

Power Politics in the WTO

Developing Countries' Perspectives on Decision-making
Processes in Trade Negotiations

by Aileen Kwa

June 2002



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with contributions from

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PREFACE

The World Trade Organization has often been portrayed as the pinnacle of the multilateral system of global economic governance.

Why it has achieved this reputation is puzzling since it is one of the most undemocratic organizations around. Formally speaking, the WTO is a one-country, one-vote system. Yet actual decision-making is done by a process called “consensus,” in which the big trading powers impose a consensus arrived at among themselves on the rest of the body. In the WTO, formal parliamentary sessions where decisions are made in democratic institutions are reserved for speechmaking. Real decisions are made in backrooms by informal caucuses whose members are not determined by formal rules and votes but by informal agreement among significant players.

This non-transparent, non-accountable system of decision-making is one of the elements that has contributed to the crisis of legitimacy of the WTO. After Seattle, there were expectations that reform of the decision-making process would be at the top of the WTO agenda. Instead, the organization lurched into the Fourth Ministerial with its decision-making structure unreformed, and Doha has now become a byword for the perversion of democracy and the thwarting of the will of the majority via intimidation, threat, and bribery on the part of the strong.

Aileen Kwa and her colleagues throw much-needed light on this sordid process in this much-needed study, which is based on extensive interviews with developing country delegates to the Doha ministerial. This is essential reading for everyone with an interest in one of the most powerful economic groupings of our time. For both critics and partisans of the WTO, it makes a very powerful case that the decision-making process has become the Achilles Heel of the organization.

Walden Bello
Executive Director
Focus on the Global South

INTRODUCTION

'It is now over 6 years since we established the WTO regime. Assessments are being done and studies carried out. These are not reassuring...

Till these imbalances in results are addressed, there will be no equitable integration of least developed countries into the multilateral trading system. And till our capacity to negotiate on fair terms and to enforce our rights is improved, we will remain in this unfortunate position. We are simply asking for fair and equitable rules that would take into account our development needs and allow us to participate fully in the trade system. But instead we risk being pressured once again into accepting rules we don't need and can't afford. In the new negotiations, WTO members will need to bear this in mind...'

Ambassador Nathan Irumba, Mission of Uganda and
Representative of the Least Developed Countries (LDC) at the WTO, 11 April 2002.¹

After several years observing WTO trade negotiations, we have become increasingly convinced that the entire process of 'negotiations' is a complex procedure of getting developing countries to agree to the agenda and proposals of the powerful countries. In the most critical negotiations, it is never an exercise to meet halfway, and certainly, not about responding to the development needs of the poor members, as the WTO's director general, Mike Moore, would have us believe.

There may be some carrots that are given out along the way, to keep things flowing smoothly, but these are paltry. The process may also take slightly longer than the powerful countries would like. But eventually, the complex and carefully executed playing out of power politics, ensures that the goals of key developed countries are met. Developing countries are reduced to damage control and scrabbling to secure deals of negligible benefit - and not even all of them. Only the few developing countries who have the negotiating clout are rewarded with some very small 'carrots' to ensure their consent. Most receive nothing, and silently acquiesce against their better judgment, committing themselves to more trade rules, which have so far proven to be highly imbalanced and even detrimental. This they do to avoid the consequences of displeasing the politically and economically powerful.

The form of consultations and negotiations – whether it be 'green room', small group, informals --does not seem to make much difference. The bottom line is that

¹ Irumba, Nathan 2002, Speech delivered on 11 April, Geneva, cited in South Bulletin 33, 15 April 2002.

when the views of developing country delegates are vastly different from the majors, they are likely to be simply ignored.

The marginalisation of the South in this institution is of serious concern. The WTO now wields executive power over 23 separate agreements, from trade related investment measures (TRIMS), to services liberalisation, intellectual property rights, agriculture, and industrial goods. Since the 4th ministerial conference in Doha, November 2001, more agreements are on the table for negotiations.

What happens in the WTO is important because member states are required to change their national laws to ensure compliance with WTO rules. Non-compliance at the national level can result in a country being hauled by another country to the Dispute Settlement Body, the WTO's own court of law.

WTO rules have now penetrated national political, social and economic systems and customs. Many developing country governments, as well as people's movements, see the institution as wrongly encroaching on the policy freedom of national governments. The widely unpopular and development-destructive Trade-Related Intellectual Property Rights (TRIPS) Agreement and the Agreement on Agriculture (AOA) are cases in point.

It is often claimed that the institution works especially well for the poor, since in a power-riddled world, having rules can protect the poor. However, the marginalisation of developing countries in this rule-making process leads to the institutionalisation of a highly *imbalanced* and *legally binding* global framework of economic and trade governance.

Why Focus on Decision-making Processes?

The aim of this report is to show, with evidence, the skewed process of decision-making and rule making at the WTO. How is it that less than fair rules are endorsed by developing countries? What is going on behind the scene that allows this to happen? In answering these questions, we point to the exact points in the process and describe the strategies used, which allow the will of the majority to be subverted. Without tackling these process issues, developing countries are unlikely to make progress in bringing more equity to any of the substantive areas: TRIPS, services, agriculture, nor in the new negotiations launched at Doha.

The need to deal with process was felt keenly by many countries before the Doha ministerial. One delegate had this to say at that time,

It is not a question of substance. Nobody can say that we have not participated. We have done so, and we have simply been ignored. The text [Doha draft declaration] does not take our interests into account. We will not have a third draft, not because we have no time. The text came in on Saturday. By Monday, we sent a letter by 20 developing

*countries to make changes in implementation. And he [the chair of the General Council, Stuart Harbinson, ambassador of Hong Kong] simply said no. We all know why he said that, because our Ministers will have a difficult time. We are in the worst possible situation, and it is a question of politics, not a lack of arguments.*²

Analyst BL Das, also describes how the South ends up compromising its own interests:

'If...[developing country negotiators] feel that any proposal is not in the interest of their country, they oppose it. (For several countries), their opposition is quite firm sometimes and they stick to their line almost till the very end. But finally when intense pressures are built up in the capitals or if all other countries have acquiesced in the proposal, they also drop their objection and remain sullenly silent. Decisions are taken to which they become parties even though they had earlier raised objections. And in this manner their countries get bound by the obligations imposed by the decisions. The immediate political cost of withholding consensus appears to them to be much heavier than the burden of these obligations in the future.'

Das, Bhagirath Lal, in 'Strengthening Developing Countries in the WTO'³

The strategies used by the powerful to bring about such an outcome, is the topic of this report.

Developing Country Negotiators Speak Up

The voices of developing country negotiators are seldom heard by the public. Yet they are the ones that can bear testimony to the decision-making and process problems at the heart of the trading system. A conscious effort has been made in this document to bring these voices to the fore. Almost thirty interviews were conducted after the Doha ministerial for this purpose.⁴ The material also draws on the on-going experience and work of the authors with developing country delegates in Geneva on substantive areas. Most delegates, out of fear of repercussions on their jobs or pressures on their capitals, have chosen to remain anonymous.

Contents

Part 1

The document begins with personal accounts by several delegates of the marginalisation and arm-twisting they have experienced as negotiators in the WTO.

² Kwa 2001 'Power Politics To Cripple WTO Ministerial', 9 November, www.focusweb.org

³ Das, Bhagirath Lal, 'Strengthening Developing Countries in the WTO, Trade and Development Series No. 8, Third World Network, <http://www.twinside.org.sg/title.td8.html>

⁴ Many thanks to Fatoumata Jawara for arranging a number of these.

Part 2

The Story of Doha begins from the outcome of Seattle, the third ministerial conference in 1999. Any real attempts to institute change in the way negotiations and consultations are conducted were short-lived and inadequate. The story of Doha is then related through the eyes of developing country negotiators. The underhand procedural mechanisms and the exclusive processes are highlighted. The impact of September 11 on negotiations is also discussed.

Part 3

Part 3 goes into the mechanisms of the unbalanced decision-making process. The manufacturing of consensus - the process through which the initially strong opposition by many, finally becomes passive consent, is pulled apart and analysed. The strategies employed by the powerful include:

- ensuring the continuation of institutional procedural deficiencies - exclusion, secrecy, overloading the agenda, giving the chairperson conducting negotiations free rein to operate with no binding rules to follow;
- various forms of bilateral pressures and arm-twisting. We have called this the 'subterranean' reality of trade negotiations. The strategies used by the influential include instilling fear and self-censorship, threats to negotiators' jobs, and the possibility of cessation of trade preferences, aid or investment

This section also examines the highly problematic role and ideological bias of the WTO secretariat - which should be neutral – in helping developed countries push their agenda onto developing countries.

Part 4

The post-Doha section looks at how these same strategies of marginalisation and control were used by the powerful countries post-Doha to institute Mike Moore as chair of the Trade Negotiations Committee (TNC). The other interesting aspect covered are the foiled efforts by developing countries, fresh from their Doha experience, to put in place binding rules of procedure. Like the attempts made after Seattle, the outcome was a set of non-binding 'Principles and Practices'. The role of technical assistance has been given prominence in the Doha declaration. This is the strategy currently used by the developed countries – promising technical assistance in the new issues -- to make it difficult for recipient governments to refuse the new negotiations at the 5th ministerial. A critique of technical assistance is provided, touching on the extent to which it has *not* given developing countries what they really need.

Part 5

This section offers some suggestions for improvements. For example, it calls for the use of the vote, at least for certain types of decisions at the WTO e.g. procedural decisions, or those involving the question of expanding the WTO's remit. It also touches upon the idea of having an independent ombudsman mechanism where countries can bring complaints should they be harassed before important decisions are made at the WTO.

Important Note on the Term ‘Developing Countries’

Although we will frequently use the term ‘developing countries’ in this document, there is no single ‘developing country’ perspective or voice. Some developing countries have very close alliances with the US or EU and take positions closer to these powerful countries than the other developing countries. Examples of such countries that usually push a neo-liberal agenda, and sometimes act as ‘representatives’ of the powerful countries within their own regional groupings⁵ include South Africa, Egypt, Chili, Mexico and Singapore. Some of these countries are part of the informal coalition, ‘Friends of the Chair’.

However, there are many representatives of Southern government who try to carry the ‘development’ agenda as far as politically possible. They make up the majority of the members. The term ‘developing countries’ is used with reference to these countries. Many who take more ‘development-oriented’ positions do so passively for fear of repercussions, but remain sympathetic and supportive of those who are more vocal – usually the ones with more political clout.

Who are these ‘developing countries’? They include the Least Developed Countries (LDCs) and the African Group. These groups are usually represented by their respective co-ordinating countries in plenary meetings. Some individual countries do speak, but most do not. Another group that consistently puts forward ‘development-oriented’ positions and are a powerful force in negotiations, is the Like Minded Group (LMG). This includes Pakistan, India, Malaysia, Indonesia, Jamaica, Dominican Republic, Cuba, Honduras, Uganda, Zimbabwe, Tanzania, Kenya and Mauritius. Another regional grouping, which comes together, although less frequently, is Caricom – the group of Caribbean member countries.

Purpose and Intended Audience

This document has been written both for civil society actors and governments, in the hope that:

- 1) Northern civil society groups will exert more pressure and hold their governments accountable to democratic and good governance practices at the WTO, principles that these governments are so eloquent at preaching to the South, yet fall miserably short on implementing when outside the eye of their domestic constituencies.
- 2) Southern civil society groups will be more aware of the problematic workings of this institution, and the extent of marginalisation many of their governments face within the institution. Given the ambitions of the powerful countries to continuously expand the scope of agreements covered by the WTO, it is critical that Southern groups bring pressure to bear on their governments – and pressure that can be felt at the very top - to counter that exerted by the powerful countries (commonly called the ‘majors’ in WTO-

⁵ By this I mean that they promote the positions of the key influential countries within their regional groupings.

speak). This is critical if we want our governments to make choices based on long-term goals, rather than short-term goals and ambitions.

3) Developing country government officials in capitals will be more aware of how the decision-making processes in the institution in fact works, and the undemocratic and coercive strategies that are employed. This should be taken into account when capitals are approached by the powerful countries regarding their Geneva-based negotiators. It should also be taken into account when capitals send instructions to Geneva-based delegates

4) Developing country officials in Geneva and in capitals can use this as a reference on 'process' and decision-making issues vis-à-vis the WTO. The hope is that this document can spur more concerted efforts at radically improving this fundamental area of WTO functioning. Until and unless progress in this area is made, all the attempts to make rule-making more equitable will be in jeopardy.

PART I

DEVELOPING COUNTRY NEGOTIATORS SPEAK UP

CHAPTER 1

PERSONAL ACCOUNTS BY DEVELOPING COUNTRY NEGOTIATORS

This chapter consists of writings by developing country trade diplomats based in Geneva. They speak about their experience in the WTO, and in particular, the political pressures they are up against. The fear of repercussions for speaking their mind has made it necessary for these accounts to remain anonymous.

Country 1

It is very difficult to predict the future of the small economies, but what is certain is that we have been pointed in the direction of slow destruction, of our customs, our economies and of the sovereignty of our countries.

I come from one of the poorest countries in the world. While it is not classified as least developed, it has been slowly but surely marginalized by globalisation. When we begin to learn and understand how the multilateral trade system works, the first question that comes to mind is: how is it that my country is part of this immense project called globalisation? The task becomes more arduous when the sole and simple interest that our people have - to be able to feed themselves - becomes a utopia. It is especially difficult when we see that the dirt-covered faces are too weak from hunger to even cry.

With this knowledge in our hearts, we do our best to obtain the benefits that globalisation is supposed to bring, such as special and differentiated treatment, technology transfer and the desperate search for the investment that rarely arrives. We do everything, including the impossible, to meet the obligations that multilateralism demands of us -- creating legislation, and even mechanisms that protect the interests of others -- but where are our rights?

My task, as well as that of my team, has been nothing more than to seek the benefits for a small economy within the 'norms' of the World Trade Organization. However it has not proved possible. I do not say this because we do not have the negotiating capacity with which to reach our objectives, but to expose the different strategies that are used, to keep us submerged in underdevelopment. Within the World Trade Organization there are many developing countries with different levels of economic activity, and regrettably, this has been turned into one of the most powerful weapons used by the developed countries: to divide and conquer.

The usual practice is to make promises to a developing country so that it will defend the interests of a developed country, with the result that the developing countries are pitted against each other. Apart from that they use pressure tactics, for example political pressures, threatening to withdraw some type of tariff preferences and trying to

discredit the people in charge of small country delegations in Geneva. In short, the most common practices can be summed up by the famous phrase of Machiavelli "the ends justify the means", even though the interests of the developing countries are trampled in the process.

The examples are numerous: there are black lists of enemy countries, and lists of people whose positions are contrary to their interests and who therefore-- thanks to political pressures and the use of personal attacks-- are moved away. Is this sovereignty or a new form of colonialism?

Many of the developing countries were not able to deal with the results of the Uruguay round and these imbalances formed the corner stone of the foundations of a new economic system. We see countries that had never been active in the organization, now beginning to present proposals, to speak up and put forward their points of view, to express their interests, all this with the vision to provide the better opportunities for their vulnerable economies in the world market. The result of much of this effort was the disaster of the Seattle ministerial conference, even though that was not necessarily its objective. In addition, I would even venture to say that if September 11th had not happened, the Doha ministerial declaration would not have contained even half of its obligations. In any case, despite the results, I congratulate the developing world for having achieved some of its objectives.

September 11th is an act to be lamented by all humanity, but what gives cause for even greater regret, are the economic benefits that were attained by the industrialized countries through such a disaster. We cannot deny that many of the countries that were making a difference in the WTO have been undermined, and their officials even removed, simply for raising their voices in defence of the interests of their countries. Their requests were simply to have justice, transparency and a functioning system at the WTO. The result is that the WTO – a member-driven organization - continues to be governed by bad practices and arbitrary decisions. These are being imposed on others as a result of the supreme power of a few.

As for the institution itself, we have a director general whose only interest is his personal agenda, who slavishly lends himself to the interests of the powerful countries, and is not interested in the developing world, which he treats with disdain and contempt. This is clear from the threats he has directed at various representatives of small countries. This is no secret, it common knowledge for those who monitor the WTO closely.

What will happen now? At the moment, it is very difficult to predict the future of the small economies, but what is certain is that we have been pointed in the direction of slow destruction, of our customs, our economies and of the sovereignty of our countries.

Country 2

'During the preparations for the conference in Qatar, the pressure on the capitals increased, this time requesting the withdrawal of many of the ambassadors in Geneva who defended the interests of their countries and who opposed the launching of a new round. The truth is that the launch of this new round would never have taken place if it had not been for the lack of transparency and interference on the part of the WTO secretariat and the political pressures used by the developed countries - mainly the United States and the European Union.'

I arrived in Geneva when the WTO was first formed. The experiences I have had over these years, have led me to conclude that the biggest obstacle developing countries face in achieving true participation in the multilateral trade system, is not the lack of capacity, knowledge or training, but the lack of transparency in the processes within the WTO, and the political abuse committed by the developed countries.

At the Singapore ministerial conference, it was clear that a group of delegations met in secret, and drafted the ministerial declaration without the rest of the delegations even knowing where they were meeting.

Then came the Geneva ministerial conference. This should simply have been a routine ministerial conference, in which new topics are not introduced to the already loaded calendar of the WTO, as this was the position of the majority of developing countries.

However, at the last moment the United States presented a proposal for a declaration on Electronic Commerce, launching a work programme, and introducing a "standstill". The majority of the developing countries opposed the proposal. Unfortunately, I could see that little by little, their arms were being twisted, even that of my Minister, until only Mexico and Pakistan were left still opposing. Eventually these two also had to give way.

The next battle was over the selection of the new director general in 1999. The first thing that the developed countries did was to break the gentleman's agreement arrived at when the WTO was being created. There was an understanding that after Renato Ruggiero [the first director general], the new director general would come from a developing country. The developed countries presented their own candidates: Canada and New Zealand. The process continued, and from the beginning Supachai [from Thailand] was the favourite of the majority. However, when the selection process was narrowed down to Mike Moore and Supachai, the pressure put on the developing countries, mainly by the United States, was indescribable. The chair of the general council finally ended up presenting Mike Moore as the winner, which caused indignation amongst most of the members, who didn't accept the proposal. The tortuous process of consultations that followed, gave the developed countries an opening, and they began to put pressures on the capitals, causing several of the small countries that had originally supported Supachai to change sides. Finally, a negotiated solution was achieved: that Mike Moore and Supachai would each serve for three years. Mike

Moore's candidacy never had the support of majority of the members, but it did have the support of the most powerful.

Then came the preparations for the Seattle conference, and the desire of the developed countries to launch a new round, once again, in the face of opposition by the majority of developing countries.

During the preparations for the conference, the developing countries showed great ability and organization. The Like Minded Group was formed, lead by the Indian delegation but included developing countries from all regions. The Like Minded Group presented more than 100 proposals on the problems related to the implementation of the WTO Agreements, which were supported by many other developing countries in other regions- the Africa Group, the Least Developed Countries (LDCs), some of the countries of the Latin American Group, etc.

I was a witness to how the officials of the developed countries communicated with the capitals of the developing countries, with the goal of stopping the delegations in Geneva from continuing to speak about implementation. The strategy used by the developed countries is to confuse the capitals, making them believe that the delegations in Geneva are acting as their enemies, which causes some developing countries that are not very well organized to modify their positions. These are the negotiating tactics used by the distinguished trade negotiators of the developed countries.

After the failure of Seattle, a process of building trust began at the WTO. However, this process consisted of little more than words. A mechanism was created to examine the implementation proposals, and in spite of the hours of discussion, work, proposals, and reasons presented by the developing countries, and which gave legitimacy to their problems, the developed countries didn't back off. They held on to their position that everything had to be resolved through a new round of trade negotiations, something which most of the developing countries continued to oppose.

During the preparations for the conference in Qatar, the pressure on the capitals increased, this time requesting the withdrawal of many of the ambassadors in Geneva, who defended the interests of their countries, and who opposed the launching of a new round. The truth is that the launch of this new round would never have taken place if it had not been for the lack of transparency and interference on the part of the WTO secretariat, and the political pressures used by the developed countries - mainly the United States and the European Union.

After Qatar, the pressures remain, and the objective of the developed countries is now to undermine any possibility of the developing countries presenting proposals and participating effectively in the negotiations. They are trying to destroy the like minded group (LMG) which is the body that achieves balance in the work of the WTO. The idea is to divide in order to be able to impose their proposals. The pressures for changes of position and for the withdrawal of ambassadors is permanent, and has no apparent logic, beyond the arguments that the delegations in Geneva act as the enemies of the multilateral system, of the developed countries, and even of peace in the world. It is

indeed incredible that in the 21st century, and in the context of an organization in which all are supposedly equal, that arguments like these continue to be used.

Many reforms are needed within the WTO in order to address the issue of lack of transparency in the process, undue interference by the secretariat, and its bias towards the developed countries. But a change in the thinking of these countries is also needed. If they believe that they will be able to achieve better trade opportunities by excluding the developing countries from the system through underhanded strategies, they are mistaken. What they will ultimately end up with will be more poverty, migration problems, and violence in the world; problems that in the end will also turn against them. Globalisation should be a process by which all countries develop, and enjoy economic growth, peace and progress, and not a mechanism by which a few use to increase their wealth at the cost of the majority.

Country 3

‘Experience so far shows that developed countries have most often insisted on their positions while pressing small developing countries to give up their positions... In some cases there is an attempt to bypass the Geneva based delegates and even to create a wedge between them and their capitals. This unfortunately has led many delegates to remain silent. When a delegate feels that his career might be at risk, it affects his performance.’

