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**INSTITUTIONAL GOVERNANCE AND DECISION-MAKING PROCESSES IN  
THE WTO**

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**I. INTRODUCTION**

1. The WTO’s institutional mandate is clearly spelled out in its founding charter, the 1994 Agreement Establishing the World Trade Organization (WTO Agreement). The preamble of this international treaty stresses that the objectives of the WTO are that:
  - trade and economic relations among WTO Members “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, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development”;<sup>1</sup>
  - “developing, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.”<sup>2</sup>
  
2. In short, the primary objective of the WTO is to serve as the mechanism through which international trade can become the means for supporting the economic development of Members, in particular the developing and least-developed Members. The economic development of developing countries, and the use of trade to achieve such development, has been a long-standing objective of the multilateral trading system and of the international governance structure of which the WTO is a part.<sup>3</sup> This objective is ultimately rooted in the right of peoples to enjoy “higher standards of living, full employment, and

<sup>1</sup> WTO Agreement, 1<sup>st</sup> preambular clause.

<sup>2</sup> Id., 2<sup>nd</sup> preambular clause.

<sup>3</sup> For example, Article 1:2 of the 1947 Havana Charter of the International Trade Organization (ITO) states that, inter alia, it will “foster and assist industrial and general economic development, particularly of those countries which are still in the early stages of industrial development, and to encourage the international flow of capital for productive investment.” This same objective is reflected in, inter alia, the third preambular clause, Article XVIII (Governmental Assistance to Economic development), and Part IV (Trade and Development) of the GATT 1947 and GATT 1994. See also the 2001 WTO Doha Ministerial Declaration, paras. 2 and 3, stressing that the needs and interests of developing and least-developed Members of the WTO have to be addressed and should be placed “at the heart of the [Doha] Work Programme.”

conditions of economic and social progress and development”<sup>4</sup> consistent with the right to sustainable development under international law.<sup>5</sup>

3. To achieve the WTO’s developmental objectives, WTO Members were expected to enter into “reciprocal and mutually advantageous arrangements directed to the substantive reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.”<sup>6</sup> These trade arrangements and obligations were to be undertaken within a “common institutional framework for the conduct of trade relations” among WTO Members.<sup>7</sup> This framework is the WTO, and the agreement set up an elaborate institutional structure for the organization;<sup>8</sup> established a secretariat;<sup>9</sup> provided for its financing;<sup>10</sup> defined its legal personality;<sup>11</sup> and established some rules on decision-making.<sup>12</sup>
4. The functions of the WTO are also clearly laid out in Article III of the WTO Agreement, as follows:
  1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.
  2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.
  3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement.
  4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in Annex 3 to this Agreement.

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<sup>4</sup> United Nations Charter, art. 55(a).

<sup>5</sup> See, e.g., the 1966 United Nations International Covenant on Economic, Social and Cultural Rights; the 1986 United Nations General Assembly Declaration on the Right to Development; the 1992 United Nations Rio Declaration on Environment and Development, principle 3; the 1993 United Nations Vienna Declaration and Programme of Action on Human Rights; the 2000 United Nations General Assembly Millennium Declaration, para. 11; and the 2002 United Nations World Summit on Sustainable Development Plan of Implementation, para. 5.

<sup>6</sup> WTO Agreement, 3<sup>rd</sup> preambular clause.

<sup>7</sup> Id., art. II.1. See also id., art. III.

<sup>8</sup> Id., art. IV.

<sup>9</sup> Id., art. VI.

<sup>10</sup> Id., art. VII.

<sup>11</sup> Id., art. VIII.

<sup>12</sup> Id., art. IX.

5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.
5. For many developing country WTO Members, the WTO's record in serving as a developmental institution has been disappointing. There has not been any significant progress in the treatment of development issues that have been raised by developing countries since before the creation of the WTO up to the present. These include, for example, the implementation-related issues and concerns and the effective operationalisation of the special and differential treatment provisions of the WTO. Aside from these internal substantive issues, the developmental impact for developing countries of joining the WTO, implementing their WTO obligations, and asserting their WTO rights, has been much less than had been promised to them during the Uruguay Round.
6. An increasing body of research has documented that the developmental gains promised for developing countries during the Uruguay Round largely have not materialized. In fact, the economic growth rates of most developing countries "declined in the 1990s compared to previous decades and inequalities have increased."<sup>13</sup> According to UNCTAD Secretary-General Rubens Ricupero, while 25 developing countries "grew at rates of five percent or more per year throughout" the 1990s,<sup>14</sup> "three-fifths of developing countries did not find it possible to benefit [from globalization] in a substantial way. Thirty of them, in effect, posted negative growth rates per capita GDP during the decade."<sup>15</sup> The United Nations Development Program has also stated that "[i]nternational trade rules have also worked against the economic interests of developing countries and failed to restrain protectionism in industrial countries..."<sup>16</sup> Even the idea that trade liberalization per se automatically leads to developmental gains is now increasingly being questioned, with some asserting that "[t]here is no convincing evidence that trade liberalization is always associated with economic growth."<sup>17</sup>
7. The failure thus far of the WTO to achieve its developmental objectives can be traced, in some respects, to the inability of the organization's institutional governance mechanisms to balance competing interests among Members, reflect and take into account differing perspectives, provide adequate mechanisms to address and redress institutional structural deficiencies, and ensure equitable and fair decision-making outcomes. Issues relating to internal World Trade Organization (WTO) institutional governance have long been

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<sup>13</sup> Research and Information System for the Non-Aligned and Other Developing Countries (RIS), *World Trading System and Developing Countries: Agenda for Cancun and Beyond – Executive Summary* (2003), at 2.

<sup>14</sup> UNCTAD, *Preparations for UNCTAD XI: Submission by the Secretary-General of UNCTAD*, TD(XI)/PC/1, 6 August 2003, para. 20.

<sup>15</sup> *Id.*, para. 23.

<sup>16</sup> UNDP, *HUMAN DEVELOPMENT REPORT 2002: DEEPENING DEMOCRACY IN A FRAGMENTED WORLD* (2002), at 7.

<sup>17</sup> UNDP, *MAKING GLOBAL TRADE WORK FOR THE PEOPLE* (Earthscan Publications Ltd., 2003), at 28.

recognized by, and been placed on the agenda of, the WTO.<sup>18</sup> This is due primarily to the fact that the institutional governance mechanisms and processes currently used in the WTO have led to problems of transparency, inclusiveness, participation, and efficiency in decision-making in the organization.<sup>19</sup> For example, the requirement in Article IX.1 of the WTO Agreement for formal consensus as the basis for decision-making has pushed the WTO to engage in and rely more and more on informal processes for building such consensus, but at the same time, such informal processes have had a largely negative impact on the development of formal developing country groupings, and thereby reinforcing the power imbalances in the organization.<sup>20</sup>

8. In general, based on General Council and Ministerial Conference discussions on internal WTO governance and process-related issues since the establishment of the WTO, these issues can be divided into three distinct, but closely linked, categories:
  1. Administrative process-related issues that do not involve substantive changes to the WTO's existing institutional framework or constitutional legal instruments – These would include looking at the way that the WTO Director-General and the WTO Secretariat provide their services to Members (but not involving changes in their formal powers and functions); the role and functions of WTO officers in running subsidiary WTO bodies; and the role and functions of the officers of the Ministerial Conference and General Council in running the affairs of these bodies;
  2. Internal process-related issues involving the WTO's main decision-making mechanisms or structures, but which do not require fundamental substantive changes to the WTO's institutional framework or constitutional legal instruments – These would include changes in the current decision-making processes and procedures used by the WTO Ministerial Conference and General Council; and in effecting changes in the WTO's work program; and
  3. Internal process-related issues with respect to the WTO's institutional framework that would involve substantive changes or amendments to the WTO's constitutional legal instruments – These would include changing the formal modes and structures of decision-making in the WTO as provided for in Art. IX of the WTO Agreement.

