

Power Politics in the WTO

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PREFACE

The World Trade Organization (WTO) 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 Conference of the WTO 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.

This publication is an effort to throw much-needed light on this sordid process. This much-needed study 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

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.

Ambassador Nathan Irumba, Mission of Uganda and Representative of the Least Developed Countries (LDC) at the WTO.¹

This is quite a remarkable statement. Six years after the founding of the WTO, and three years after the debacle of the Seattle Ministerial, the representative of the poorest members of the WTO feels it is still necessary to ask for 'fair and equitable rules'.

But the WTO prides itself exactly on being a 'rules-based' organization. The argument is that without the rules of the WTO, world trade would descend into the anarchy of the jungle. And then, we are told, the poor and the weak would go to the wall.

This image, as we are about to demonstrate, is not true.

This paper will show that at crucial points in the WTO system, there simply are no rules. Attempts to set 'fair and equitable' rules are routinely rebuffed. Some rules are made up on the spot in a way that cannot be 'fair and equitable'. And the rules that do exist are commonly flouted, not just by the rich and powerful countries, but also by the supposedly neutral WTO staff.

But there is one respect in which the WTO scenario outlined above is quite true. The poor and the weak are going to the wall. And precisely because of the WTO and its rules.

The claim is made not by ideologues with an axe to grind, not by ivory tower academics, not by people who can be brushed aside as anti-WTO activists. It is made by the people best placed to know, by ambassadors and government officials to the WTO. These are the people who are supposed to represent the interests of the weak and the poor. Their own words show how the South is marginalized in the WTO.

Developing countries are reduced to damage control and scrabbling to secure negligible benefits. A few with sufficient negotiating clout are given minor rewards to ensure their compliance. Most receive nothing, and silently acquiesce against their better judgment, condemning themselves to the enlargement of a system that has so far proved to be highly unbalanced and detrimental to their own interests. They do this to avoid the consequences of displeasing the politically and economically powerful.

The marginalization of the South in the WTO is a serious concern. The WTO now wields executive power over 23 separate agreements, from trade related investment measures (TRIMS), to intellectual property rights, agriculture, and industrial goods. The Fourth Ministerial Conference at Doha in November 2001 put more agreements on the table. Member states are required to change their national laws to ensure compliance with WTO agreements. Non-compliance can result in a country being hauled before the Dispute Settlement Body, the WTO's own court of law. This report presents evidence of the manipulation and subversion 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? We show the exact points in the process and the strategies that allow the will of the majority to be subverted.

Unless the rules by which the WTO itself operates are made fair, 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. This 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 signed 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

B. L. Das, former Indian Ambassador to the GATT, also describes how developing countries end up compromising their own interests:

If [developing country negotiators] feel that any proposal is not in the interest of their country, they oppose it. 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.³

The strategies used by the powerful to bring about such an outcome are the topic of this publication.

The voices of developing country negotiators that appear in this paper are seldom heard by the public. Yet they are the ones that 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 Most delegates, out of fear of repercussions on their jobs or pressure on their capitals, have chosen to remain anonymous.

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- 1 *Speech delivered on 11 April, Geneva, cited in South Bulletin 33, 15 April, 2002.*
 - 2 *Quoted in Kwa 2001 'Power Politics To Cripple WTO Ministerial', 9 November, www.focusweb.org/publications/2001/power-politics-to-cripple-WTO-ministerial.html*
 - 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](http://www.twinside.org.sg/title.td8.html)*
 - 4 *Many thanks to Fatoumata Jawara for arranging a number of interviews.*

Chapter

**Personal accounts
by developing
country negotiators**

1

In this chapter developing country trade diplomats based in Geneva 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. The italics in the quotations are ours and are intended to highlight the anti-democratic practices of the WTO.

Country 1

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 marginalised 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.

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 say this not 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, developed countries 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.

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 have become 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 at Seattle, even though that was not the objective.

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 extracted by the industrialized countries out of this disaster. I would even venture to say that if September 11 had not happened, the Doha ministerial declaration would not have contained even half of its obligations. We cannot deny that many 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.¹ He 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, its 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 led in the direction of slow destruction, of our customs, our economies and of the sovereignty of our countries.

Country 2

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. 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 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 of the WTO], the new Director General would come from a developing country. From the beginning Supachai Panitchpakdi [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 developing and least developed 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 developed countries an opening, and they began to put pressures on 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 Group² was formed, led by the Indian delegation but including developing and least developed countries from all regions. The Like Minded Group presented more than 100 proposals on the problems related to the implementation of the WTO Agreements.

I was witness to how the officials of the developed countries communicated with the Capitals of developing and least developed countries, with the goal to stop the delegations in Geneva from continuing to speak about 'implementation issues'. 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 Ministerial Conference, a process of building trust began at the WTO. However, this process consisted of little more than words. In spite of hours of discussion, work, proposals, and reasons presented by the developing and least developed countries [on implementation issues], 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, as a coalition, attempts to achieve balance in the work of the WTO. 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 which a few use to increase their wealth at the cost of the majority.

Country 3

The multilateral trading system is of critical importance to many developing countries. 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 measures of

the traditional areas of GATT. With the launching of a new round of trade negotiations at Doha, the WTO remit may be broadened further, constraining the policy space of countries.

Prior to the Uruguay Round, many countries, especially the LDCs, did not participate fully in the negotiations - in the exchange of concessions - since LDCs were exempt from GATT disciplines, and were not required to make reciprocal concessions. But they benefited from tariff reductions negotiated among developed countries and preferential access to markets of developed countries. 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. Developing countries have carried on reforms and taken on obligations required by the WTO. 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 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 their participation, one can look at the extent to which, in practice, the WTO effectively responds to and meets the development needs of these nations.

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 IX of the WTO Agreement, which provides for voting.

The operations and activities of 'green-rooms' remain the preserve of mostly the developed countries. On some occasions, some developing and least developed 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 formal meetings, for Chairpersons are invariably eager to move on after being party to informal consultations. There are times when some Chairmen 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.

In the Singapore ministerial, a number of developed countries wanted to initiate negotiations on the 'new issues' (investment, competition, government procurement and trade facilitation), including labour standards. This move was opposed by developing countries. 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. A new round was agreed upon, 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.

The WTO is a standing negotiating forum. The many daily meetings are perpetual negotiations and consultations. 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 only a couple of 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.

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- 1 *The interview was given before September 2002. The Director General referred to is Mike Moore.*
- 2 *An informal group of developing countries that meet regularly on WTO issues in Geneva. Members include Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe.*

Chapter

**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.

The informality of the process means that, in fact, it is a process of consultation and discussion behind closed doors. This 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.

(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)¹

The WTO-official line

Former WTO Director General Mike Moore always presented the WTO as democratic, rules-based and member-driven. At a conference on democracy and free trade, he stated:

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 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.²

The rhetoric cracks in Seattle

The supposedly democratic nature of the WTO was exposed in Seattle in December 1999, when member governments at the ministerial revolted. The ugly secrets of how the institution actually functions became public,

much to the embarrassment of the majors. 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 communique from the Latin American and the Caribbean countries.³

This was a public relations disaster for the host country, the United States, and the WTO's then Director General, Mike Moore. The developed countries were quick to placate angry members.