The multilateral trading system is of critical importance to many developing countries. Under the General Agreement on Trade and Tariffs (GATT), and currently under the World Trade Organization (WTO), the pace of trade liberalization has increased. The WTO agenda has broadened with the adoption in the Uruguay Round, of agreements in new areas of services, intellectual property rights and investment that go beyond border measures of the traditional areas of GATT. With the launching of a new round of trade negotiations at Doha, intense negotiations have started in WTO and most probably the WTO remit may be broadened further, constraining the policy space of countries. Developing countries should, therefore, effectively participate in shaping the rules. It is worth recalling that GATT, which emerged in place of the stillborn International Trade Organization (ITO) envisaged under the Havana Charter, developed a reputation of being called a rich man’s club. Developed countries dominated the organization. Hence, secretariat, and the GATT process, reflected their priorities and concerns. It was developed countries that drove the GATT Agenda.

Prior to the Uruguay Round, many developing countries, especially the LDCs, did not participate fully in the negotiations in exchange of concessions, which was the major preoccupation of negotiators under GATT. They were exempt from GATT disciplines, and were not required to make reciprocal concessions. They benefited from tariff reductions negotiated among developed countries under the MFN treatment and could benefit from preferential access to markets of developed countries under the GSP. There were few demands being made on them, therefore they could not insist very much on full participation. They were often derided as “free riders”.

The situation has however changed considerably with the Uruguay Round. As part of a single undertaking, developing countries have carried on reforms and taken on obligations required by these Agreements including the Tokyo Round Codes now incorporated in the WTO. Furthermore the WTO membership has further expanded, and because of far reaching obligations, most members wish to participate fully. They feel they have a greater stake in the world trading system and a better claim for participating in the WTO decision-making process.

There is need for a systematic change. On the face of it, decisions are taken by consensus. However, the consensus seems to be developed in the so-called 'green room' process which brings together a few self-selected developed and developing countries. There seems as to be no objective basis for selecting participants. As it has evolved, the 'green room' consultations have involved the quad countries (US, EU, Japan and Canada), Australia, New Zealand, Norway, Switzerland, some representation from countries of economies in transition, and from developing countries, Argentina, Brazil, Chile Egypt, Hong Kong (China), India south Korea, Mexico, Pakistan, South Africa and representatives from the ASEAN countries. Until recently, the LDCs were not invited in the 'green room'. As one ambassador of the group pointed out, LDCs may be poor, but they do not have the poverty of ideas.

The idea of participation does raise the questions of the nature and the objective of participation. To participate is to be part of, to have an effective presence. And this will be done with a view to attaining given objectives. The objectives of developing countries have been clear, primarily to make the existing international system respond to, and meet their development needs. So to assess the effectiveness of the participation of developing countries in the WTO decision-making process, one can look at the extent to which developing countries have an effective presence in the process as well as the extent to which, in practice, the WTO effectively responds to and meets the development needs of developing countries.

Another question raised is the nature and scope of the WTO decision-making. As to the nature, WTO decision-making involves informal and formal consultations. There is more emphasis on informal selective consultations. Consensus is used instead of voting, as the means of reaching the final decisions. This is despite Article 9 of the WTO Agreement, which provides for voting; as well as the enforcement of the specific rules or obligations.

Regarding consultations, the operations and activities of 'green-rooms' remain the preserve of mostly the developed countries. On some occasions, some developing countries may be invited, according to the convenience of the circumstances. In these consultations, final positions are agreed upon. These are then adopted in the formal meetings. It often proves difficult to re-open the debate in the formal meetings, for chairpersons are invariably eager to move on after being party to the informal consultations. There are times when some chairman or officials just go through the motion of consultations to make LDCs happy, but do not take into account their views when formulating the final compromise positions. Experience so far shows that developed countries have most often insisted on their positions while pressing small developing countries to give up their positions. In the euphoria following the conclusion

of the Uruguay Round, the WTO was held out as a member-driven organization in which the voice of small developing countries would be equal to that of any developed country. Five years on, every one knows and sees how we still have a long way to go in this regard.

It will be recalled that in the Singapore ministerial, a number of developed countries wanted to initiate negotiations in the new issues (investment, competition, government procurement and trade facilitation), including labour standards. This move was opposed by developing countries as they felt that some of those were outside the WTO mandate. However, a small group of ministers were assembled, and agreed on a compromise that a study process be established. Without any debate in the Committee of the Whole and in the plenary, the recommendation was adopted. Equally, in Doha, developing countries were opposed to the new issues. But again, a group of ministers in the Green-Room gave their consent. This was contrary to positions which various regional groups had earlier taken. A new round was agreed to, which included these very issues. No such far-reaching decisions were agreed on implementation issues, which were a priority for developing countries.

In some cases there is an attempt to bypass the Geneva based delegates and even to create a wedge between them and their capitals. This unfortunately has led many delegates to remain silent. When a delegate feels that his career might be at risk, it affects his performance.

As to scope, it may be pointed out that the WTO is a standing negotiating forum. The many daily meetings are perpetual negotiations and consultations, with the aim of reaching decisions in the WTO on this or that issue. It is a heavy schedule, one drawn up solely on the basis of the staffing and capacity of developed country missions and capitals. Yet critical decisions are being taken in these meetings. Developing country missions are invariably understaffed and if lucky have two or so persons dealing with the entire WTO, if not the entire UN system. For such missions, it is difficult to participate effectively in these decision-making processes under the current circumstances. It is necessary to rationalize and reduce to a manageable level, the number of WTO meetings per week. A possible solution to redress this is to cut down on the meetings to reflect the capacity of developing country missions.

PART II

DOHA

CHAPTER 2

FROM SEATTLE TO DOHA: REAL IMPROVEMENTS OR MERE TRAPPINGS OF DEMOCRACY?

'Formally, one can vote. But in the absence of a one-country-one-vote, and in the presence of a decision-making structure that is based on consensus and an informal decision-making process, I will be ignored if I raised my flag. You will be ignored unless you are a major trading country.'

'If there is to be an election of a candidate, people will consult me, (as in the UN system), because I can make an X on the box and I count. But here, it is not the case. A decision is such because one of the big countries thinks so.'

'The informality of the process means that, in fact, it is a process of consultation and discussion behind closed doors. In that process, it means that those with clout will carry the most weight. There are few countries that would challenge a decision that has been put forward as a done deal.'

'At the WTO, the tradition of not taking decisions based on one-country-one-vote weighs against those who are smallest and weakest. If we really want to make a start, one area is to have elections concerning procedural decisions, such as of members of the appellate body. Why do you need to have an informal consultative process, by which some decide, and the weight of opinion favours a, b, c, and not x, y, z?'

(Caribbean delegate)

'Decisions of the WTO have an impact on all members and this is why the rules-based multilateral trading system requires that the entire membership is given an opportunity to effectively participate.'

(Representative of St Lucia)⁶

The Official Line

The WTO's director general has always presented the WTO as democratic, rules-based and member-driven. Recently, at a conference on democracy and free trade, he stated that

'The WTO system is built upon the rule of law and respect for the sovereign equality of nations. Ultimately, it is an open, rules-based multilateral trading system, built on

⁶ WTO WT/GC/M/57 14 September 2002 'Minutes of Meeting, 17 and 19 July 2000'.

democratic values. It is the most democratic international body in existence today...The transparency and inclusiveness – which is to say the ‘legitimacy’ of the process helps to explain why member governments are more prepared and more willing to reach agreement when they gathered in Doha...

Opponents of the World Trade Organisation who sometimes claim that the system is ‘undemocratic’ start from a basic fallacy. The WTO is not imposed on countries... No country is forced to sign our agreements. Each and every one of the WTO’s rules is negotiated by member governments and agreed by consensus.’⁷

The Rhetoric Cracks in Seattle

Even as Moore was proclaiming a very similar rhetoric in Seattle, in December 1999, about the democratic nature of the institution, member governments at the ministerial revolted. The ugly secrets of how the institution actually functions leaked into the public eye, causing quite a sensation, much to the embarrassment of the major countries. The African Group, totally exasperated by their marginalisation in discussions, issued a statement threatening that they would not be part of any package they had not been involved in discussing. This was followed by a similar joint communiqué from the Latin American and the Caribbean countries.⁸

This was a disastrous public relations event for the host country, the United States, and the WTO’s director general (DG). The developed countries were quick to placate the angry members and the public.

The host, then US trade representative, Charlene Barshefsky said,

‘The process was a rather exclusionary one... the WTO has outgrown the processes appropriate to an earlier time. An increasing and necessary view, generally shared among the members, was that we needed a process which had a degree of internal transparency and inclusion to accommodate a larger and more diverse membership’.⁹

The UK trade and industry minister, Stephen Byers, also said that the ‘WTO will not be able to continue in its present form. There has to be fundamental and radical change in order for it to meet the needs and aspirations of all 134 of its members’.¹⁰

⁷ Moore 2002 Speech delivered at the Conference on Democracy and Free Trade, Qatar, 26 March 2002.

⁸ The interesting thing about this statement is that the Ministers objected to the deception that was taking place. It states that there was a ‘parallel course of action between a discourse oriented to transparency and the participation by the delegations, and a process of limited and reserved participation by some members which intends to define the scope and extent of the future negotiating round that all member-countries are to adopt...’. (The full statement is attached in Annex 1).

⁹ Press briefing, Seattle, 2 December 1999.

¹⁰ Guardian News Services, ‘Deadline Set for WTO Reforms, 10 January 2000.

The False Dawn of Democracy

Shocked by the outcome of the Seattle ministerial, for the first time, the WTO took up the issue of internal transparency with some apparent seriousness. It became a component of the ‘confidence building package’ that was dished out to developing countries after Seattle. One change that the chairman of the general council at the time, Ambassador Bryn, put in practice, was to move away or lessen the number of ‘green room’ type consultations, where a selected group of about 20-30 countries hold closed door meetings, and encourage more ‘informals’ and small group consultations.

Ambassador Bryn’s efforts were widely viewed by developing countries as genuine attempts to address the serious democratic deficiencies. In his year as chairman in 2000, he held more ‘informals’ of different members, so that the reach of consultations became broader than it was before. These were followed by informal meetings that were open to all. In April 2000, he presented a discussion paper to the membership. There were some fundamental questions that were touched upon, which, if seriously addressed, could have had the potential to make some real and beneficial changes towards democratising the decision-making process, and providing some checks against the abuse of power by the influential members.¹¹

It is perhaps not an accident then, that his work was not taken very far. The result of the consultations and negotiations on this issue did not emerge as binding rules, but was finally presented to the membership only as a chairman’s Statement in July. The guidelines he eventually came up with were as follows:

- 1) That members are advised of the intention to hold informal consultations;
- 2) That those members with an interest in the specific issue under consideration are given the opportunity to make their views known;
- 3) That no assumption should be made that one member represents any other members, except where the members concerned have agreed on such an arrangement;
- 4) That the outcome of such consultations is reported back to the full membership expeditiously for consideration.¹²

Even though many members wanted more work to continue in this area¹³, nothing concrete has emerged. What is worse is that even these minimal principles have not been applied.

¹¹ Some of these included whether there would be a ‘need to identify means to ensure that smaller, consultative groups are not in any way replacing the formal decision-making processes of the WTO, nor perceived as substitutes for decisions by the whole membership.’ He also raised the question of whether Members considered it necessary to hold Ministerial Conferences every second year. The paper is attached in Annex 2.

¹² WTO 2000 WT/GC/M/57 Minutes of Meeting on 17 and 19 July.

¹³ These are reflected in WT/GC/M/57, Minutes of meeting on 17 and 19 July.

Refining the Trappings of Democracy on the Road to Doha

The issue of internal transparency, and its potential ability to create major problems, particularly during a ministerial, led the majors to refine their strategies pre-Doha.

In the initial phase of preparation, some delegates in Geneva felt that, while there remained much room for improvement, the process was somewhat more inclusive. This does not mean that there was total transparency or that negotiators of the politically weaker countries always knew what negotiations were going on. It only means that the delegates of the small economies would be invited to *some* consultations, when before they were totally excluded. However, it seems as though even such practices collapse the moment the powerful countries feel the pressure, and the same secretive, non-democratic and exclusive negotiating practices re-emerge. A case in point were the two mini-ministerials held before the Doha ministerial, one in Mexico in August, and another in Singapore in October. Like the old-style 'green room', only about 20-22 countries were invited to these meetings. Some delegates in Geneva went out of their way to get an invitation, but found that both the WTO secretariat, as well as the host countries were not forthcoming. The secretariat claimed no responsibility for those meetings, and the hosts said that they were merely providing the facilities, and were not in a position to issue invitations.

The only difference between the post-Seattle 'green rooms' and its previous practice was that leaders of groups were invited. For example, the LDC co-ordinator, Tanzania, and the African Group co-ordinator, Nigeria, were present at both mini-ministerials. The problem is that while no country had surrendered their negotiating rights to these representatives, it was assumed by the influential countries that such representation was sufficiently inclusive. This exclusive process was thus justified and it became more difficult for the marginalised countries to complain about being left out. The real test of inclusiveness, however, is in the outcome. The huge difference between Doha's outcome and the positions that the LDCs and the African Group had taken as a collective prior to Doha, is sufficient evidence.

CHAPTER 3

THE STORY OF DOHA – REFLECTIONS OF DEVELOPING COUNTRY DELEGATES

*Interviews with Ambassador Boniface Chidyausiku of Zimbabwe¹⁴,
and other Geneva-based Negotiators*

Section I

The Story of Doha

The 4th ministerial conference took place in November 2001 in Doha. The ministerial resulted in the launch of yet another ‘round’ of trade negotiations. The Doha would have been radically different had the decision-making processes in the final two days been non-coercive and transparent. However, pressed by time and the single-minded ambitions of the influential countries – in particular EU, US, Canada and Japan - to seal a deal and get a new round launched, dishonest and non-democratic processes re-emerged. Certain key countries that were representing coalitions in the ‘green room’ as well as countries that were seen as ‘obstructionist’ came under severe political pressures. Heads of states were contacted by the US and EU. There were obviously threats – usually inferred, but this is sufficient - that bilateral relations (aid or trade) would be affected unless certain positions were changed. Several Geneva-based ambassadors’ jobs were put on the line. When the deal had more or less been sealed by a small group of countries in the ‘green room’, the majority were presented the package on a take-it or leave-it basis.

The story of Doha, mainly from the perspective of developing countries, is quite different from the impressions of Doha that were carried in the mainstream press. This chapter is woven together using the texts of interviews with many developing country delegates.

The chapter also addresses the impact of the events of September 11 on the outcome of the ministerial. The US and its allies made it imperative that a new round had to be launched in order to help the fight against terrorism. Many countries, while totally disagreeing with the logic, were not prepared to have fingers pointed at them for standing in the way. This considerably weakened their ability to stand by the positions they had brought to Doha.

¹⁴ Interview with Aileen Kwa, 22 February 2002, Geneva. Comments by Chidyausiku in this chapter come from this interview.

We have been approached bilaterally in capitals. We are approached in Geneva. We are made to feel that we are holding up the rescue of the global economy if we don't agree to a new round here.

This is a view I don't subscribe to. I don't think negotiations will come to fruition in time to offset any recessionary tendencies in the global economy. Nor do I feel that this is going to be a signal to financial markets. In addition, we feel that this meeting has no connection with the fight against terrorism. And all these things have been put to us in a way that if we don't agree, we are not committed to those goals, which is certainly not the case.

Dr Richard Bernal, Jamaican Delegate in Doha¹⁵

The Battle Over New Issues / Singapore Issues

The main fight in the run-up to Doha was the attempt by the developed countries to expand the scope of the WTO to include the so-called new issues or Singapore issues (investment, competition, transparency in government procurement and trade facilitation). The majority of developing countries were not in favour of this. The outcome of Doha allows developing countries the space to oppose the introduction of these issues at the next ministerial, but leaves them in a severely disadvantaged position to do so. On these issues, the Doha declaration says that

'... we agree that negotiations will take place after the 5th session of the ministerial conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations.'

Due to the unease of several countries over such ambiguous language, and in particular, the strong position taken by India, the chairman of the conference, Qatar Minister Kamal made the following clarification at the closing plenary session.

Chairman's Clarification

'I would like to note that some delegations have requested clarification concerning Paragraphs 20,23,26 and 27 of the draft declaration. Let me say that with respect to the reference to an 'explicit consensus' being needed, in these paragraphs, for a decision to be taken at the Fifth Session of the ministerial conference, my understanding is that, at that session, a decision would indeed need to be taken by explicit consensus, before negotiations on trade and investment and trade and competition policy, transparency in government procurement, and trade facilitation could proceed.

'In my view, this would also give each member the right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Session of

¹⁵ Christian Aid Press Release, 11 November 2001. Part of the text was used in an article in the Guardian, 'Developed world accused of bully-boy tactics at WTO', 12 November 2001.

the ministerial conference until that member is prepared to join in an explicit consensus.'

Since no one objected to the chair's statement, it can be considered the interpretation of the meeting on paragraphs 20, 23, 26 and 27 in the declaration. In theory therefore, developing countries will have the right to stop these negotiations from being launched. However, whether they would have the political clout to do so remains questionable.

The Slippery Road to Doha

'It is a sophisticated game that is played at the WTO. Many developing countries realised at the end of the process, that they have come out at the short end of the stick. Yet there are many who could not get a grasp of how it happened.'

'In Seattle, we had a breakdown. This did not come from developing countries. There was agriculture and anti-dumping, where there was no agreement. The combined pressure of the quad would have been sufficient to break developing countries. Basically, my view was that the quad was divided.'

'The process leading to Seattle was cumbersome. We never reached agreement. What it did was to push the formulation of the text till the end. This usually happens in ministerials.'

'For Doha, they changed the methodology to reduce the chances of failure. They had a chair produce an outline and then the first draft. But even before the ministerial, the process was circumscribed and the chairman was in the driver's seat from the start. We went along because we thought the chair was from a developing country. We underestimated the kinds of pressures to which all chairs are subjected to.' (South Asian Delegate)

'The outcome of the Doha cannot be de-linked from what happened before Doha. LDCs and the African Group wanted a limited work programme that we could manage. This was because we did not have the capacity to understand, to negotiate, and to be able to decide whether the negotiations pushed to us by certain countries, would actually lead to development in our countries.'

'In terms of preparations, there were these 'confessionals' with the chair of the general council, where you state your positions. Many such meetings were held. We later realized that something was wrong. We reiterated and submitted the LDC position paper, as well as the Abuja paper (the African Group position paper). We submitted these to the chair and thought that these would be taken into consideration within the declaration.' (Ambassador Chidyausiku, Zimbabwe)

Green Room Meetings

'The major countries realized they could not beat the Geneva process. Developing countries had built capacity in the Geneva process. Realising that they could not put their agenda through Geneva, they started to have meetings (amongst a small group of members). The first was in Frankfurt. Those who were invited included the quad (US, EU, Japan and Canada), and other countries sympathetic to the new round, such as South Africa, Egypt and Singapore. Malaysia and a few others who had opposing views were also invited. They did not succeed in Frankfurt. Many countries sent their Geneva based ambassadors. Then they met in Coppet (Switzerland). Again, many ambassadors (from Geneva) were sent.

'The real meeting that changed things was the one that was held in Mexico (at the end of August). After Mexico, people started to see things differently. It was again a selected group. The follow-up to that meeting was Singapore. After the Singapore meeting, the DG said that it was not a WTO meeting. However, both the chair of general council and the DG were present. They also asked the Singapore ambassador to give a brief to the entire membership. And reading in the press, what transpired in Singapore is very close to what was in fact agreed in Doha.

'This method lacks transparency and is a relic of the GATT, where countries that were strong trading nations, came together and tried to push their agenda on to others.' (Ambassador Chidyausiku, Zimbabwe)

Magic Texts Which Did Not Capture Our Concerns

'We made so many suggestions before Doha, but they were ignored. In fact, the suggestions by developing countries just fizzled out. We gave texts. We didn't know where they went, but they didn't find their way to the draft declaration. We were expressing our dissatisfaction, and our disgust. Yet the chair went ahead, taking the draft to Doha. We were shooting, but we didn't know who we were shooting at. We ended up negotiating with the chair, whereas negotiations should be amongst members.

'The onus was left on developing countries to say we don't want this. But the other side didn't have to do that because the job had already been done for them in the text.' (African delegate)

'In the process of negotiations, we would object to a text, but it would still appear. We would state we wanted a text added in, and still it would not appear. It was like a magic text'. (South Asian delegate)

'We had submitted a number of drafts, in the Like-Minded Group, the African Group and LDCs. But our positions were not captured in the draft. Why were we wasting our time to submit these position papers which were not being taken into consideration?' (Ambassador Chidyausiku, Zimbabwe)

Problematic Consultations

'There were intensive plurilateral consultations before Doha. In these consultations, it was as though you were just talking to the wall. These were called Room D informal consultations. They were so-called 'open-ended' meetings. You were just talking and talking (but not listened to). The first draft which came reflected two positions. The revised second draft did not reflect the position of the majority. Majority of members did not agree to negotiations on Singapore issues and environment. And even areas where they had strong positions were not appropriately reflected.' (Asian delegate)

'Big farce is the word I would use. What are these consultations meant for? I attended three meetings on trade facilitation. There were a number of Africans, LDCs and Caribbean countries. While this meeting was taking place, the mini-ministerial in Singapore was happening. Of those who spoke – about 30 countries, 20-25 said no. But it was completely ignored. But there were no records. Nobody knows who said what. Finally it depends on the DG and the deputy DG who drafts that paragraph. So the question is that you can have innumerable meetings, but what does it reflect? Either informals are followed more frequently by formals, or what is discussed in the informals is to be recorded.' (South Asian delegate)

The Pressures Begin

'Then came arm-twisting as the ministerial approached. This was by the US, EU and DG. The DG started calling individual ambassadors on Saturdays and Sundays, asking them for their cooperation, because he needed a new round.' (Asian delegate)

'Pressures were put on Tanzania (representing the LDCs). Even before the Zanzibar meeting (LDC meeting in July), the minister was receiving calls from the major countries, criticising him for the tough stance he was taking on new issues' (African delegate).

