific country needs, precisely how this can be achieved is controversial. On the one hand, most developing countries have demanded greater technical assistance from the Secretariat. But on the other hand, they have also asserted that the technical assistance that they receive from the Secretariat is, at best superficial and irrelevant, while often it is actively biased. The debate on the form and content of technical assistance reflects a deeper question, namely, what kinds of powers should be allowed to the Secretariat? Greater technical assistance from the Secretariat assumes expanded powers to the Secretariat, but if the technical advice of the

⁴⁵ Paraphrasing the opposition of developing countries to the inclusion of the new issues, Ricupero writes, 'What purpose would it have served...to add more floors (i.e., new issues) to a building whose foundations were likely to collapse at any moment?'

Secretariat is already seen to be politically loaded and biased, should its powers of intrusion into domestic capacity-building be expanded? More will be said on this issue in the next section, drawing lessons from the experience of the IFIs.

III.4 Ministerial Conferences

As previously mentioned, the Seattle Ministerial in particular prompted a serious rethinking about the frequency and venue of the Ministerials. Some proposals emphasise that substantial preparatory work needs to be completed before a ministerial, failing which, the timing and frequency of the Ministerials perhaps needs to be reviewed. In any case, more effort needs to be made to resolve most of the contentious issues in Geneva, before the Ministerial -- the extent of disagreement among all the major powers at Seattle contributed in no small way to the failure of the Ministerial and also dented the credibility of the WTO process. Many proposals suggest that at least a work programme should be drafted before the ministerial, so that no surprises, such as labour issues in Seattle, are sprung up at the Ministerial. Better planning -- in terms of selecting Chairs, ensuring transparency, avoiding overlaps -- is essential to avoid a recurrence of Seattle. Some scholars have also suggested that it might be more practical to hold the ministerial in Geneva, where the infrastructural support is already present and the Secretariat can take the greater part of the initiative.⁴⁶ In addition, this might reduce any confusion about the division of authority between the host country and the Director General. The US handling of the Seattle Ministerial have led to one proposal that the role of the host country should be clearly limited to chairing the plenary session, while all other processes should be handled by the Director General and his deputies.⁴⁷ This would provide one of the few safeguards against the hijacking of the multilateral agenda and the informal consensus-building processes of the WTO by the host country (especially when the host country is an already powerful member of the WTO). There is also the option of having the Vice-Chairs assist the Chair (host country) in chairing and other substantive work. The alternative would be to have the ministerials scheduled only in developing countries so that they can acquire a sense of greater ownership of WTO processes. However, it is not certain if developing countries would necessarily want this responsibility, nor is it obvious that the developed countries would support it. In the long run, moreover, it would not enhance the credibility of the WTO as an international institution if host countries -- developed or developing -- use their position to structure the Ministerial to their own advantage and at the exclusion of other members, and there is no guarantee that such situations will not arise again.

The argument that the WTO will prove to be a less biased host to the Ministerials than some member-states assumes a relatively apolitical and more technocratic role for the DG. That the DG is seen as apolitical and unbiased by most members is critical to ensuring that the WTO's identity as an IO is retained. In a recent study, it has been pointed out, 'Whereas the Director-General previously had always been an official, with the creation of the WTO the job has come to be filled by politicians.'⁴⁸ The controversies surrounding the appointment of the current and previous DGs are too well known to require elaboration here. However, it is certainly worth debating whether it might help to bring back the technocrats and diplomats, who actually run the organisation, to top dog position and improve some of the credibility of the DG as an international bureaucrat. Meanwhile, a more direct accountability of the

⁴⁶ Rege (2000).

⁴⁷ Barshefsky stated that if the process did not reach a consensus text, 'I fully reserve the right to also to 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.' Transcript, WTO Press Briefing, US Trade Representative Charlene Barshefsky (et al), World Trade Organization Conference, Seattle, Washington, December 2, 1999. Also, http://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/resum01_e.htm.