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.⁴

The UK Trade and Industry Minister, Stephen Byers, also said:

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.⁵

The false dawn of democracy

After Seattle, the WTO took up these problems with apparent seriousness. The 2000 Chair of the General Council, Ambassador Kare Bryn of Norway reduced the numbers of green room consultations in favour of small group meetings with different members, followed by 'informals' open to all. Ambassador Bryn's efforts were widely viewed by developing countries as genuine attempts at greater democracy.

In April 2000, Ambassador Bryn presented a discussion paper, raising fundamental

questions about the democracy of WTO decision-making processes and proposing checks on the abuse of power by influential members.⁶

But by July 2000, the hopes of a set of binding rules had faded. All that remained was a Chairman's statement containing 'guidelines' rather than rules:

- 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.⁷

Even though many members wanted more work to continue in this area⁸, nothing concrete emerged. Worse still, these minimal principles were not applied to future processes.

In the initial phase of preparation for Doha, some delegates in Geneva felt that, the process was becoming 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. But delegates of the small economies would be invited to some consultations, when before they were totally excluded. However, the moment the powerful countries felt the pressure, the same secretive, non-democratic and exclusive negotiating practices re-emerged.

This was clear from the two Mini-Ministerials held before the Doha ministerial, in Mexico in August 2001, and in Singapore in October 2001. Only about 20-22 countries were invited to each meeting. There was a small change from previous 'green room' practice. The LDC co-ordinator, Tanzania, and the African Group Coordinator, Nigeria, were present at both Mini-Ministerials. The problem was that no country had surrendered negotiating rights to

these representatives, although it was assumed by the influential countries that such representation was sufficiently inclusive.

Some delegates in Geneva tried to get invitations, but the WTO Secretariat claimed no responsibility for those meetings, and the host countries said that they were merely providing facilities, and were not in a position to issue invitations.

The 'majors' 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 in 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)⁹

- 1 WTO WT/GC/M/57 14 September 2002 'Minutes of Meeting, 17 and 19 July 2000'.
- 2 Moore 2002 Speech delivered at the Conference on Democracy and Free Trade, Qatar, 26 March, 2002.
- 3 December 2 1999 'Joint Communique'. The Communique states 'The undersigned Latin American and Caribbean countries, represented by their respective ministers to the WTO... attending the 3rd WTO Ministerial Meeting... wish to declare as follows: ... To the authorities of the Conference and the WTO Director General office, their express disagreement with the way in which negotiations are being conducted at the Ministerial Conference, a way that shows 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. 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.'
- 4 Press briefing, Seattle, 2 December, 1999.
- 5 Guardian News Services, 'Deadline Set for WTO Reforms, 10 January, 2000.
- 6 JOB(00)/2551 26 April 2001, 'General Council: Internal Transparency and the Effective Participation of all Members. Discussion Paper by the Chairman'. Paragraph 3 of this paper raises an important question, 'While agreeing that decisions should only be taken within the formal, open-ended processes established within the WTO, would there 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?'
- 7 WTO 2000 WT/GC/M/57 Minutes of Meetings on 17 and 19 July.
- 8 These are reflected in WT/GC/M/57, Minutes of meetings on 17 and 19 July 2000.
- 9 Interview with Aileen Kwa, 22 February, 2002, Geneva. Comments by Chidyausiku in this paper come from this interview.

Chapter

**The story of Doha -
reflections of
developing country
delegates**

3

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 Doha¹

The battle over new issues

The main fight in the run-up to Doha was the attempt by developed countries to expand the scope of the WTO to include the so-called Singapore issues (investment, competition, transparency in government procurement and trade facilitation). The majority of developing countries, overburdened by their commitments from earlier rounds, were not in favour of these issues.

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)

The process leading to Seattle was cumbersome. We never reached an 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)

There were many problems for developing countries in the development of the Draft Declaration for Doha. One was the way the Draft ignored suggestions from developing countries 'by magic'.

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)

Many delegates blamed a consultation process where there was the appearance of participation, but no substance.

There were intensive plurilateral consultations before Doha. In these

consultations, it was as though you were just talking to the wall. 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.

(Southeast Asian delegate)

Pressures were increased on stand-out countries.

Pressures were put on Tanzania (representing the LDCs). Even before the Zanzibar meeting (LDC meeting in July 2001), 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. When Doha came closer, negotiations were more concentrated at Capital level.

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)

Some of the pressure came from the supposedly neutral WTO Secretariat itself.

Then came arm-twisting as the ministerial approached. This was done by the US, EU and Director General [Mike Moore]. The DG started calling individual ambassadors on Saturdays and Sundays, asking them for their cooperation, because he needed a new round.

(Asian delegate)

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)

Chairman of the General Council Stuart Harbinson released two drafts for Doha. The first 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 on 27 October 2001 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.

Nigeria issued a statement denouncing the second Draft Declaration

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.²

As we shall see later, something then happened to make Nigeria change its opinions on this.

So how could a text that had not been properly approved go to the Doha Ministerial? Ambassador Chidyausiku of Zimbabwe explains:

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.

But this was in fact false. Even though Ruggiero had indeed sent a letter on his own responsibility to the Ministers, the General Council had not been by-passed. There were many brackets in the draft declaration that was sent to the Singapore Ministerial, and similarly for Seattle. Ambassador Chidyausiku again.

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.

So rather than a text with options, reflecting genuine disagreements, what went to Doha was a clean text, falsely implying agreement, and a very brief cover letter superficially noting objections.

Once in Doha, another procedural rabbit was pulled out of the hat - facilitators.

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?

(Ambassador Chidyausiku,
Zimbabwe)

The process itself was strange. Right after first plenary, there were facilitators that were chosen without consultation with members. And even these facilitators were 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 upon and there was only one problem - the 'phasing out' of export subsidies by EU. He did not meet in an open-ended session. 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.

(South Asian delegate)

Committee of the Whole (COW)³ plenary meetings were 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 delegate)

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.

(Ambassador Chidyausiku,
Zimbabwe)

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. Yet the African, LDC and ACP countries had not relinquished their negotiating rights to their group representatives, nor were they consulted on this issue.

These presumed representatives then came under severe attack by the powerful countries.

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. 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.

(African delegate)

The impartiality of the Secretariat was again in question.

The Chairman to the Ministerial Conference 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)

Pressures mounted as heads of state 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 Presidents and Prime Ministers of some African and Asian countries. As a result, delegations in Doha receiving calls from their capitals. The US exerted much pressure on the President of Pakistan, who gave instructions that the Ambassador softens his position. As a result, Pakistan played a meeker role than they would have otherwise done.

British Prime Minister Tony Blair called Indian Prime Minister Atal Behari Vajpayee at midnight of November 13, 2001, when WTO Members were in the final stages of hammering out a Ministerial Declaration.⁴

Blair: I just wanted to say very briefly that we would very much like to get the trade round agenda agreed at Doha...I believe

we go 142 out of 143 countries now signed up.

