

WTO DECISION MAKING: A BROKEN PROCESS

WTO
Cancun
Series Paper

no.

4

Institute for Agriculture and Trade Policy



**INSTITUTE
for
AGRICULTURE
and
TRADE POLICY**

*WTO Decision
Making:
A Broken Process*

*Shefali Sharma,
Director of Trade
Information Project*

2003

2105 First Ave S
Minneapolis,
Minnesota 55404
USA

www.iatp.org

Table of Contents

Introduction	2
Breakdown in Seattle	3
Nine Practices Damaging the WTO Process	4
Pushing for Reform	10
The Irreversible Road to Cancun	11
Conclusion	12
References	13
Glossary	14
Sources	back cover



Introduction

In the last nine years, the WTO has gone from 128 to 146 members. While it took negotiators eight years to complete the Uruguay Round, governments gave themselves only three years to conclude the Doha Round, with the half way mark approaching at the Cancun Ministerial in September 2003. Governments in Cancun will also decide whether to launch negotiations on four additional issues (Investment, Competition, Government Procurement and Trade Facilitation – also known as the Singapore issues). The Doha Ministerial created an ambitious agenda for negotiations, with 17 different and complex areas of discussion. Each of these areas is discussed in formal and informal sessions, and numerous meetings of subsidiary bodies. The total number of meetings in the year 2002 is astonishing. According to the Information and Media Relations Division of the WTO, there were 5,224 meetings in 2002, practically double the number of meetings that took place in 1997.¹

The high profile issues in Cancun will be agriculture, access to essential medicines, Special and Differential Treatment for developing countries, the four Singapore Issues, and improving implementation of existing WTO rules. Yet critical to the outcome of each of these negotiations will be how the negotiations are managed. Non-governmental organizations (NGOs) and the media have long criticized the WTO for its secretive decision-making process, but the institution has been just as harshly admonished for its lack of

internal transparency by WTO member countries themselves.

Following the Doha negotiations, a group of developing country members known as the Like Minded Group (LMG) submitted a paper critical of the WTO's lack of clear negotiating procedures: "Since the WTO was established in January 1995, four Ministerial Conferences have been held so far. The procedures adopted, both in the preparatory process in Geneva and at the Ministerial Conference itself, have been different. This uncertainty in the process makes it difficult for many Members to prepare themselves for the conferences. Some basic principles and procedures for this Member-driven organization need to be agreed upon, so that both the preparatory process and the conduct of the Ministerial Conference are transparent, inclusive and predictable." (WT/GC/W/471, pg. 1)

The LMG was addressing what are known as "process issues," which refer to the decision-making procedures for WTO member states. This absence of clear procedures greatly benefits certain powerful members by allowing the flexibility to change the rules to suit their interests, and weakens the ability of the less powerful and under-staffed delegations to prepare, follow, and participate in the negotiations.

The WTO has already paid a heavy price for the weaknesses in its negotiating process. The Seattle WTO Ministerial broke down largely because of a process that excluded large numbers of member countries at significant points in the nego-



tiations. However, the same process issues, although somewhat different in form, remain and continue to threaten the credibility of the WTO. In addition to the use of so-called "Green Room" meetings, where only a limited number of countries are asked to resolve difficult issues, new exclusionary methods have evolved. The chairperson of each negotiating committee is increasingly relied upon to write a summary of negotiations on his or her own responsibility, allowing strong differences among members to be glossed over or ignored. So-called Mini-Ministerials have become increasingly common, which bring together some 20 or 30 member countries to an informal negotiating session whose results are then very difficult for the uninvited members to reject. Overall, the time to prepare for meetings and for negotiating processes as a whole has been shortened, making it ever harder for small delegations to keep abreast of developments. The result is a deeply unaccountable decision-making process.

An important casualty of the WTO's negotiating process is the dialogue between capitals and citizens about the content and implications of trade negotiations. There needs to be time for governments to hold meaningful discussions with their constituencies before taking their final negotiating positions. When negotiations exclude member countries until the last minute and make decisions and proposals behind closed doors, the critical dialogue between negotiators and capitals is severely diminished.

Negotiating by consensus with 146

members is not an easy task, but how decisions are made and agreements are reached matters. It matters in the implementation of the agreements and the follow-through on commitments. It also matters for the future of the WTO as a credible multilateral institution.