⁴⁸ Hoekman and Kostecki (2001), p. 77.

WTO to its members , ie. to its parliamentarians and politicians rather than diplomats, can be retained through the Ministerial level meetings.

IV. IMPLICATIONS OF PROPOSALS OF INSTITUTIONAL REFORM FOR THE CHARACTER OF THE WTO AND GLOBAL ECONOMIC GOVERNANCE

All the reasoned proposals for institutional reform discussed above and the riotous demonstrations at Seattle, Prague, Washington and Genoa that the last two years have unfolded have one feature in common: serious dissatisfaction with the current system of global economic governance. Even if we adopt a mainly conservative view -- as taken by the member states of the WTO themselves -- that a major overhaul of the WTO system is not necessary, some of the proposals discussed above actually have far-reaching implications for the very nature of the WTO and the global economic system. This section analyses the bigger questions that emerge from the problems posed by the WTO as well as the proposals for reform.

A large proportion of reform proposals has aimed to resolve the tension between plenary democracy vs. board-led efficiency.⁴⁹ Post-Seattle, the WTO has tried to structure a fine balance between the two by providing a combination of relatively transparent small group meetings for consensus-building and plenary-style democracy for actual decision-making⁵⁰. However, the problems of attendance and knowledgeable participation continue, particularly in the case of developing countries with small or no delegations in Geneva. This raises the issue, is the democracy of the WTO actually not much different from the Board-led decision-making of the IFIs, if it is only the already powerful countries which are really able to deal with the ever expanding agenda of the WTO? Improved transparency and equal votes notwithstanding, there is still a de facto weighted voting system in the WTO on account of the superior research skills and resources available to the economically strong. This leads to the question, to what extent is it the responsibility of the institution to ensure that democracy is actually functional, assuming that the weak find it difficult and the strong are reluctant to ensure this?

If we decide that it is the responsibility of the institution to ensure that democracy is actually operational, i.e. the assumption of knowledgeable presence is met, considerably more resources will have to be granted to the WTO Secretariat. This attribution of responsibility is not far-fetched and provides the basis for the demands of developing countries who have been saying that equal opportunity of participation requires equal capacity of members, thereby attaching much importance to the provision of relevant assistance from the WTO. However, if these expectations are to be met, the Secretariat will have to be endowed with resources that are similar to those enjoyed by those of the

⁴⁹ Some delegations have made the point that there is really no contradiction between efficiency and democracy, as a democratic decision is also likely to be a more sustainable one and hence more efficient in the long run. The point, while valid, does not address the contradiction between the two sets of decision-making procedures.

⁵⁰ However, recent meetings in Mexico and Singapore in the lead up to the Fourth Ministerial Conference, amongst a select number of countries, often referred to as 'super green rooms', call into question any commitment towards increasing transparency and inclusiveness.

Fund and the Bank so that they are able to assist developing countries in capacity-building at the grass roots. But, given the member-driven nature of the WTO and its chief role as a negotiating forum, such expanded powers would fundamentally alter the character of the WTO. The immediate implications of such expanded powers would also be far from paltry. The most serious would involve even deeper intrusive potential on the part of the WTO into the domestic affairs of member-states. Given that it is developing countries who would be the main targets of capacity-building efforts, they would also provide the arena for this deep intrusion.

Of course, one can hope that assuming developed countries prove willing to increase funding, technical assistance programmes of the WTO that give domestic and international trade policy advice to developing countries will be not only tailored to country requirements but will also be unbiased. However, even the limited technical assistance programmes and legal advice by the WTO has already attracted criticism from developing countries on the grounds that it is biased and attempts to redefine their priorities irrespective of the 'real' needs of the governments.⁵¹ The expansion of the IFIs into 'second generation' reforms has demonstrated that good governance conditionalities privilege only *certain* kinds of *good* governments and rule-based orders, namely neo-liberal ones, and exclude alternative ways of governance (e.g. the 'Asian way' in the case of the East Asian financial crisis where restructuring included an assault on the chaebol and prompted a multitude of 'IMF suicides'). Whether the WTO should follow a similar path of expanding the Secretariat's advice-giving powers is certainly not desirable.