Vajpayee: Hmm...Hmm

Blair: We really need India to do this now. I hope very much...that you will be able to find a way through, Sir, because otherwise it will be, I think, a great shame, if this round fails as a result of that.

Vajpayee: How many countries have signed?

Blair: I am told that now 142 out of 143 countries...can sign up

Vajpayee: Oh, that is not the situation Mr. Prime Minister. We are having discussions with other developing countries and there is a lot of opposition...

Blair: Then I have been told the wrong thing... but I think... but that's certainly what I have been told sir... I was just going to say if there is anything at all you can do...at all to solve the issue, we would be, I think, everyone will be extremely grateful...

Vajpayee: We are trying to do that. But... the Cabinet before the Commerce Minister left, had given a brief to the Commerce Minister...And he is in Doha... he is to follow that. But I hope there will be some solution at the end of the talks.

Blair: I hope so too. That's all that I wanted to say to you, Mr. Prime Minister.

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.

The DG [Mike Moore] told Ministers of the invited countries that only two members from a delegation could enter the 'green room' i.e. the Minister and one other. It was no coincidence that they kept the room small.

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

(Ambassador Chidyausiku,
Zimbabwe)

13th November 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. The security was provided by 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 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 only 23 countries present in the critical 'green room' of the 13th, where the final deal was sealed. They were: Australia, Brazil, Botswana, Canada, Chile, Egypt, the EU (Pascal Lamy), Guatemala, India, Japan, Kenya, Malaysia, Mexico, Nigeria, Pakistan, Singapore, South Africa, Switzerland, Tanzania, Uruguay, USA, Zimbabwe, Chair of the General Council (Hong Kong), and the DG.

While most delegations were only allowed two representatives, the US apparently had five.

Most developing countries had been excluded and some of those present were debarred from speaking. And then the gloves came off, with the supposed referee, the WTO DG, taking sides. 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 behalf of developed countries. The Canadian Minister, Pettigrew, was so insolent to the extent of insulting the Minister of India (Murasoli 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.

The Indian Commerce Minister Maran was insulted by two countries in a most brutal way. And then, the DG [Mike Moore] 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.

An Asian delegate adds:

The DG [Mike Moore] also asked the Indian Commerce Minister, 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.'

Note that the burden of proof had shifted from those making new proposals to those not wanting them.

Since the developing countries (e.g. Nigeria) failed to speak up on that final night, the EU took the chance to push through all their issues. Now the EU argues that all the four issues (investment, competition, trade facilitation, transparency in government procurement) are part of the single undertaking.⁵ In the final 'green room', it was only the EU's position that prevailed. They kept raising their ambitions, and developing countries were not able to stop them on that.

(Asian delegate)

It was widely reported that while Nigeria had earlier been quite firm in its opposition, it suddenly went silent in this final meeting, clearly unable to withstand political pressures.

A developed country delegate offered a different perspective:

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 upon. 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. There was tough language being used at the end of the night.

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

They got the deals they wanted because 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.

While developing countries' delegates inside the meeting were being negotiated to exhaustion, those outside were left in the dark.

We waited till 9 or 9.30 pm 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. 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 7 am. Our Ambassador was briefed by another Ambassador.

An EU member state delegate 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)

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).

The 'green room' of the 13th produced an outcome that was clearly different from the original positions of the Africans and LDC countries, causing a lot of confusion and anger amongst many. An ACP/LDC/African Group meeting took place on the 14th, when the text from the 'green room' was presented. An African delegate has written the following account.

A feeling of deep disappointment and betrayal filled room, 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 Botswana, Dominican Republic, Egypt, Ivory Coast, Kenya, Jamaica, Nigeria, South Africa, Tanzania and Zimbabwe. 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 all about of give and take. 'If we are not ready to give away something, issues where we have made some considerable gains, especially 'implementation'⁶ 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 Fifth 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 Fifth 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.

Among those who found the revised draft acceptable were Botswana, Egypt, Kenya, Mauritius, and Tanzania.

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 Burundi, Cuba, Dominican Republic, Grenada and Zimbabwe. 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 Egypt's Minister 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.⁷

Back in plenary last-ditch effort was made to include the views of developing countries. 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 Cuba, India, Jamaica and Zimbabwe.

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 Committee of the Whole was adjourned. The DG [Mike Moore] was locked up with the Indians negotiating on how to break the impasse, but not the others. Only when they struck an agreement with India that the Qatar minister would give a clarificatory statement on the launching of negotiations on new issues, did they send 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 couldn't 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.

That is how they came up with the explanation from the Chair on his understanding about the new issues.⁸

Once the opponents had been bullied into submission, it was necessary to manufacture the appearance of consensus.

You could see that once they thought they had agreement on the final day in the Committee of the Whole, they arranged the order of the speakers 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. 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. In that 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).

A frequently asked question after 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 ACP-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. There was so much pressure during negotiations that they did not have the guts to say, as far as my national position is concerned, this is not in our interest.

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, Kenya and Pakistan, for example. Some could only go up to a certain point.

Technical assistance was offered to the losers. This supposedly is to compensate for the weak bargaining position of developing countries. But does it address the real problem? 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. 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?

Our trading partners were quick to notice this line of thinking, which is weak. 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.

The countries that are going to give you [technical assistance] are interested in investment and competition, where they want developing countries to be engaged in negotiations. We want technical assistance to address major obstacles for our trade. 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.

Developing countries also found it hard to risk the possibility of not securing the WTO waiver for the EU/ACP Cotonou Partnership Agreement, giving special access to EU markets. Ambassador Chidyausiku:

We blinked again, when they said, if there is no progress on negotiations, there is no 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. And those preferences are only there for five years.

The impact of September 11 on Doha

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. Launching new trade talks and security issues, before only remotely connected, became one and the same cause.

Many developing countries suddenly found themselves in too vulnerable a situation to continue opposing the US and EU. No matter how ludicrous the link between a new round and the fight against terrorism, countries were tiptoeing around the threat of being charged with supporting 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.

Long-time WTO analyst, Chakravarthi Raghavan has suggested (with some humour) that the new round could more accurately be called the 'Bin Laden 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.

It was a positive effect in getting an agreement. 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.

September 11th was not the only factor that may have softened up the opposition to the Doha round. Here we look at selected countries and note changes in their position and other events that may be significant.

While Pakistan continued opposing a new round, their position on the launch 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 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. 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 2004.⁹ 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 in fact publicly announced that he was extremely disappointed with the outcome of the package.

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.' It is not clear what Malaysia received, but some package was indeed doled out to them. Since September 11, they have also been cooperating closely with the US on the 'war against terrorism' in Southeast Asia.

Due in large part to Pakistan and Malaysia's reticence post-September 11, the Like Minded Group (LMG)¹⁰ 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.

The other country that played a significant role in the outcome of Doha was Nigeria, representative of the African Group in Doha. Their position pre-Doha, and even during Doha, underwent a 180-degree shift on the final day of the ministerial. Did September 11 play a role here? Perhaps, although ties were already close between the US and President Obasanjo, which no doubt would have constrained Nigeria's ability to resist US pressures. 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. After 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).