Breakdown in Seattle

Seattle was supposed to be a turning point in WTO history. At the Ministerial Conference, held in November 1999, the exclusion of the majority of the membership by an economically powerful few members was revealed in dramatic fashion to the world. The European Commission (EC), United States, Japan, and Canada (together known as the Quad) and a few other countries failed to launch the new round of trade negotiations they wanted because, among other things, the marginalized majority revolted. A communiqué by Latin American and Caribbean countries in Seattle expressed disagreement with the process that allowed only a few countries "to define the scope and extent of the future negotiating round that all member-countries are to adopt. We are particularly concerned over the stated intentions to produce a ministerial text at any cost, including the modification of procedures designed to secure participation and consensus."²

However, governments failed to rise to the challenge. After Seattle, the WTO General Council took on the heavily contested problem of process in the form of "best practices," collected by then General Council Chairman Kare Bryn of Norway. Rather than providing clear and



binding rules of procedure, Bryn provided only an interim report and his own statement “best practices” for internal transparency. The report had little impact.

Instead of addressing the very real concerns about the negotiating process raised by many WTO member countries in the wake of Seattle, the WTO has side-stepped them. Most of the basic problems—secrecy, lack of accountability and unpredictability—are as prevalent as they were before Seattle. Only now they have taken a different form.

Nine Practices Damaging the WTO Process

1. *Green Rooms*

As the preparatory process for the 2001 Doha WTO Ministerial concluded, it became evident that attempts to improve the negotiating process were not going to result in greater inclusion of developing country views. Tanzania, on behalf of 30 Least Developed Countries (LDCs), commented to the General Council in October 2001, “In most areas, the draft does not adequately present the views of LDCs. It would have been preferable if these views had been presented, even as options, so that there is fairer representation of our views.”

New formats as problematic as the old were being introduced. For instance, rather than using “green room” meetings (secret and exclusive meetings characteristic of pre-Seattle days), the Secretariat institutionalized “open-ended Heads of

Delegation (HODs) meetings.” “Small group consultations” were invented, to which countries particularly involved or interested in an issue would be invited. In principle, no country asking to join the consultation would be refused. However, often informal meetings were not openly announced. Frequently, informal meetings are set from one informal session to another, so by missing one, a country would not be on a list to know about the next meeting.³ Moreover, in many cases, countries interested in a particular issue were excluded from the consultation. There are numerous accounts of these experiences⁴ where countries had to struggle to be included and were not always successful.

Here is one example from a Caribbean country delegation:

“I was present at a consultation conducted by Ambassador Bryn who was handling Implementation Issues. Ambassador Akram of Pakistan complained about the lack of progress and when he began to press the issue, the U.S. Ambassador responded in frustration, ‘Akram, we will discuss this in the session tomorrow morning!’ But no one in the room knew about this HOD. I asked the Chair after the meeting, what time, and where and he said he didn’t know. He told me to ask his secretary. But the secretary didn’t know. She asked to check the board, but it said nothing on the board. Finally, I asked Mario,⁵ and he knew the time and place. This meeting was obviously fixed with a few delegations.”⁶



Whether they are called open-ended meetings, super informals, or small group consultations, green rooms have continued both inside and outside the WTO building. Sometimes governments meet across the border from Geneva in France. Mini-Ministerials are a larger, more public version of the same phenomenon—the powerful green room style meetings are advocated by some powerful WTO members who feel that 146 members is too unwieldy for consensus-based decision-making. They feel justified in inviting their idea of a representative group to try and make progress on negotiations. Those countries are then responsible to go back and persuade the rest of the membership to accept what has been proposed at the session. The preparations for Cancun are relying on these kinds of exclusive meetings, leaving many WTO members in the dark about the state of negotiations.