The concerns raised above are relevant not only to the WTO but also any IO, and boil down to the question, even with the best intentions, can IOs ever act as neutral brokers? No IO can escape power politics completely, especially as without the participation of the great powers, any legislation of the IO would be rendered meaningless. This is precisely why threats by the US to resort to alternative fora worked so effectively in the GATT in the Uruguay Round. Given this dependence of IOs on the great powers, not even the most qualified and honest Secretariat can give completely impartial technical assistance. If such is the nature of all international economic governance, do we really want the WTO to give additional power to its Secretariat and have the Quad legislating in our own backyards?

This leads us to the second crucial issue of defining the remit of the WTO. So far, there is little consensus. For some, the mandate of the WTO is already over-extended. Others would have the WTO stop at nothing short of world government with legislation extending to labour, environment, gender issues and so forth. Failing this, some advocate a race to the bottom for international legislation i.e. until alternative bodies dealing with environmental and labour issues have legislative authority and enforcement abilities equal to the WTO's, the WTO's system of rules must be scaled down as non-trade issues will otherwise be given short shrift. In these demands, it is often forgotten that the WTO is only one of the many organisations that constitute the global governance system. As far as rationalisation of diverse legal systems that might eventually evolve in each organisation goes, it would again be most efficient to define and restrict the mandates of each. In cases where overlaps are inevitable, some interesting proposals have been put forth about establishing either joint panels⁵² or a

⁵¹ Rege (2000) arrives at a similar conclusion – '... the higher management would generally discourage publication by the secretariat of any papers that express views that go against the negotiating positions of the major players. The officials themselves may be reluctant to do so, because they fear that this may affect their long-term career prospects. Further, the experience has shown, that if any official persists in pursuing approaches, that in their view are in the interest of countries with weaker bargaining positions, but not favoured by the major players, the latter build up pressures through complaints to the higher management and require them to shift them to other assignments.'

⁵² Greenpeace, Verdi, Action Aid et al, Oxfam.

superior referral body.⁵³ However, we are already in the realm of the speculative and long-term. Until parallel systems of law evolve, it is important to remember that it will not be to anyone's benefit to entrust one inter-state organisation with the responsibilities of world government.

The third issue that emerges from the current debates is that of the need of developing countries to establish a rules-based system and the various forms that it can take. It has been argued by one scholar of International Relations that developing countries, as rule-takers in the international system, value the predictability that comes from rules-based regimes.⁵⁴ However, the example of the WTO vs. the IFIs demonstrates that different benefits can be derived from informal vs. formal methods of institutional functioning. While formal rules offer greater certainty, they can also institutionalise hierarchies and induce additional rigidities in the processes of rule-making and enforcement. Informality, if carefully and strategically used, can allow considerable freedom of manoeuvre and prevents a locking-in of resources that is especially useful for countries with minimal negotiating resources. The key phrase here, however, is 'if carefully and strategically used' and as has been illustrated in the previous pages, reform of rules of the WTO can only go so far without destroying some of the benefits of the system. The next section discusses strategies available to developing countries themselves in the current circumstances and irrespective of the potential for reform.

⁵³ Action Aid et al.

⁵⁴ Krasner (1985).

V. STRATEGIES FOR DEVELOPING COUNTRIES

This section suggests strategies that developing countries can employ on their own, irrespective of the pace and implications of institutional reform that were discussed in the previous two sections, such that they are able to utilise the existing key features of WTO decision-making to their best advantage.