Like Nigeria and Kenya, Tanzania, as a representative of the LDCs were also pressured. Entering the ministerial, Tanzania represented a united position on 'no new issues', yet on 14th November in the Committee of the Whole, Tanzania said that they had a 'sense of happiness'¹¹ with the outcome of the Doha Development Agenda. A week after Doha, the World Bank and IMF agreed to debt service relief for Tanzania for US\$3 billion under the Heavily Indebted Poor Countries (HIPC) initiative.

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-out in the tourism sector. The war on terrorism, anti-money laundering and the narcotics trade are likely to have influenced how far these countries could go in their opposition at Doha.

India's commerce minister Murasoli Maran fought a brave fight to the end. Unfortunately, the accusation of supporting terrorism if they continued opposing the new round may have contributed to India's decision finally to back down when they found in the last 'green room' that they were indeed alone in that group. They would also have had to bear the brunt of the political / trade costs had they held up the talks, very likely in the form of trade sanctions by the majors. This was perceived to be too costly domestically.

Indonesia came under pressure from Japan regarding accepting negotiations in investment. The week before Doha, Japan made a bilateral agreement with Jakarta offering investment. This was made on condition that Jakarta agrees to an investment agreement at the Ministerial.

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- 1 *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.*
- 2 *WT/GC/W/454; 2 November, 2001 'Nigeria's Reaction to the Revised Ministerial Text', 29 October, 2001.*
- 3 *Plenary meetings convened at WTO Ministerials composed of the entire membership.*
- 4 *Hindustan Times, 7th December, 2001.*
- 5 *The single undertaking means that all the different agreements have to be negotiated and adopted as a single package. In the earlier draft of the 13th, the 'new issues' were not part of the 'single-undertaking'. However, the EU post-Doha has been arguing that in the final text that was adopted, the new issues are a part of the 'single undertaking' since the declaration refers to 'negotiations'. Many developing countries disagree*

with EU's interpretation, given the Chairman's clarification made at the closing session of the Ministerial. Minister Kamal said,

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

- 6 *Implementation issues refer to developing countries' proposals on bringing equity to the Agreements that resulted from the Uruguay Round. In fact the give-and-take here did not come out equal. All that the developing countries won at Doha on implementation was in 'best endeavour' language, therefore it is non-binding, and dependent on the good will of the developed countries, which a year on, has still not materialised. For example, the July and December 2002 deadlines for agreement on strengthening Special and Differential Treatment provisions for developing countries have not been met.*
- 7 *Seatini internal files, 2002.*
- 8 *See footnote above on Chairman's Clarification.*
- 9 *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).*
- 10 *An informal group of developing countries that meet regularly on WTO issues in Geneva. Members include Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe.*
- 11 *Notes from Maud Johansson, Member of the Swedish delegation.*

Chapter

**Manufacturing
consensus and
what it entails**

4

Is consensus decision-making really democratic?

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.

In theory, consensus means that a single member, no matter who, is able to object to, and hold up a decision on any issue. This theoretical understanding is also used by the Secretariat and the influential countries as evidence of the WTO's democratic nature.

In practice, consensus is assumed when there is no formal objection to a decision by any Member present at the meeting. It does not mean active agreement, merely the absence of objection. Silence is therefore taken to mean consent. Consensus decision-making can be democratic if and only if countries are free to voice their dissent. In practice, the power politics at play in the WTO means that dissent by any one country in a formal meeting, and the consequent blocking of consensus, is rare.

As one Southeast Asian delegate observes:

Many developing countries think that consensus is good, because we can singularly 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.

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.

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 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, also falls into this category. The majority of developing countries never make it into this circle of decision-making.¹

This is achieved through 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. Members are invited 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 consultations have been taking place without the knowledge or inclusion of many countries. When the Chair is sufficiently confident that his/her 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. Finally, a formal General Council meeting is convened and the decision is taken there by consensus i.e. no member present objects.

So, although the decisions of the WTO affect the lives of people in all member states, the process of decision-making is quite arbitrary and dependent on the Chair and those countries that have influence over her/him (usually the QUAD).

This process of manufacturing consensus requires the 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 formally reject the package.

This is achieved by an elaborate mixture of strategies of marginalisation, influence-peddling and even outright coercion, made

possible by the huge differences in power between the players. We will here look more closely at 3 strategies.

- 1) Institutional and procedural deficiencies that marginalise the majority
- 2) Use of bilateral threats to silence developing country negotiators
- 3) The bias of the WTO Secretariat.

Section I

Institutional and procedural deficiencies that marginalise the majority

A significant number of delegations experience outright exclusion from consultations, or are included only on some issues and not others.

Bulgaria, for example, 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 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.²

One African delegate, exasperated with 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.

The non-existence of binding rules on the conduct and role of the Chair has given the Chair enormous powers. Experience has shown that arming the Chair with such a broad space works against the interests of developing countries. The Chair essentially has the ability to decide whether or not to consider all positions equally, or to give prominence to one or two positions over others.³ This may depend on the personality, or ideological leanings of the Chair, or it may be affected by the pressures exerted on him/her.

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.

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.⁴

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.

Regarding the selection for the Chair of the General Council (for 2002, Canadian Ambassador Sergio 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, the Majors have tightly controlled the procedures by which Chairs are chosen. A well-known example is the way the names of the facilitators chosen during the Doha Ministerial seemed to have 'popped up out of nowhere.'

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

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'. Consensus now seems to mean that you 'tolerate' decisions, not agree to them.

Even though Ambassador Kare Bryn recommended in July 2000 that open-ended small group consultations should be announced and open to all, 'small group informals' are regularly held without announcement. It is therefore difficult for delegates to find out what consultations are taking place, where and between whom. This system works against those who are already resource-strapped and have to spend time and effort simply trying to find out what is going on.

Small group meetings are usually justified with the claim that they are open-ended, and no final decision is made at them. The final proposal is presented to the entire membership, and a decision is taken when members who are opposed can, in theory, object.

One Egyptian delegate has pointed out that there is a stark difference between decision-making and "decision-taking" that is not being acknowledged.⁵ In reality 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.

The rationalization for small group meetings is always "efficiency". 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 one-country-one-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 altar of efficiency.⁶

Opposing views are not taken seriously. 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 Chairs do not pay attention. If this is not something already agreed before that meeting, you can be sure that you cannot get it.

This view is echoed by a Southeast Asian delegate:

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

A surprising amount of WTO business is conducted in an 'informal' mode, off the record. This adds ambiguity to the process and provides unnecessary space for the 'majors' to influence interpretations of these ambiguities to suit their concerns.

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 give 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 from the past that can help them to understand the present. It is very important institutionally. But the WTO has a preponderance of informal meetings. There are a huge number of them.

Developing countries suffer from acute staff shortages that limit participation. In 2000, 24 countries had no permanent presence in Geneva. The average delegation of a developing country is 3.5 compared to the developed countries average of 7.4⁷. 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.

Even the most active and articulate delegations are severely short of staff. Their expertise is in no way comparable to that available in developed countries. In addition, developed countries obtain detailed information from their corporate lobbyists. As a result, they know the economies of their trading partners, often even better than government negotiators of those countries.