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<sup>18</sup> See, e.g., the 1996 WTO Singapore Ministerial Declaration, para. 6; the 1998 WTO Geneva Ministerial Declaration, para. 4; the 2001 WTO Doha Ministerial Declaration, para. 10.

<sup>19</sup> See e.g. Amrita Narlikar, *WTO Decision-Making and Developing Countries*, TRADE Working Paper No. 11 (South Centre, November 2001); Richard H. Steinberg, *In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO*, 56:2 INTERNATIONAL ORGANIZATION (Spring 2002). For an in-depth account of power politics in the WTO, see e.g. Fatoumata Jawara and Aileen Kwa, *BEHIND THE SCENES AT THE WTO: THE REAL WORLD OF INTERNATIONAL TRADE NEGOTIATIONS* (2003).

<sup>20</sup> UNDP, *supra* note 17, at 88.

9. It must be remembered that the fundamental basis for all discussions regarding WTO governance and decision-making processes is the WTO Agreement, especially Article II (Scope of the WTO), Article III (Functions of the WTO), Article IV (Structure of the WTO), Article VI (The Secretariat), Article VIII (Status of the WTO), Article IX (Decision-Making), and Article XVI:1 (Miscellaneous Provisions). In addition, especially in relation to General Council and Ministerial Conference processes, the “Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council”<sup>21</sup> approved by the WTO General Council in 1996 is the only formal WTO legal instrument in this regard. The selection of chairs for the various WTO bodies are subject to the “Guidelines for Appointment of Officers to WTO Bodies”, first adopted by the General Council in February 1995 and subsequently revised in December 2002.<sup>22</sup> Finally, the appointment of the WTO Director-General is subject to the “Procedures for the Appointment of Directors-General” adopted by the General Council in December 2002.<sup>23</sup>
10. Following are some of the recent Member submissions, General Council discussions, and Ministerial Conference decisions that have been made especially with respect to the process-related issues above:

| Author  | WTO Document Reference   |
|---|--|
| <b>General Internal Transparency and Inclusiveness Issues</b>   |  |
| Bulgaria  | <i>Internal Transparency</i> (dated 2 November 2000), WT/GC/W/422, 13 November 2000  |
| WTO General Council   | <i>Minutes of the Meeting of 17 and 19 July 2000</i> , WT/GC/M/57, 14 September 2000, paras. 132-170   |
| <b>Process for the Doha-Mandated Negotiations</b>   |  |
| WTO General Council   | <i>Minutes of the Meeting of 7-8 February 2000</i> , WT/GC/M/53, 15 March 2000, paras. 12-39   |
| Cuba, Dominican Republic, Egypt, Honduras, Kenya, Pakistan, Tanzania, Uganda, Zimbabwe  | <i>Establishment of the Trade Negotiations Committee (TNC) and Related Issues</i> (undated), WT/GC/58, 21 December 2001  |
| Cuba, Dominican Republic, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda, Zimbabwe | <i>Organization of Negotiations Envisaged in the Doha Ministerial Declaration</i> (dated 28 January 2002), TN/C/W/2, 29 January 2002                                     |
| WTO Ministerial Conference, Fourth Session  | <i>Ministerial Declaration</i> (adopted 14 November 2001), WT/MIN(01)/DEC/1, 20 November 2001, para. 49  |
| WTO Trade Negotiations Committee  | <i>Minutes of the Meeting of 28 January and 1 February 2002</i> , TN/C/M/1, 14 February 2002   |
| WTO Trade Negotiations Committee  | <i>Statement of the Chair of the General Council on the Structure of the Negotiations and Arrangements for Chairing</i> (dated 1 February 2002), TN/C/1, 4 February 2002 |
| <b>Preparatory Process and Negotiations in Ministerial Conferences</b>  |  |
| WTO General Council   | <i>Minutes of the Meeting of 7, 8, 11, and 15 December 2000</i> , WT/GC/M/61, 7 February 2001, paras. 195-205  |
| Cuba, Dominican Republic, Egypt,  |  |

<sup>21</sup> WT/L/161, 25 July 1996.

<sup>22</sup> See WT/L/31, 7 February 1995, for the 1995 Guidelines; and WT/L/510, 21 January 2003, for the 2002 Guidelines.

<sup>23</sup> WT/L/509, 20 January 2003.

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| Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, Zimbabwe | <i>Preparatory Process in Geneva and Negotiating Procedure at the Ministerial Conferences</i> (dated 19 April 2002), WT/GC/W/471, 24 April 2002  |
| Australia, Canada, Hong Kong (China), Korea, Mexico, New Zealand, Singapore, Switzerland                         | <i>Preparatory Process in Geneva and Negotiating Process at Ministerial Conferences</i> (dated 27 June 2002), WT/GC/W/477, 28 June 2002  |
| WTO General Council  | <i>Minutes of the Meeting of 13 to 14 May 2002</i> , WT/GC/M/74, 1 July 2002, paras. 89-130  |
| WTO General Council  | <i>Minutes of the Meeting of 8 and 31 July 2002</i> , WT/GC/M/75, 27 September 2002, paras. 27-84  |
| WTO General Council  | <i>Minutes of the Meeting of 10-12 and 20 December 2002</i> , WT/GC/M/77, 13 February 2003, paras. 261-318   |
| WTO General Council Chair (Ambassador Sergio Marchi of Canada)   | <i>Internal Transparency and Effective Participation of Members in the Preparatory Process in Geneva and Organization of Ministerial Conference</i> , JOB(02)/197/Rev.1, 6 December 2002 (noted by the WTO General Council during its meeting on 10-12 and 20 December 2002) |

**NOTE: The listing above may not necessarily be complete.**

11. The UNDP has described internal WTO governance processes as follows:

The WTO is accused of being one of the least transparent international organizations, largely because few developing country members are able to participate effectively in negotiations and decision-making. Decisions are based on “one country, one vote” and made by consensus, giving the WTO the appearance of democratic decision-making. ...

But in practice, the WTO is dominated by a few major industrial countries – while the poorest developing countries have little or no representation or negotiation capacity.<sup>24</sup>

12. The current institutional mechanisms for internal WTO governance therefore reflect and, in many cases, intensify the political and economic imbalance that exists among WTO Members of disparate political capacities and economic strengths. Internal process and governance-related issues in the WTO are closely and inextricably linked to the substantive issues that the organization deals with and the outcomes that the WTO has to achieve. Unfair or inequitable governance mechanisms that effectively marginalize developing countries will lead to inequitable and unfair substantive outcomes and move the WTO even further from achieving its developmental objectives.

13. In the 2002 Human Development Report, some critical governance processes were highlighted by the UNDP as parameters for assessing the extent to which governance mechanisms can provide for positive outcomes. These include the following:

- How and by whom mandates, agendas and forums for discussions and decision-making are chosen and agreed. These activities determine what gets done – and what remains undone.
- Who establishes, elaborates and enforces rules.
- The transparency of the process.

<sup>24</sup> HDR 2002, supra note 16, at 120-121.