The first and most important tool that developing countries must employ to enhance their participatory abilities in the WTO lies at the national level. The discussion in the preceding pages has only reinforced this point: not even the most well-intentioned and adequately funded technical assistance programmes can be completely free from the influence of the great powers and their agenda.

Among the causes that developing countries identify for their marginalisation from the WTO, an important one is the weak interest that domestic capitals have in international trade policy matters. One developing country delegate pointed out that trade rules seldom have election making or breaking potential in developing countries, and hence capitals choose not to invest adequate resources in capacity-building at home or at the delegation level. There exists little policy coordination between the capitals and the delegations in Geneva for many countries, which means that while delegations can exercise considerable negotiating leeway due to their independence from domestic pressures, but they are also deprived of the research-based and political back-up that is needed to negotiate effectively. Some LDCs point out that they have hardly any national structure for international trade policy-making. Whatever technical expertise that does exist is difficult to relate to the WTO context, especially with the vastness and complexity of the issues that are covered within its mandate. Developing countries recognise that they need to somehow increase their Geneva presence, increase coordination between Geneva and their capitals, and increase interest, resource, and research commitments at the national level to allow more informed participation in the WTO. This acknowledgement of limitations of processes at the domestic level presents a remarkable contrast to the dismissal of the GATT as a 'Rich Man's Club' by developing countries in the past and their refusal to even try to participate on equal terms in the institution. Underlying this self-critique has been the recognition that it is up to the developing countries themselves to assert their voice in the WTO and represents the first step to empowerment.

Besides working on their individual capacity and Geneva presence, the second way of improving the participation of developing countries in the WTO is by their bargaining together, i.e. through coalitions. Coalitions allow a pooling of organisational resources, and enable countries with less well defined interests to avail themselves of the research efforts of allies and a possible country-wise division of research and labour across issue areas. In addition, by bargaining together, developing countries occupy greater weight in terms of trade shares and political clout and can hence exercise more influence than when they bargain alone. Combined bargaining power based on greater economic weight might resemble the 'coercive power of trade unions'. When power is thus aggregated and achieves a critical mass, the weak too acquire a capacity to say 'no' and affect the outcome of international decision-making through their participation or otherwise.⁵⁵ Even when the coalition does not enhance the strength of the members sufficiently to hold the strong at ransom, large membership enhances the credibility of demands through the legitimacy that comes from large numbers in institutions that espouse norms of international democracy.⁵⁶

⁵⁵ This point is drawn from Helleiner (1976).

⁵⁶ On further advantages and problems of coalition creation and maintenance, Narlikar (2000).

While successful coalitions have been employed by developing countries to diverse ends in the GATT/ WTO, the most successful coalition that has facilitated a division of labour and sharing of diplomatic resources (i.e. the chief problem addressed in this paper) is that of the ASEAN. The ASEAN Geneva Committee (AGC) was formed in 1973 to coordinate the position of members in the GATT.⁵⁷ Particularly since the 1980s with the pre-negotiation phase of the Uruguay Round, the ASEAN has often presented a coordinated stance in multilateral trade negotiations.⁵⁸ The preparations for Seattle saw a similar pooling of resources by the African Group. The Like-Minded Group, formed at the time of the Singapore Ministerial, played a major role in highlighting the importance of implementation issues in the run-up to Seattle. Since then, it has been active in addressing issues of substance and procedure, and is seen by its members and those outside as a highly effective coalition and a force to reckon with. While all these coalitions are more cross-issue coalitions, issue-based diplomacy is another option that came into vogue at the time of the launch of the Uruguay Round and continues to be an important option for developing countries today. Precisely how developing countries can choose their allies, on what terms and in what coalition types form the subject of an independent enquiry.⁵⁹ What is noteworthy here is that even WTO officials, in contrast to the studied refusal of GATT officials to acknowledge the existence or advantages of coalition formation, see coalitions as an important tool that developing countries can use to improve their participation in the WTO and thereby also enhance the democratic workings and legitimacy of the institution.