'A difference in some developing countries' positions started to emerge as Doha approached. This was all part of the learning process after Seattle. Developed countries were responsible for a frenzy of activity going on – bilaterals, regional meetings, and contact with key leaders. There was greater involvement of some capitals and key ministers in the process. All this had quite a bit to do with why positions changed. Geneva was more on its own when Doha came closer. Negotiations were more concentrated at capital level.

'Therefore we need some ministerial engagement along the way. It reduces the potential to have ministers brought in just at the last minute, and they don't know how things work.

'There was also the psychological and public relations spin on the consequences of failure. That was trumpeted all the time in capitals'. (Caribbean delegate).

'Just before Doha, ministers from the African countries that are part of AGOA (the African Growth Opportunity Act) went to Washington. When they came back, some countries' views on the issue of the TRIPS agreement and public health had taken a

shift towards the US position. However, the majority of the African countries were able to see that the US wanted to divide the developing countries by giving a moratorium to sub-Saharan Africa on the implementation of TRIPS. We had to scuttle that. We saw this as a ploy to divide developing countries. We said no. We have been fighting this as developing countries, and they should not divide us.' (Ambassador Chidyausiku, Zimbabwe)

Nigeria Denounces Draft Declaration

When the second draft declaration was released on 27 October 2001,¹⁶ Nigeria issued a statement denouncing it: *Nigeria considers it a serious omission that the draft has not projected the crucial differences in our views. This portends that there is no level playground in the WTO if one side only is heard in arguments and on issues that affect all our countries'*.¹⁷

According to some delegates in Geneva, when the Nigerian delegation had put forward the statement, they seemed very confident that the position would not change. The statement had the 'blessings' of the capital. In Doha, they were initially tougher than India. However,

'They were being manipulated about supporting the new round. When you become chair of the group, you get subjected to too many representations. I suspect that they came under many pressures'. (African delegate)

However, the same delegate speculated that Nigeria had been 'worked on' even before the ministerial.

'It was not an accident that the African Group held their meeting in Abuja (this led to Nigeria being the representative of the African Group in Doha). Of course it was very expensive to host, so very few countries offered. But I see the hand of the Organisation of African Unity (OAU) Secretary General [a Nigerian], and some people in the secretariat'. (African delegate)

Role of the Secretariat

'The secretariat was also playing the EU role. Within the secretariat, it was not only the DG. The secretariat was championing a round all throughout. If you wanted to advance your career, you had to be seen as pushing a certain line. Of course you would take the cue from the director general' (African delegate).

¹⁶ Two drafts were released by Harbinson. The second one was worse than the first because the first in fact had two options in brackets on the new issues, showing that there was disagreement. Even though Members continued to express the same position of 'no new issues', the second draft was a clean text. That is, the option of no negotiations on new issues was removed. The text agreed to the commencement of negotiations by the 5th Ministerial.

¹⁷ WT/GC/W/454 2 November 2001 'Nigeria's Reaction to the Revised Ministerial Text', 29 October 2001.

Transmission of the Document that had No Consensus

'When we had failed to agree on the document that had been drafted by the chair of the general council, the question then was how to send a document that had not been agreed upon by the membership.'

Because of the lack of procedures, the secretariat advised the chair that he was able to send it on his own responsibility. Stuart Harbinson [the chair] said that he had consulted with legal advice in the secretariat, and he cited the case of Ruggiero [the first WTO DG], when he sent a letter to ministers in Singapore.

We felt that this should not be the case. In 1999 when we sent the draft declaration text to Seattle, the chair of general council (Ali Muchumo) had brought the text to the general council, and he got the approval of the general council to transmit the text to Seattle. At that meeting, the representative of Hong Kong, (Stuart Harbinson) stressed that he should accommodate all views expressed, not only what was in the draft, but what was discussed in the general council. Two years later, (as chair himself), he ignored that and gave his understanding to the ministers without brackets. We felt it was an affront to all the norms of international negotiating procedures. In the UN, the issue of brackets when there is no agreement is standard procedure. There are brackets until you agree. This was disregarded to give the ministers a clean text. We felt it was not fair. Ministers are not equally endowed in the understanding of the technical issues. But the other side insisted on sending this document to ministers without brackets. When the chairman came to the general council, he was told he had to include the different views that had been expressed. In the end, the compromise agreed to was to do a covering letter to the ministers. This he did, but it did not meet the concerns of developing countries.' (Ambassador Chidyausidu, Zimbabwe)

Pressures and Non-democratic Practices Intensified in Doha

'When we got to Doha, the agenda was not in place. The chair of the ministerial (minister Kamal of Qatar), suddenly announced there would be facilitators to facilitate the negotiations on issues and themes that were problematic. How they chose the facilitators and themes, nobody knew, and those facilitators were friends of the new round – Mexico, Singapore, South Africa and Canada. If facilitators are people with a definite interest, they would definitely steer the meetings in certain directions, and the small consultations held by them were not inclusive. People had problems getting into those consultations. In the selection of facilitators, how were they chosen? Who were they facilitating? When they came to plenary, they came to report. But it was in general terms. They didn't give the nuances about who was supporting which positions.' (Ambassador Chidyausiku, Zimbabwe)

Confirming this sentiment, another delegate said:

'The process itself was strange. Right after first plenary, there were facilitators that were chosen without consultation with members. And even these facilitators were not partial. I remember attending one meeting with the facilitator on agriculture

(Singapore minister) one evening. He said that the text transmitted from Geneva was agreed and there was only one problem - the 'phasing out' of export subsidies by EU. He did not meet in an open-ended session. He invited delegates for separate meetings with EU, developing countries, Cairns Group. He possibly had joint meetings with the Cairns Group, US and EU, we don't know. And his position was that the text itself was like a house of cards, it should not be changed or it will fall like a house of cards. It was not open-ended'. (South Asian delegate)

'The chairman himself did not know anything. He was only a yes man, saying or doing what the DG was telling him. The DG would even tell him to give the floor to somebody and not to give the floor to somebody. It happened so many times. He would say, 'Don't give him the floor', with the chairman's mike on.' (Asian delegate)

Having committee of the whole (COW) plenary meetings was also seen by some as merely a show of transparency.

'We held COW informal meetings and occasional meetings with the facilitators. There was an appearance of consultations. And that is where ministers would make statements. My question is, how much of it would be taken into account? My reading of this was that it was made such to make ministers happy, when negotiations were going to go elsewhere'. (LDC, African delegate).

'In the process before Doha, we had a magical text. In Doha, it got worse. Texts were coming, but were not being inserted. Then on the last day, we were told, here is the text.' (South Asian delegate).

There were also problems around the issue of representation. While the big economies were allowed to represent themselves, for the smaller economies, at the most critical moments, only the representatives of the groups were included. The African, LDC and ACP countries had not relinquished their negotiating rights to their group representatives, nor were they consulted on this issue. Yet including their representatives, gave an air of 'inclusiveness'.

This was an issue several delegates took exception to. However, others felt that that was not the main problem. The main problem was that the representatives came under severe attack by the powerful countries, so that it was impossible for them to sustain the group position:

'Key ministers were selected to represent groups – Nigeria for the Africa group, Kenya representing the ACP countries, Tanzania, representing LDCs. Therefore one cannot really complain that you were not represented. The problem is that those particular representatives came under a considerable amount of pressure. That was the major problem. In my view, as a result of those pressures, rather than to advance the views for which they were there, at the end, they became more defensive to sell the

*views from the other side. Some couldn't take the pressure. One or two even began advancing the views of the secretariat.'*¹⁸ (African delegate)

Pressures Mount As Heads of States Were Contacted

According to an African delegate, Africa stood together. What broke Africa in the final two days, was when the US and the EU contacted heads of state. There were calls from Obasanjo (Nigeria's President) and other African heads of state.

The US also exerted much pressure on the president of Pakistan, who gave instructions that the ambassador soften his position. This led to Pakistan playing a meeker role than they usually do. It was also rumoured that Tony Blair himself had contacted the Indian prime minister, asking for co-operation.

The Final Two Days... and Nights (November 12th and 13th)

Two major 'green room' meetings were held, one on the night of the 12th, and another on the night of the 13th.

It was the DG who called Ministers of the invited countries, before the commencement of these meetings, to inform them that only two members from a delegation could enter the 'green room' i.e. minister plus one. It was no coincidence that they kept the room small.

According to Zimbabwe's Ambassador Chidyausiku,

'They were having a meeting [on the night of the 12th]. We tried to go there. They just took in the African Group representatives. The other African countries included were South Africa, Egypt and Botswana.'

One developing country delegate explained the difference between the text that came out on the 13th, and that which was finally agreed to on the 14th:

'If the Africans and the LDCs had not held on to their positions, the Harbinson text (that was transmitted from Geneva) would have been even strengthened. But because they did, the text was actually downgraded. There were no mandated negotiations in investment and competition, although the text mandated negotiations in trade facilitation and transparency in government procurement. It was not good from the point of environment, which had been scaled up from the Harbinson text. The Indians rejected the 13th text saying that it went too far on environment and Singapore issues. The EU rejected it, saying that there was not enough environment and Singapore issues.'

¹⁸ For example, Chiedu Osakwe of the Secretariat, who is himself a Nigerian, and has been promoting a new Round and new issues, was keeping close ties with the Nigerian Minister in Doha. This is also touched upon in the chapter on the Secretariat.

According to several delegates, on the evening of the 13th (at the 6pm COW), Nigeria's statement was even stronger than the Indian statement. But they apparently did not speak up in the 'green room' that night. (It is highly likely that Obasanjo had already intervened by then).

The 13th was supposed to be the last day of the ministerial. Many developing country delegates are critical of the fact that they were not party to any decision-making process about prolonging the meeting. Unfortunately, by the evening of the 13th, many ministers and delegates, who could not change their travel plans had already left Doha. One Latin American delegate told us that she and her Minister had under-estimated the pressures that could be exerted at the last minute. They left on that evening, feeling totally confident that the logjam could not be broken.

Back in the conference centre, Zimbabwe's ambassador and another member of their delegation tried again to enter the 'green room' on the 13th, but were barred.

'We tried to get into the 'green room' during the first session on the 13th (about 7pm). They would not let us in. It was the security from the secretariat. They had a list of people who could go in, and those who could not. When we tried to go in we were refused entry. So when you say that consultations are open ended, it is not true. These were not. It was a group of 'executive' countries.'

'On this final night (13th), my minister had to force himself in. The chairs of the African Group, ACP and LDCs came to report to the bigger group that evening. It was after that meeting that my minister joined the other chairs going into the 'green room'. That was at about 11 pm. He was not given a chair, he had to sit on the floor the whole night. He saw how this was operating like a mafia. He could not speak since he was not officially invited to the consultations. He could not contribute. He could only give notes to his colleagues to intervene.'

There were 23 countries present in the critical 'green room' of the 13th, where the final deal was sealed. They were: EU (Pascal Lamy), Canada, Chili, Singapore, Pakistan, Zimbabwe, Malaysia, Brazil, South Africa, Australia, Kenya, India, chair of the general council (Hong Kong), the director general, Uruguay, Mexico, Switzerland, Japan, Botswana, Tanzania, Nigeria, Egypt, Guatemala and the US. While most delegations were only allowed two representatives, the US apparently had five!

Rogue Tactics in the Green Room

According to a delegate who was in the 'green room',
'Even though the chair of the conference (Qatar's Minister Kamal) was there, it was mainly the DG who was negotiating on the part of developed countries. The Canadian Minister, Pettigrew, was so insolent to the extent of insulting the Minister of India (Maran). At one stage, when Pakistan and India were pushing on the issue of textiles, Pettigrew was almost shouting at them, 'we have given you almost everything. You guys are blocking things. You have to be reasonable...'

Another delegate confirmed:

'At the last night, the pressures were tremendous. It came at the highest level, right from the top in capital, and it was specific. People were being targeted by name. So it was quite brutal.'

Maran was insulted by two countries in a most brutal way. And then, the DG joined in saying 'We have agreed to the ATC (Agreement on Textiles and Clothing), what more do you want?' It was a brutal exercise of power'.

The Use of Negative Consensus

'The DG also asked Maran why he could not agree to the text on environment. He said, you have to be reasonable. Maran said, 'When I go back, how can I justify this to my people'. DG said, 'Well, you have to convince other people around the table' (ie. Instead of those who wanted to change and expand the agenda having to convince others, it became a negative consensus. Those who wanted the status quo had to justify themselves). We had to say why we did not want an issue in the text' (Asian delegate).

However, since 'the developing countries (e.g. Nigeria) failed to speak up in that final night, the EU took the chance to push through all their issues. Now all four issues (investment, competition, trade facilitation, transparency in government procurement) are part of the single undertaking.¹⁹ In the final 'green room', it was only the EU's position that prevailed. They wanted to go further on all those issues. They kept raising their ambitions, and developing countries were not able to stop that in the night. Even the countries that were opposing environment (e.g. the Cairns Group countries such as Australia) were silent.' (Asian delegate)

A developed country delegate offered an interesting perspective. He said,

'At 6 or 7 am in the morning, the meeting was still on and we had pulled it all together. We asked if we had gotten a deal or not and the Africans (Africa Group, ACP, LDC) said they felt they had nothing to say to their colleagues outside the room because they could not ascertain what was agreed. They said something like 'you guys have pulled one on us again'. That was when there were pretty tough exchanges. Minister Maran of India was not happy with the situation.

South Africa intervened and made an impassioned speech to his fellow Africans saying that it was in the overwhelming interest of Africa to support the final offer which Lamy and Zoellick had made.'

¹⁹ The single undertaking means that all the different agreements have to be negotiated and adopted as a single package. Some are saying that in the earlier draft of the 13th, the new issues were not part of the 'single-undertaking'. However, that in the final text that was adopted, it is. This is also the interpretation of the EU. Such an interpretation would make it impossible for countries to continue refusing to accept the new issues, since the Round would not be concluded without these. However, this point could and should be disputed given the Chairman's clarification.

According to him, *'There was tough language at the end of the night'*.

An African delegate, reflecting on the outcome of that last night said,

'They got the deals they did out of sheer fatigue on our part. They have big delegations and they can stagger people. But for us, we don't. It is very difficult to go on negotiating day and night for several days without sleep.'

Views Of Those Who Were Excluded

With only 23 countries present in the final 'green room', there were many who were excluded. This is the view of one such delegate:

'We waited till 9pm or 9.30pm that night. We did not know what was going on and we finally decided to go back to the hotel. We left a message that when the COW convenes, to call our hotel. It is rather humiliating to hang around the corridors. You are representing a country and it is humiliating and ridiculous for you to hang around in the corridor. It shows that there is something wrong with the process. If you cannot enter, then something should be done to give you information. Who gave legitimacy to the meeting? Was it decided in the COW to extend the meeting? No, it was only a small group of people.'

Another said,

'It was a sad day for us. It was like Seattle, we were sidelined, except that they succeeded in the end. It was all very quiet and we were taking turns keeping shifts (through the night) and kept going downstairs to find out whether anything had come out. And we didn't hear anything till 6 or 7am. Our ambassador was briefed by another ambassador.'

A representative of the EU delegation, lamenting that most people at ministerials are superfluous (including too many on their own teams) said,

'There are always far too many people who have nothing to do attending these meetings. You get a whole lot of people walking in one direction and five minutes later, you see them walking in the opposite direction looking very important, yet 90 per cent of them have nothing to do'.

Another delegate from an EU member state said,

'Developing countries find themselves excluded because they didn't speak up (in the earlier consultations). It is not that we wanted to exclude them'.

When pressed about the fact that there were those who wanted to get into the 'green room' but could not, he justified the exclusion with the following:

'Everybody wants to be in for the kill, but if you have to do a deal, you must make a decision about who the people are who really carry an opinion.'

The Last Day (14th November)

The 'green room' of the 13th produced an outcome on new issues that was clearly different from the original positions of the Africans and LDC countries. Needless to say, what emerged caused a lot of confusion and anger amongst many. An African delegate, who was party to the ACP/LDC/African Group meeting, which took place on the 14th, when the text from the 'green room' was presented to them, has written the following account.

ACP, Ldcs and Africans Meet after the Release of the Final Draft Declaration

'A feeling of deep disappointment and betrayal filled room SALWA 3 which was packed with African and some Caribbean delegates. The document in front of them was much worse than all previous documents. Everyone was anxious to hear about what had transpired the previous night. In the room were Ministers and Heads of Delegations from Nigeria, Kenya, Tanzania, Egypt, Botswana, Zimbabwe, Ivory Coast, South Africa, Jamaica and the Dominican Republic. The Nigerian Minister was chairing the meeting. He started by thanking all the Ministers for their participation in the nightlong gruesome negotiating process. He then gave the floor to the South African minister of trade (Alec Erwin) to give explicit information on how they came to this complete change of position, especially on the new issues.

Minister Erwin said that this was the best bargain that we could get out of this conference. He said that negotiations are a game of give and take. 'If we are not ready to give away something, issues where we have made some considerable gains, especially implementation²⁰ might fall away.' He said he was of the view that the group had to make a tough decision and take the time constraints into consideration.

On new issues, he explicitly said that all we have been asking for, since the Singapore ministerial (in 1996), was more time to be able to understand the issues and to avoid going into negotiations immediately. According to him, the revised document on the table captured these elements completely. He said that the two years prior to the 5th ministerial conference would give us enough time to build our capacity and understand and analyse the issues at stake.

In addition to that, the fact that the basis of a decision on modalities of negotiations were going to be taken by 'explicit consensus', was strong enough for us to be able to block the negotiations at the 5th ministerial conference. Those countries that were carried away by his eloquence clapped at the end of his presentation. Others who were familiar with the position of South Africa on new issues were obviously furious, and ready to jump in to take the floor.

²⁰ Implementation issues refer to developing countries' proposals on bringing equity to the Agreements that resulted from the Uruguay Round. The outcome on implementation in Doha, unlike Erwin's assessment was very disappointing. Most of what was given was in 'best endeavour' language, i.e. non-binding, and they would depend on the good will of the developed countries to implement.

Among those who found the revised draft acceptable were Kenya, Tanzania, Egypt, Botswana, and Mauritius. Although Mauritius was not too happy with the exclusion of the needs of small economies, she was willing to go along with whatever consensus was going to come out of this African ACP group meeting.

When Belize was given the floor, the representative of this country demanded to know what really transpired overnight for the group position to move from a position against new issues to a new much weaker position. He said that the group had made no gains at all but had lost the battle. Jamaica echoed the same sentiments. Other countries which supported Belize and Jamaica included Zimbabwe, the Dominican Republic, Burundi, Cuba, and Grenada. There were other silent supporters of this group, who cheered each time an opposing voice took the floor. However, Alec Erwin and other supporters of the document were not ready to give up. Minister Seretse from Botswana, as the vice-chair of the ministerial conference then took the floor. She acknowledged the group's lack of technical capacity at ministerial level, and she said that this was where the group's heaviest weakness rested. She applauded the technical assistance from Erwin and Butros Butros Ghali, and the fact that delegations were not intimidated by the challenges they had faced. She invited all countries to accept the document. In his turn, Tanzania's Minister Simba pointed to the fact that the present group had mandated the selected representatives to negotiate on behalf of the group. The group should therefore accept the outcome.

The ACP waiver issue was one of the issues that took a good amount of time during this meeting. The EU was using it as a bargaining chip for the endorsement of the ministerial declaration. The room was divided on this issue. The meeting was adjourned without proper agreement, but only with Kenya's Minister Biwott (representative of the ACP countries) concluding amidst much confusion, that the waiver should be obtained before the ministerial declaration was accepted. This was what finally happened that day. The waiver (after being held up in talks in Geneva) was finally endorsed. This divided the group, and it considerably weakened the ability of the ACP countries to reject the declaration.²¹

Final Negotiations on New Issues – the Chairman's Clarification

According to Ambassador Chidyausiku,

'On that final day, in the Committee of the Whole, we tried to say that we did not want negotiations on the new issues. The first country that raised the issue was Barbados. The other countries included Zimbabwe, Jamaica, India and Cuba'.

According to another delegate²², Jamaica had asked not only for a clarification, but also for the deletion of the worlds 'on modalities of negotiations' in paragraphs 20-27 on new issues.²³ Those supporting Jamaica after their intervention included Zambia, Gambia, Kenya, Uganda, Belize and Grenada.

²¹ Seatini Internal Files, January 2002.

²² Notes from Maud Johansson, Member of the Swedish delegation.

²³ This would have eliminated ambiguity on the new issues. Countries would then have decided at the 5th Ministerial whether or not to have the new issues. There would not be the uncertainty about whether these issues are part of the single undertaking, as the EU now claims.