- The effectiveness of representation.
  - The participation of the weakest members.
  - The fairness and consistency of dispute settlement and enforcement processes.<sup>25</sup>
14. Lessons could also be learned from the interaction and collaboration that developing countries engaged in during the 2003 WTO Cancun Ministerial Conference in terms of enhancing the ability of developing countries to effectively engage in WTO discussions and negotiations. For example,
15. Members in some instances negotiated directly with each other, rather than through the intermediation of chairs or facilitators. This happened in, for example, the US and EU agreeing to compromise with each other and presenting their joint agriculture proposal; the G-20 countries negotiating and agreeing on their own agriculture negotiations framework proposal; the G-90 countries negotiating on their common positions vis-à-vis Singapore issues;
16. Members, especially developing countries, established formal and informal coalitions with, in many cases, clear objectives, adequate technical and analytical support, and clear lines of communication both within and among coalitions. This happened, for example, with the G-20 and the SP/SSM Alliance with respect to agriculture; the G-90 group and the AU-ACP-LDC coalition with respect to Singapore issues; the WCA group and other developing countries with respect to cotton subsidies (see Annex 1:A for a list of members of these coalitions/groupings and Annex 1:B for a list of general statements vis-à-vis Cancun made by various developing country groups prior to the ministerial conference);
17. The developing country groupings were able to negotiate as groups represented by one or two group members in the context of the formal and informal processes in Cancun. Group representatives or spokespersons negotiated on behalf of their groups on an *ad referendum* basis, which meant that the various groups were not automatically bound to what their group representatives would agree to in the negotiating groups unless and until, after internal group consultations, the group's endorsement or agreement for any tentative consensus decisions made in the various negotiating groups was given. This ensured greater transparency in the negotiations, and allowed Members not actually present in the negotiating groups but who were represented as part of a developing country group included in the negotiating group the opportunity to exercise their right to object to the terms upon which tentative consensus in the negotiating groups were built.
18. In light of the above, some process-related benchmarks, based on assessments of WTO processes made by non-WTO institutions<sup>26</sup> as well as some WTO Members, could be suggested for purposes of assessing the extent to which WTO institutional governance reform needs to be undertaken. These include:

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<sup>25</sup> UNDP, supra note 17, at 49.

<sup>26</sup> See e.g. HDR 2002, supra note 16, at 121. See also UNDP, supra note 17, at 53.



1. WTO consultations, discussions, negotiations and decision-making have to be made truly transparent – This means that WTO discussions and negotiations must be made known, together with all the information and processes upon which any outcomes are based.<sup>27</sup> Processes must be fair, open to public scrutiny, and reflects the interests of all stakeholders;
2. WTO processes and bodies should, as much as possible, aim to facilitate consensus and to evolve consensus texts, or reflect different positions if needed<sup>28</sup> – This means that the primary aim of WTO bodies conducting discussions or negotiations should be the evolution of consensus-based texts as outcomes. This implies that the ground rules and the bases for the formulation of such texts must have been known to and participated fully in by all WTO Members. The role of WTO officers – e.g. the chairs of WTO bodies – in defining the outcomes of WTO discussions or negotiations must be limited to ensuring that all participants have full knowledge of the other participants’ positions and that they can all participate effectively rather than directing such negotiations or discussions to a particular pre-determined substantive outcome. The issuance of texts on the WTO bodies’ chairs’ “own responsibility” should be circumscribed. All outcomes should be the result of consensus or, if consensus cannot be achieved, through the application of the WTO Agreement’s voting rules.
3. The WTO should be impartial and be seen as impartial – That is, it should not be seen as “taking sides with more powerful countries at the expense of developing countries.” It should reflect the diversity of the membership and its procedures “should enable developing countries to voice their interests and exercise their rights. In addition, developing countries should be better represented in the WTO secretariat, especially in senior positions”<sup>29</sup>;
4. The WTO needs to have greater transparency in relation to national democratic processes – This means that member governments should ensure that their respective parliamentarians are constantly keep informed of developments in the WTO, and that such developments need to be first debated at the national level before they are made effective;<sup>30</sup>

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<sup>27</sup> The term “transparency”, in the context of the WTO’s processes, may be defined as “revealing one’s actions and decisions consciously, visibly and understandably ... It also implies being open to considering all relevant information. In addition, transparency entails the timely disclosure of all relevant information and supporting materials.” See UNDP, *supra* note 17, at 86.

<sup>28</sup> HDR 2002, *supra* note 16, at 121.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

5. WTO processes should be made more formal and institutionalized, participatory and democratic – Procedural rules should be commonly-agreed to and observed, with informal processes to be minimized as much as possible. Discussions and negotiations should take place in formally-established bodies rather than in informal or ad-hoc bodies or mechanisms. All Members must be able to participate effectively, actively, and equally. Discussions and negotiations should be engaged in directly by Members with each other, rather than through informally selected or appointed intermediaries. The formation and use of groupings or coalitions by Members to speak for and on their behalf, subject to their respective internal group processes and agreements, should be encouraged and maximized.
  
19. This paper now looks some of the major issues in internal WTO governance and processes, the discussions that have taken place, and the deficits that need to be addressed from the perspective of developing countries. In Part I, the paper will first discuss those issues in which developing countries may have a pro-active agenda. These include looking at the role of the WTO Secretariat, the role of the WTO Ministerial Conference, the appointment of WTO officers, and the processes used in decision-making. Part II will discuss those issues in which their interests may be more defensive than pro-active. These would include mechanisms that have been suggested to address decision-making process-related issues.

## II. IDENTIFYING A PRO-ACTIVE WTO INSTITUTIONAL REFORM AGENDA FOR DEVELOPING COUNTRIES

### A. Process-Related Issues Relating to WTO Institutions Which Do Not Require WTO Constitutional Changes

#### *1. Role and Functions of the WTO Director-General and Secretariat*

20. The roles and functions of the WTO Director-General and the Secretariat are based on Article VI of the WTO Agreement. The WTO Director-General is appointed by the Ministerial Conference and is subject to such regulations setting out his/her powers, duties, conditions of service, and term of office, as the Ministerial Conference may adopt.<sup>31</sup> He/she heads and appoints the staff of the Secretariat, subject to the regulations adopted by the Ministerial Conference governing the powers and conditions of service for Secretariat staff.<sup>32</sup> Article VI.4 of the WTO Agreement expressly requires WTO Members to “respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.” Secretariat staff and the Director-General have consistently stressed that their roles and functions are limited, compared to those of other major international organizations, due to the “member-driven” character of the WTO. The smallest of the major international economic institutions, the WTO Secretariat has approximately 550 staff, with a 2003 budget of CHF 155 million (approximately US\$118 million; Euro 100 million).
21. However, there have been many allegations and reports about the effective bias shown by the WTO Secretariat and the WTO Director-General in favor of the interests or negotiating positions of major developed country Members. As the ones providing the administrative and procedural support for the day-to-day operations of the organization, WTO Secretariat staff play a very crucial role in the effective running of the organization and in ensuring that the interests of all its Members are served, hence allegations of institutional Secretariat bias need to be carefully considered.
22. For example, the technical assistance provided to developing countries by the WTO Secretariat has been called “biased” and as serving developed country agendas. Four out of every five WTO Secretariat staff are nationals of developed countries, and are often perceived as sharing, and tending to act in accordance with, beliefs that are often supportive of the interests of developed countries. Developed country issues often find their way more quickly and easily onto the WTO’s working program (and are more difficult to take out) than developing country issues through the actions of Secretariat staff upon the

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<sup>31</sup> See Annex 2:A and Annex 2:B. See also WTO, *Procedures for the Appointment of Directors-General*, WT/L/509, 20 January 2003.