2. *Mini-Ministerials*

During the negotiations before Doha, the WTO held two preparatory meetings—one in Mexico and one in Singapore. Now known as “Mini-Ministerials,” these two meetings were the first of their kind. Between 20–25 countries were invited by the host country to discuss issues that were blocking progress on an overall Doha agreement. These meetings created a lot of tension in Geneva because the large majority of WTO countries were excluded. The level of secrecy surrounding the selection of attendees was so high that neither the host country officials nor the WTO Secretariat would confirm who

selected the participants and on what basis. In fact, the WTO Secretariat insisted that the Mini-Ministerials were organized outside their purview, on the responsibility of the host country. However, key Secretariat staff, such as the Director General, were always present at these meetings. After the Singapore meeting, in a gesture towards transparency, the Singaporean Ambassador briefed the WTO members that had not been invited on the outcomes of the Mini-Ministerial. But the majority of the WTO members who had been excluded resented this and said that any process outside the WTO has no legitimate role within WTO proceedings. Many WTO members believe that the Mini-Ministerial process creates an informal “executive council” of members who make WTO decisions on behalf of the rest.

“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 onto others,” said then Zimbabwe Ambassador Boniface Chidyausiku.⁷

Active WTO countries that are excluded, such as Argentina, wonder openly what the selection criteria for these meetings are and discredit their usefulness.⁸ After complaining about this process in relation to a Mini-Ministerial in Egypt, Argentina was invited to the final pre-Cancun Ministerial in Montreal.

Mini-Ministerials on the Road to Cancun

Australia

(November 14–15, 2002):

25 Countries attended to discuss patents/TRIPs and health, S&D, market access, and the Singapore issues.

Japan

(February 14–16, 2003):

23 countries attended to discuss market access, agriculture, services, and Singapore Issues.

Egypt

(June 21–22, 2003):

29 countries attended to discuss market access, S&D, patents and health, Implementation Issues, and Singapore Issues.

Canada

(July 28–30, 2003):

27 countries attended to discuss agriculture, development and general balance of the discussions leading to Cancun.

oping countries. Second, the Chairman of the General Council produced a text “on his own responsibility” and without brackets, so that opposing positions were not reflected. The paper was his version of how a compromise might look—and largely catered to the approval of the most powerful members of the WTO. While developing countries continued to make objections to the Chairman’s procedures to the last hour, the text was forwarded to Ministers in the same format.⁹

Zimbabwe’s comments, on behalf of the 45-country African group, were typical before the General Council on October 31, 2001: “we note with concern that the absence of options in the draft Ministerial Declaration could convey the wrong impression that there are no differences amongst delegations on substance.” Kenya was very direct in the same session: “Many delegations have expressed their views that the texts are biased towards one side and transmitting them in their present form will have far reaching consequences for the credibility of the multilateral trading system.”

This Doha process has now become the model for Cancun.

3. Chair Driven “Reverse Consensus”

There were two pivotal elements in creating consensus from widely divergent positions during the Doha preparatory process. First, the two draft Doha texts released in Geneva (the Doha Draft Ministerial Declaration and the draft Implementation Decision) ignored the dissenting opinions voiced in informal consultations by a large number of devel-

Proponents of this approach, where the process is led by the chairperson, argue that it is efficient and expedient. However, a chairperson’s understanding usually reflects the dominant, not the majority, interests. The use of unbracketed text side steps the chairperson’s responsibility to show diverging positions, especially in heavily contested negotiations.



The use of a chairperson's text to force consensus condenses the debate of a year or more into an "understanding" which says nothing about the reasoning behind different country positions. This process puts the onus on dissenting voices, and mostly the weaker members, to change or reject the chairperson's text. In practice, it creates a "reverse consensus¹⁰" approach to negotiations.

Traditionally, reverse consensus in the WTO refers to a practice related to the Dispute Settlement Mechanism (DSM). It roughly means that to oppose a finding by the dispute panel, all members must agree to reject the report. This process is now spreading, albeit informally, and is becoming the norm in the WTO for negotiating texts, such as draft declarations for Ministerial Conferences and draft revised rules for the Agreement on Agriculture. This means that rather than the process leading to consensus through a series of drafts that exhibit diverging positions and attempt to narrow differences (as is the norm in the UN), the WTO process of arriving at consensus now increasingly starts with a Chairman's written interpretation, following numerous undocumented informal consultations and leads to a "take it or leave it" type scenario. The resulting report is presented with few or no brackets, creating strong pressure to not change much in the text, so as to avoid the whole text unraveling. It is also unlikely to receive unanimous opposition since the final text usually favors the most powerful WTO members.