This asymmetry gets accentuated 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.

A South Asian delegate says: *'Efficiency is pursued at the expense of democracy when it suits the big powers.'*

Unnecessarily short decision-making timeframes disallow democratic consultations at a national level. For example, at the Doha Ministerial, the final Draft Declaration was 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 consulting not only with the trade ministry or government in capitals, but a broad range of stakeholders. When efficiency is prioritized before democracy, special interests can prevail over the interests of the majority. This may be the rich countries over the poor, or an elite in rich countries over the rest of their population.

The representative of Bulgaria highlighted this problem after Seattle.

The two key factors 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.

One LDC delegate, recounting her experience at a WTO meeting on LDCs and the Proposal on the Integrated Framework, 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.

Delegates returning from the Doha Ministerial, pointed out that developing country Ministers are at a grave disadvantage.

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, 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 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 issue of instituting a Trade Negotiating Committee, 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?

Section II

Bilateral pressures, self-censorship and coercion

The most effective exercise of power: self-censorship

Pressures by the powerful countries are exerted, either in Geneva, or in Capitals, on those countries that resist, to lay the ground for 'consensus'. These pressures inevitably take place under the tightest cloak of secrecy. Those exerting these pressures would certainly not want a broader constituency to find out about their backroom threats. Those being threatened would also be too fearful to speak and risk worse reprisals. Others who caved in under pressures would also not want 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 seldom brought up, when one talks about decision-making. This can be termed as the ‘subterranean’⁸ component of trade negotiations, as opposed to the ‘official’ reality (decision-making by consensus, consultations etc). These subterranean deals are a 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 is accepted.

Fear of reprisals, whether explicit or not, leads to self-censorship. The powerful exert little or even no public effort; yet, to a large extent, they control the behaviour of others.

Self-censorship, the inability to voice objections, puts in serious doubt the democratic principles of WTO decision-making. According to one analyst:

Many developing countries point out that they often fear the consequences of expressing their objections publicly, and hence choose the alternative 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?⁹

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]? If the US phones my Capital, they will not say, there is this boy, he is trying to change TRIPS for the interests of his country.

They will say, there is this boy working against the interests of the US, he is infringing on the good relationship between US and....

The political changes after September 11 increased this climate of fear. 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.

If self-censorship does not work and countries are prepared to speak up for their own interests, pressure will be applied in a variety of ways.

Often, pressure is exerted in Capitals. The missions of either the EU or the US usually play a key role, sending the message to their host countries about the line they need to toe to protect EU or US interests. One delegate said that the US Ambassador 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.

One delegate relates how such pressure tactics are 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, we will give you 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.

Key Ministers are earmarked by the Quad to break the ranks of developing countries. This was 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.

A wedge is driven between negotiators in Geneva and their Ministers, considerably weakening the ability of countries to hold on to a negotiating position. One delegate explained the preference of the Majors to lobby at the Ministerial level in Capitals, and the resultant division that this causes:

There is a Geneva-Capital divide. 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 brought in:

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.

This strategy of lobbying Ministers continued even after Doha. According to one delegate, it was a Friday (in January 2002) when the issue of giving the Chair of the TNC to Mike Moore was heatedly discussed with many delegations raising objections. However, by

the following Monday, only four countries were left. Most of the 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.

During the Agriculture negotiations 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.

Negotiators who refuse to buckle-down come under immense personal pressure. 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, the 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 been removed from Geneva. The Egyptian ambassador, Fayza Abounaga, for example, did not return to Geneva after the Doha Ministerial. 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 previous Director General Mike Moore himself played a role in threatening 'stubborn' delegates in Doha. In one such instance, Moore 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.

Many developing countries are dependent on the EU or the US for a significant proportion of their export market and fear that bilateral trade relations will be affected.

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 repercussion: 35% of our exports go to the US. Of textiles, 60% goes to the US, so we just have to keep our mouths shut.

US trade representative staff, for example, plays a key role in one way or another to threaten countries. According to leaked documents from Washington, the 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 Doha 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.

Developing countries also fear withdrawal of preferential trade relations.

One African country delegate, who was clearly unhappy with the outcome of Doha, was asked what prevented his country from blocking the final consensus.

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

Kenya, in 2001, wanted to legislate compulsory licensing laws domestically, and was told by the US, that if they do so, they would be not be in a position to enjoy benefits associated with respect to being a member of the list of countries eligible for the African Growth Opportunity Act (AGO).

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.¹⁰ That is the main tool of coercion. As long as African countries continue to depend on these big countries, the relationship will be lopsided.

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", they say. When that happens, one sees one's 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. They can also change them overnight because they are non-binding. What else is the 301¹¹ for?

Aid and investment may also come under threat. An African LDC trade negotiator says:

Aid for some countries makes 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.

Section III

WTO secretariat bias

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, there is a clear institutional bias towards the positions taken by the developed countries. 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.

The Secretariat is predominantly from the developed countries. Of 512.5 posts, 410.5 are occupied by individuals from developed countries. Some developed countries and members of the Secretariat justify the composition as historical, from the days when the organization did not have as many developing country members. But there is no clear policy, for example, to rectify the current imbalance by giving priority to applicants for jobs from developing countries. There is also the ideological leanings of the professionals employed, that is, neo-liberal economists.¹²

The institutional bias of WTO staff is seen in their support for one particular means - increased trade liberalization - rather than of the ultimate goal as stated in the very first preambular paragraph of the Marrakesh Agreement Establishing the WTO:

Recognizing that their relations in the field of trade and economic endeavor 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 ...

Many in the WTO Secretariat do not seem to accept that there are cases where trade liberalization will not achieve these goals, nor the right of countries to decide when this may be the case.

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.

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).

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 or the committees.

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.¹³

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 to other assignments.¹⁴

In recent times, the Secretariat has moved beyond caution and circumspection. The role of Director General Mike Moore in canvassing for a new round before Doha, and after that, on pressing for negotiations in the New Issues, angered many developing countries.

Moore wrote in the Financial Times (18 February 2002) that it would be in the best interest of developing countries to accept rules in foreign investment, competition, and transparency in government procurement. In the eyes of many, this was blatantly taking a position that should be left to members and it further discredited him. Many also said that he played a major role negotiating on behalf of the EU, in the most critical moments in Doha.

According to certain sources, Moore 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.

A bias in WTO technical assistance and advice is also perceived. WTO analyst, A. Narlikar, in her study on decision-making processes at the WTO came to this conclusion:

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.¹⁵

Minutes of meetings are inaccurate. One African delegate says, 'they write what they want you to say, rather than what you actually said'.