<sup>32</sup> See WTO, *Conditions of Service Applicable to the Staff of the WTO Secretariat*, WT/L/282, 21 October 1998.

suggestion or influence of developed countries. Negotiating texts or proposals prepared by, or with the assistance of, WTO Secretariat staff for consideration by the broad WTO membership have often, since the Uruguay Round, reflected the interests of developed countries (especially the US and the EU). The role of WTO Directors-General in aggressively promoting a new round of trade negotiations have also been noted as being quite opposite to the concerns raised by many developing countries with respect to such new round of trade negotiations.<sup>33</sup>

23. There have been some suggestions from academia as well as some WTO Members, such as the EC, in light of recent events, that the WTO Secretariat staff size might need to be increased and for the role and functions of the Director-General to be reviewed and reassessed in order to make the WTO Secretariat more pro-active and responsive to Members' demands. However, can the WTO Secretariat ever become a "neutral broker" in the context of the informal power politics that occur in the WTO? Would not an expanded Secretariat, with expanded institutional roles and functions, fundamentally alter the theoretically "member-driven" premises of the WTO; increase even more the power and influence of developed countries in the WTO's overall agenda-setting and decision-making processes; and ultimately provide for a greater degree of intrusiveness of the WTO into the domestic affairs of developing country Members?

24. *The key issues with respect to the WTO Secretariat and the Director-General, therefore, in which Members need to review and provide clear rules on would include the following:*

- *the content, direction, and extent of technical assistance and other Secretariat services being provided by the WTO Secretariat to Members;*
- *the role of the WTO Director-General with respect to the preparation for and the conduct of WTO meetings, consultations, and negotiations.*

## 2. Role and Functions of "WTO Officers": The Chairs of WTO Bodies

25. The various councils, committees, working groups, and working parties, of the WTO are the bodies through which the daily business of the WTO is done. Theoretically, all of these bodies (except for the accession working parties) are open to all WTO Members. Virtually no guidance is provided in the constitutional texts of the WTO with respect to the role and functions of the chairs of the different WTO bodies. Article IV of the WTO Agreement states only that the different WTO bodies shall have their respective chairs and shall establish their respective rules of procedure.

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<sup>33</sup> See e.g. Narlikar, *supra* note 19, at 11-12, 20-21; Steinberg, *supra* note 19, at 356. See also Andrew P. Cortell and Susan Peterson, *Who's Leading Whom? States, International Organizations, and the Limits of Delegation*, pp. 21-26, at [http://faculty.wm.edu/mjtier/Cortell\\_PetersonApril03paper.pdf](http://faculty.wm.edu/mjtier/Cortell_PetersonApril03paper.pdf) (last visited 13 October 2003).

26. On 31 January 1995, the WTO General Council adopted its “Guidelines for Appointment of Officers to WTO Bodies.”<sup>34</sup> These guidelines were replaced by new guidelines adopted by the General Council in December 2002.<sup>35</sup> Paragraph 3.1 of the 2002 guidelines states that “a balance which reflects overall membership of the WTO should be achieved in the appointment of officers.” From 1995 to 1999, the chairing of major WTO bodies was allocated on an approximately fifty-fifty basis between developing and developed countries (except in 1996 when more developed countries got chairpersonships than developing countries), and from 2000 to 2003, more developing countries chaired major WTO bodies than developed countries with a little under two-thirds of the major WTO bodies per year being chaired by the former (see Annex 3:A and Annex 3:B). However, despite the improvement in recent years, the ratio still does not fully reflect the balance in the overall membership of the WTO. Of the 146 WTO Members in 2002,<sup>36</sup> 101 (or 69.2 percent) are developing countries while the remaining 45 (30.8 percent) are developed countries (including transition economies). Furthermore, given the extra demands in terms of time and resources that chairing a WTO body will take on a developing country’s ambassador and his delegation, many developing countries have been very selective in accepting such positions. In addition, for some Least-Developed Country (LDC) Members, arrears in the payment of their WTO membership dues automatically disqualified them from being eligible to chair WTO bodies.<sup>37</sup> Finally, the 24 WTO Members that do not have any permanent mission in Geneva are likewise almost automatically disqualified from chairing any WTO body.<sup>38</sup>
27. The ambiguity and lack of clarity on the exact procedures to be used for the selection of chairs of WTO bodies has been raised by many developing countries as providing an avenue through which the agenda of the major developed countries can be promoted by the appointment of chairs who are supportive of or sympathetic to such agenda.<sup>39</sup> Indeed, only a few developing

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<sup>34</sup> See WT/L/31, 7 February 1995.

<sup>35</sup> See WT/L/510, 21 January 2003.

<sup>36</sup> The current membership is 148, with the addition of Cambodia and Nepal during the Cancun Ministerial Conference in September 2003.

<sup>37</sup> Paragraph 1.1 of the 1995 guidelines state that “Representatives of Members in financial arrears for over one full year cannot be considered for appointment.” This prohibition is reiterated in Paragraph 2.1 of the 2002 guidelines.

<sup>38</sup> Paragraph 4.1 of the 1995 guidelines state that “For bodies under Group 1 and 2, chairpersons should be appointed from among Geneva-based Heads of Delegations. In the case of Groups 4, 5, 6, and 8, chairpersons should be Heads of Delegation or officials of delegations of Members of the WTO in Geneva. Non-residents may be appointed in exceptional circumstances where the necessary expertise can only be found in capitals.” This requirement of having the chair be based in Geneva is reiterated in Paragraph 5.1 of the 2002 guidelines.

<sup>39</sup> Narlikar, *supra* note 19, p. 10. The 1995 guidelines, in Paragraphs 6.1 to 6.5, stated, *inter alia*, that the General Council Chair of the previous year would conduct consultations among the membership on the appointment of chairs for the major WTO bodies for the succeeding year, and that there would “no automaticity in succession to posts.”

countries seem to be able to make it as chairs of WTO bodies.<sup>40</sup> The 2002 guidelines provided for a bit clearer and a bit more explicit and time-bound procedure for the appointment of WTO officers,<sup>41</sup> and re-stressed that chairing of WTO bodies should be rotated, “as a general rule,” among Members with one-year terms of office.<sup>42</sup>

28. The 1995 guidelines did not clearly provide for any parameters or limits to what the chairs could do in running their respective WTO bodies. However, the 2002 guidelines now indicate that “Chairpersons should continue the tradition of being impartial and objective; ensuring transparency and inclusiveness in decision-making and consultative processes; and aiming to facilitate consensus.”<sup>43</sup> These 2002 guidelines apply only to the regular WTO bodies. The selection of and conduct of consultations by the chairs of the different negotiating bodies under the Doha-established Trade Negotiations Committee (TNC) are governed by a different set of rules.
29. Intensive discussions also took place with respect to the issue of having the WTO Director-General serve as the chair of the TNC. The General Council decided to make the sitting WTO Director-General, by virtue of his position as such, be the *ex officio* chair of the TNC.<sup>44</sup> Many developing countries during that meeting, however, said that their agreement to having the Director-General chair the TNC was conditioned on the subsequent establishment of clear guidelines that would guide the negotiating process under the TNC and its subsidiary negotiating bodies. However, to date, aside from both Paragraph 49 of the DMD and the TNC-endorsed Section B of the General Council Chair’s Statement to the TNC on 1 February 2002, such guidelines have not yet been established.
30. While most of the reports submitted by various chairs of WTO bodies to the General Council and to the TNC in the run-up to the Cancun Ministerial Conference were factual rather than recommendatory, the recent experience of developing countries vis-à-vis the draft Cancun ministerial text, while it was being prepared and drafted in Geneva and in Cancun itself, is clear testimony that the basic requirements of impartiality and objectivity, transparency and inclusiveness in decision-making, the facilitation of consensus and the evolution of consensus texts, and the reflecting of consensus or different positions, remain far from being fully complied with in the WTO. The penchant for using informal, exclusionary, and virtually opaque consultative methods, especially in the run-up to the ministerial conference, continues to be very much evident.