In practice, only countries with

significant economic power or a coalition with a large number of countries can significantly change the text towards their interests. Opposing or changing text in a reverse consensus process depends almost completely on power. No one member, apart from the U.S. or the European Commission perhaps, can stand up and say "no" unless they have the backing of a number of other members. This in effect has marginalized the majority of developing countries and weakened their effectiveness.

For the Cancun Ministerial, governments are considering Chairpersons' draft reports, submitted on their "own responsibility," for agriculture and industrial products modalities. Both these draft reports ignore proposals and criticisms raised by a number of developing countries in formal and informal meetings.

4. Closed Doors/No Records

The process of preparing for both the Doha and Cancun Ministerial Conferences has largely been through informal meetings, which means that no minutes of discussions have been produced. Minutes are only circulated after the rare General Council meetings, where countries have the opportunity to go on record. The lack of minutes has become a particular problem since the practice of using chairperson's bracket-free texts became so common. Objections, proposals and major differences expressed in informal meetings often disappear when a chairperson's text is presented. Usually, there are only a few



formal opportunities to revise the text. Some governments have proposed that at least the minutes from formal meetings should reach delegations within ten days of the meeting taking place, rather than the up to four months that it now takes. In addition, updates on the outcomes of informal meetings for the smaller Geneva missions and the non-resident missions (countries too poor to maintain a physical presence in Geneva) need to take place systematically. These small steps are a minimum to improve the decision-making processes at the WTO, moving them toward more accountability and predictability. Members would then be able to verify that their viewpoints are reflected adequately in the WTO debates and follow negotiations more easily. They would also be able to hold the Chair more accountable if she/he produces a Chair's text.

5. Limiting Dialogue Back Home

The lack of clarity in process is a major concern to many governments given the high stakes in Cancun and the major implications the agreements under negotiation will have for domestic policy. Governments need a clear process to know when to intervene and how.

To prepare for the Cancun Ministerial, WTO members were presented with a draft declaration on July 18, 2003. That is very little time before the Ministerial to comment on and change language in the draft text. In addition, because so little had been decided at the time of the first draft, it is difficult for negotiators to

dialogue with their capitals about the implications of the draft text. The final draft text for Cancun will be previewed for August 22 and members have three days to assess and give final comments on August 25–26 at most likely the last General Council before Cancun. There are some 23 elements for consideration in the Cancun agenda, all under negotiation simultaneously.¹¹ The burden under such a timeline is unrealistic and detrimental to effective and informed decision-making.

6. Lack of Staff for Member States

Many WTO members are also hampered by a lack of staff to handle these extremely complex negotiations. The average staff capacity of member states is 7.38 delegates per developed country and 3.51 per developing country (South Center Working Paper 11). The United States has at least 15 staff just working on the WTO while several developing countries have just one person, who is responsible for both the UN in Geneva and the WTO.

7. Make up of the Secretariat

Compared to many international organizations, the WTO Secretariat is relatively small at 560 staff (see WTO 2002 Annual Report). A breakdown of the staff by region of origin indicates that the Secretariat is overwhelmingly European. In 2002, there were 371 staff from Europe, 23 from the United States and 10 from Australia. This compared to 19 from the entire African continent and 16 from all of South Asia. Moves towards internationalizing the Secretariat have been



extremely limited since the WTO was founded in 1995 (many staff continued from their time as secretariat to the General Agreement on Tariffs and Trade, which preceded the WTO).

8. The Role of the WTO Secretariat – neutral or aggressive agenda

The WTO is an intergovernmental organization. This means the Secretariat is circumscribed in its function, which is by and large to service the different committees and decision-making bodies of the WTO. The Secretariat is obligated by the WTO's mandate to facilitate sustainable development, raise living standards and provide employment through trade. The WTO was not established to promote a simplistic agenda of trade liberalization.

However, the rhetoric of the Secretariat's leadership, through media messages and WTO brochures, unambiguously promotes trade liberalization for its own sake – a message that many member countries may not agree with. The WTO Secretariat's public messages before Doha, for example, supported the launching of a new trade round before member states had agreed this was appropriate.