The Secretariat is overly involved in the drafting of negotiating texts. That they do provide the drafts is well known. 'Inside US Trade' reported:

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.¹⁶

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- 1 *'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.*
- 2 *WTO, TN/C/M/1, 14 February, 2002, Trade Negotiating Committee, Minutes of Meeting 28 January and 1 February, 2002.*
- 3 *Narlikar A. 2001 'WTO Decision-making and Developing Countries', South Centre TRADE Working Papers 11, November.*
- 4 *Minutes of Meeting, Trade Negotiations Committee 28 Jan and 1 February, 2002, TN/C/M/1, 14 February, 2002.*
- 5 *Ramadan A, Presentation at a Germanwatch Conference, Bonn, October 2000.*
- 6 *N.Ndirangu 2000 'Participation in the WTO Decision-making Process for Developing Countries', Paper presented at a Germanwatch Conference, October, Bonn.*
- 7 *Narlikar, A. 2001 'WTO Decision-making and Developing Countries', South Centre TRADE Working Papers 11, November.*
- 8 *This idea has been borrowed from Yash Tandon, SEATINI*
- 9 *Narlikar, A. 2001 'WTO Decision-making and Developing Countries', South Centre TRADE Working Papers 11, November.*
- 10 *The General system of Preferences (GSP) allows developing countries easier access to rich country markets. However, this access by developed countries is non-binding and subject to change. It*

- is used as instrument of control in negotiations.*
- 11 *Section 301 of the Trade Act of 1974 provides the United States with the authority to enforce trade agreements, resolve trade disputes and open foreign markets to U.S. goods and services. The "special 301" allows the US to determine whether policies and practices of foreign countries deny adequate and effective protection of intellectual property rights, or what US deems as fair and equitable market access for U.S. persons who rely on intellectual property protection. Various lists categorising countries are created: priority foreign country, priority watch list etc. GSP can be terminated or trade sanctions imposed when a country is deemed guilty.*
- 12 *Narlikar, A. 2001 'WTO Decision-making and Developing Countries', South Centre TRADE Working Papers 11, November.*
- 13 *Rege, V 1998 'Developing Countries and Negotiations in the WTO', Third World Economics, No. 191, 16-31 August.*
- 14 *Rege, V 2000 'WTO Procedures for Decision Making: Experience of Their Operation and Suggestions for Improvement, Background Paper, Commonwealth Secretariat, 21 January.*
- 15 *Narlikar, A. 2001 'WTO Decision-making and Developing Countries', South Centre TRADE Working Papers 11, November.*
- 16 *Inside US Trade 2001 'Moore Reorganises WTO in Division Overseeing New Talks', December 21.*

Chapter

**Post-Doha antics:
Laying the
foundations for
Cancun**

5

Upon their return to Geneva after Doha, delegates discovered the same charade of democratic process that they had seen in Doha and in the run-up to Doha.

The trade negotiations committee (whether you want it or not)¹

The first issue was the proposal to establish a Trade Negotiations Committee (TNC) to oversee negotiations of the Doha round, and then to have then DG Mike Moore as its chair.

The position of many countries was that the TNC was unnecessary. Although the GATT had a TNC, the Marrakesh Agreement gives to the WTO General Council (which the GATT never had) the authority to make decisions on negotiations in between ministerials. Having a TNC while the General Council exists therefore seems redundant, and a waste of precious meeting and staff time.

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 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.²

As for the DG serving as chair, the developing countries position was clear. Ambassador Chidyausiku of Zimbabwe:

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.³

The LDCs also opposed this idea. They believed that it caused a conflict of interest and would force them to negotiate with the Secretariat. Tanzania spoke on behalf of LDCs:

Chairs and Vice-Chairs should 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.⁴

While these countries, the Like Minded Group (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, 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 result was predictable:

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)

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.

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'.

The ambassador of Zimbabwe, Chidyausiku:

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 somebody being Chair of TNC, why would someone go to extent of lobbying in capitals?⁵

Amongst others, the Capitals of Egypt, Honduras and Sri Lanka were influenced heavily during this process.

The green room made a re-appearance. Three days before the decision had to be taken, Canada and Brazil pulled together a 'green room' meeting at the Canadian mission. About 25 countries were present.⁶ Strangely enough, the Director General, too, showed up.

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

The Canadians were having here a Mini-Ministerial. 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 ranks of the LMG were also being broken. The ASEAN and Asian countries were particularly vulnerable, given that Dr. Supachai Panitchpakdi (from Thailand) was to be the next Director General. ASEAN was therefore in support of the DG as TNC Chair ex-officio. Ambassador Chidyausiku:

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.

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. An informal paper, floated by India in January, noted that 'Ambiguity works to the disadvantage of developing countries'.

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)⁷

In order to address these serious institutional deficiencies, a group of nine LMG countries⁸ in a communication to the General Council, addressed the systemic problems of non-transparency and non-inclusiveness.⁹

- The TNC should be subordinate and accountable to the General Council.
- Selection of Chairs must be done formally with ‘explicit consensus’.
- There should be general procedures for a balanced makeup of TNC Chairs.
- Chairs should be filled from Geneva-based ambassadors (i.e. not the DG/Secretariat).
- Neutrality should be the central feature of the Chair.
- Accurate minutes should be released within 10 days of a TNC meeting.
- All drafting should be done in open meetings, and negotiating texts be 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.

Although these are fundamental requirements for the proper functioning of an international organisation, there was intense resistance by some developed countries. The US, for example, felt that this would ‘bog down’ the negotiations and put the negotiating process in a ‘straight jacket’. 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.

What was the outcome of this battle?

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.

This reference to non-existent ‘best practices’ was quickly challenged by Bulgaria:

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.¹⁰

China threatened to stall negotiations if the issue of accurate negotiating texts was not addressed appropriately. Developing countries wanted explicit language to forbid Chairs from submitting texts in their ‘personal capacity’ and to require that differences be reflected in the actual negotiating texts. 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.’

The DG was appointed, ex-officio, as TNC Chair, but as ‘an exceptional arrangement’. Appointments to WTO bodies should normally be made from among representatives of WTO members’.

Within two and half weeks of being elected as the new TNC Chair, under principles and practices that ‘Chairpersons should be impartial and objective’, Mike Moore was breaking the rules.

The *Financial Times* reported ‘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.’¹¹

The agriculture chair

And then seasoned observers of the WTO were treated to a reprise of this rule-breaking. In the TNC, the Secretariat had bulldozed its way into Members’ territory. Again, this is now being repeated in the agriculture negotiations.

Stuart Harbinson, WTO Ambassador of Hong Kong, and Chair of the General Council in 2001, whose 'magical' clean text for Doha had omitted the objections of many developing countries, found himself appointed chair of the agriculture negotiations, the most politically sensitive issue at the WTO in February 2002. (It was not too difficult for the big powers to pull through this appointment, since Stuart Harbinson himself, in the last days of his General Council chairmanship, was the one holding the consultations appointing the chairpersons of various committees, including agriculture.)

In June 2002, it was announced that Dr Supachai, incoming Director General of the WTO from 1 September, had appointed Harbinson as chef de cabinet in the Director General's office. From 10 September, Harbinson took leave from his government position and assumed his new post in the Secretariat, yet he has not relinquished his position as Chair of Agriculture.

In national terms, this is the equivalent of the MP chairing an important parliamentary committee joining the civil service. Which in most countries you are perfectly free to do, as long as you give up your parliamentary seat.

Recall that the appointment of DG Mike Moore as Chair of the TNC was 'an exceptional arrangement'. An exceptional arrangement that was repeated within months.