Ambassador Chidyausiku:

'We said that we wanted an amendment to the draft declaration that would effectively represent the position we had taken in the consultations. Otherwise, there would be no consensus. When these objections were raised, the COW was adjourned. The DG was locked up with the Indians negotiating on how to break the impasse, but not the others. When they struck an agreement with India, that the Qatar minister would give a statement, that is when they sent the secretariat to advise the others (who were still opposing the text). The secretariat said that it was not possible to amend the declaration at that juncture, and that Minister Kamal would give a note to explain his interpretation. We said an explanation was not enough. We wanted something that was binding. I wanted something written, which says that this was the agreement of the meeting, rather than have an official saying that this was the understanding he had.'

Kenya said that there were a number of issues they were not happy with, such as the issue of the formation of the Trade Negotiating Committee (TNC). We were told that it was too late. Alec Erwin (Minister from South Africa) said that we cannot start bringing these amendments in at the final hour, because it would unravel all the agreements that were struck in the 'green room'. Our understanding, however, was that nothing is agreed upon until everything is agreed.

The secretariat also said that it was too late to bring in an amendment. The secretariat has a tendency to give advice to the chair or DG to flout some of the regulations if they are there, and if they are not there, to do what they want to get the results.

That is how they came up with the explanation from the chair on his understanding about the new issues.'

Manufacturing of Consensus

'You could see that once they thought they had agreement on the final day in the COW, they arranged the order of the speakers in such a way as to make it seem as though there was a consensus on the New Issues. India and a few countries wanted to speak on the question of modalities (of the New Issues). They arranged speakers, and speakers were given the floor literally to set the consensus. Although India had raised its flag first, 6-7 speakers who were in favour of consensus were given the floor one after another.²⁴ And when a country had spoken, somebody would clap. A number of countries had intended to speak up against the status quo (on new issues), but eventually when they saw how the groundswell was organized, they either backed off, or toned down. These countries included some Caribbean and some African countries. They felt very strongly about the text regarding agreement to negotiate on modalities. They did not mind agreeing to decide in the 5th ministerial. Some wanted to express their reservation and their understanding of what that meant. However, in that

²⁴ According to one delegate, this included Pakistan, because they knew that Pakistan was not in a position to hold up the consensus (as a result of September 11 pressures).

environment, it would be seen as though you were a wrecker. That is common, anyway, to arrange a certain viewpoint to appear that it is the dominant viewpoint...

So they orchestrated this speaking order and put India under great pressure to compromise. It was as though they were alone, although they had a lot of sympathies.' (African delegate).

Pressures on Developing Countries' Ministers in Doha

A frequently asked question post-Doha, was why developing countries agreed to such a bad deal. Ambassador Chidyausiku explains:

'They said that if you don't agree to the inclusion of new issues, you don't get the TRIPS and health declaration and the waiver. The other source of pressure was that no minister was prepared to be blamed for the failure of Doha, and standing in the way of fighting terrorism. This terrorism issue was not tied down to the success in Doha. They had created this hype. There was so much pressure that in negotiations, they did not have the guts to say, as far as my national position is concerned, this is not in our interest.'

Eventhough many were in opposition to the final declaration, countries were unfortunately not in a position to block consensus. Even India felt that they could not afford the price of sanctions that would have otherwise resulted. An LDC delegate said,

'My perception is that some had instructions not to stand in the way. Many were honest enough to say, we can press, but we were told not to stand in the way, Pakistan and Kenya, for example. Some could only go up to a certain point.'

Under such heavy-handed political maneuvering, the unity of the developing countries fell apart, and the ministerial was thus concluded. The Nigerian minister even went so far as to say that the declaration offered more to developing countries, than the developed countries.

Post-Doha Reflections: How We Lost the Battle on New Issues

Ambassador Chidyausiku:

'On the way to Doha, we developing countries became victims of our own argument. We said that we couldn't go into the new issues, because we don't understand, and we don't have the capacity. That was part of the problem, but not the main problem. We want to know how we could safeguard our interests, if we negotiated these issues. What is the impact of these on our trade and on our development concerns? It is not that we can't negotiate. We can build our negotiating skills. But are we in a position to determine that what we negotiate would be good for our development?'

Technical Assistance: Is it really of Use?

Our trading partners were quick to notice this line of thinking, which is weak. There is no free lunch as the Americans say. If you cannot negotiate, we will give you technical assistance. This will give you capacity to negotiate. That is not what developing countries want. It is not just the ability to negotiate. Negotiations can give you opportunities but unless you can take advantage of those negotiations, it is pointless.

*When we were in UNCTAD the other day, the US said that they would fund technical assistance on subjects of interest to them. **The countries that are going to give you money are interested in investment and competition, where they want developing countries to be engaged in negotiations. We want technical assistance to address supply side constraints, which makes us unable to trade.** We do not have warehouses of goods, where, if there is market access, we ship it to Europe. **If we can't take advantage of opportunities, the results of the negotiations are zero.** That is where we have problems as developing countries.*

When we agreed to start negotiations in the Doha agenda, they said that they would give us technical assistance and capacity building. They want to give it to us to be able to negotiate and be up and running by three years. But in reality, when you develop capacity, you can't do that in two or three years. What we need is technical assistance to address supply-side constraints. We cannot take advantage of markets available when we are sinking in debt.

We blinked when it came to technical assistance and that was the problem.

Renewal of the ACP Waiver /TRIPS and Health Declaration Made it Difficult to Say No to New Issues

We blinked again, when they said, if there is no progress on negotiations, there is no waiver (the EU ACP Cotonou agreement). They gave us the waiver.

Even if there are other areas where we had problems, we had no moral ground to say that 'although you have given us the waiver, we can't go along.' So that became a problem, linking the successes of the Doha ministerial conference to the granting of a WTO waiver for the EU/ACP (African, Caribbean and Pacific) Cotonou Partnership Agreement. And those preferences are only there for five years. The implications of the consequences of these new areas to be negotiated, are worse than if we hadn't got the waiver. The EU is already saying that by 2005, we start negotiations on economic partnership agreements in regional groups or as individual countries, which are compatible with the WTO. The preferences will only last till 2008.

Meetings Were Only a Façade of Inclusion

In Doha, the spin-doctors had realised that in Seattle, ministers felt ignored, and developing countries were prepared to bite the bullet. In Doha, they created a process, where ministers could go to the committee of the whole (COW) and discuss and raise issues, but nobody was taking into account what they said. They were just venting their frustration. That feeling of being part of the process dented their anger of being uninvolved. But in fact, there was a smaller group taking the decisions for the whole.

Those managing Doha kept ministers in a semblance of being involved in the process, when they were not, because what was discussed in the committee of the whole was not reflected in the declaration. The views, which were captured in the declaration, came from people who were pushing on environment and new issues. The ministers felt part and parcel of the process, but were not involved in real terms.

Was Africa Represented in the Decision-making Process?

After Doha, Ambassador Abbot from the EU²⁵ said that Africa was well represented in the negotiations. In the 'green room' in Doha, African countries present included Egypt, South Africa, Kenya, Tanzania, Nigeria and Botswana. But there is a fundamental flaw in that argument. African members have not surrendered their sovereignty to their group representatives. We are members in our own right. Having Tanzania present does not necessarily address the concerns of Malawi or Zimbabwe, or others that are not there. They should not take regional consultations as final. With the EU, yes, they are a union and are an entity in WTO. We are individual members and want to debate and decide. We have not delegated our legal sovereignty or right to others.'

Section II

The Impact of September 11 on Doha

September 11 led to a profound set-back in terms of how far third world countries could go in resisting the pressures by the big countries. Seattle had put the legitimacy of the institution in question. The majors were on the defensive. There was a slight improvement in the political climate for developing countries. This political space evaporated, however, on September 11.

Post September 11, US Trade Representative Zoellick, toured the world, meeting with Presidents and Prime Ministers, with the message that a new trade round and free trade would stamp out terrorism. His message was taken up promptly by two other traveling emissaries, director general Mike Moore and EU Trade Commissioner Pascal Lamy.

The fight to launch a new round of trade talks before Doha was thus shifted away from negotiations primarily carried out in Geneva, to talks with heads of states and trade ministers in the capitals. The links between launching new trade talks and security issues, before only remotely connected, became one and the same cause.

²⁵ This was in Mauritius at an EU-sponsored workshop on Services.

For a variety of reasons, many developing countries suddenly found themselves in too vulnerable a situation to continue opposing the US and EU. No matter how ludicrous the linking of a new round was to the fight with terrorism, countries were tiptoeing around the threat of possibly being implicated as supporting or harbouring terrorists. The US and EU WTO trade agendas, though starkly self-interested, became a small concession in return for continued good political relations and being part of the new coalition against terrorism that was being built.

As an indication of these pressures, long-time WTO analyst, Chakravarthi Raghavan suggested (with some humour) that the new round could more accurately be called the 'Bin Ladin round'. One representative from an African country related in a personal interview that indeed, during bilateral negotiations between US and developing countries during Doha, Zoellick would always reiterate to his counterpart that calls had already been made to the capital and that the prime minister or president had already assured him that all efforts to help combat terrorism would be guaranteed, (including launching a new round).

According to Stuart Harbinson, chair of the general council at the time,

'There is a certain amount of feeling that the events of September 11 were a bit of a threat to the world and to the established way of doing things in the world. And it was important for multilateral institutions, not just the WTO, to be seen to be operating successfully. So I think that put a bit of extra pressure on people to have a result. At that particular point in time, it would have looked particularly bad if there had not been an agreement.'

'It was a positive effect in getting an agreement. Some ministers would have operated with that sort of mind frame. I didn't feel that in Geneva. But some ministers might have been more willing to compromise as a result of that. It wasn't a tangible thing – just a bit of a feeling.'

Sudden Shifts in Developing Countries' Positions Post September 11

Many countries, pre-September 11 held very firm positions against having the new issues incorporated into the WTO agenda. Amongst the strongest opponents were the Like Minded Group of countries, and in particular, India, Pakistan and Malaysia.

However, by October, there was a perceptible shift in the mood by key countries in resisting the unrealistic WTO agenda placed before them. The most noticeable were shifts in Pakistan and Malaysia's positions. While still championing the need for implementation (past promises that have not been delivered) to be addressed first, these countries significantly toned down their previously strident opposition.

Section III

What Deals Were Brokered?

Pakistan

While Pakistan continued opposing a new round, their position on the launched of investment talks seemed to have become more nuanced post September 11. This came at the same time as intense talks were held on what Washington termed the 'one billion dollar plus' aid package that was being negotiated to reward Pakistan's support of the US in Afghanistan. The package was concluded and signed on November 15, a day after the conclusion of the Doha ministerial. It was significant that President Musharraf was in Washington while the ministerial was underway. In addition to offerings by the US, the EU, too, offered to match their concessions to Pakistan in the area of textiles. The EU removed all tariffs on apparel, and increased quotas for Pakistani textiles and clothing by 15 per cent until 2004.²⁶ In addition, Musharraf of course also received recognition and political legitimacy by the international community as the legitimate leader of the country.

According to Pakistani sources, however, the US has inflated the package, which may only amount to US\$146 million per year for 3 years. An analyst said, 'Washington is inflating the figures to impress the Pakistani people'. The Pakistan minister had in fact publicly announced that he was extremely disappointed with the outcome of the package.

Malaysia

Many developing countries that were opposed to a new round were extremely disappointed by Malaysia's silence in Doha. Malaysian officials up until August had been one of the most articulate countries speaking up against new issues. Yet, by October, it was reported in the international press that Minister Rafidah supported an opt-in opt-out investment agreement (the EU's attempt to get a full investment agreement in through the back door). One source who was present in the 'green room' said that Minister Rafida was very much on the side of developed countries and 'implored the Africans to go along with the deal.'

Weakened LMG in Doha

Due in large part to Pakistan and Malaysia's reticence post-September 11, the Like Minded Group (LMG) arrived in Doha in a much weaker position. While some members, such as India, Zimbabwe, Cuba, Jamaica, Dominican Republic were still opposing a new round, the LMG was not able to hold a united position in this area.

²⁶ Textiles makes up over 60% of all exports from Pakistan. Pakistan exports to the EU amounted to 2.3 billion Euros in 2000. The expansion of quotas would boost Pakistani exports to Europe by US\$ 1 billion over the next four years. The removal of tariffs would eliminate duties to the tune of US \$150 million a year (Corporate Logo 17 October 2001, BBC News, 22 October 2001).

Nigeria

The other country that played a significant role in the outcome of Doha was Nigeria, representative of the African Group in Doha. Again, it is difficult, if not impossible to find out exactly what Nigeria received in return for agreeing to a new trade round. It is only possible to point out their positions pre-Doha, even during Doha, and then the 180-degree shift in their position on the final day of the ministerial, and draw some conclusions.

Did September 11 play a role here? Perhaps, although ties were already close between US and President Obasanjo, which no doubt would have constrained Nigeria's ability to resist US' pressures to the end. Nigeria receives more aid from the US than any other Sub-Saharan country. It has also been receiving aid from USAID to restructure the military. Post-September 11, the country experienced ethnic clashes between Muslims and Christians in some areas, and US military presence in the Niger Delta region increased (in order to guard the interests of US oil companies). Perhaps the most tangible sign of a deal was the announcement in December, that the Paris Club of Creditors, to which Nigeria owed \$22 billion, was rescheduling Nigeria's debt repayment, giving them some reprieve for the moment.

Tanzania

Like Nigeria and Kenya, Tanzania, as a representative of the LDCs were also pressured. A week after Doha, it was in the news that the World Bank and IMF had agreed to debt service relief for Tanzania for US\$3 billion over time under the Heavily Indebted Poor Countries (HIPC) initiative. Entering the ministerial, Tanzania represented a united position on 'no new issues', yet on 14th November in the COW, Tanzania said that they had a 'sense of happiness'²⁷ with the outcome of the Doha Development Agenda.

The Caribbean Countries

A couple of Caribbean countries – Barbados and Jamaica - tried hard to stalemate the final package. They probably went as far as they could go, without blocking the consensus. The Caribbean countries were in a much weakened political position after September 11. Their economies were hard hit by the significant drop in tourism, particularly from the US and EU. Just before Doha, an IMF aid package was handed to them to help them cope with the fall-outs in the tourism sector. The war on terrorism, targeting states linked to money laundering and the narcotics trade is likely to have had an effect on how far these countries could go in their opposition at Doha.

India

India's commerce minister Murasoli Maran fought a brave fight to the end. Unfortunately, this same issue of being accused of supporting terrorism if they continued opposing the new round may have contributed to India's decision to finally back-down when they found in the last 'green room' that they were indeed alone in that group.

²⁷ Notes from Maud Johansson, Member of the Swedish delegation.

Other Sources of Pressure (which may not have been linked to September 11)

Indonesia

It is quite widely known that Indonesia came under pressure to from Japan regarding accepting negotiations in investment. The week before Doha, Japan made a bilateral agreement with Jakarta offering some investment. This was made on condition that Jakarta agrees to an investment agreement.

The New Political Climate

The war on terrorism is not the only reason for Doha's outcome. Developing countries are always in a weaker position because of their dependence on the markets and, in some cases, the preferential trading arrangements of the EU and US. Nevertheless, the room for resistance by developing country governments post-Seattle had increased significantly. September 11 eliminated this space and has given the powerful countries a new weapon in the trade negotiating arena: the war against terrorism. The types of pressure exerted will be discussed more fully in the next chapter.

PART III

THE NON-DEMOCRATIC NATURE OF 'CONSENSUS'

CHAPTER 4

MANUFACTURING CONSENSUS AND WHAT IT ENTAILS

Decision-Making at the WTO

Article IX.1 of the Marrakesh Agreement establishing the WTO says

'The WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting.'

Decision-making at the WTO is carried out using the rule of 'consensus'. While voting is endorsed, this rarely took place in the life of the GATT, and has never happened at the WTO. The big countries, such as the US and the EU would not want to be subjected to the 'tyranny of the majority'.

Is Consensus Decision-making Really Democratic?

In theory, consensus means that a single member, no matter how small an economy, is able to object to, and hold up a decision on any issue. This theoretical understanding has lent the principle much support. It is also being used by the secretariat and the influential countries as evidence of the WTO's democracy.

In practical terms, consensus means that no decision is formally objected to by any member present at the meeting. It does not mean active agreement, merely the absence of objection. Silence is therefore assumed as consent. Whether consensus decision-making can be democratic depends on the ability of countries to voice their dissent. Unfortunately, the reality of power politics in the institution means that dissent by any one country in a formal meeting, which goes to the extent of blocking consensus, is rare.

As one Southeast Asian delegate observes:

'Many developing countries think that consensus is good, because we can singularly [sic] say no. But in reality, this is used against developing countries. Only the US or EU can say no. No single developing country, or even a small group, can say no.'

Yet another Caribbean delegate had this to say:

'A formal decision-making process which is based on consensus, and which has no strict rules of procedure, becomes slightly vague at the edges. It requires

superhuman conviction of one of the members to oppose what the major countries want. It is easy to think that decision-making by consensus allows anyone to prevent a decision from being made. But actually that is not what it effectively means’.

Decision-making by consensus therefore seems to disadvantage developing countries in several ways:

- 1) Countries are weak in their ability to propose. This ability is almost non-existent when proposals go counter to the wishes of the major countries. There are numerous examples. For instance, proposals to negotiate implementation issues since 1998 have not gone far at all.²⁸ Another example is the refusal by the influential to seriously undertake a GATS (General Agreement on Trade in Services) assessment, although this has been mandated in the Agreement. Article 27.3b review on patenting of life, and the mandated review of the entire TRIPS agreement have also been stalled for the last three years.
- 2) Within the realities of the political context, the ability to oppose is also elusive, and impossible for any single country (as in Doha).

The Process of Manufacturing Consensus

Decision-making essentially takes place in ‘concentric circles’. First, the US and the EU come together to decide on a common position. The circle is then expanded to Japan and Canada. They make up the ‘quad’. After this, the circle is enlarged to include other developed countries, followed by friendly developing countries (e.g. South Africa, Chile, Singapore etc). This group is sometimes known as ‘friends of the chair’. And finally, other influential developing countries, such as India, Pakistan, and Malaysia are brought on board, since they carry weight, and it would be impossible for the majors to leave them out. China, a new member, would probably also fall into this category. The majority of developing countries never make it into this circle of decision-making.²⁹

The *modus operandi* through which this happens is informal meetings. Since Seattle, there has been more awareness of the need to include more countries than the usual 20 –30 members. However, the choice of which countries to include is left entirely to the chair. The secretariat is often enlisted to help in this task, even though the secretariat should be neutral. There are no rules binding the chair, only the various occasions where guidelines have been given.³⁰ Members are invited by the chair for consultations. Those not invited would not even be informed and even if they did find out and wanted to join the meeting they may well find themselves stopped at the door. This is how texts suddenly ‘appear from nowhere’ before important meetings, since

²⁸ Even though this has been the most important issue for most developing countries.

²⁹ ‘Circles of consensus’ is explained by Drahos, P, drawing on the example of the negotiations of the TRIPS Agreement, in ‘Developing Countries and International Intellectual Property Standard-setting’, Paper presented at the Commission on Intellectual Property Rights, 2002.

³⁰ See chapter 2 and chapter 5 regarding these guidelines.

consultations have been taking place without the knowledge or inclusion of others. When the chair is sufficiently confident that his compromise package (supposedly coming out of the informal consultations) will not be openly objected to by the majority, informal general council meetings (of the entire membership) are convened. If objections remain strong, the decision goes back into informal consultations. For the most part, developing country members, no matter how unhappy, are unlikely to block a decision that is proposed by the chair. Finally, a formal general council meeting is convened and the decision is taken there by consensus i.e. no member present objects.

It is indeed shocking that for an international organisation with such a wide and pervasive rule-making mandate that affects the lives of people in all member states, the process of decision-making is so arbitrary and dependent on the chair and those that have influence over him (usually the QUAD).

This process of consensus-manufacturing requires the developed countries to exercise their "skills" to keep the group together as the circle of consensus expands. Some effort needs to be made by those who want their interests protected - usually the quad and other developed countries - to ensure that when the final package is brought to the larger membership, the ground has already been prepared so that no matter how unhappy the majority is, no single country will outwardly reject the package.

This process requires an elaborate mixture of strategies of marginalisation and even outright coercion, only made possible because of the huge differentiation in power between the players. The strategies used to manufacture consensus can be categorised into five broad areas:

- 1) Institutional and procedural deficiencies that marginalise the majority
- 2) Use of bilateral threats to arm-twist and silence developing country negotiators
- 3) The bias of the WTO secretariat and the fact that it meddles in negotiations
- 4) Technical assistance as a tool to elicit consent
- 5) Divide and rule strategies used by the powerful countries

These are taken up in the following sections

Section I

Institutional and Procedural Deficiencies that Marginalise the Majority

The disadvantaged position of developing countries in the area of trade negotiations is well known. Even the most active and articulate delegations are severely short of staff. Numbers in the delegations are small, while the number of meetings is too large to effectively service. What expertise they may have in capitals or in Geneva is in no way comparable to the research and technical expertise available in developed countries. In addition, developed countries obtain detailed information from their corporate lobbyists. As a result of all these sources of information, they know the economies of their trading partners, often even better than government negotiators of those countries. To make matters worse, ministers of developing countries are usually political appointees, rather than trade experts like their developed country counterparts.

Given these realities, developing countries become even more vulnerable when the procedures of negotiations work to exclude them, when pressures are put on capitals and ministers, and when misinformation is circulated.

The Process of Negotiations: Strategies that Marginalise the Majority

Through lack of procedural clarity, there is much room that is left for developed countries to manoeuvre their agenda into the negotiations. The following is a list of institutional and procedural deficiencies that effectively serve this purpose. Some are more 'sophisticated' than the others, for example, the 'seeming' inclusion of developing countries without in fact including them in real terms.