Successive Director Generals have invested their personal reputations on launching or completing rounds of negotiations, putting them at odds with their obligation to balance the rights and obligations of the membership as a whole. For instance, former Director General Mike Moore campaigned for the launch of a comprehensive trade round in the Doha process, and the current Director General,

Supachai Panitchpakdi, is campaigning for the completion of the round by January 2005. Their positions echo those of the Quad and other dominant states, at the expense of the majority of developing countries, who are unable to move at the pace of the largest trading countries.

This conflict of interest was exacerbated in September 2002 when Supachai Panitchpakdi appointed Ambassador Stuart Harbinson of Hong Kong as his Chef de Cabinet, making him second in command at the Secretariat. Harbinson was serving as Chairman of the Special Session of the Agricultural Committee, which is the body where governments are negotiating new rules for agriculture. Harbinson resigned as Ambassador but, at the insistence of some members, continued to serve as chairman of the agricultural talks, a position he continues to hold. This puts a member of the Secretariat in the extraordinary position of chairing intergovernmental negotiations, raising a number of concerns about the Secretariat's neutrality. Concerns were raised privately with the Director General and the Africa group was prepared to send a formal letter to the Director General, however, power politics came into play that split the Africa group on this issue.¹²

9. Technical Assistance

Currently there are approximately 120 developing countries that are WTO members, 29 are identified as least developed, and 25 of these countries do not even have an office in Geneva. Because the majority of members are understaffed given the demands of the



diverse and intricate negotiations undertaken at the WTO, governments have recognized the need for additional training for countries. However, this training, known as Technical Assistance (TA), has been criticized as inadequate by many members.

A recent review of the TA program by the Secretariat found that "Since 1995, WTO TA activities have now grown by 660% – from 79 activities in 1995 to over 600 activities requested for 2002."¹³ But the capacity to evaluate the effectiveness of TA activities is strictly limited. The Technical Cooperation Audit (TCA) of the WTO, in charge of designing evaluations of TA, is staffed by one person and evaluations are primarily conducted through "self-evaluation" by WTO staff carrying out the training. According to the WTO Technical Audit report, "The emphasis in the prevailing approach to TA in the WTO is on quantity. This is perhaps not surprising given the demand-driven notion. But within this there is a need to focus also on the **quality** of the capacity-building."¹⁴

According to one delegate from Africa, "the Secretariat attempts to put us through university in a period of three days, as a result I come out even more confused than when I started. These are complex issues that must be addressed in layers. We have to have a base first and then build on it. We can't do the whole thing together."¹⁵

Technical assistance has become a political tool for powers such as the U.S. and the European Union who link donor

money for TA with expansion of negotiations into areas of interest to them such as the Singapore issues. In other words, technical assistance is given to assist developing countries to take on more commitments. While no developing country objects to receiving technical assistance, they do believe that broader socio-political and economic implications should be the basis upon which to expand an already large agenda.

Pushing for Reform

After Doha, a group of developing countries expressed their opposition to the unpredictability and lack of accountability in the negotiating process. Several groups of countries pushed to create binding procedures as the Trade Negotiating Committee (TNC) for Doha was established. What resulted, however were non-binding "Principles and Practices," set out in a "Statement by the Chairman of the General Council." (TN/C/1, 4 February), which promised inclusion and transparency. The statement added specific guidelines for chairs, who were to "be impartial and objective...ensure transparency and inclusiveness..." and, most importantly, "facilitate consensus among participants and should seek to evolve consensus texts through the negotiation process." Chairs were asked to "reflect consensus, or where this is not possible, different positions on issues." These last two items continue to be subject to debate in the WTO. How much leeway should a chairperson be given to facilitate consensus? How should they reflect different positions? These vague guidelines are now in use as the basis of the Cancun



preparations. But concerns are rising amongst developing countries that the Chair of the General Council will not reflect different positions in the final draft Ministerial text for Cancun.

Having failed to get binding rules on procedures accepted with the establishment of the TNC, a group of 15 developing countries (who are part of the Like Minded Group) issued a paper with proposals on how to manage the preparatory process in Geneva and the negotiations during Ministerial conferences in April 2002. Some of reforms requested in their paper were very elementary:

- differences of positions should be clearly reflected where consensus is not possible,
- facilitators and the agenda of the Ministerial conference should be decided in Geneva and by consensus of all members,
- frequent formal general council meetings should be held during the preparatory process, with minutes for those countries who are not present
- new draft text should be provided with enough time to allow consultation with officials in national capitals before any decisions are required.