Those who want to see agriculture talks moved along and concluded (in their favour), are all for Harbinson staying on as Chair of Agriculture. Some of the reasons cited have been that he is after all 'neutral', and therefore, even if he is a Secretariat staff, it can be excused since his 'neutrality' would not create a conflict of interest.

The big powers - US and EU - and the Cairns Group of agricultural exporting countries did not want a change of Chair in agriculture since intensive talks in the Agriculture Committee were planned for the ensuing six months. Changing the chair would set back the timetable significantly.

Hong Kong's South China Morning Post carried an article with Harbinson describing his own style of 'compromise' as follows:

The whole thing is to construct a balance of interests in which everybody gives something and everybody gets something....¹²

Many developing country officials in Geneva are uneasy with this situation. They have given a lot and got very little. They also do not want to see a repetition of Doha where their position on 'no new issues' were ignored in the Harbinson negotiating text. For them, this is also setting a dangerous precedent of involving Secretariat staff directly in negotiations.

Several delegations have raised their concerns privately with Dr Supachai. At least one other country has also formally written a letter to the Chair of the General Council, stating its displeasure at such an arrangement. It was also the understanding of various members within the African Group that the group had taken a decision to write a formal letter to the General Council, but unfortunately no follow-up materialized, as key members of the Group were approached by the powerful members.

As one African diplomat privately explained:

Some countries whom we thought were our friends are no longer with us on this. They have come under bilateral pressure.

Another developing country delegate, explaining why the issue is under wraps said:

I get the impression that no one is willing to be the spoiler. The major powers see such a high stake in this. Many developing countries are still feeling the post-September 11 threat, that 'you are with us, or you are against us.

Supachai appears to have done nothing on this critical process issue. His stand, when he stepped into his position as DG, was that he would remove Harbinson as agriculture chair if the membership so indicated. Many developing country delegations have no desire to embarrass the newly appointed Director General, well aware of the hard battle they had to fight three years ago to get him into the DG position. They are instead eager to maintain a good working relationship with him. This has been one reason (of several reasons outlined earlier) why they have preferred to keep things at the informal level, speaking to him about it on the quiet.

Unfortunately, Supachai is either deaf to these concerns, or, is himself walking a political tightrope in his current position. Already before the assumption of his position, the majors had declared their displeasure at some of the comments he had made about the WTO while he was DG in waiting.

Laying the foundations for Cancun: manufacturing another Doha ‘success’?

Despite the fact that Cancun is a whole year ahead, the influential members of the WTO have already started their work in ensuring a repeat of their success. The same raft of anti-democratic practices are being put in place:

- i) Harbinson in the lead, ready to produce unbracketed texts indicating that a consensus exists when there may be none, and texts which are released ‘on his own responsibility’;
- ii) Mini-ministerials and Green Room meetings of about 23 countries which exclude the majority;
- iii) ‘flexibility’ in process, i.e. breaking of procedural rules in order to manufacture a consensus;
- iv) accurately timed and well-planned doses of bilateral pressures. This includes the post September 11 ‘with us or against us’ threats;
- v) breaking down the coalition of developing countries and isolating ‘hard liners’ such as India.

Already countries are wondering if their positions in agriculture (predicted to be the sticking point in the coming Fifth Ministerial) will be reflected in the agriculture modalities paper that Supachai’s *Chef de Cabinet* Harbinson, will be releasing and revising between December 2002 and March 2003. In anticipation of his pre-Doha antics, some countries like India have already warned DG Supachai that they will not accept a repeat of the Doha text. However, politically weaker countries are not so confident that they will be able to stand up against the tide.

One African ambassador, when asked why countries have not been more proactive in speaking out against the breach of rules (of Harbinson as Secretariat chairing a negotiating body), said that many countries do indeed see this issue as being highly problematic. However, no one seems to want to be the ‘spoiler’. Countries are remaining quiet out of fear that they could be punished by the influential countries if they stepped ‘out of line’.

Mini-ministerials come in useful in terms of getting ministers of a core group of countries in line, by making bilateral deals on the side. This has the effect of marginalizing those that are excluded. The package is then presented to the majority marginalized countries on a take-it-or-leave it basis, with the underlying threat that any country opposing such a consensus package will pay heavily (in terms of termination of preferential trading arrangements etc). De facto, these mini-ministerials mean that a small group of Members, without authorisation, takes leadership of the institution (similar to an executive council). In this light, such meetings are illegitimate.

A mini-ministerial has already been planned on November 14-15 in Sydney. Only 24 countries have been invited. The line-up of countries is rather significant. The ‘strident’ voices of any weight are of course included, such as India. Also included are representatives of African countries that for some years now have been under the influence of the majors, and have been groomed to break the African Group coalition at strategic points. It is very significant that Pakistan has not been invited,

an illustration of their weakened role since September 11 and the removal of their well-known, out-spoken Geneva ambassador, Munir Akram earlier this year.

Of the African countries on the Sydney invitation list, it is common knowledge that South Africa and also Egypt (to a large extent) sings the tune of the US and EU. Kenya and Nigeria have also been frequently accosted by the US. In Doha, Kenya was leading the ACP countries and its Minister Biwott was the one responsible for putting the ACP waiver on the table, clearly after having been manipulated by bilateral deals with the influential members.

Breaking the procedural rules was a major factor leading to Doha's outcome. Vagueness of procedures provided developed countries the space to manipulate the negotiating process in order to suit their interests.

The proposals for greater transparency from the Like Minded Group (LMG) in May have met with a riposte from a grouping of 8 countries - Australia, Canada, Hong Kong, China, Korea, Mexico, New Zealand, Singapore and Switzerland. Their view is:

In a member-driven organization processes need to be kept flexible. We need to avoid rigidities.

Prescriptive and detailed approaches to the preparatory processes are inappropriate and will not create the best circumstances for consensus to emerge in the Cancun meeting.

In processes of this sort much depends on members' level of ambition and the force with which they pursue individual objectives. Ultimately consensus will be achievable only if members are prepared to moderate these objectives and take a wider view of what their interests require. Restraint and flexibility will be essential.¹³

According to this view the 'rules-based' organization operates best with no rules.

Bilateral pressures are being applied. US missions based in the developing countries have been selling its agriculture position to officials of these countries. For example, El Salvador, who was part of the 'Development Box' coalition of countries (asking for protection of their agricultural sector), announced in the market access agriculture session in early September that they supported the position of the United States advocating drastic tariff reductions.

Pressures on delegates have continued. The determined Ambassador of the Dominican Republic Federico Cuello was removed at the end of August 2002 because of his active role in the Like Minded Group Coalition. Likewise, the outspoken Ambassador of Pakistan was also given a promotion and sent to New York in the middle of 2002.

The divide and rule strategy, breaking the coalition of developing countries, is being used to make such coalitions impotent, in particular, the Like Minded Group¹⁴ and the African Group. A Ministerial meeting of the Like Minded Group planned for mid-September did not materialise as some Ministers were approached and persuaded not to attend. One critical issue on that agenda was the topic of Harbinson and the breach of rules.