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<sup>40</sup> Among developing countries, the countries most often selected to chair a WTO body from 1995-2003 were: Hong Kong (7); Costa Rica (6); Brazil and Korea (5 each); and Chile, Colombia, Singapore, and Uruguay (4 each). (See Annex 2:B, *infra*, Note 2).

<sup>41</sup> See Paragraphs 7.1 to 7.5, 2002 guidelines.

<sup>42</sup> Paragraph 6.1, 2002 guidelines.

<sup>43</sup> Paragraph 2.2, 2002 guidelines.

<sup>44</sup> See WTO Trade Negotiations Committee, *Minutes of the Meeting of 28 January and 1 February 2002*, TN/C/M/1, 14 February 2002, Para. 9, approving Agenda Item 1 of the General Council Chair’s *Statement to the TNC of 1 February 2002*, TN/C/1, 4 February 2002.

31. *In terms of the role and functions of WTO officers, therefore, Members might need to address the following issues:*

- *the need to establish, and ensure the implementation of, clear rules of procedure and guidelines for conduct of their functions and responsibilities by WTO officers. These rules must, inter alia, seek to ensure that WTO officers exercise impartiality and objectivity; identify the consultation mechanisms to be used and the extent of their use; and actively seek to engage all Members, including those without representation in Geneva, in any formal and informal consultation process;*
- *the need to establish clear guidelines on the criteria for selection, rules on appointment, roles, responsibilities, and functions of the duly-appointed chairs of WTO bodies;*
- *the need to establish clear guidelines on the selection criteria and rules on appointment, their responsibility and functions, and the consultation or discussion facilitation procedures or mechanisms to be used by persons informally tasked with assisting formally appointed chairs of WTO bodies (such as the informal group “facilitators” and “friends of the chair”) in conducting informal consultations, negotiations, or meetings in informal settings.*

### *3. Role and Functions of the Ministerial Conference, the General Council, and Their Officers*

32. The Ministerial Conference is the highest policy-making body of the WTO. It has often been used, within the WTO context, as the vehicle through which major changes in the organization’s work program have been effected – e.g. the addition of Singapore issues to the WTO work program in 1996 and the launch of negotiations in 2001 covering more areas outside the “built-in” negotiating agenda on agriculture and services. As such, the role of the officers for the meetings of the Ministerial Conference is crucial in terms of ensuring that developing country interests are reflected in the outcomes. During the period that the Ministerial Conference is not in session, it is the General Council that performs the Ministerial Conference’s functions.<sup>45</sup>

33. Under Rule 12 of the 1996 Rules of Procedure for Sessions of the Ministerial Conference,<sup>46</sup> the Ministerial Conference is required to elect a Chairperson and three (3) Vice-Chairs, to serve a term of office extending from the end of the session in which they were elected to the end of the next regular session of the Ministerial Conference. The officers for the Cancun Ministerial

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<sup>45</sup> WTO Agreement, art. IV.2.

<sup>46</sup> WTO, *Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council*, WT/L/161, 25 July 1996.

Conference were formally elected into office by the General Council in July 2003.<sup>47</sup>

34. With respect to the selection or appointment of “facilitators” to assist the Ministerial Conference Chair in running the conference, one should not that there is no provision in the rules with respect to the appointment of “facilitators” or “friends of the chair” as Ministerial Conference officers. On the other hand, while the Ministerial Conference Chair is authorized, under Rule 17 of the 1996 Rules of Procedure for Sessions of the Ministerial Conference to “direct the discussion, accord the right to speak, submit questions for decision, announce decisions, rule on points of order and, subject to these rules, have complete control of the proceedings”, there is nothing in the rules that specifically authorizes (or prohibits) the Ministerial Conference Chair from making such appointments.
35. The conduct of the informal consultations by the “facilitators” during the Cancun conference involved mostly closed-door one-on-one discussions between the “facilitators” who had been selected by the Ministerial Conference Chair and Members’ ministers, either individually or in groups. This prevented ministers from engaging in substantive negotiations with each other, and instead caused the entire conference process to be concentrated in the hands of the “facilitators” and the WTO Secretariat staff supporting the facilitators. The Cancun Ministerial Conference, furthermore, agree on the venue for the next Ministerial Conference<sup>48</sup> and also failed to elect new Ministerial Conference officers to serve to the end of the next Ministerial Conference.
36. In addition to the ambiguity in terms of the power of the Ministerial Conference Chair to appoint “facilitators” or “friends of the chair” to assist him/her in the performance of his/her functions, the existing 1996 Rules of Procedure for Sessions of the Ministerial Conference are also not clear on the extent to which the Conference Chair can end or extend the conference proceedings. While Rule 17 of the 1996 Rules of Procedure for Sessions of the Ministerial Conference grants to the Chair the power to “declare the opening and closing of each meeting ... and ... have complete control of the proceedings,” it does not provide any clear-cut parameters under which such control may be exercised, especially in the matter of when to declare the meeting closed.
37. The same situation of ambiguity in the powers and functions of the General Council Chair also exists. The General Council Chair is elected from among the

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<sup>47</sup> These officers were the following: Chairperson – Minister Luis Ernesto Derbez (Mexico); Vice-Chairpersons – Minister Laurens Jan Brinkhorst (Netherlands), Minister Amir Khosru Mahmud Chowdhury (Bangladesh), Minister Youssef Boutros Ghali (Egypt). See WTO, *General Council – Minutes of the Meeting of 24 and 25 July 2003*, WT/GC/M/81, 28 August 2003, Paras. 76-77.

<sup>48</sup> Hong Kong – China had offered to host the Sixth Session of the Ministerial Conference (see WT/GC/72, 25 August 2003). This offer was accepted by the General Council on 21 October 2003, but postponed setting the date for such Sixth Session. See [http://www.wto.org/english/news\\_e/news03\\_e/hongkong\\_nextmin\\_21oct03\\_e.htm](http://www.wto.org/english/news_e/news03_e/hongkong_nextmin_21oct03_e.htm).



representatives of the Members to serve a term of one year.<sup>49</sup> The General Council does not have any Vice-Chairs.<sup>50</sup> The powers and functions of the General Council Chair are couched in exactly the same language as that of the Ministerial Conference Chair,<sup>51</sup> and the problems and issues that apply to the exercise by the Ministerial Conference Chair of his powers and functions also apply to the exercise by the General Council Chair of his own powers and functions. That is, there are no clearly defined parameters that determine how the General Council Chair is supposed to appoint any other “officers” for, or to run or direct the business of, the General Council.