This submission by the Like Minded Group¹⁶ states, "If the majority of the membership has strong opposition to the inclusion of any issue in the draft ministerial declaration then such an issue should

not be included in the draft declaration." This was in reference to the inclusion of the Singapore Issues in the Doha draft despite vociferous opposition raised in the preceding informal meetings.

The paper also addresses Ministerial Conference procedures, questioning whether every Ministerial needs to launch or conclude new negotiations. Finally, the paper suggests holding all future Ministerial Conferences in Geneva because of the cost of meeting elsewhere for poorer members and the inability of all members to have a strong presence in different far-off places.

The paper was criticized by a group of eight countries led by Australia, New Zealand, Canada, Mexico, Hong Kong, China, Korea, Singapore and Switzerland who insisted the process should be more flexible and "avoid rigidities."¹⁷ These proposed reforms have been at a standstill since December 2002 and will likely be revived by the LMG weeks before Cancun in order to prevent a Doha-like scenario.

The Invisible Road to Cancun

The preparatory process for the Cancun Ministerial has highlighted the problems of the WTO's internal negotiating procedures. Remarkably, WTO members had no idea as of early July 2003 whether Ministers in Cancun would even try to agree on language for a declaration, or simply release a general communiqué as the outcome of the Conference. The preparatory process for Cancun limits countries to Heads of Delegation meetings



to express their views. Between the first draft Ministerial declaration and the Cancun meeting, there were only two General Council Meetings where delegates had the opportunity to formally address the draft Cancun text (July 24–25 and August 25–26th). Immediately after the July General Council meeting, some 26 countries plus the General Council Chair left for a Mini-Ministerial in Canada to discuss the draft in secrecy. Thus the full membership will have had only two chances to express their views on record, as the HODs are informal and therefore no minutes are circulated. It is possible for the General Council to meet off record also, which would eliminate any record of different views altogether apart from any written statements that countries circulate themselves.

Given the short amount of time allowed to come up with some sort of “consensus-based text” for the Cancun Ministerial, the entire process is in the hands of the Director General, as head of the TNC, and the Chairman of the General Council, Perez del Castillo of Uruguay. Because time is so short, the Secretariat will play a crucial role in “harmonizing” the texts of all the various subsidiary bodies of the General Council to fit the mandate given by ministers in the Doha Ministerial Declaration. The final draft could be a repeat of the Doha approach where informal, undocumented consultations reveal an “understanding” of the Chair who then produces a text “on his own responsibility.” Changing the Cancun text will be very difficult for most WTO members if the General

Council Chair does not effectively reflect differences.

Conclusion

Almost four years after the WTO's failure in Seattle, many of the central institutional weaknesses that caused the breakdown of that Conference have not been addressed – in fact, they have worsened. Much work is needed on WTO decision-making for the institution to take on a credible standing in the current global economic architecture.

A number of NGOs, including IATP, have examined the problems of process in the WTO and have outlined a detailed proposal called the Democracy Challenge (see full proposal at <http://focusweb.org/civil-society-call/>).

The Challenge calls for several reforms including:

- The “informal” green room meetings including “Mini-Ministerials” in the preparatory process of Cancun must be stopped.
- All negotiating texts in Cancun must be produced by the membership, and all members should have the opportunity to effectively participate in the drafting, revision and approval. Differences in positions should be fairly reflected as options for example by the use of square brackets. Chairpersons must not present any documents “on his/her own responsibility.”



- The agenda and any draft texts to be used as the basis for negotiations must be approved by the entire membership at a formal General Council meeting prior to the Ministerial in Cancun, and confirmed at a formal first business meeting in Cancun.
- All meetings must be inclusive and transparent. No Member may be excluded from meetings.
- When new language is proposed during the Ministerial meeting, the member(s) proposing the language must be indicated.
- Issues outside of the WTO's agenda (such as preferential access arrangements, aid, debt, etc.) must not be brought into the negotiations and held hostage to achieve a Ministerial outcome.
- The Secretariat should maintain neutrality during the Ministerial.