Outright Exclusion of the Politically Weak

A significant number of delegations are left out of consultations, or included only on some issues and not others. Usually, the excuse by the majors is that they have nothing valuable or different to say, since if they did, they would have already been included in the core circle.³¹

The developed countries however, are careful that the politically stronger developing countries, the ones with the most potential to 'rock the boat', are included at some point in the process. Exclusion of the politically weak in the decision-making process matters much less, since there will be little risk that they will hold up a consensus.

Bulgaria recently took strong objection to their exclusion from the process of selecting the Trade Negotiating Committee (TNC) chair. Their statement is evidence of the extent of non-transparency.

'The representative of Bulgaria, referring to the chairman's statement (which appointed Mike Moore, the director general as the chair of the TNC), said that he had

³¹ Interview with a European Commission delegate, March 2002.

received the document in the informal meeting just prior to the present meeting, and his delegation had not been involved in its preparation...

His delegation had made it clear that it wished to be involved in the informal consultations on the negotiating structure and other aspects, but it had been excluded from those consultations and its views were not reflected. The state of internal transparency in the organisation needed to be improved. The problem of transparency in the negotiations needed to be dealt with in a much more specific way through the adoption of clear and explicit rules'.³²

One African delegate, exasperated by the system said,

'There are some developing countries who are involved in the consultations on all issues. They invite us only for some issues, but they invite another country to all. That is unfair. They should ask who is interested in this issue, and when I raise my flag, I get a ticket.'

There are No Binding Rules About the Conduct and Role of the Chair!

The non-existence of binding rules in the area of procedures and how negotiations are conducted has given the chairperson of any negotiations enormous powers. This is highly problematic and experience with the recent 'chairs' have shown that giving such a broad works against the interests of developing countries. The chair essentially has the ability to decide whether or not to consider all positions with similar weight, or to give prominence to one or two positions over others.³³ Much depends on the personality, inclination, and the ideological leanings of the person, as well as the pressures exerted on him/her, and how the person reacts in the face of these pressures.

One developing country delegate relates his experience:

'In a situation where so many decisions are taken informally, and different weights are given to the views of different players, and the chair follows these unwritten rules, it is much harder to get your input to the text than some players. There are no rules which say that all inputs submitted in writing must be distributed and reproduced. So you have to work twice as hard to get your input into the draft as another member.'

The problematic role of the chair was very much in evidence in the preparations for Doha. Even as the chair of the general council, Stuart Harbinson acknowledged that 50 per cent of the members disagreed about having new issues launched in Doha (and developing countries would assert that it was more than 50 per cent). Nevertheless, he removed brackets on the new issues in the second draft of the text, giving the impression of consent.

³² WTO, TN/C/M/1, 14 February 2002, Trade Negotiating Committee, Minutes of Meeting 28 January and 1 February 2002.

³³ Narlikar A. 2001 'WTO Decision-making and Developing Countries', South Centre TRADE Working Papers 11, November.

In a revealing statement about the need for the chair to be fair to all sides, the Philippines said,

'The TNC chairman should not interfere in these substantive discussions in one way or another, nor should he resort to so-called 'friends of the chair' ostensibly to facilitate or promote consensus'.³⁴

Another delegate from Africa, obviously wary about the extent of powers the chair can 'arbitrarily' exercise said,

'Harbinson's consultations were centered on the positions of the big players. He is somebody who says he is consulting and building consensus. It is like the same person being the accountant and the auditor. You are everything. Even if there is a mistake, you are auditing the books and you don't see it. A number of countries made noise that they were not being consulted on the selection of chairs for the negotiating groups in the TNC. There must be more transparency in the consultations. Maybe you make a table – you consulted 50 countries, and what their positions are. You have to show everyone the results of the consultations. Right now, only Harbinson can tell you what he did. There is no proof that he has consulted with delegations, and there is no proof that they have agreed. So the real decisions may have been made by very few. We have to have a system that we can monitor.

'What I have learnt about Harbinson's style is that he is 'sympathetic' to every group. He goes to one group, and tells them that this is a very good paper. But at the end of it, he brings you the same list, and tells you that this list is what has been acceptable to everybody. Maybe it used to be good in the old days (GATT) when countries divided-up the positions and distributed them amongst the major players. But now you have 144 members.

'Regarding the selection for the chair of the general council (for 2002, Canadian Ambassador Marchi), Harbinson came to the African group to say that most members expressed reservations, but we don't have anybody else for the job. This is the best we have. When it is a one-man show, it depends on what the man wants, not what the group wants.'

Given the critical role of the chair in steering the direction and even the conclusion of negotiations, it is not surprising that the major countries have tightly controlled the procedures by which 'chairs' are chosen. A well-known example is the way the names of the facilitators chosen in Doha seemed to have 'popped out of nowhere'.

The lack of rules and keeping the decision-making process vague³⁵ serves the interests of the powerful. One delegate echoes this sentiment:

³⁴ Minutes of Meeting, Trade Negotiations Committee 28 Jan and 1 Feb 2002, TN/C/M/1, 14 Feb 2002.

³⁵ Efforts to implement binding rules are always curtailed and even the non-binding guidelines adopted are severely watered down. See Chapters 2 and 5.

'Power is best exercised in a situation of uncertainty and unpredictability. And that is why the rules are so vague. One direction the institution can take is to begin to chip away at the procedural vagueness and uncertainties.'

When we spoke with Stuart Harbinson about how he, as chair, pulled through the Doha preparations with so many countries objecting to the introduction of new issues, he had this to say:

'If you operate that way and put out a chairman's draft, you have to be rather sure that you have got a right feel of the situation, and are putting out a position that the majority would at least tolerate. If you don't do that, you are in serious trouble.'

The key word here is 'tolerate'. The extent to which developing countries 'tolerate' a situation depends on the larger power politics at play and how well the ground has been laid beforehand. If sufficient pressure is brought to bear, then it is likely that many countries end up 'tolerating' positions they would rather not have taken in the first place.

The Problems with Small Group Consultations

In the process of decision-making at the WTO, it is small group informal meetings that play the main role. Clearly though, not all small group consultations have the same impact on the final decision. It largely depends on who is being consulted, and the political weight a country has.

Even though Ambassador Bryn, in his recommendations (July 2000) had said that open-ended small group consultations should be announced and open to all interested, 'small group informals' are regularly held without announcement to the larger group. It is therefore difficult for delegates to find out what consultations are taking place, where and between whom. It is most likely that those who make the loudest noise and are perceived to have an interest in the area would be invited to at least one of the several consultations on an issue. However, such a system works against those who are already resource-strapped. They have to work doubly hard to constantly do their investigation about what is going on.

These small group meetings are usually rationalised as acceptable because they are supposed to be open-ended, that is, the decision or result is not finalised. The final proposal is presented to the entire membership, and a decision is taken there. The theory is that members that are opposed can object at the bigger meeting.

One Egyptian delegate has pointed out that there is a stark difference between decision-making and decision-taking that is not being acknowledged.³⁶ Effectively, rights are given to an exclusive group to make decisions, while the majority is only brought in at the end, to accept or reject the final decision.

This issue has been criticised by some delegations. The representative of Bulgaria has commented that

³⁶ Ramadan A, Presentation at a Germanwatch Conference, Bonn, October 2000.

*'Small group meetings in no way could replace informal meetings, open to all members and as such could not be considered consultations. In some exceptional circumstances, and only if it could be demonstrated that small group meetings could usefully complement the open-ended consultations, could such meetings be allowed to play a limited preparatory role. This role would have to remain both auxiliary and subordinate to the role of the open-ended consultations.'*³⁷

Unfortunately, this is not the case at present. There are considerably more small group meetings than meetings open to all. Developing countries are also being split on this issue. There is a certain level of 'buy-in' amongst *some* of the developing countries that are usually included. While even these same countries may complain that the process is lacking, nevertheless, they collude by participating, and by not raising strong enough objections for more fundamental change.

The rationalization for non-inclusion of the majority in any one meeting, is always efficiency. Ndirangu, a Kenyan delegate had this to say:

*'Developing countries consider that efforts should be made to ensure that 'juridical equality', which the rule (consensus decision-making and on-country-on-vote) aims to ensure, is translated into practice, by providing opportunity to all members to participate in the work of various councils and committees throughout all the stages. It has been suggested that this form of inclusive participation in the decision making process might affect efficiency, but I personally believe that democracy should not be sacrificed at the alter of efficiency.'*³⁸

Opposing Views Are Not Taken Seriously in Informal Consultations

Even though informal consultations may have broadened to include some of the countries that traditionally are outside the circle of decision-making, many delegates have wondered how seriously the chair listens to and incorporates their views.

One African delegate said

'Sometimes when you have consultations, you can see that the guy is just going through the motions, and your views are not going to be reflected'.

Another delegate said:

'By the time you are consulted, they have already done consultations with the big countries. The truth is that you are fighting against the proposal already agreed by the big guys and the person who is doing consultations is defending that proposal. I have seen people say I want this 15 times-- the same thing-- but they do not pay attention. If this is not something already agreed before that meeting, you can be sure that you cannot get into it.'

This view is echoed by a Southeast Asian delegate:

³⁷ WTO 2000 WT/GC/M/57 Minutes of Meeting on 17 and 19 July.

³⁸ N.Ndirangu 2000 'Participation in the WTO Decision-making Process for Developing Countries', Paper presented at a Germanwatch Conference, October, Bonn.

'The real decisions are not even in 'green rooms'. We get called to 'green rooms' in 'consultations'. The real decisions are made in cocktail parties and dinners. Those [green rooms] are trappings of democracy and consultations'.

Big Group Meetings: Are Our Views Taken Seriously, Can Developing Countries Really Oppose?

In the decision-making process, general council meetings (open to all) usually take place when a series of informal consultations have already been held. The idea is to ensure more transparency by giving the broader membership more information about where things stand as a result of the small group consultations, and allows more face-to-face dialogue in the big group (as opposed to talking to the chair). In theory, these meetings should also allow opposing countries to stop a decision from being passed, if they so desire. However, this is not the case in reality.

There was a conscious effort pre-Doha to increase the frequency of these meetings, an initiative that was appreciated by some delegates. However, they seem to have run into the same problems as small group consultations in several ways.

First, countries' statements even in formal general council meetings did not seem to have been taken on board. For example, protests about new issues made no difference.

Second, as pointed out above, the politically weaker position of developing countries does not allow them to go to actually block a position that has been put forward by the chair. In consonance with this sentiment, one Asian delegate observed *'When you consult 20-25 countries in small groups or in the 'green room' and you bring this back to the larger open-ended meeting, it is very difficult in the big meeting to oppose a proposal. In Doha...nobody could open their mouths on trade and environment once these 20-25 countries had agreed.'*

It's Off the Record

It is surprising, given that this is an international organisation, that most of its business is conducted in 'informal' mode. That is, proceedings are off the record. Even formal, recorded general council meetings are usually preceded by longer informal general council meetings. There is thus an impression, if one reads the records, of general agreement on most issues. But later, when it comes to interpretation of what is quite often ambiguous language, there is a lack of institutional memory. Again, developing countries, being in a politically weaker position to argue a case, come out at the short end of the stick.

As one Geneva-based ambassador explains:

'The real difficulties are addressed informally without records and the formal meetings are mere rubber stamps. So it is difficult to find records that cover an issue and gives a sense of history of the issue and the real substantive differences that members may have had, because all of that has happened in informal mode. Someone

coming in 10 years from now will have no idea of the history of an issue. All you have are little minutes of the formal meetings.

This is very important because when my successors come, they will have nothing to understand the past with. It is very important institutionally. But the WTO has preponderance for informal meetings. There are a huge number of them.'

Overloaded Agenda and the Structure of a round Exclude Effective Participation
'Efficiency is pursued at the expense of democracy when it suits the big powers'
(South Asian delegate)

Developing countries suffer from acute staff shortages. In 2000, 65 developing countries maintained WTO missions in Geneva and 24 countries have no permanent presence in Geneva. Even those with delegations are severely under-resourced. Delegation size is on average about 3.5 compared to developed countries with an average of 7.4 delegates per country³⁹. Even this 3.5 figure is misleading, since most developing country delegations not only cover WTO, but a range of international organizations in Geneva. For WTO alone, there are easily 40-50 meetings to be covered in a week.

This un-level playing field is tilted even further when the agenda is set at such a pace that even some developed countries can barely keep up. Developing countries just fall by the wayside, or are simply unable to participate in all the debates affecting their interests. Just one example of how this problem plays out is that important informal consultations are quite often held at the same time. It marginalises most Southern negotiators from participating effectively. Spreading themselves out thinly also prevents them from participating knowledgeably.

One delegate explains this from his experience, linking the ideas of the need for a more inclusive decision-making process, and the overloaded agenda:

'Individual participation is difficult logistically, even though the question does arise that this is done in other bodies, so why cannot it be done in the WTO. I think it is a powerful documentation of that possibility, when we look in other bodies that adopt legal documents. In some ways, the problem may be how we approach the question of negotiating rounds. If we are going to be negotiating legally binding agreements in 10-12 agreements, it is impossible. If you are negotiating the Kyoto Protocol, 144 can negotiate over a long period. In WTO we negotiate agriculture, rules, market access, services, intellectual property, environment, and we are doing all of these simultaneously. That itself makes it almost impossible to have an inclusive structure. I am told that this is because we have to have trade-offs between the sectors. Therefore, I can't spend 6 months negotiating services, and then 6 months on agriculture. I have to do all of this together. That poses a Herculean task. It is impossible for anybody except the EU or the US. And it is impossible to have an inclusive process where each country

³⁹ Narlikar, A. 2001 'WTO Decision-making and Developing Countries', South Centre TRADE Working Papers 11, November.

can attend all the meetings. So the very structure of the programme, the round, marginalises you instantly if you are not a major player.'

Unnecessarily Short Decision-making Timeframes Disallows Democratic Consultations in Capitals

While the institution claims that it is democratic, the fast-paced negotiations do not in fact allow *real* democratic consultations at national level. For example, in Doha, the final draft declaration was only presented to the membership on the morning of the 14th November, and adopted later that afternoon. Many elements, such as the text on environment, were new. real democracy means not only consulting with the trade ministry in capitals, or only the head of state, but in fact a broad range of stakeholders before new texts are endorsed. this of course would slow the machinery down. however, the question goes back to the fact that efficiency is prioritized before democracy. This prioritization by the major countries within the institution is questionable and probably exists to serve certain interests.

The representative of Bulgaria, post-Seattle highlighted this problem. Commenting on Ambassador Bryn's statement in the July meeting (on internal transparency), Bulgaria said:

'One principle in the chairman's discussion paper, was the consensus principle. His delegation believed that it would be insufficient only to reaffirm this principle. If addressed in the context of internal transparency and effective participation, this principle should be formulated so as to state that internal transparency and effective participation of all members were indispensable for genuine consensus...

From (this) point of view, the two key factors in such consultations were information and time. The purpose of informal consultations should be to give delegations sufficient information about the proposals made, including drafts tabled, and an opportunity to interact and exchange views with other members. There should be sufficient time to enable members to identify their interests and formulate their positions. Each proposed draft decision should be tabled sufficiently in advance so that delegations could contact their capitals and a process of coordination with domestic agencies and constituencies could be undertaken.

One of the most important lessons, which members could draw from Seattle, was to avoid last minute proposals agreed between some members in exclusive small group meetings. The present time-frame for the submission of proposals twelve hours before the respective meeting was inadequate for a transparent and inclusive decision-making process and he proposed that this time-frame be increased and that draft decisions be submitted before or together with the convening notice for the meeting at which they were to be discussed.'

One LDC delegate, recounting her experience at a WTO meeting on LDCs and the proposal on the integrated framework, she said,

'We (LDCs) said we haven't studied it (the proposal presented by the secretariat). But it was adopted. I wanted to make changes, but we were told there is no time. There is a propensity by the secretariat to introduce things just there and expect you to endorse it. But when it concerns developed countries' interests, they say, 'we have to refer to capital. We have just received it today.' They are rushing us. They want to make sure that things, which are not in our interest, are pushed through quickly. But on their part, they want more time.'

Two-tiered Ministerial Involvement: Developing Country Ministers Are at a Disadvantage

Delegates returning from their Doha experience, pointed out that the way developing country ministers were brought into the picture to make key decisions occasionally, without sufficient knowledge of the issues nor the politics within the institution, puts them at a grave disadvantage. It has been observed that there is now a two-tiered ministerial involvement. A group of developed country ministers who are trade experts, interacting with a group of developing country ministers, who are brought in only at particular times requiring decision-making.

One delegate said:

'I'm not satisfied with Ministers being involved every two years. I think that except for the 'Lamys' (EU trade commissioner) and the 'Zoellicks' (US trade representative), there is no real engagement with the WTO except every two years when they are almost being parachuted into the process. How do you exercise your ministerial oversight in a judicious manner, when you don't know how this organization works? They don't know how the secretariat is composed, what the budget is, how decisions are made. If we are going to involve ministers in a fair manner, there must be on-going engagement with the institution. I do believe we are at a serious disadvantage. you have a small group that are intimately involved, and a larger group of ministers that are pulled in occasionally, but have little or no knowledge.'

The lack of involvement and intimate knowledge of how the institution really functions, also puts Geneva-based delegates in a weak position to counter pressures put on their ministers. An African delegate said:

'Even on the TNC, there was a lot of capital representation. It is difficult to get your minister to understand. you cannot give him all the facts... it is difficult to tell your minister that he is on the wrong track and he is undermining his own negotiating position.'

Yet another delegate, relating his failed attempt to stop his minister from agreeing to the Doha package said:

'Our biggest problem is our ministers. When you advise them, they don't understand. Just before the document was adopted, I pointed out to my minister the number of areas that are being subject to negotiations. There were about 16. How do you expect me to handle all this? And you are coming here to agree to establish other

subsidiary negotiating groups. How do you expect us to cover that when we aren't able to follow even the regular meetings.'

Many of the less than democratic procedural practices outlined in this section are allowed by the marginalised to continue, because they are also accompanied by bilateral pressures. This is discussed in the next section.

Section II

The Subterranean Realities of Decision-making in Trade Negotiations Bilateral Pressures, Self-censorship, Arm-twisting and Coercion

The Most Effective Exercise of Power: Self-censorship

Pressures by the powerful countries, exerted either in Geneva, or in capitals, play a critical role in decision-making processes at the WTO. Pressures in one form or another, put on those countries that resist, is the way in which the ground is laid for 'consensus' on a decision to be adopted. These pressures inevitably take place under the tightest clock of secrecy. The powerful countries exerting these pressures would certainly not want a broader constituency to find out about their backroom threats. Furthermore, those being threatened or arm-twisted in one way or another, would be too fearful to speak and risk worse reprisals. Others who caved in under pressures would also loathe their own domestic constituencies to find out exactly what they gave in on, and the paltry deals they may have received.

Secrecy therefore characterises this aspect of negotiations, so that the very existence, extent and effect of these pressures are therefore seldom brought up, when one talks about decision-making. This can be termed as the 'subterranean' component⁴⁰ of trade negotiations, as opposed to the 'official' reality (decision-making by consensus, consultations etc). This subterranean aspect is crucial, if not the most critical component of decision-making at the WTO. Bilateral pressures are used to quell resistance so that the final package presented to the membership, which may not look vastly different from the original proposals, is accepted.

Such pressures may not even require overt and blunt threats from the influential. These certainly do happen. However, for the majority of countries, the powerful do not have to go to this extent. Power – in its most effective form - is exercised through internalization, so that the subject him/herself, becomes the agent of control. The clearest evidence of power politics in operation – and in its most sophisticated form – is self-censorship and fear. Thus, the powerful exert little or even no effort yet, to a large extent, they control the behaviour of others.

⁴⁰ This idea has been borrowed from Yash Tandon, Seatini.

Self-censorship and the inability to voice objection in order not to be on the receiving end of serious repercussions to one's country, puts in serious doubt, the democratic principles of decision-making.

According to an analyst,

*'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. 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... if consensus is reached because some countries are too afraid to express their dissidence, how democratic is decision-making by consensus?'*⁴¹

Indeed, following from this analogy, fear and self-censorship are the characteristics of an authoritarian state, where opinions cannot be freely expressed.

A delegate from an LDC, referring to this fear, and therefore the inability to take a strong position in negotiations said:

'Why do you think we performed this way in the last two years on TRIPS [not raising any major objections despite the stalemate in the TRIPS review]? If the US phones my capital, they will not say, there is this boy, he is trying to change TRIPS for the interest of his country. They will say, there is this boy working against the interest of the US, he is infringing on the good relationship between US and....'

The Post-September 11 Political Climate: The Ascendancy of Fear

As discussed above, September 11 gave the US, the EU and the DG, added ammunition to raise the pressure in negotiations. The effectiveness of their 'campaign,' aided by the larger power politics at play, has led to a marked difference in the political climate within trade negotiations. This continues to be the case even after Doha. Many country representatives are 'behaving' and 'towing the line,' rather than risk the consequences.

In February 2002, one delegate said:

'Everybody is really cautious about the political atmosphere in the world. As you can see, they are using the events of September 11 in a really rotten way, to put pressure on us. Everybody is afraid in so many ways. Nobody wants to come out and risk their necks. It is a really, really difficult situation.'

⁴¹ Narlikar, A. 2001 'WTO Decision-making and Developing Countries', South Centre TRADE Working Papers 11, November.

A Caribbean delegate observed:

'We will be alone on many issues because many developing countries are being pressured, especially the Latin American countries'.