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- 1 Many thanks to Shefali Sharma of the Institute for Agriculture and Trade Policy, for her contributions to this section.
 - 2 South Bulletin 29, 15 February, 2002, South Centre.
 - 3 Interview with Ambassador Boniface Chidyausiku, 22 February 2002, Geneva.
 - 4 WTO 2001 WT/GC/M/72 'Minutes of General Council Meeting, 19-20 December.
 - 5 Interview with Ambassador Boniface Chidyausiku, 22 February 2002, Geneva.
 - 6 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.

- 7 WTO 2002 TN/C/M/1, 'Minutes of TNC Meetings, 28 January and 1 February, 2002'.
- 8 *These were Cuba, Dominican Republic, Egypt, Honduras, Kenya, Pakistan, Tanzania, Uganda and Zimbabwe.*
- 9 *The paper was entitled: 'Establishment of the Trade Negotiations Committee (TNC) and Related Issues', December 21, 2001.*
- 10 WTO TN/C/M/1, *Minutes of TNC Meetings 28 January and February 1, 2002.*
- 11 *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.*
- 12 *South China Morning Post 29 April 2002 'Freedom's Quiet Advocate: entrepot role gives Hong Kong's man in Geneva pivotal position in global trade body'.*
- 13 WT/GC/W/477, 28 June 2002 *'Preparatory Process in Geneva and Negotiating Process at Ministerial Conferences'.*
- 14 *The Like Minded Group includes India, Pakistan, Sri Lanka, Cuba, Dominican Republic, Honduras, Egypt, Malaysia, Indonesia, Jamaica, Mauritius, Uganda, Kenya, Tanzania, Zimbabwe.*

Chapter

Conclusion

6

The anti-democratic decision-making processes of the WTO result in highly imbalanced trade rules which are damaging the economies of the developing world. Beneath all the gestures to bring in developing countries from the cold, the real agenda is at the fore - to provide corporations of the developed countries access to markets of the developing world by dismantling not only tariff structures but also domestic regulations that impede foreign corporations.

In terms of the substantive issues, the Doha Development Agenda emerging out of the Fourth Ministerial Conference was a skillful public relations exercise, which unfortunately is a major step in the wrong direction for developing countries.

This failure to address the needs and interests of the developing world is clear a year after Doha. The promises made to the South have remained undelivered as deadlines on issues of importance to the South have all passed.

The TRIPS and Public Health Declaration was the 'trophy' developing countries brought back from Doha. It is a political declaration stating that 'The TRIPS Agreement does not and should not prevent members from taking measures to protect public health', hence allowing countries to take action to provide affordable generic drugs.

Unfortunately in the year since Doha, the Declaration has been severely watered down by the US, EU and Japan¹. These countries, led by the US, are adamant about limiting the scope of diseases covered by the Declaration. The deadline of end 2002 to find a solution

for developing countries without manufacturing capacity to be able to access affordable drugs has also been missed.

In summing up the results of a year of intense negotiations, the Indian Ambassador K.M.Chandrasekhar said,

We sometimes wondered whether the Council was discussing how to facilitate access to drugs at affordable prices to poor people or how to restrict the scope and ambit of the intended solution. Commercial interests appeared to have become predominant

The whole world is waiting expectantly for the outcome of the exercise in which we are presently engaged. It will be difficult to justify why this organization could not rise to the occasion and satisfactorily respond to the crises being faced in several parts of the world on account of public health problems of the kind described in the Doha Declaration. At stake are the hopes of millions of people to get access to medicines at affordable prices.²

The promise in Doha that developing countries' priority issues - implementation and Special and Differential Treatment - would be dealt with on a fast track with decisions taken by July and December 2002 have also not materialized. Developed countries have remained completely intransigent in the negotiations. It is clear that there is no political will to right the imbalances of the Uruguay Round, or to address the development needs of the majority.

Two working groups mooted by developing countries were also formed in Doha: one on Trade, Debt and Finance and the other on Transfer of Technology. The suggestions by developed countries as well as the WTO Secretariat during the year are tantamount to a tasteless joke pulled on developing countries. The EU, keenly supported by the Secretariat, has suggested that the Trade, Debt and Finance working group should explore issues around the establishment of a multilateral framework agreement on investment and competition.

Even as the promises made to developing countries remain unfulfilled, developed countries are aggressively pursuing their own interests.

In agriculture, intensive talks are underway to knock together a new agreement. Developing countries are called to undertake yet another round of aggressive tariff reduction, yet the US adopted their Farm Bill in May 2002, increasing subsidies by 63 per cent. As a result of enlargement, EU subsidies will increase up to 2006 and subsidy levels will be maintained at the 2006 level until 2013. It is inevitable that dumping in developing countries will escalate yet, in spite of this, the South is being told it must continue to liberalise.

Doha also fast-tracked the negotiations in services. The request phase started in June 2002 despite the fact that the mandated assessment (Article XIX.3 of the GATS) of the Uruguay Round services liberalisation has not been carried out. The offer phase takes place from March 2003. Many developing countries are at a loss at dealing with the current GATS negotiations. The liberalisation requests they have received from the developed countries have covered all sectors imaginable, yet their small service suppliers are in no position to compete with the Northern corporations. They are extremely nervous that they will be pressured into opening up their domestic service markets in the current GATS round.

On the question of the new issues - investment, competition, transparency in government procurement and trade facilitation - the EU has chosen to ignore the Chairman's statement that the launch of these issues depends upon

a decision based on explicit consensus at the 5th Ministerial.³ In discussions in Geneva, the EU has called for a broad definition of foreign direct investment, and the US is insisting on the inclusion of portfolio investment. The launch of the new issues will essentially be about removing domestic regulations that protect domestic enterprises, hence eliminating the last bastion of policy space developing country governments have at their disposal to support their local industries and enterprises.

Cancun will be a critical decisive moment in history. If the round — with all the new issues - is launched, it will have devastating impact on ordinary people all over the world. Refusal by developing countries to launch the new issues, on the other hand, will bring the WTO to a standstill and hopefully the beginning of a significant roll-back. The outcome rests on whether developing countries will be able to resist the political and economic pressures of the rich countries. Developing country governments so far have failed their people by agreeing to be swindled time and time again. It should be clear to all that attempts to 'developmentalise' the WTO, as with attempts to 'democratise' it, are nothing more than a public relations exercise carried out by the powerful to couch their corporate interests.

Even the more enlightened Southern governments in trade negotiations tend to sacrifice long-term interests in order to avoid short-term pain (aid or market access being put at risk). While the choices before them are not always easy to navigate, they would do their people a major service by taking a longer-term view and finally taking a strong stand against the bullying strategies of the rich countries. They have the lives of their people at stake.

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- 1 *Japan tried to exclude vaccines from the coverage of the Declaration. In future, vaccines will be used to combat HIV.*
- 2 *K.M.Chandrasekhar, Statement in the General Council meeting of 20 December 2002, cited in Raghavan, Chakravarthi, 'Trade: Scrooge's gift for the Third World at WTO', #SUNS 5260, 23 December 2002.*
- 3 *This is elaborated in Chapter 3, footnote 5.*