38. In addition, the current practice of the Ministerial Conference and General Council Chairs of issuing draft texts “on their own responsibility” regarding issues under consideration by the membership does not have any clear legal basis under the WTO Agreement nor in the 1996 Rules of Procedure for the Ministerial Conference and the General Council nor, if such legal basis can be found, any clear guidelines or parameters for such.
39. The issuance of “own responsibility” texts by the Ministerial Conference or General Council Chairs, beginning with the run-up to the 1999 Seattle Ministerial Conference under the guise of making WTO process more “efficient”, has only increased the opacity of WTO decision-making processes and virtually disempowered Members from directly negotiating with each other because the focus of drafting texts has shifted from Members to the Ministerial Conference or General Council Chairs. That is, instead of Members negotiating with each other in evolving and drafting consensual texts (as is done in most other intergovernmental negotiations such as those in the United Nations and other intergovernmental organizations), Members’ representatives no longer deal directly with each other but instead focus their efforts on talking to the Chairs without any clear guideline or assurance that their perspectives will be fairly and adequately reflected by the Chairs in any text that the Chairs may issue on their “own responsibility.” This practice of issuing “own responsibility” texts also places a great deal of power in the hands of the Chairs that may not be clearly warranted under the WTO’s own legal instruments.
40. *Therefore, the 1996 Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council need to be reviewed and reassessed by Members with a view towards clarifying its provisions relating to the roles, functions, powers, and responsibilities of the Ministerial Conference and General Council officers, including their responsibilities to the membership to ensure that the procedures of the meetings that they chair are transparent, inclusive, fully participatory, and effective in addressing the needs of Members; and that their efforts are focused on assisting Members evolve consensual texts, or texts which fairly reflect divergent views, rather than for the Chairs to issue “own responsibility” texts.*

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<sup>49</sup> See WTO, *1996 Rules of Procedure for Meetings of the General Council*, WT/L/161, 25 July 1996, Rule 12.

<sup>50</sup> *Id.*, Rule 13.

<sup>51</sup> *Id.*, Rule 17.

## B. Process-Related Issues Involving WTO Decision-Making Which Do Not Require WTO Constitutional Changes

### *1. Decision-Making Mechanisms and Processes*

41. Issues and suggestions for reforms in the WTO's decision-making procedures gained in prominence first after the collapse of the 1999 Seattle Ministerial Conference, as a result of which Members undertook to have discussions relating to internal transparency and participation. The last major formal discussion among Members on these issues took place during the July 2000 meeting of the General Council. During that meeting, the then-General Council Chair, Ambassador Kare Bryn of Norway, sought to identify, based on his consultations with Members, what he felt were the "mainstream of the discussions" with respect to internal transparency and participation towards achieving consensus.<sup>52</sup> (See Annex 4 for the text)
42. Subsequent WTO process-related documents, such as the TNC Negotiating Principles and Practices<sup>53</sup> and the draft text of the Procedures for the Appointment of Directors-General<sup>54</sup> have pointed to Ambassador Bryn's statements above as indicative of "best practices" in terms of internal transparency and the participation of Members in decision-making in the WTO. However, some Members have continued to express reservations, exceptions, qualifications or commentaries with respect to Ambassador Bryn's statement.<sup>55</sup> This effectively implies that there is no consensus, especially from developing countries, on the points identified by Ambassador Bryn as "best practices" for WTO decision-making processes with respect to internal transparency and the participation of Members.

#### (a) Defining and Achieving Consensus

43. Formal WTO decision-making procedures are governed by Article IX of the WTO Agreement. Consensus decision-making is deeply embedded in the WTO decision-making system, and has its roots in GATT 1947 decision-making practices.<sup>56</sup> Art. IX.1 of the WTO Agreement expressly indicates a

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<sup>52</sup> See WTO, *General Council – Minutes of the Meeting of 17 and 19 July 2000*, WT/GC/M/57, 14 September 2000, Para. 134. Subsequently, during the December 2000 General Council meeting, Ambassador Bryn outlined what he believed were the "mainstream of the discussions on the preparation and organization of Ministerial Conferences." See WTO, *General Council – Minutes of the Meeting of 7, 8, 11, and 15 December 2000*, WT/GC/M/61, 7 February 2001, Para. 196.

<sup>53</sup> See WTO, *Trade Negotiations Committee – Minutes of the Meeting of 28 January and 1 February 2002*, TN/C/M/1, 14 February 2002, Para. 8, endorsing Section B of the General Council Chair's *Statement to the TNC of 1 February 2002*, TN/C/1, 4 February 2002.

<sup>54</sup> Job(02)/152, para. 2. This was subsequently adopted by the General Council on 10 December 2002. See WTO, *Procedures for the Appointment of Directors-General*, WT/L/509, 20 January 2003.

<sup>55</sup> See, e.g., WTO, *General Council – Minutes of the Meeting of 13-14 May 2002*, WT/GC/M/74, 1 July 2002.

<sup>56</sup> Narlikar, *supra* note 19, at 2. See also WTO Agreement, Art. IX.1. Other writers, however, have described consensus-based decision-making in the WTO as "organized hypocrisy in the procedural

preference for consensus decision-making over that of voting. Consensus is defined in the WTO Agreement as follows: “The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.”<sup>57</sup> The definition of consensus in Art. IX.1 of the WTO Agreement places importance on: (1) the actual and informed or knowledgeable presence of a Member’s representative during the meeting in which the decision is made; and (2) the willingness of such Member, during the meeting, to formally and expressly indicate that it opposes consensus on the proposed decision. In this form of “passive” consensus, both absence from the meeting and silence or non-objection during the meeting are equivalent to joining in the proposed consensus.

44. The consensus-based decision-making model under Art. IX.1 of the WTO Agreement “effectively bars developing countries from making full use of their equal status with industrial countries through the one-country one-vote system ... [,] deprives them of the benefits of formal voting and can work against them even if they hold the majority view on an issue.”<sup>58</sup> On the other hand, consensus-based decision-making has also enabled developing countries in some cases to effectively assert their voice in GATT and WTO decision-making.<sup>59</sup> The latest examples were in Seattle (1999), when a group of African, Caribbean, and Latin American countries objected to their marginalization from the decision-making processes that took place during that ministerial conference and declared that they could not join in any consensus arising from such flawed process; and in Cancun (2003), when Members could not come to a consensus on the issue of whether negotiations on the “Singapore issues”<sup>60</sup> were to take place after the ministerial conference, as a result of which Ministerial Conference Chair Minister Derbez of Mexico

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context ... [i.e.] as patterns of behaviour or action that are decoupled from rules, norms, scripts, or rituals that are maintained for external display. The procedural fictions of consensus and the sovereign equality of states have served as an external display to domestic audiences to help legitimize WTO outcomes.” See Steinberg, supra note 19, at 342 and also at 365.

<sup>57</sup> WTO Agreement, Art. IX.1 footnote 1.

<sup>58</sup> UNDP, supra note 17, at 87.

<sup>59</sup> See e.g. Steinberg, supra note 19, at 345-46, 350-54, stating that the inclusion of issues of interest to developing countries, such as special and differential treatment, in the agendas of the Dillon, Kennedy, Tokyo, Uruguay, and Doha rounds of multilateral trade negotiations were due to the legal power of developing countries to block a consensus under the consensus-based decision-making regime of the GATT and WTO.