The Various Avenues Used to Exercise Power and Manufacture Consensus

Often, when self-censorship is inadequate in its ability to control, it is accompanied by more direct exertions of power. These range from the very subtle – such as hints about your countries' reliance on aid -- to outright conditionalities, blackmail and threats.

What are the avenues through which these pressures are delivered?

I) Diplomatic Missions of Powerful Countries Exert Pressures in the Capital

The mission of the US or EU country in the capital usually plays a key role, sending out the message to the country about which line to tow. One delegate said that the ambassador of the US in his capital visits minister after minister, delivering the same message about the country's position on WTO issues, which the US is unhappy about.

Before Doha, several countries received letters from the resident US ambassador in their capitals outlining the type of positions they would like the country to take in order to ensure the 'success' of the talks. Whether stated explicitly or not, the various ways in which a country is dependent on the powerful country is put at stake, for example aid, generalised system of preferences (GSP), loan rescheduling etc. The other avenue where pressure is exerted is via the country's ambassador to Washington.

One Asian delegate relates how such pressure tactics and contact between the countries is played out:

'The US ambassador in my country addressed a seminar. It is in our interest to enact intellectual property legislation. It will send the right signal to investors. When he meets a trade minister, he will say, you must reform your custom procedures; you must support an investment agreement. When he says investment, my minister will jump. Nobody goes beyond, into the next stage. On the surface, it is easy to sell some of these ideas to ministers. If they say, you have a longer time-frame to implement, and technical assistance since we recognize your stage of development, my minister will say, what is wrong? Then we will not look at whether the agreement is inherently balanced or biased in favour of the developed world. It happened in the Uruguay round. This is going to happen.'

Another delegate lamented that there are four powers in her country. They are the judicial, legislative, and executive powers *and* the embassy of the US.

II) Putting Pressure on Capitals, Negotiating with Ministers, By-passing Geneva Negotiators

Key ministers have been earmarked by the quad to break the ranks of developing countries, and to push developing countries towards the launch of a new round. Contact with these and other ministers has been an important strategy of Mike Moore and the US and EU in their preparation for Doha. In Africa, for example, four countries and their ministers were systematically courted and quite successfully roped in: South Africa in the South, Egypt in the North, Kenya in the east, and Nigeria in the West. As illustrated in the Doha chapter, these countries generally supported the majors at Doha, in spite of the Africa and LDC groups previous clear rejections of the new issues.

This not only divides developing countries, but even within a country, it drives a wedge between negotiators in Geneva, and their ministers, hence considerably weakening the ability of countries to hold on to a negotiating position. One delegate explained the preference by the majors to lobby at the ministerial level in capitals, and the resultant division that this causes:

‘There is only a Geneva-capital divide, because as a result of their contact with ministers, they have changed the positions in capital... The big countries recognize that Geneva negotiators know the complex issues, and the nuances, so they have found it effective to bypass us and go for decision-makers at other levels who won’t see the complexities and nuances’.

Another delegate explains how capitals are earmarked:

‘If they see that you are serious about an issue then they will call the big guys and send a complaint (about you) to capital. That is the way it works’.

The strategy of lobbying ministers has continued even after Doha. In the heated debate about whether or not the director general should be given the chairmanship of the trade negotiations committee (TNC), ministers were contacted in the capitals. According to one delegate, it was a Friday (in January 2002) when the TNC issue was heatedly discussed and many delegations raised objections. However, by that following Monday, only four countries were left objecting to the idea. All others had received instructions from capital not to stand in the way. One delegate told a group of his friends that he could not appear publicly to be seen as standing in the way of Mike Moore.

In the recent Special Session meetings on Agriculture in early 2002, a developing country trade negotiator on agriculture was told by his US counterpart in Geneva that he would not be the one that the US would deal with, but that the US will deal directly with his capital.

III) Remove Your Official /Ambassador!

The manufacturing of consensus requires that the negotiators who refuse to buckle-down, come under immense personal pressure. The amount of pressures put on them is in direct proportion to the extent they fight for what they perceive is right. Often the powerful players instruct these capitals to change their position on a certain issue. If the official remains consistently 'difficult' the majors, such as Washington, then pressure the capital to remove the official. One delegate feeling the heat of such pressures lamented, *'These are dishonest practices. How can we negotiate like that?'*

On 1 February, 2002, trade journal 'Inside US Trade' reported that the US trade representative was even singling out specific ambassadors.

'US trade representative Robert Zoellick, speaking to a business group on January 31, took note of Pakistan's role in the Geneva fight (TNC structure), but attributed it to its ambassador Munir Akram not the Pakistani government as a whole. "The TNC process has had 'some stumbles due to our good friends in Pakistan, where the ambassador clearly doesn't pay attention to the people [in the capital]," Zoellick said.'

Other ambassadors and delegates have also come under attack, and have already been removed from Geneva. The Egyptian ambassador, Fayza Aboulnaga, for example, did not return to Geneva after Doha. She was promoted to the position of Junior Minister. The talk in Geneva, however, is that she was removed for the positions she held. A Central American ambassador lost his job after Doha. It is commonly known that several other ambassadors are now walking the tightrope. The strategy seems to be one of making these negotiators the 'enemies' of their own people. Loans or preferential trade access are held hostage to whether or not a country continues to keep their ambassador in Geneva.

Although the secretariat is supposed to be neutral, the director general Mike Moore himself played a role in threatening 'stubborn' delegates in Doha. In one such instance, Moore had asked the official if he wanted to be consulted or terminated.

Those in the line of fire find themselves spending an inordinate and wasteful amount of time accounting to their capitals why they are taking the positions they do in the negotiations. The very real threat to their jobs and careers has the palpable effect of toning down what these officials are willing to say in negotiations.

Consensus is finally achieved, with key countries keeping silent as a result of blackmail and coercion.

IV) Playing on The Fears of The South: Market Access, Trade Preferences, Debt, Technical Cooperation

What are the areas of vulnerability which the powerful use to corner developing countries? Indeed, the threats used are not necessarily delivered in a blunt or crude manner, although that also happens. Most delegates have said that they are 'gently reminded' in the course of bilateral meetings of their dependence on the powerful country.

Every country has at least one issue of prime interest to them, which is used by the powerful as a leverage point. For the African, Caribbean and Pacific (ACP) countries it could be their trade agreement with the EU, the Cotonou Agreement (as happened in Doha), for African countries in relation to the US, the African Growth Opportunity Act (AGOA) is being used for LDCs or it may be market access. Many countries are vulnerable in the area of debt and loan rescheduling, IMF, World Bank packages, and so on. There is also the fear that aid and other forms of technical cooperation could be withheld. For textile exporting countries, it may be fear that restrictive 'rules of origin' are imposed. After September 11, the sensitive issue was whether countries harboured or in one way or another supported terrorists. Sometimes, all of this is put at risk, by the mere reference that 'good bilateral relations' could be affected.

1) Threats that Good Bilateral Trade Relations Will be Affected

This is rather an amorphous threat. But the issue most countries worry about is their export market, should 'good' bilateral relations be soured. Many developing countries are dependent on the EU or the US for a significant proportion of their export market. The difficult situation this puts negotiators has been articulated by this delegate:

'Small countries like us will be just caught in between. We cannot take the floor and oppose. We will never do that. There will be a lot of repercussions. 35 per cent of our exports go to the US. Of textiles, 60 per cent goes to the US, so we just have to keep our mouths shut.'

US trade representative staff, for example, play a key role in one way or another 'threatening' countries. According to some leaked documents from Washington, an ambassador of a developing country related the threats he had received from the US trade representative as follows:

'During the course of the meeting...several comments (were made) on (our) position in Geneva with regards to the WTO issues, such as export subsidies, textiles and clothing, and access to medicines under TRIPS...At one point during the conversation, ...[it was expressed] that the USTR was in the process of defining a list of those countries that were friends of the United States and those that were not, and (our country) at this point, most certainly, was not on the list of friendly countries. It was made emphatically clear to us that any USTR support in other areas of mutual interest would be subject to our support in Geneva.'

In another case, a letter by US trade representative Zoellick to a developing country ambassador just three days before the ministerial stated:

'My deputy in Geneva, Ambassador Linnet Deily, is working hard to lead successful talks. We have been discouraged that (your country) has so consistently, and so vocally, adopted positions counter to those of the United States. We would very much appreciate the cooperation of your team there (in Doha) in helping move forward issues of common interest'.

An African country delegate even said that pressure to support a new round was put on them using the threat of withholding entry visas to the US.

2) Trade Preference Arrangements (GSP) Could be Terminated

One of the most sensitive issues for developing country negotiators, is the fear that generalised system of preferences (GSP) arrangements, giving developing countries easier access into the developed country markets, would be removed if negotiators displeased the countries providing the access. The generalised system of preferences (GSP) scheme, proposed by UNCTAD in the 1960s, was intended to be a non-reciprocal tariff preferences scheme to foster manufactured exports from developing countries. While noble in its original objectives, 'conditionalities,' often arbitrary, are now being laid down.

As a result of GSP, rather than making decisions based on what is good for their people in the long term, decisions are made based on avoiding short term loses and as much as possible, ensuring that the current trading arrangements that countries are dependent on are not harmed. There is often no clear calculation between the long-term price countries pay in order to remain within these schemes (for example, agreeing to a round in Doha) as compared to the losses that would result, if GSP were removed. The pressure that would come from capital upon such removal is usually sufficient incentive for negotiators to tow-the-line.

We asked one African country delegate, who was clearly unhappy with the outcome of Doha, what prevented his country from not blocking the final consensus. He said,

'Well, we have preferential arrangements with the EU on beef and sugar. They would have removed that. There is nothing worse than being poor.'

A major problem with the GSP schemes is that preferential access is non-binding. The standard by which the GSP is provided is also not completely transparent. This allows a country to use the threat of GSP withdrawal to get a country to comply with many of its whims. For example, USTR uses the GSP to lay down conditions in developing countries on protection of intellectual property and the respect of labour rights etc. In a recent case where a country was excluded from certain benefits, the USTR judged that the country was not in compliance with the WTO TRIPS Agreement.

According to the WTO secretariat's note on GSP, 'The US law also allows the USTR to offer additional benefits to countries that cooperate with the United States.'⁴²

Kenya, in 2001, wanted to legislate compulsory licensing laws domestically, and was told by the US, that if they do, they would be removed from the African Growth Opportunity Act (AGOA).

An LDC delegate offered this perspective,

'The kind of intimidation that Africa is undergoing... all these things depend on your level of development and poverty, and how much you get from the other guy. The main one (tool to intimidate), which is used, is preferences. That is the main tool of coercion. As long as African countries continue to depend on these big countries, the relationship will be lopsided.'

Negotiators who put in jeopardy an existing GSP scheme would be faced with a difficult time having to justify it before their domestic constituencies. One delegate said,

'If you take the line that is not what they want, then they threaten removing our preferences, and they have done that. When we go to the private sector and say that the US may be removing preferences, they start shaking'.

To an Asian delegate,

'It is a weapon used by the developed countries to control the rest of us. You better behave, otherwise you are out of this. When that happens, one sees one's own interest only. Why should I rock the boat? GSP is never binding and is voluntary. They may provide it if they want to. But they are not compelled. I give you preferential treatment, but for you, no, because I don't like your environmental laws. I don't even have to give a reason. They can also change them overnight because they are non-binding. What else is the 301 for?

For as long as a standard is objective and is not whimsical on the part of the grantor, fine. But that is not the case. You are out because I don't like you, or because you don't follow my vision'.

3) Dependence on Aid and Investment

In as far as developing countries depend on aid from the big countries, it leaves them always open to being blackmailed by the ones providing aid. This double-edged sword is acutely felt by delegates such as this LDC African trade negotiator:

'Aid for some countries aid make up 40 or 50 per cent of their budget, so that the threat that aid is cut is extremely serious. Therefore while I might brush this threat aside, my finance minister would not. As long as we are dependent on aid support, it makes us very vulnerable'.

⁴² WTO 2001 WT/COMTD/W/93 'The Generalised System of Preferences: A preliminary analysis of the GSP schemes in the QUAD', Note by the Secretariat, 5 October.

The cessation of aid or funding for projects is not unheard of, if the grantor has been displeased. One minister who refused to remove his official from Geneva, was himself directly targeted, and had US funds to his project cut.

Aid as leverage is not only used by the biggest countries. Other developed countries also use it to similar ends. It is known, for example, that Indonesia would like to leave the Cairns Group (group of agricultural exporting countries advocating agricultural liberalisation). The position Indonesia takes on food security and self-sufficiency is totally different from the positions of the Cairns Group. It is also a net importer, rather than a net exporter. Its efforts to leave the grouping, however, have thus far not been successful. Australia, the leader of the group, holds the aid that they provide to Indonesia's agricultural ministry, hostage to their continued membership in the group. This is because Indonesia is a significant market for Australian exports, and for that reason, Australia would like to see Indonesia move on the path towards more rapid liberalisation.

Section III

The WTO Secretariat is Biased and Meddles with Negotiations

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.'

Unfortunately, while the rules mandate that the secretariat should be neutral, there is a clear institutional bias towards the positions taken by the developed countries. While some members of the secretariat may be more conscious of the need to be impartial, the secretariat on the whole, are actively involved in assisting the major countries meet their objectives. As a result, there is a significant amount of mistrust of the secretariat, on the part of developing country delegates.

One delegate returning from Doha had this to say about the secretariat,

'When the big guys come together, it is almost impossible for the developing countries to resist that kind of combined pressure. But it is not only the big guys. The entire brain power of the secretariat was used to engineer the outcome of Doha.'

While the developing countries see the position of the secretariat as biased, key members within the secretariat and developed countries justify the positions taken by the secretariat as merely advancing the objectives of the institution, i.e. advancing

liberalisation. They seem to forget that liberalisation is a means, and may have to be implemented at different times and in very different ways for the smaller economies.⁴³

One person holding a high rank within the secretariat had this to say about the secretariat's 'neutrality':

'When you say neutral, we need to ask on what? We are not neutral with regards to liberalisation versus protectionism. We do not believe in the introduction of new subsidies for example, or things that are antithetical to the agreements that the secretariat is supervising here. If you are talking about neutral with regards to the position of countries on the introduction of new issues, e.g. labour standards, yes. But when it comes to the objectives in our mandate, then I would say we are not neutral.'

Clearly, there is a divide between what developing countries expect of the secretariat-- the carrying out of administrative functions and impartial research -- and the role the secretariat perceives it should be playing.

Vinod Rege, a retired senior officer of the GATT secretariat, and currently a consultant in the Commonwealth secretariat makes these observations:

'The US and the EU exercise, at present, overall hegemony over the activities in all these three organisations (WTO, IMF and World Bank).

*'These realities could influence the way the discretion and freedom of action that is available to the international officials is used by them. They may be more forthcoming when the initiatives taken or actions contemplated are consistent with the policy approaches of the dominant players or conform to the dominant ideology or views prevailing at the time. They would be willing to take initiatives that may not be liked by these players...only if in their judgment the initiatives taken may be tolerated and no objected to by the major players.'*⁴⁴

Specifically on the WTO, Rege notes that

'WTO officials take pride in saying that they are the only international bureaucrats who remain true to the oath to remain neutral which all persons joining the international civil service have to take. They express no views and take no sides. They only prepare factual papers that provide the basis for discussions and reports reflecting the main points made in the discussions. The responsibility for taking views lies entirely with the member states acting jointly in the meetings of either the council of the committees.

⁴³ This is acknowledged in the very first preambular paragraph of the Marrakesh Agreement Establishing the WTO. It reads, 'Recognising that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand...

⁴⁴ Rege, V 1998 'Developing Countries and Negotiations in the WTO', Third World Economics, No. 191, 16-31 August.

This, of course, is a fiction; it is promoted because it suits the interests of both the secretariat and the member states. In practice... because of it being a secretariat of a negotiating body as well as a body responsible for the settlement of disputes, the officials tend to be more cautious and circumspect in expressing opinions and weigh carefully the possible reactions of member states in expressing opinions on subjects on which differences of views exist among member states'.⁴⁵

The various areas of the secretariat's functioning which developing country negotiators take objection to include:

Role of Mike Moore and the Secretariat in Canvassing for a New Round

The role of the director general in canvassing for a new round before Doha, and since then, on pushing through the New Issues, has angered many developing countries. It throws into doubt, the ability of the secretariat to service its members fairly.

The article Mike Moore wrote for the Financial Times (18 February 2002) stated that it would be in the best interest of developing countries to accept rules in foreign investment, competition, and transparency in government procurement. This created some waves in Geneva amongst the developing countries. In the eyes of many, it further discredited him. Many coming back from Doha, also said that he played a major role, *negotiating on behalf of the EU*, in the most critical moments (e.g. in the 'green room').

Role of Mike Moore in Politicising Appointments

According to certain sources, Moore has also politicised appointments within the Secretariat. For example, Chiedu Osakwe was promoted to the position of director of the technical assistance division in June 2001, according to some sources, for his strong support of Moore during the time of the election of the Director General.

The corridor talk in Geneva, has also been that after Doha, Moore also created a new position for the former Moroccan ambassador as a reward for the role he played in assisting the launch of the new round. He is now in charge of 'coherence' at the WTO.

Needless to say, the way in which Moore has politicised the secretariat, and politicised the appointments, has caused quite some controversy even within. One ambassador provides his perspective:

'The staff are mostly very sophisticated Europeans. There is a friction between Moore and these sophisticated Europeans. So it is an unhappy relationship. The doctrine coming from him is not always shared. Sometimes, the secretariat is more reasonable. But their basic instinct is to get a round launched, and he pulled out all stops for that purpose. So the secretariat's resistance towards him has been dampened, because he succeeded.'

Research, Technical Assistance and Advice Provided is Biased

WTO analyst, A. Narlikar, in her study on decision-making processes at the WTO came to this conclusion,

⁴⁵ Rege, V. *ibid.*

*'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.'*⁴⁶

Rege also echoes these views. He writes,

*'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.'*⁴⁷

Some of the rather serious complaints developing country delegates have made of the secretariat in this area of advice, research and even mundane tasks such as the writing of minutes include:

- 1) Minutes of meetings are inaccurate. India, for example, has asked that a lead-time is given before WTO minutes (even the unrestricted ones) are put in public domain, because they do not trust that these minutes are always accurate. One African delegate says, *'they write what they want you to have said, rather than what you actually said'*.
- 2) The bias of the secretariat creates problems when they are overly involved in the drafting of negotiating texts. That they do provide the drafts is well known. This was even reported in 'Inside US Trade' 'that secretariat official Evan Rogerson, who played a major role in drafting the ministerial declaration laying out the new agenda will head up a new division responsible for the affairs of the general council and the trade negotiations committee (TNC)'.⁴⁸

There are occasions when draft negotiating texts are being manipulated to suit the interests of the big countries. One well-known example was the incident before Seattle, where the October 6 draft was leaked to some delegations. It included several pages on implementation. These were removed in the October 7 draft released to all delegations. It caused a furor in the house, as some developing country delegates had seen the October 6 draft.

⁴⁶ Narlikar, A. 2001 'WTO Decision-making and Developing Countries', South Centre TRADE Working Papers 11, November.

⁴⁷ Rege, V, 2000 'WTO Procedures for Decision Making: Experience of Their Operation and Suggestions for Improvement, Background Paper, Commonwealth Secretariat, 21 January.

⁴⁸ Inside US Trade 2001 'Moore Reorganises WTO in Division Overseeing New Talks', December 21.

Another example of blatant meddling was the draft declaration that arrived back to Geneva from Seattle. Paragraph 72a on bound duty-free market access for LDCs, arrived back in Geneva as a blank. Some LDC members made investigations, which seemed to point to the secretariat as the culprit.

- iii) Some delegates have also complained that the advice of the secretariat has been misleading at times. One developing country delegate, relating his experience as chair of a certain committee had this to say:

'Chairmanship gave me the opportunity to see how the secretariat functions, and how some countries would subtly get into the drafts. It is very clever and done in a highly sophisticated manner. When a country says, I don't agree with this text and the secretariat has to redraft, the outcome depends on the chair. If the chair is not technically competent, then the secretariat will take over.'

He explained that he went to some trouble trying to clarify the scope of the work his committee had been entrusted to by the general council. The secretariat's suggested advice was that it was only in 1 tiret of the negotiating text. However, after investigations, he realised that it was 3 tirets.

'If I'm not sharp, we would have lost two tirets. After that, they started respecting me. If you are technically sound, then you control the secretariat. If not, it happens the other way, because you would depend on them if you didn't know'.

The chair of one committee last year had this to say of his experience:
'I must say that I found the secretariat quite good on the whole. There were one or two occasions I had problems, which I took care off. There were a couple of instances when the advise of the secretariat was not what it should have been, or didn't tally with my reading of things'.

But, another delegate said,

'The secretariat is running the show, but behind certain chairpersons. You are left negotiating with the chairman who is powerless, because the document, upon which consultations are based, has come from the secretariat, and that is the only document that had been given to the chair.'

The ideological leanings of the secretariat also become rather problematic when it comes to the provision of technical assistance, and the type of information they give out in the process, e.g. seminars on the WTO.

The composition of the secretariat- heavily from the developed countries- has been an area which has received much criticism from developing countries. Of 512.5 posts, 410.5 are occupied by individuals from developed countries, and 94 from developing countries. Many point to the cultural bias as a reason for the secretariat's lack of neutrality. Others argue that it is not only an issue of nationality, but also the ideological leanings of the professionals employed, that is, neo-liberal economists.⁴⁹ Some developed countries and members of the secretariat justify the composition as historical. These staff have been in the secretariat since the days of the GATT, when the organisation did not have as many developing country members. While this may be true, not enough real effort is made to change the situation. There is no clear policy, for example, that given the current imbalance, those who apply for jobs from developing countries would be given priority.