The third strategy for improving their participation in the WTO is one that developing countries have learnt the hard way. Until the Uruguay Round, developing countries had followed mainly a strategy of blocking. It was only with the failures of the G-10 and the successes of the *Café au Lait* coalition and the Cairns Group that the importance of having a positive agenda dawned on developing countries. Blocking works, but only when sparingly and carefully used by a group whose consistently positive agenda has already won it legitimacy and credibility. The threat of the six Latin American members of the Cairns Group at the Montreal Mid-Term Review of the Round was effective because they had shown themselves to be enthusiastic members of a bridge-building, mediating coalition. The walkout staged by such members was more seriously taken because it was unusual, in contrast with the persistent blocking techniques that the G-10 had adopted.⁶⁰ Similarly, the opposition of developing countries to the labour issue has been effective due to their proactive and positive participation in other areas. However, formulation of a positive agenda requires considerable investment in research that allows interest identification, possible trade-offs and feasible bargains, which re-emphasises the role of capacity enhancement (individually or through coalitions).

Fourth, while more work needs to be done to understand the relationship between member states, the corporate sector, and NGOs in international economic institutions, it is important that

⁵⁷ The ASEAN Geneva Committee meets formally at least twice a year, and holds informal weekly meetings at the ambassador level in the WTO. Ad hoc coordination meetings with respect to particular issues are also conducted. Members divide up assignments for coordinating WTO issues among themselves. One or two countries are assigned to deal with each issue, for a minimum duration of one year. Responsibility for coordinating work on the General Council is rotated every six months. See Blackhurst et al (1999), and Stephenson (1994).

⁵⁸ The initial ASEAN position in the pre-launch phase of the Uruguay Round, was to support the G-10 hard-line position, 'Trade: No consensus on high level meeting for new round,' Special United Nations Service, SUNS, No. 1247, 17 May 1985, p. 2. The shift to opposing the hard-line and re-alignment with the *Café au Lait* by the Southeast Asian countries, was also collective, under the umbrella of the ASEAN.

⁵⁹ Narlikar and Woods (2001), Narlikar (2000).

⁶⁰ Note that this example refers only to the effective walk-out threatened by the Cairns Group, and not its proverbial successes (many of which are questionable) or the reasons for whatever effective influence that the group did exercise (which include, among others, the EU-US rift and the support that it enjoyed from the US i.e. circumstances which favoured the group and are not easily reproducible). For further details, Narlikar (2000), Woods and Narlikar (2000).

developing countries do not view NGOs in simplistic terms of us (i.e. the marginalised member states of the WTO) vs. them (NGOs which tow the line of the developed countries by introducing labour and environmental issues and deflecting attention from the issues that are of importance to developing countries). In fact, NGOs might be one of the few forces that can provide a balance against the corporate lobbies that sometimes drive the agenda of the WTO through the influence they exercise on the developed country governments. Some NGOs have already revealed their ability to act as a 'virtual secretariat' for the developing world -- it is up to developing countries now to identify these NGOs and liase with them.

Finally, the procedural improvements at the institutional or domestic levels may enhance the participation of developing countries in the WTO, but the deal that developing countries ultimately get from their WTO involvement will depend on the substance of the negotiations themselves. Hence, particular care must be taken to ensure that extensive discussion of process does not deflect developing countries from determining what their negotiating priorities are and what kinds of trade-offs are they willing to engage in to ensure that they achieve their aims. Similarly, while interest in long-term procedural matters is a healthy trend, the Secretariat too needs to guard against the risk of conducting discussions on procedural reform at the expense of fulfilling core and more immediate functions.