The current system is unaccountable, unpredictable, and undemocratic. But there are solutions to these problems and they can be realized. Clear procedures for negotiation, approved through the consensus process, must be established soon within the WTO. The WTO Secretariat and member countries need to appreciate that how agreements are reached is important and often determines what is decided.

References

- ¹ '96 and '97 numbers indicate over 2300 meetings and 2800 meetings, respectively, averaging over 10 meetings a day. (Source: South Center Working Paper 2)
- ² December 2 1999 'Joint Communiqué' by Latin American and Caribbean Countries at the Seattle Ministerial.
- ³ Based on interviews over three years with Geneva based delegations.
- ⁴ See Bibliography.
- ⁵ Mr. Mario Trabacchi is an institution in himself. He is listed as in charge of "Hall Security" at the WTO and has been at the institution for 26 years.
- ⁶ Personal Off the Record Interview; May 18, 2003, Geneva.
- ⁷ In Power Politics in the WTO, Kwa Aileen, pg. 18; Interview with Aileen Kwa, 22 February, 2002, Geneva.
- ⁸ Inside US Trade, June 6, « Agenda, Participants Finalized for Egypt WTO Mini-Ministerial. »
- ⁹ In the old GATT, Mr. Arthur Dunkel was prevented from presenting a 'GATT view' when he could not cite when, where and how, the Contracting Parties gave him such an authority....At the General Council on Thursday, the Chairman of the General Council, Mr. Stuart Harbinson of Hong Kong China ignored objections from several delegations, and without actually citing any precedent, insisted that he had the right to present on his authority draft texts for a ministerial declaration. » From SUNS, 5 November, 2001, « Trade : Attempts to repeat Seattle decision-making process at Doha ? » Raghavan, Chakravarti.
- ¹⁰ This phrase is taken from the recent South Centre Working Paper 15 « Single Undertaking: A Straight Jacket or Variable Geometry, Working Paper 15, » and expands the definition of what is officially meant by reverse consensus.
- ¹¹ JOB(03)/98 27 May produced a checklist of Issues for Cancun that mandate 11 issues for decisions or political guidance or stock-taking by Ministers, five recommendations and five reports.
- ¹² See Kwa, Aileen Power Politics in the WTO, pgs 51-52.
- ¹³ WT/COMTD/W/104/Rev.2, pg 7.
- ¹⁴ WT/COMTD/W/11, 28 March 2003, pg 11.
- ¹⁵ Background personal communication. April 14, 2003.
- ¹⁶ WT/GC/W/471, 24 April 2002, Communication from Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe
- ¹⁷ WT/GC/W/477, 28 June 2002



Glossary of Terms

Brackets: Square brackets are often used in international negotiating text to indicate disagreement among governments on language. Often, several options are presented within successive brackets, representing divergent positions. Where text is not bracketed, it indicates that the negotiators have agreed on that language.

"Chair's Own Responsibility" or Chair's Text: An alternative to bracketed text, this phrase indicates that while there is no consensus among the membership, the Chairperson will use the role of Chair to submit a document on his/her "own responsibility." The draft text prepared for the Doha Ministerial was the first time in WTO history that the Chair prepared language on his own responsibility, without brackets, or annotations explaining differences in members' positions, for presentation to Trade Ministers. For the Cancun 5th Ministerial, Chairs of certain bodies have already presented entire sets of documents on their own responsibility to members. The first version of the draft Ministerial text was also drafted on the General Council and the WTO Director General's own responsibility.

Consensus: Consensus-based decision-making, rather than majority voting, is formally incorporated in WTO rules under Article IX:1, which defines consensus in the following terms: "The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is formally taken, formally objects to the proposed decision." (From South Centre Working Paper 11)

General Council: The General Council is the highest decision-making body of the WTO, after Ministerial Conferences. Composed of all the members of the WTO, the General Council governs all the Committees in the WTO. It also serves as the Dispute Settlement Body and the Trade Policy Review Mechanism. When Ministerial Conferences are not in session, it is the WTO General Council that makes decisions.

"Green Rooms" or Small Group Consultations: Exclusive meetings held by "invitation only," these often occur without other members being informed that the meeting is taking place. The "Green Room" refers to the green décor of the room near the Director-General's office in Geneva where key members would meet in secret to iron out differences and often set the agenda of the GATT and then WTO. Despite resolutions to change this practice, exclusive meetings are continuing during preparations for Cancun.