Section IV

The 'Carrotisation' of Technical Assistance

The final Doha package was presented to developing countries, based on the premise that technical assistance will be provided. Developing countries are extremely wary and critical of what kind of technical assistance is being provided, to achieve whose interests and to what ends. The fact that it has been used as a persuasive mechanism to get countries on board to negotiations in new issues, has been widely criticised.

One ambassador explains:

'There has been, what I call, a 'carrotisation' of technical assistance and capacity building. Technical assistance and capacity building are used to make palatable and acceptable something I may not have accepted in the first place. But this is not what it should be for. Technical assistance and capacity building are to empower me to achieve my objectives that I had in the first place. That element, I think, is unhealthy. No developing country can say that it doesn't want it, and this makes it even more dangerous.

It is now extensively used as a persuasive technique.'

Another delegate, echoing the same sentiments said:

'Everywhere, technical assistance is highlighted. That will be used for you to agree to negotiations. Yes, you will have workshops, regional seminars, and policy analysis. But who is going to assess, whether in fact, consequent to this technical assistance, countries are ready for these agreements? That is how it is going to come up in the next ministerial. They will say, we have given you so many millions in technical assistance. Now you are ready for negotiations in new issues. This is tricky. If it is

⁴⁹ Narlikar, A. 2001 'WTO Decision-making and Developing Countries', South Centre TRADE Working Papers 11, November.

really going to help, yes, we have workshops, but workshops to understand what the policy implications are, to evaluate whether or not we have the institutions in place, what the plus and minuses of the treaties are...'

The other issue that has been highlighted is that real and effective technical assistance should be about building domestic supply side capacity so that countries can in fact make use of market access opportunities. At the moment, it is increasingly clear that technical assistance is being offered in those areas, which the major players intend to launch negotiations in.

Due to its importance post-Doha, a separate chapter (below) is devoted to technical assistance.

Section V

Dividing Developing Countries, Weakening Coalitions

The importance of being in a coalition cannot be underestimated for developing countries. Even a country, which carries as much clout as India in the WTO, has found that it is difficult, in fact, impossible to stand up to pressure when it is isolated. This tactic of dividing developing countries and weakening coalitions has frequently been used by the strong. Here, the 'service' rendered by the other more 'developed' developing countries is critical. For example, the role that South Africa plays, in consistently trying to water down the African Group positions, and to cajole its colleagues to take on positions more like the major players.

At present, concerted effort by the influential countries is being made, to break the ranks of the Like Minded Group (LMG) of countries. The LMG, consisting of the most vocal developing countries, has been an effective counter-weight to the pressures exerted by the big countries within the institution. Pressures have been put at capital level by the countries, to blackmail certain LMG members to get out of the coalition. In one particular case, getting out the LMG has been mooted as a condition for preferential access. In the selection of the trade negotiations committee (TNC) chair, the cohesion of the LMG was systematically being broken down, with the ASEAN countries being worked on first, followed by the other countries individually.

Attempts are also made to divide the developing countries by efforts, such as 'buying off' the LDCs. For example, the offer before Doha, by the US to give LDCs a moratorium on the implementation of the TRIPS Agreement up to 2016. They did this in the hope that the developing countries would be split and would not be able to press ahead for the TRIPS and health declaration in Doha.

PART V

POST-DOHA CONCERNS

CHAPTER 5

POST-DOHA ANTICS: SELECTING THE CHAIR OF THE TRADE NEGOTIATIONS COMMITTEE AND THE SEARCH FOR GROUND RULES

by Shefali Sharma and Aileen Kwa

'It is not good to hear that: Africa supports a certain position on the issue of the TNC chair (opposing the DG as TNC chair), and this is also the same position taken by the ACP countries and the LDCs, some Asians say yes and some no, and then it is concluded that the majority of opinion supports the DG. That doesn't build confidence.'
(Caribbean delegate)

Upon delegates' return to Geneva after Doha, the same antics and strategies were played out. The trade negotiations committee (TNC) was set up to oversee the negotiations in the 'round'. The contentious issue was the push by certain developed countries to institute Mike Moore, the director general, as chair of the TNC for as long as the round lasted. This was strongly opposed to by many developing countries who felt that the secretariat, which should be neutral, should not be overseeing negotiations. After three weeks of wrangling and pressures put on capitals, Mike Moore was instituted as chair of the TNC until the end of his term (August 2002). Developing countries did manage to push through a set of 'principles and practices' regarding how the chair of the TNC should operate. These however, were not binding rules, but were issued as a 'Statement by the chairman of the general council'.

This episode illustrated two things:

- 1) That while the majority of countries were not in favour of the DG ex-officio⁵⁰ taking the position of chair of the TNC, this was nevertheless pulled off by the powerful countries, with the help of the general council chairman at the time, Stuart Harbinson.
- 2) That concerted efforts by developing countries to institutionalize explicit rules and procedures in negotiations was systematically subverted or severely watered down. This is also what had happened to the work on internal transparency post-Seattle.

This chapter outlines the strategies and processes used.

⁵⁰ This means that the office of the DG would serve as the Chair of the TNC.

Where Did the Idea of a TNC Come From?

The concept of the TNC was pushed through in the Doha declaration. Even before Doha, some developing countries had already expressed their view that a TNC should not be created, and that there was no consensus on that paragraph in the Doha draft text. The origins of the TNC concept come from the GATT. During the Uruguay round, a TNC was set up to supervise and run the negotiations. However, this took place at a time when the GATT was not an institution, and unlike today, did not have a permanent negotiating body, the general council.

The Marrakesh Agreement establishing the WTO in 1995, under Article IV on 'Structure of the WTO' and Article IX on 'Decision-making' gives the WTO general council the authority to make decisions on negotiations in between ministerials. Having a TNC while the general council exists therefore seemed not only redundant, but also a waste of precious meeting and staff time. However, like many of the contentious issues that were pushed through in the draft before Doha, the TNC was also included as a clean text.

Ambassador Akram of Pakistan explains:

*'After the WTO was established, we created the WTO general council, which is basically entrusted with all the tasks that are supposed to be conducted by a TNC. A number of us had felt before Doha that even if negotiations were agreed upon, there was in fact no need for a TNC and that negotiations should be conducted within the existing structure. But, once again, developed countries felt that the TNC should be created and they were able to carry the day in Doha.'*⁵¹

In Doha, the TNC issue, like many others was sidelined. Six facilitators were set up to do consultations on six issues. Only after developing countries complained that this arrangement left many other issues unattended did the chair of the conference elect one more facilitator, the minister of Botswana, to see to all the other remaining issues. This was already halfway through the conference. It is not surprising that specific concerns of various member states got lost in the process, and the texts on these remaining issues changed very little.

According to Ambassador Akram,

*'If Doha had really been a genuine consensus, some of these things that we have gone into (would) either have not been necessary or they would have been clearly stated, or where necessary, we should have prolonged the negotiations and elaborated the Doha document further – in order to establish what the structure and content would be – who would be the chair of the TNC and what its principles and practices would be. All of that should have been in the Doha document. But the Doha document was basically rushed through because it was so important for our developed partners to launch the round. And that is why things were kind of pushed through pell mell.'*⁵²

⁵¹ South Bulletin 29, 15 February 2002, South Centre.

⁵² South Bulletin, *ibid*

Developing Countries' Opposition to the DG as Chair of TNC

Post Doha, it became clear to developing countries that the TNC issue had been pushed through because developed countries wanted to ensure that Mike Moore had an on-going role to play in the present round of negotiations.

Ambassador Chidyausiku of Zimbabwe said:

'Even before Doha, there was this position that we need a TNC. We said that you had in GATT a different animal. Now you have a general council. They didn't listen to us. Everybody was occupied with other issues. Nobody in the membership found time to look at the organization of the work and the issue of the TNC slipped in. It only became apparent to us that the developed countries wanted the TNC for reasons we were not aware of. Moore wanted to be chair of TNC in his personal capacity. It was after the NGOs realized the issue that developed countries said he should be in that position as DG ex-officio.'

*'Ex-officio changed the ball game. Having been beaten once, we were careful. We said no. Even as a systemic reason, it is wrong to have the DG as TNC head. The secretariat should not take part in the politics of negotiations. It should be neutral, and should service all members equally. It should not promote certain views or positions held by some in the membership.'*⁵³

The LDCs also opposed this idea of DG as ex-officio in the last general council meeting of 2001 in December. They believed that it caused a conflict of interest and would force them to negotiate with the secretariat. This was the case during the Uruguay round when the DG of the GATT chaired the TNC. Tanzania spoke on behalf of LDCs,

'It would be extremely disappointing if the choice of TNC chair, whose decisions and influence would have a long-lasting impact on members' trade activities and development, were to be imposed. The LDCs had participated in launching these negotiations and wished to see their concerns taken on board. The chair should be impartial throughout the process, unbiased and strong enough to ensure that LDCs' interests and concerns were not marginalised, as they had been in the past. The imbalances and asymmetries of the Uruguay round were well known, had undermined the multilateral trading system, and had also created numerous implementation problems for developing countries, especially the LDCs.'

*'LDCs are convinced that the chair should hold his post for only one year to allow for rotation among regions...Regarding other negotiating bodies, their chairs and vice-chairs should also be Geneva-based representatives in order to exercise membership control and to uphold the Member-driven principle. The secretariat should provide support services and should not be involved in the negotiations.'*⁵⁴

While these countries, the LMG, the LDCs and the majority of the African Group supported the approach of having a Geneva-based ambassador fill the TNC post, it was clear from public statements by EU Commissioner Lamy and others that the quad (US,

⁵³ Interview with Aileen Kwa, 22 February 2002, Geneva.

⁵⁴ WTO 2001 WT/GC/M/72 'Minutes of General Council Meeting, 19-20 December.

EU, Japan and Canada) supported the current DG to chair the TNC. Harbinson was asked to consult with the membership for a decision by the first TNC meeting scheduled for 28 January.

The Ends Justify the Means: Strategies Used to Push Through the DG as TNC Chair

The same strategies that were employed to pull through the Doha outcome came into use again. Many developing country negotiators received calls from their capitals, instructing them not to stand in the way. The chair, Harbinson, also played a key role in pulling off yet another chairman's 'compromise text'. At the same time, consultations, as is always the case when the majority seems to be too stubborn, were brought back into the 'green room'.

Green Room Mini-Ministerials

Three days before the formal meeting of the TNC when a decision had to be taken, Canada and Brazil pulled together a 'green room' meeting at the Canadian mission. About 25 countries were present.⁵⁵ Some ministers were also present. Strangely enough, the director general, too, showed up in a closed meeting where the question of his chairmanship was in question.

One delegate who was not invited to this meeting commented later:

'The Canadians were having here a mini-ministerial. Some ambassadors were invited. There is concern that what they started in the pre-Doha process, such as having these mini-ministerials, they are trying to institutionalize. Mike Moore has openly said that it worked (for Doha) – mini-ministerials and facilitators. One problem is that they bypass the Geneva process. Another is that, increasingly, this group is identified as a de facto executive committee of the WTO, a management committee. The problem is that it cannot be assumed, that the developing countries present represent the interest of others.'

Pressures Put on Capitals

One African delegate related that he had been contacted by his capital, saying the Mike Moore was soon visiting them. They should therefore not be obstructionists and join in 'the consensus'.

As in Doha, this form of pressure was extremely effective in quelling the resistance. The ambassador of Zimbabwe, Chidyausiku questioned:

'Some colleagues saw this issue as a systemic problem, but the DG was able to get in touch with their ministers, and colleagues got instructions not to stand in the way. If it (chairing the TNC) is a ceremonial position and there is nothing of substance in

⁵⁵ Those present included EC, US, Japan, Switzerland, Australia, Hungary, Uruguay, Costa Rica, Chile, Argentina, Egypt, South Africa, Uganda, Kenya, Jamaica, Korea, Singapore, India and Pakistan.

*somebody being chair of TNC, why would someone go to extent of lobbying in capitals?*⁵⁶

Amongst others, the countries that had been contacted in capitals included Egypt, Honduras and Sri Lanka.

Splitting Developing Countries

The ranks of the LMG were also being broken. The ASEAN and Asian countries were particularly vulnerable, given that Dr. Supachai Panitchpakdi (from Thailand) is to be the next director general. ASEAN was therefore in support of the DG ex-officio as TNC chair. Others in the LMG were contacted in their capitals. What was quite a firm position held by the majority of LMG members was systematically broken.

Ambassador Chidyausiku described the process as follows,

'Our colleagues in ASEAN wanted the chair to be DG ex-officio, since the next DG comes from ASEAN. We didn't want ourselves to be divided as developing countries. And we didn't want to be seen as opposing the appointment of the DG based on personalities. It is a systemic issue.'

*'We found a way which could accommodate the aspirations of Supachai and also take precautions using the safeguards we had. We came up with a compromise: TNC chair would be DG ex-officio, with rules that would bind the chair of the TNC and how he could conduct himself. We also said that it would be a one-time arrangement that would end with Supachai's tenure. It is not a precedent. It helped us that China was with us. When China and developing countries have a point to put across, they cannot ignore it. We welcome China's entry into the WTO.'*⁵⁷

Developing Countries' Search for Ground Rules and the Systematic Subversion by Developed Countries

'Although some delegations had expressed concern over what was perceived as either procedural quibbling or the imposition of too many procedures, Jamaica remained convinced that clear rules and transparent guidelines would contribute to efficiency through clarity and predictability. Too much flexibility and too much vagueness would be counterproductive.'

(Ambassador Ransford Smith, Jamaica)⁵⁸

Even as the fight over TNC chair was taking place, many developing countries were concerned about the 'flexibility' in procedural matters that had characterised Doha. There were no clearly articulated rules of procedure for the role of the

⁵⁶ Interview with Ambassador Boniface Chidyausiku, 22 February 2002, Geneva.

⁵⁷ Interview, *ibid.*

⁵⁸ WTO 2002 TN/C/M/1, 'Minutes of TNC Meetings, 28 January and 1 February, 2002'.

chairpersons, or ‘facilitators’. An informal paper, floated by India in January, noted that ‘Ambiguity works to the disadvantage of developing countries’.

In order to address these serious institutional deficiencies, a group of nine LMG countries⁵⁹ submitted a communication to the general council a month after Doha, addressing the systemic problems of non-transparency and non-inclusiveness.⁶⁰ Some of the key issues addressed were:

- The TNC should be subordinate and accountable to the general council.
- Selection of chairs must be done in a formal setting with ‘explicit consensus’.
- General procedures for a balanced makeup of TNC chairs. This included the suggestion that there should be one year rotating chairs and vice-chairs. One should be from a developed country and the other a developing country.
- Chairmanships should be filled from Geneva-based ambassadors (i.e. that the DG was not an appropriate choice)
- Neutrality should be the central feature of the chairmanship.
- Accurate and objective minutes should be released within 10 days of a TNC meeting.
- All drafting should be done in open meetings, and that negotiating texts be made available at least two weeks in advance of a decision, to enable delegations to receive feedback from their capitals.
- All disagreements must be reflected in bracketed text (i.e. the various positions should be clearly laid out)

Given that these are such fundamental issues to the proper functioning of an international organisation, it is surprising that there was intense resistance by some developed countries to create detailed procedures and a code of conduct for the TNC. Yet, they wanted to ensure that the informality and lack of clarity in many procedures of the negotiating process was kept. The US, for example, felt that this would ‘bog down’ the negotiations and put the negotiating process in a ‘straight jacket’. Some developed countries felt it was too cumbersome to demand minutes of consultations. Australia said,

‘The necessary progress (on the Doha Mandate) would be impossible if, for example, there were procedural requirements that minutes had to be prepared before another meeting could be held, or that no groups could meet simultaneously’.

Australia appealed to all delegations to think seriously about their ability to deliver what ministers wanted, if they were bogged down in procedure.⁶¹

⁵⁹ These were Cuba, Dominican Republic, Egypt, Honduras, Kenya, Pakistan, Tanzania, Uganda and Zimbabwe.

⁶⁰ The paper was entitled: ‘Establishment of the Trade Negotiations Committee (TNC) and Related Issues’, December 21, 2001.

⁶¹ WTO 2001 WT/GC/M/72 ‘Minutes of General Council Meeting, 19-20 December.’

On January 29, amidst the heated controversy over DG as chair and the extent to which the guidelines should be established for the TNC, a group of developing countries again submitted an official proposal to the TNC. They were the original nine countries (minus Egypt), plus India, Indonesia, Jamaica, and Malaysia. The paper⁶² covered the following areas:

- 1) Role of the TNC
- 2) Negotiating Process
- 3) Role of chairperson of TNC and its Negotiating Bodies

As mentioned above, China, exercising their newly acquired membership rights, played a major role in the demands for clear rules, without which, developing countries would probably not have even attained the outcome they finally did.

Outcome of the Battle: Non-binding Rules, Mike Moore as TNC Chair

What was the outcome of this critical battle?

- 1) The results of the process were not binding guidelines for negotiations, but rather a set of 'Principles and Practices' delivered as a 'chairman's statement' 'that should be (kept) in mind'. One of these principles was that members should 'build on the best practices established over the past two years' in the WTO with regards to internal transparency. To date, these 'best practices' have been widely and openly discounted at the WTO by developing countries as being ineffective and non-operational. Also, many proposals submitted by certain developing countries were not reflected in the principles and practices. These included no green rooms; that transcripts or accurate minutes of meetings are to be made available no later than two weeks after a meeting; ensuring a limited and neutral role for the director general and the WTO secretariat; and clear rules to govern ministerial conferences.
- 2) The critical issue of producing accurate negotiating texts that reflect differences between members' positions was handled in a lukewarm manner. China threatened to stall negotiations if this issue was not addressed appropriately. In the end, developing countries got the following language, 'In their regular reporting to overseeing bodies, chairpersons should reflect consensus, or where this is not possible, different positions on issues.' What developing countries wanted was explicit language that forbids chairpersons from submitting texts in their 'personal capacity' and reflects differences in the actual negotiating texts. Currently, the language is ambiguous and leaves too much room for the chair to make his/her own interpretations.
- 3) The TNC chair, as DG ex-officio was the decision that was finally adopted. However, it was agreed to be 'an exceptional arrangement, and that appointments to

⁶² WTO 2002 TN/C/W/2.

WTO bodies should normally be made from among representatives of WTO members’.

- 4) An important trade-off developing countries did get was that the work in two major areas became part of the negotiations in the round. This had not been clear in the Doha declaration. These are all the special and differential treatment provisions (with the view to strengthening them), and implementation issues.

Some Developing Countries: We Do Not Agree to this Outcome, But Cannot Block Consensus

A large number of developing countries (for example, the LDCs) were finally unable to hold up their position on the selection of the chair in the face of bilateral pressures, and the fact that many of the more outspoken developing countries had already caved in (e.g. various LMG countries). In the final statements made at the TNC meeting, Tanzania, representing the LDCs, spoke out strongly against the decision to accept the DG position as chair. Ambassador Muchumo said that the LDCs

*‘believed it was institutionally wrong and even harmful to have the director general of the WTO to chair the TNC, which was a body of an intergovernmental institution....This was like arguing that the best guarantee for objective decision-making in the organization would be to surrender the chairmanships of the various bodies to the deputy director generals and other members of the secretariat’.*⁶³

Others were dissatisfied with the ‘Principles and Practices’ adopted, as they did not go far enough. In fact Bulgaria, even thought that they could be dangerous:

*‘In the section on transparency and process, the second bullet referred to established best practices. Such practices had never been established and this delegation could not agree to an institutionalisation of something, which had never been agreed upon, through the back door...The problem of transparency in the negotiations needed to be dealt with in a much more specific way through the adoption of clear and explicit rules.’*⁶⁴

Mike Moore Immediately Breaks the Rules

According to the principles and practices ‘chairpersons should be impartial and objective, and discharge their duties in accordance with the mandate conferred on the TNC by Ministers.’

⁶³ All country statements in this section are from TN/C/M/1, ‘Minutes of TNC Meetings 28 January and February 1, 2002.’

⁶⁴ WTO TN/C/M/1, Minutes of TNC Meetings 28 January and February 1, 2002.

Within two and half weeks of being elected as the new TNC chair, the Financial Times reported that ‘Mike Moore, director-general of the World Trade Organization, has urged developing countries to support proposals for WTO rules on competition and investment, telling them it is in their own economic interest.

Even the Financial Times reporter wrote that ‘It is unusual for a WTO director-general to take a public position on such politically contentious questions.’⁶⁵

Following this, Moore, as TNC chair, also invited chairs of the investment and competition working groups to a meeting with other chairpersons of the TNC bodies. Several developing countries opposed this openly since investment and competition do not fall under the purview of the TNC. Investment and competition are critically contested issues in the WTO and the TNC chair has no mandate to include chairs of these working groups in TNC discussions.

⁶⁵ Financial Times February 18, 2002, ‘Moore Speaks Out on WTO Rules’, by Guy de Jonquieres. See also Mike Moore’s Personal View, ‘Development Needs More than Trade’, Financial Times, February 18, 2002.

CHAPTER 6

TECHNICAL ASSISTANCE: EMPTY PROMISES TO ELICIT CONSENT?

by Sabrina Varma

Technical Assistance: A Conditionality for Agreeing to Negotiations in New Issues?