<sup>60</sup> These issues, which were first included in the WTO’s work program as a result of the 1996 Singapore Ministerial Conference (hence the term “Singapore issues”), refer to the proposed negotiations for WTO agreements that would fall within the scope of the WTO’s existing dispute settlement mechanism and which would: (i) curb the ability of governments to regulate and direct foreign investments (*trade and investment*); (ii) prevent governments from supporting domestic enterprises to enable them to compete effectively against foreign competitors (*trade and competition policy*); (iii) require governments to undertake binding obligations for costly changes in government procurement procedures to eliminate any advantages that local firms might have in the bidding process and open up bidding procedures to foreign scrutiny and possible disputes (*transparency in government procurement*); and (iv) require governments to undertake binding obligations to effect costly changes in domestic procedures for the release of traded goods (*trade facilitation*).

decided that consensus could no longer be achieved and decided to close the conference.

45. However, given the capacity and resource constraints that many developing countries face in terms of their representation and participation in the WTO's day-to-day business in Geneva, developing countries might not be able to fully maximize the potential of the consensus decision-making model provided for in Art. IX.1 of the WTO Agreement in ensuring that their views and perspectives are clearly heard and fully reflected in the final outcomes of the process. To remedy the shortfalls of the current "passive" consensus rule in the WTO, Members could perhaps seek to clarify the mode through which consensus could be expressed.
46. An "active" consensus could be sought that would require "an active endorsement by all Members of the proposal under discussion, rather than simply the lack of objection."<sup>61</sup> This shift needs to be coupled with adequate and clear provision of information to all Members of the time and agenda of meetings in which such "active" consensus is sought. "Active" consensus can be seen as a viable alternative to that of the "passive" consensus provided for in Footnote 1 of Art. IX.1, or to that of majority voting under the last sentence of Art. IX.1 of the WTO Agreement. The Ministerial Conference, or the General Council in the interim between sessions of the Ministerial Conference, can legally create such an alternative means of decision-making under Art. IX.1 of the WTO Agreement without having to amend the WTO Agreement by simply clarifying the mode through which Members can express their consensus.
47. In fact, there are already precedents in the WTO for shifting from "passive" to "active" consensus. For example, the requirement of "explicit consensus" under the 1996 and 2001 WTO Ministerial Declarations with respect to decisions regarding the launch of negotiations, and on modalities for negotiations, of Singapore issues effectively requires Members to achieve "active" as opposed to "passive" consensus.<sup>62</sup> These references are clear indications on the part of the Ministerial Conference that the "passive" consensus rule in Art. IX.1, footnote 1, of the WTO Agreement, should, for purposes of deciding on Singapore issues, be modified. That is, Members' agreement to the launch of negotiations on Singapore issues as well as to the modalities for such negotiations must be "explicit" – i.e. actively, clearly and unambiguously stated or expressed. Silence or non-objection should not, therefore, be considered as consent. The ordinary meaning<sup>63</sup> of the term "explicit" is that it "distinctly expresses all that is meant; leaving nothing merely implied or suggested."<sup>64</sup> To be "explicit" means to be "unambiguous in

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<sup>61</sup> Narlikar, *supra* note 19, at 15.

<sup>62</sup> See the 1996 WTO Singapore Ministerial Declaration, para. 20; and the 2001 WTO Doha Ministerial Declaration, paras. 20, 23, 26, and 27.

<sup>63</sup> Art. 31(1), 1969 Vienna Convention on the Law of Treaties, requires that the terms of treaties or other international instruments be given their ordinary meaning in their context and in light of the instrument's object and purpose.

<sup>64</sup> Oxford English Dictionary, at <http://dictionary.oed.com>.

expression [with] such verbal plainness and distinctness that there is no need for inference and no room for difficulty in understanding.”<sup>65</sup> The Ministerial Conference’s requirements for “explicit consensus” with respect to decisions regarding the launch of Singapore issue negotiations and their modalities, therefore, are precedent-setting “active” consensus requirements in the WTO context.

*48. Hence, while retaining consensus as the bedrock of WTO decision-making and the foundation of the legitimacy of its rules and agreements for all Members, it might be useful for Members to clarify consensus as a means of decision-making in the WTO as requiring “active” rather than “passive” consensus.*

(b) Processes for Achieving Consensus

(i) Processes for the Doha-Mandated Negotiations

49. Paragraph 49 of the Doha Ministerial Declaration provides the legal basis for defining the process to be used in the negotiations – i.e. the negotiations are to be “conducted in a transparent manner among participants, in order to facilitate the effective participation of all ...” In December 2001 and January 2002, some developing countries made suggestions regarding the establishment of the TNC and the process for the Doha-mandated negotiations.<sup>66</sup> Section B of the General Council Chair’s Statement to the TNC on 1 February 2002<sup>67</sup> which was endorsed by the General Council during its 1 February 2002 meeting, lays down some negotiating principles and practices to be followed by the TNC and its subsidiary negotiating bodies. These include:

- a reference to paragraph 49 of the DMD vis-à-vis transparency in the negotiations, “in order to facilitate the effective participation of all”;
- a reference to the 17 July 2000 statement of Ambassador Bryn vis-à-vis “best practices” with regard to internal transparency and participation of all Members;
- expeditious circulation and translation into the three official WTO languages of the minutes of meetings of the TNC and other negotiating bodies;
- an “overall guideline” that “as far as possible only one negotiating body should meet at the same time”. The TNC is required to keep the calendar

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<sup>65</sup> Merriam-Webster Dictionary, at <http://www.m-w.com>.

<sup>66</sup> See WTO, *Cuba, Dominican Republic, Egypt, Honduras, Kenya, Pakistan, Tanzania, Uganda and Zimbabwe – Establishment of the Trade Negotiations Committee (TNC) and Related Issues*, WT/GC/58, 12 December 2001; and WTO, *Cuba, Dominican Republic, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe – Organization of Negotiations Envisaged in the Doha Ministerial Declaration*, TN/C/W/2, 29 January 2002.

<sup>67</sup> TN/C/1, 4 February 2002.

of meetings “under surveillance” and that the constraints of smaller delegations should be taken into account when meetings are being scheduled;

- chairpersons of the TNC and negotiating bodies should be impartial and objective; ensure transparency and inclusiveness in decision-making and consultative processes; aim to facilitate consensus and to evolve consensus texts; and reflect consensus or different positions on issues in their regular reports to the overseeing bodies.

50. *Given that, in many cases, the processes used often determine the substantive outcomes of negotiations, it might be time for Members to review the negotiating principles and practices outlined in the General Council Chair’s statement above in light of Members’ negotiating experiences in the various negotiating bodies in 2002 and 2003. Such review should be with a view towards clarifying ambiguities, establishing clearer and more explicit procedural negotiating norms, and creating more institutional opportunities to allow Members to effectively participate in the negotiations.*

(ii) Processes for the Ministerial Conference and the General Council

51. Currently, the only formal rules that guide the process for the conduct of Ministerial Conferences (as well as for meetings of the General Council) are contained in the “Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council.”<sup>68</sup> However, based on the experiences of both developing country delegates and from studies made by outside observers<sup>69</sup> regarding the processes used in the run-up to and during Ministerial Conferences, these rules of procedure tend to be honored more in the breach than in the practice. Furthermore, neither do these rules of procedure provide clear and unambiguous parameters for the exercise by the Chair of the Ministerial Conference, as well as by the Chair of the General Council in the run-up to the Ministerial Conference, of their powers as chairpersons of the meeting.

52. During the December 2000 meeting of the General Council, Ambassador Bryn also set out points, which were noted by the membership, “which he believed reflected the mainstream on the discussions on the preparation and organization of Ministerial Conferences.”<sup>70</sup> Some developing countries, such as India and Singapore, made comments during that General Council meeting that sought to further flesh out Ambassador Bryn’s listing. Given the importance of ministerial conferences in internal WTO governance, and reflecting on the procedural and political flaws of the processes leading up to

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<sup>68</sup> WT/L/161, 25 July 1996.