Heads of Delegation Meetings (HODs)/HOD plus one: This refers to the format of meetings held both in the Doha and the Cancun preparatory processes where only the Ambassador (Head of Delegation) of a WTO Mission is invited to attend. These meetings usually are in "plus one" formats where the Ambassador can also select his/her deputy or counselor to attend with her/him. They are usually informal meetings, which means no record is kept of the discussion.

Reverse Consensus: This term is normally used at the WTO when members wish to reject a panel report from the dispute settlement mechanism. Reverse consensus requires that all members agree to reject the report. The use of reverse consensus is now informally spreading to negotiations, where a Chair's text almost requires rejection by consensus.

Special and Differential Treatment (S&D): Special and Differential Treatment dates back to the Havana Charter of 1947 and embodies the principle of integrating development concerns and special needs of developing countries in establishing an equitable global trading system among dramatically unequal powers. S&D Provisions in the WTO consist primarily of longer implementation periods for certain agreements and lesser liberalization in certain areas for developing countries. Currently, this is an area of intense negotiations with around 80 proposals to make it mandatory and meaningful.

Single Undertaking: While initially this term meant that all negotiations would begin and end at the same time, this concept was re-defined during the Uruguay Round to mean all parties must agree and sign all the agreements. A common descriptive phrase is "nothing is agreed until everything is agreed." (A recent paper by the South Centre deals in depth with this issue: "Single Undertaking: A Straight Jacket or Variable Geometry, Working Paper 15.")

Trade Negotiating Committee (TNC): This committee was formed during the Uruguay Round to oversee negotiations on all the various issues under consideration. It reports to the General Council.

Technical Assistance and Capacity Building (TACB): Services financed or provided by donors and development agencies to strengthen trade-related institutions and build trade capacity in developing countries. In the WTO, it refers to the Technical Assistance Plans, which aim to meet the demands of developing country members through seminars, workshops, and three-day or two to three week courses on various trade topics of the WTO.

Sources:

World Trade Organization:

www.wto.org

GATT – Agreement on Agriculture:

http://www.wto.org/english/docs_e/legal_e/14-ag.pdf

WTO Legal Documents:

http://www.wto.org/english/docs_e/legal_e/legal_e.htm

Doha Declaration and Negotiations:

http://www.wto.org/english/tratop_e/dda_e/dda_e.htm

WTO Agriculture negotiations:

http://www.wto.org/english/tratop_e/agric_e/negoti_e.htm

Organization for Economic Cooperation and Development (OECD) on Uruguay Round and Agriculture:

<http://www.oecd.org/EN/home/0,,EN-home-141-nodirectorate-no-no-no-24,00.html>

UN Food and Agriculture Organization (FAO) on WTO/Uruguay Round and Agriculture:

<http://www.fao.org/trade/index.asp?lang=en>

U.S. proposal for AoA negotiations:

<http://www.fas.usda.gov/itp/wto/as>

European Commission proposal for AoA negotiations:

http://europa.eu.int/comm/agriculture/external/wto/officdoc/index_en.htm

U.S. Farm Bill 2002:

<http://www.usda.gov/farmbill/>

European Union's Common Agriculture Policy:

http://europa.eu.int/pol/agr/index_en.htm

U.S. Dumping on World Agricultural Markets: Can Trade Rules Help Farmers?, Institute for Agriculture and Trade Policy, 2003.

http://www.tradeobservatory.org/library/uploadedfiles/United_States_Dumping_on_World_Agricultural_Ma.pdf

Managing the Invisible Hand: Markets, Farmers and International Trade.

Institute for Agriculture and Trade Policy, 2002.

http://www.tradeobservatory.org/library/uploadedfiles/Managing_the_Invisible_Hand_2.pdf

Development Box Proposals:

http://www.iatp.org/tradeobservatory/library/index.cfm?c_id=42

**Institute for Agriculture
and Trade Policy**

**2105 First Avenue South
Minneapolis, Minnesota 55404 USA**

www.tradeobservatory.org

WTO Cancun Series
Paper Number 4

WTO Decision Making:
A Broken Process