Technical assistance has been and continues to be a controversial issue in the WTO. Promises of technical assistance have been used in trade negotiations rather liberally to get developing countries on board to accepting obligations and commitments in a range of areas, and the Doha ministerial declaration is no exception. In fact, the declaration is 'riddled' with promises of increased technical assistance and capacity building.⁶⁶ The fear amongst some developing countries is that technical assistance will be used as a 'conditionality' for agreeing to negotiations on the new issues. The argument that is likely to be used by developed countries is that substantial technical assistance has already been provided in these areas.⁶⁷

To date, the actual provision of technical assistance has proved to be the elusive carrot for developing countries in that it has failed to deliver substantial benefits, let alone respond to the needs of developing countries.

Why, in Theory, Technical Assistance is Important for Developing Countries

The importance of technical assistance is underlined by the changed nature of WTO commitments and obligations (as opposed to the GATT) which are adopted on the basis of a single undertaking, whereby developing countries must implement and comply with those commitments in all areas. This 'all or nothing' approach was adopted from the Uruguay round and continues in the context of the Doha agenda. This is a costly and burdensome exercise in human and financial terms, especially from the perspective of developing countries who have limited resources. Moreover, not only is the coverage of areas expanding into 'behind the border' domestic policy areas but the complexity of the rules is also increasing.

The Elusive Carrot: A Product of the Systemic Deficiencies in the WTO

There are many problematic aspects of technical assistance including its nature, scope, focus, management, ownership, delivery, monitoring and evaluation. These problems will be drawn out below as significant problems in their own right but they are also

⁶⁶ Doha Ministerial Declaration, paragraphs 16, 21, 24, 26, 27, 33, 38, 39, 40, 42, 43

⁶⁷ South Bulletin, 33, 15 April 2002, South Centre.

illustrative of the systemic problems concerning the operation of the WTO. These relate to the role of the secretariat in a so-called member driven inter-governmental organisation; the extent to which developing countries are decision-makers in the WTO; and the extent to which the WTO genuinely delivers on addressing the needs of developing countries.

Technical Assistance's Non-binding character

As in the case of special and differential treatment provisions, technical assistance commitments are also of a best endeavour nature, which are not binding on donor countries. In other words, developing countries cannot take donor countries to the WTO dispute settlement on the basis of non-provision of technical assistance commitments. At the same time, developing countries are subject to challenge if they have not implemented their commitments under the various WTO agreements, regardless of whether or not they have the means to meet their obligations.

A Tool of Institutional Control

Technical assistance is one area, which has been closely shaped and controlled by the WTO secretariat. Yet technical assistance is a service area which in order to be effective needs to be demand/client driven, and therefore flexible and adaptable by nature.

Discussions since the last quarter of 2001 to date in the committee on trade and development (CTD) and sub-committee on least developed countries regarding the WTO's Annual Technical Assistance Plan for 2002, were essentially 'negotiations between Member countries and the secretariat'. As several delegates observed, the secretariat was refusing to incorporate the former's comments on structure and substance. The plan had been drawn up before the Doha ministerial and so was based on country requests at that time. However, as discussions have moved towards finalising the plan after the ministerial, it is inevitable that countries will identify needs as they engage in the negotiating process. This has been the case in the past.

Lack of transparency has also shrouded the way in which the secretariat has controlled the technical assistance agenda. For example, there are a number of Memorandum Of Understandings (MOUs) being developed with regional development banks⁶⁸ on technical assistance, yet not all members are aware of it and there has not been adequate discussion in the relevant committees.

Secretariat's Institutional Bias in the Provision of Technical Assistance

The secretariat's track record of non-neutrality has not helped it build confidence amongst developing country members in seeing it as an 'adequate, neutral or desirable provider of technical assistance in many areas, including preparing governments for

⁶⁸ One MOU has already been signed with the American Development Bank

negotiations'⁶⁹. For example, the current Annual Technical Assistance Plan for 2002 sets out 520 activities with an obvious bias towards the new issues (i.e. competition, investment) with a view to assisting countries to participate in negotiations. Yet the inclusion of these issues as a part of negotiations has and continues to be a politically sensitive and contentious.

Moreover, there is actually very little expertise within the secretariat⁷⁰ in training and capacity building which means it is often a case of international bureaucrats with a narrow view of trade policy delivering seminars to developing country government officials on the benefits of trade liberalisation.

Where there is a recognition of the need to involve other agencies with 'related competencies', instead of drawing on UNCTAD, which developing countries have been asking the secretariat to do time and again, the WTO has drawn in WIPO, as a provider of capacity building (in which it has no mandate) on TRIPs.

As outlined in an earlier chapter, this institutional bias is also related to the composition of the secretariat and the type of professionals that are employed.

The Purpose and Nature of Technical Assistance: In Whose Service?

The purpose underpinning the provision of technical assistance has been the subject of much criticism by developing countries. According to the Doha declaration, technical assistance is 'to assist developing and least developed countries and low income countries in transition to adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership, including drawing on the benefits of an open, rules-based multilateral trading system'.⁷¹

Therefore the focus is on assisting countries to adjust to a set of obligations and commitments which have been laid out before them, rather than empowering developing countries by building their negotiating capacity to undertake analysis, identify their own interests and related objectives in relation to the WTO agenda. This alternative approach would include providing assistance in areas where developing countries are experiencing problems with certain agreements. This latter approach would contribute towards minimising any undue influence in the trade policy of developing countries.⁷²

The difference in approach to technical assistance has been further illustrated by the recent comments of Deputy USTR Allgeier who is reported to have said that developing countries define it (technical assistance) very broadly whereas the US wants to focus narrowly on the 'assistance related to negotiations'.⁷³

⁶⁹ Bridges Vol 6, No.13, 9 April, in reference to sentiments expressed by Pakistan and Egypt.

⁷⁰ The Secretariat has embarked in a process of recruiting 'trainers'

⁷¹ Doha Declaration, para 38, 14 November 2001.

⁷² Kostecki, M. 2001, 'Technical Assistance Services in Trade Policy', ICTSD Resource Paper No. 2.

⁷³ Inside US Trade, 5 April 2002

Currently, the existing nature of WTO technical assistance comprises:

- provision of ad-hoc events such as seminars;
- virtually no use of local resources;
- governments as the main beneficiaries;
- service provided on the basis of location rather than needs;
- mainly single agency providers; and
- a one-way transfer from developed to developing countries.

This is a far cry from some of the things developing countries have been asking in the submissions and interventions of the approach to technical assistance, which includes:

- a needs-based approach which ‘trains the trainers’;
- direct involvement of a range of complimentary service providers drawing on local institutions wherever possible;
- civil society, academic and private sectors as beneficiaries;
- on-going monitoring and evaluation.

The failure to take on board the needs and concerns of developing countries is a reflection of the wider problem of ‘institutional deafness’ within the WTO.

The Donor Drives the Agenda

Funding of technical assistance has been lacking and unpredictable. Essentially the technical assistance division has relied on extra-budgetary contributions, through trust funds, for a host of technical assistance activities, which has not contributed to any sustainable and coherent approach. Instead it has fostered a culture based on providing ad hoc type of activities, such as seminars.

As one delegate has pointed out in the context of the recent pledging conference in March for the ‘Doha Development Agenda Trust Fund’ which raised CHF30 million, one of the main problems with extra-budgetary financing is that donors subscribe to those projects in which they have an interest hence any sense of priorities or a demand driven agenda is lost.⁷⁴

Empty Promises: The Integrated Framework as a Case in Point

The Integrated Framework (IF) was endorsed in 1997 with the aim of increasing the effectiveness of trade-related technical assistance to the least developed countries and one of its main objectives being to address the implementation problems of LDCs. Participating agencies include the IMF, UNDP, UNCTAD, World Bank and more

⁷⁴ South Bulletin 33, 15 April 2002, South Centre.

recently the ITC. 40 LDCs had completed needs assessments between 1997-1999, yet only five IF 'roundtables' had been held by mid 2000 and only one country received renewed funds.

An independent review of the IF in June 2000⁷⁵, highlighted serious problems because it did not address the link between WTO agreements and the problems of LDCs. In other words, the needs assessments had not been adequately used as a basis for technical assistance plans. The review showed that the IF suffered from weak administration, unclear performance criteria, lack of coordination amongst donors and a serious shortfall in donor resources.⁷⁶

Although the IF has since been 'redefined', this has been done with the purpose to 'ensure better integration of trade with national development strategies by designing and implementing capacity building loans within countries' own PRSPs' with the WTO, World Bank and IMF spearheading these efforts. This has been accompanied by the creation of the IF Trust Fund.

There are several concerns with this approach. Firstly, the coming together of the WTO, IMF and World Bank in 'mainstreaming trade in national development plans' could consolidate the 'one size fits all' approach based on trade liberalisation as the main engine of development, which has been advocated by all three institutions in their specific realms of activity with more negative rather than positive implications. As one commentator notes, between 1997-2001, 36 countries agreed to comply with bringing their trade regime in line with WTO accession requirements or have committed to accelerating implementation of WTO rules as stated commitments in their formal IMF Letters of Intent and Poverty Reduction Strategy Programmes (PRSPs) and in some cases conformity with WTO rules was an actual condition of IMF lending.⁷⁷

Secondly, the IF can be viewed as providing a framework for these institutions to further micro-manage developing countries by moving into 'behind the border' policy areas such as services, standards and regulations, with the focus on reforming developing country legal and regulatory systems - further decreasing any existing domestic policy autonomy.

Thirdly, the emphasis on trade policy could lead to an imbalance in policy focus in the wider context of development priorities within countries. Fourthly, the domination of these institutions gives little scope to other better-placed agencies, such as UNCTAD, to provide technical assistance. Under the Doha Agenda, UNCTAD's role has been limited to providing technical assistance only on the new issues whereas it is the only organisation with the mandate to advocate the interests of developing countries and provide training in the broader context of economic development. There continues to be a gaping hole in the provision of capacity building in the core WTO areas of agriculture, services, TRIPs, implementation issues and on issues of special interest such as trade, debt and finance, special and differential treatment, technology transfer.

⁷⁵ There is no independent review process of the WTO's overall technical assistance activities. An in-house audit team has recently been endorsed.

⁷⁶ World Bank 2001 'Leveraging Trade for Development: World Bank's Role', 14 March.

⁷⁷ Rowden, R 2001 'IMF-WB-WTO Synthesis Report', RESULTS, October, Washington.

Under the revamped IF, there is another review yet to occur and appraisal of the pilot scheme in three LDCs has been taking place, yet in the Doha ministerial declaration, the IF is presented as 'a viable model for LDCs' trade development.

Conclusion

While technical assistance is being trumpeted as a tool that will help developing countries integrate successfully into the world economy, within Geneva trade circles, it is quite widely regarded as a tool that is being used to get countries on board to negotiations on new issues in the coming 5th ministerial. There are therefore clear vested interests driving its provision.

Whether or not developing countries will eventually see technical assistance providing real development benefits, would ultimately depend on the extent to which entrenched systemic and institutional deficiencies in the WTO are addressed, and the extent to which developing countries' concerns are taken seriously.

PART V

RECOMMENDATIONS

CHAPTER 7

CAN DECISION-MAKING PROCESSES BE IMPROVED?

By Sabrina Varma

The main problem with decision-making processes in the WTO is that there are none. For example, under the WTO Guidelines for the Appointment of Officers to WTO bodies (WT/L/31), there is no actual procedure for the appointment of chairs. This void enables more powerful countries to take advantage by manipulating situations, undertaking dubious interpretations and often making rules up on the hoof to suit their particular needs.

A committee, which looks into the functioning of the WTO, should be established to consider mechanisms, which can be embodied in a formalised system of processes, checks and balances for ensuring equity, predictability, stability and transparency. This would include a close examination and review of the process leading up to ministerials and ministerials themselves.

The following is a consideration of the main issues:

Consensus vs. Voting

Consensus has become the main mode of decision-making in international organisations. Whilst in theory consensus implies the scope to reject a decision, the reality of the asymmetrical relationship between developed and developing countries means that the latter will always be vulnerable to the threats and offerings from the former.

Moreover, the consensus mode of decision-making is the root cause of non-transparency, given that with it comes the informal and green room meetings, bilateral/corridor pressure tactics etc. Whilst it is unlikely that these problematic aspects of decision-making will altogether stop, nonetheless if developing countries do not have to signal their approval or rejection of a decision under the scrutiny of other members, this would go a long way towards ensuring they are not under pressure to make a decision based on short term incentives or threats.

Voting, as provided for in the WTO Agreement, based on equal rights seems to be the best safeguard against the domination of a few economically powerful countries and the only way to give developing countries some negotiating weight. For example, as one delegate noted, when the LDCs issue a statement it is taken as though one country has spoken instead of 40.

However, given developing countries have numbers on their side, it is unlikely this will ever be accepted by the quad - this is why voting is viewed so negatively by developed countries in international fora.

One possibility is having a *tiered voting system* (by ballot to ensure anonymity), which would apply to certain types of decisions such as selection of chairs, DG and other process and administrative type of issues which have a significant impact for developing countries.

Voting procedures could be accompanied with a *code of appropriate conduct*, which would not accept inappropriate forms of bilateral arm-twisting and threats, such as withdrawal of trade preferences and job loss. The idea would be to create a culture of operation whereby such activities would be considered corrupt and out of place, as they are in voting processes in the context of country elections. *Decisions would not be considered legitimate if there was evidence of coercion.* This could be reinforced by an *independent ombudsman mechanism and procedure* which would allow countries to bring such cases before it and be solely devoted to the monitoring and arbitration of process related issues in the WTO.

Whilst developing countries are highly critical of the decision making process at the WTO, many would like to retain the consensus style of decision-making for two main reasons:

- 1) There is a fear that the quad would withdraw and resort to bilateral and regional agreements where they can exercise more power, or simply not implement the resulting Agreements; and/or
- 2) They feel it enables them to extract concessions from the major powers, which they would otherwise not obtain.

Developing countries need to undertake cost-benefit analysis and weigh their long-term interests with short-term gains. This often comes with experience. In various cases, seasoned developing country delegates have admitted that in pragmatic terms, the concessions did not amount to much, in comparison with commitments that had been taken on, such as in the Doha agenda.

Partial voting would also resolve the so-called 'efficiency vs. democracy' dilemma which has instigated dangerous discussions around the need for a limited 'executive' decision-making body in the WTO, given that building consensus between 144 member countries has become a time-consuming procedure.

Informal meetings

Whilst it may be impossible to rid the WTO of informal meetings between members, there can be rules which make it clear that their outcomes have no place in formal meetings. *Only discussions, which have taken, place in formal meetings and have been*

recorded should provide the basis for negotiations. Moreover, informal meetings should be ruled out on the basis of there being too many meetings as it is in the WTO meeting schedule, which is one of the major participation issues faced by smaller missions.

The definition of informal meetings would include those which take place in the form of ‘mini-ministerials’ which characterised the process leading up to Doha, between a limited number of the membership, 20-25 countries. As one delegate points out, this practice appears to have become institutionalised whereby it is these same countries who are always consulted (although not all opinions are always counted), thereby operating as a de-facto ‘representative’ executive committee. Moreover, it is the outcomes of these meetings, which guided the process in Geneva.

Representativeness and the Need for Clearly-defined Roles

Two-thirds of the WTO membership is from developing countries, yet the secretariat continues to be represented by people of an Anglo-Saxon background and of a particular ideological leaning i.e. neo-classical economics. In theory, whilst the secretariat is an intergovernmental organisation and therefore supposed to be neutral, the composition and background of the secretariat staff make a significant difference in the advice and research they provide.

More importantly, it is clear from many developing country delegates that the secretariat plays a heavily influential role in the day-to-day workings of committees and actual the negotiation process, in terms of recording of meetings, drafting of negotiating texts and making decisions on who can and cannot enter informal meetings.

More effort needs to go into improved recruitment policies, which better reflect the diversity of the membership, possibly *based on the UN quota system*.

A manual for appropriate conduct of WTO civil servants should be put together, which spells out their role, sets out principles for giving advice and a *grievance/dismissal process* for addressing situations of improper conduct/conflict of interest. This must be part of the *internal performance evaluation*. This should also include the *director general, who must be accountable to the membership*, i.e. general council. The current provisions in the WTO Agreement are not adequate and obviously not taken seriously enough.

The representation issue also applies to the committee work and various negotiation working groups as they arise. Moreover, as the process leading up to Doha showed and as various delegates have highlighted, the mini-ministerials set the scene for the actual ministerial where by and large it was the ‘usual suspects’ who were selected to ‘facilitate’ the negotiating issues and subsequently chair the negotiating bodies in the WTO.

A roster should be devised to keep track of representation in order to guide the selection process for chairs and to ensure that the same countries are not always

chairing key bodies. At the same time, chairing committees is a heavily taxing role, especially for the smaller missions and as some delegates have pointed out, any vulnerability on the part of the chair is exploited by the secretariat in controlling the work of the committee. Therefore it is *critical that small missions and non-residents are given the necessary resources to effectively participate in Geneva.* Also, according to the rules, countries in financial arrears for over more than one year cannot be considered for appointment. This excludes some LDCs and should be reconsidered.

The *role of chairs should be clearly spelt out* in terms of what they can and cannot do. Vice-chairs should be considered as an additional safety valve of accountability, operating on similar lines to navy protocol whereby the vice- chair has the authority to oversee and override decisions/conduct which do not meet a certain established criteria.

Accurate records of meetings

Many delegates have complained about the minutes of meetings provided by the secretariat, due to their one-sided representation of the events and discussions which actually took place. As one delegate said: *'you need to be in the room, you cannot rely on the notes of the secretariat to give you an accurate account of what was said'*. This is a critical area where action is needed because in the process leading up to Doha the strong opposition voiced by developing countries to the new issues was down played and hence used as a the basis for the general council's chairman's approach of no bracketed draft text for the ministerial declaration.

Transcripts should be taken of all meetings, which would be summarised in the outset. These *transcripts would provide the basis for the drafting of negotiating texts. These texts would then automatically reflect any difference in opinions.* This is common parliamentary practise in many countries and would significantly contribute towards increased transparency, neutrality and accountability. Once the practise of informal meetings goes, the accurate recording of positions should become more forthcoming, given that positions voiced in consultations and informal meetings are never recorded.

Ministerials

The specific situation of ministerials present a different set of challenges due to the pressure cooker environment it is based on. For this reason alone, all *procedures and processes must be devised and agreed in advance of the event,* including on the selection of chairs and issue groups. Moreover, the ministerial process *must be subject to an overseeing monitoring mechanism* at the ministerial to ensure certain standards are being met (e.g., sufficient time given to consider texts) and it should be *subject to an independent audit or evaluation afterwards* to determine whether the decisions taken were made on a legitimate and democratic basis.

The flow of information during ministerials virtually breaks down. Various delegates have commented on the moral blow and wasted time of hanging around

corridors not knowing what is going on. Therefore it is critical that the governing body of the ministerial i.e. the *Committee of the Whole has frequent daily meetings to update people and that transcripts are circulated from every formal meeting* (COW, any working groups and consultations) as soon as they are available. The *secretariat's prime role at ministerials should be to facilitate information flows* and ensure that all members are fully aware of the state of discussions and this should be subject to evaluation.

There is also a strong case to *hold ministerials less frequently and in Geneva* in light of the associated problems discussed in other parts of this paper.

Addressing substantive imbalances

Addressing process issues is critical in the WTO because, as illustrated above, it largely determines the substance of negotiations, which remain skewed in favour of a few powerful countries. However, existing cases of imbalances in substance also require attention in the current state of play of the WTO agenda if developing countries are to get a better deal in the future. These include addressing outstanding implementation issues, reviewing problematic agreements such as TRIPs and progression of talks in areas of interest to developing countries such as movement of natural persons, whilst slowing down talks in other areas where support is not clear, such as investment. The single undertaking, which requires countries to take on commitments in all areas, should be discarded.

This approach requires a fundamental review of the purpose and objectives of the WTO, which has become an unstoppable vehicle in pursuit of unbalanced trade liberalisation as an end in itself.

Broader governance issues

Any institutional reform of the WTO should take into account the broader picture of global governance. The democracy problems of the WTO are illustrative of problems within the wider system of global governance whereby developing countries remain marginalised from global economic decision-making, and subject to bullying pressure tactics in other international fora. Yet developing countries are key stakeholders as they are the ones most vulnerable to the decisions, which eventuate from these organisations. This is a systemic problem, which needs to be addressed on a wider level across the UN, World Bank, IMF.

Finally, there are also useful ideas evolving in the discussions around improving governance of the Bretton Woods institutions, which could be relevant to the WTO. There should be a concerted effort to converge this area of work. For example, the work on applying corporate governance principles for minority shareholders (i.e. developing countries) is of interest. Whilst the WTO is not a shareholder-based organisation such as the Bretton Woods institutions, and developing countries can be considered 'equal shareholders' in theory (and their numbers far outweigh developed countries), in

practise it is evident that their negotiating weight carries very little influence in the consensus-style of decision-making, effectively making them minority shareholders. Therefore the principles, which apply to corporate governance in terms of transparency and audit, could be conceived with a view to protect these 'minority shareholders' rights'. A process by which these rights could be audited should also be put in place.

Conclusion

The WTO continues to steam ahead in the name of progress without establishing democratic procedures of decision-making, and endorsing back-room coercive arm-twisting. It is time to devote undivided attention to developing guidelines and procedures for accountability, and to introduce checks and balances into the system. Currently, power in the WTO depends on the level of economic and trade weight. But at stake are the legitimate and varied development policy objectives of 144 countries. For all who believe in and support democracy, this lack of due process and accountability, as well as the coercive strategies that are used, is absolutely unacceptable.



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