VI. CONCLUSION

International institutions can be viewed in two perspectives. The first perspective is a minimalist one. Here, an international organisation like the WTO is seen as little more than a forum, which provides an opportunity to all member-states to interact on a multilateral basis. As such, it reduces the transaction costs that derive from multiple bilateral deals and also minimises bilateral arm-twisting by establishing a system of rules and norms of inter-state behaviour. The institution, by facilitating multilateral dealings and allowing the scope for coalition-building, mitigates some of the worst excesses of power politics. However, as an inter-state body, it cannot replace the existing international hierarchies by more equitable structures. Once minimal measures for ensuring that all members can interact on a relatively equal basis are established (through rules such as one-member-one-vote), it is the responsibility of the members to avail themselves of these measures. The second view accords a much bigger role to institutions. Here, institutions ensure that provision of opportunity to interact on a multilateral basis means levelling the playing field. For instance, the provision of one-member-one-vote is not enough; rather, it is the responsibility of the institution to ensure that states are able to exercise that vote if states find themselves ill-equipped to exercise it. It is up to the institution to do whatever it takes to achieve this (including intervention at the domestic levels by the Secretariat to ensure capacity-building). It is to this latter view that some developing countries, in effect, appeal, albeit unknowingly, when they argue for increased technical assistance from the WTO, and increased funding and staffing of the WTO to ensure this. Of course, the second perspective is based on the assumption that the institution is capable of acting as a neutral broker and hence capable of taking on its expanded role in an unbiased way. Unfortunately, as this paper has argued, there is little in the record of the WTO (or any other IOs, for that matter) to assure one of this neutrality. As a result, this paper has argued that once the condition of transparency and openness of decision-making procedures is fully met, reform of any kind has to be cautious. Ways of improving transparency and facilitating a more active engagement of developing countries has also been suggested. The role of measures at the domestic level and coalition-building was also highlighted. Greater attention to issues of accountability might further improve the credibility of WTO decision-making and also increase the participation of developing countries.⁶¹ Reforms along the lines of creation of an Executive Board or expansion of the role of the Secretariat would not only institutionalise existing hierarchies but would also import new and deeper imbalances into the WTO at the expense of developing countries.

It is also important to recall that the WTO is only one IO in a network of international regimes and organisations that constitutes the system of global governance. To expect an already overburdened WTO (Secretariat and developing country delegations alike) to oversee matters of environment, labour, gender and so forth is both unfeasible and dangerous. Limiting the mandate of the WTO will work to the advantage of developing countries -- something that delegates have shown an acute awareness of through their emphasis on implementation issues and opposition to the new issues. Limiting the mandate, however, also means a better distribution of responsibilities outside of the WTO, i.e. a rationalisation of global governance.

Finally, recognition that there are some serious problems with even the relatively democratic decision-making processes of the WTO is the first step towards the goal of more effective participation of developing countries in the WTO. But this recognition comes with two attendant risks. First, there is a danger that preoccupation with procedural reform will deflect attention from issues of substance -- a

⁶¹ On accountability, Woods and Narlikar (2001).

luxury that neither the Secretariat nor developing countries can afford. Procedural reform may assist developing countries in dealing with the substance of the negotiation, but certainly does not substitute for attention to the latter. Second, in the long-term, there is a risk of over-correction. If the informal procedures that go into decision-making are replaced with formal rules and a powerful Secretariat, as per the second view of international institutions, the resulting certainty will be accompanied by an insurmountable cost. A powerful Executive Board and Secretariat would imply deep encroachments into areas of domestic practice by the WTO. While one may hope that these encroachments would be mainly technical and legal, the experience hitherto from other organisations as well as limited technical assistance programmes of the WTO have shown that almost all intrusions have a political content that is not unrelated to the interests of the powerful.

Reform along the lines advanced in this paper will at least go some way towards improving the participation of developing countries in both the process and substance of decision-making. These issues are of paramount importance for systemic sustainability as well. In its current form the multilateral trading system managed by the WTO is in danger of losing credibility and confidence amongst the bulk of its membership unless the cautious and reasoned proposals by developing country delegations for improving participation in the WTO are taken seriously.

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