<sup>69</sup> See e.g. Aileen Kwa, POWER POLITICS IN THE WTO (Focus on the Global South, November 2002). See also various issues of the South-North Development Monitor (SUNS), at [www.sunsonline.org](http://www.sunsonline.org), as well as the relevant WTO ministerial conference webpages on BRIDGES, at [www.ictsd.org](http://www.ictsd.org).

<sup>70</sup> See WTO, *General Council – Minutes of the Meeting of 7, 8, 11, and 15 December 2000*, WT/GC/M/61, 7 February 2001, para. 196.

and during previous Ministerial Conferences, some developing countries have called for the establishment of clear guidelines and rules with respect to the Geneva-based preparatory process and the conduct of the negotiations during the Ministerial Conference itself.<sup>71</sup> During the May 2002 meeting of the General Council in which the developing country proposal above was discussed, India, as the presentor for the proposal, raised the following process issues with respect to the conduct of Ministerial Conferences:<sup>72</sup>

- (i) the general issue of procedures to be adopted for Ministerial Conferences and the Geneva process leading up to the Ministerial Conference: different procedures had been followed at Singapore, Geneva, Seattle and Doha;
  - (ii) the preparation of the draft Ministerial Declaration: different views had not been fully and clearly reflected, and options for decisions had not been precisely laid out;
  - (iii) there had been no discussion by the General Council or the Committee of the Whole on the procedures to be followed by the Ministerial Conference: a decision on the selection and appointment of facilitators appeared to have been taken prior to the meeting and then communicated to the Committee of the Whole, and there had been no inclusiveness or transparency in this process;
  - (iv) the organization of meetings: Ministers had had to sit for more than 40 hours at a stretch; and
  - (v) last-minute drafts on important issues, which left no time for consultations with stakeholders and other Government departments, or for proper reflection on implications.
53. While many developing countries expressed support for both the thrust and the conclusion the proposal presented by India with respect to the need for clearer procedural guidelines for the preparatory phase and the actual conduct of Ministerial Conferences, many developed countries, and some high-income developing countries, stressed that Members must ensure that they retain procedural flexibility in both the preparatory phase and the actual conduct of the Ministerial Conference. According to the latter, flexibility and non-rigidity in terms of operating procedures vis-à-vis the Ministerial Conference are essential to achieving agreements on the issues that are to be discussed therein. In a response to the developing country proposal, a group of developed and high-income developing countries called for the retention of “flexibility” and the “need to avoid rigidities” in the preparatory process for, and during,

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<sup>71</sup> See, e.g., WTO, *Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe – Preparatory Process in Geneva and Negotiating Procedure at the Ministerial Conferences*, WT/GC/W/471, 24 April 2002.

<sup>72</sup> See WTO, *General Council – Minutes of the Meeting of 13-14 May 2002*, WT/GC/M/74, 1 July 2002, para. 93.

Ministerial Conferences.<sup>73</sup> This proposal was discussed during the July 2002 meeting of the General Council, with many countries stating that the need for flexibility and the need for the establishment of clear guidelines need not be mutually exclusive. Another discussion on the issue of the preparatory process for ministerial conferences took place during the December 2002 General Council meeting, at which the membership took note of the General Council Chair's statement on this issue.<sup>74</sup> (See Annex 5 for the text of the General Council Chair's statements on this issue in December 2000 and December 2002). The fact that both the December 2000 and December 2002 General Council Chair's statements on internal transparency and participation in the preparatory process for and organization of ministerial conferences were merely noted, rather than endorsed or adopted, by the General Council meant that these statements did not have any strong normative force nor showed a strong commitment on the part of members to abide by them.

54. Hence, despite the efforts of Members from 2000 to 2002 to come to an agreement on the procedures to be used with respect to preparing for and organizing ministerial conferences, consensus on such procedures continued to be elusive. As a result, the preparatory process in the run-up to, as well as the actual conduct of, the Cancun ministerial conference were marked by the same informal, non-transparent, and non-inclusive mechanisms that also characterized past ministerial conferences. During the Cancun ministerial conference itself, the draft ministerial text reflected very little, if at all, of the concerns and proposals that had been previously raised by many developing countries with respect to various aspects of the draft.

55. *Members, therefore, might need to review and revisit the 1996 Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council, with a view towards revising them and clarify the procedures to be followed in these meetings, for the preparatory phases as well as for the duration of the meeting, with the objective of ensuring that:*

- (i) *all Members will be able to participate fully and effectively in all of the decision-making processes therein;*
- (ii) *the diversity of their views and perspectives are reflected and made the subject of full, inclusive, transparent, and participatory negotiations by Members;*

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<sup>73</sup> See WTO, *Australia, Canada, Hong Kong (China), Korea, Mexico, New Zealand, Singapore and Switzerland – Preparatory Process in Geneva and Negotiating Process at Ministerial Conferences*, WT/GC/W/477, 28 June 2002

<sup>74</sup> See WTO, *General Council – Minutes of the Meeting of 10-12 and 20 December 2002*, WT/GC/M/77, 13 February 2003, paras. 260-318. See also WTO, *General Council Chair's Statement on Internal Transparency and Effective Participation of Members in the Preparatory Process in Geneva and Organization of Ministerial Conferences (Revision)*, JOB(02)/197/Rev.1, 6 December 2002.



- (iii) *all decisions made are taken only when all Members have signified that they are ready, politically and technically, to make or join in such decisions;*
- (iv) *formal meetings of the Ministerial Conference and General Council are prioritized over informal meetings thereof, subject to proper and sufficient notice to be given, all relevant documents to be distributed to all Members well before the meeting in which such documents are to be considered, and proper and comprehensive minutes to be kept for subsequent distribution to all Members.*

(c) Institutional Mechanisms for Decision-Making

56. In the WTO, formal decisions are made and adopted by Members in formal meetings by consensus under Art. IX of the WTO Agreement. Formal and on-the-record meetings of WTO bodies are also used as the venues in which Members can put forward and formally discuss their proposals and views on issues. Formal meetings are recorded and minutes are kept, circulated, and made publicly available. These kinds of meetings and the records of such meetings, therefore, are valuable in ensuring both internal and external transparency, and also allow less well-resourced delegations (especially those that do not have representation in Geneva) to follow, albeit *ex post facto*, the formal discussions that took place leading up to the decision taken.

(i) Informal Mechanisms

57. However, the need for formal consensus has meant that informal processes are often, if not always, used in arriving at formal consensus decisions in the WTO.<sup>75</sup> These informal processes often take the following forms:
- a. “informal open-ended working groups” – informal meetings of Members, attended usually by technical-level delegates and open to participation by all Members, for the purpose of dealing with specific issues at the technical substantive level. Notice of meetings of these working groups are circulated to the general membership;
  - b. “Confessionals” – informal meetings of individual or a few Members with chair of a WTO body (or other person, e.g. “facilitator” or “friend of the chair,” appointed by the chair of such WTO body) “facilitating” or chairing the meeting, held so that the chair could get a sense of the bottom-line negotiating positions of the participants with respect to a particular issue. These kinds of meetings began to be held in the run-up to and during the Cancun Ministerial Conference;
  - c. “Green Rooms” – informal meetings of a few Members, usually from 24 to 30 in number and composed of the major developed countries, the big

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<sup>75</sup> UNDP, *supra* note 17, at 88.

developing countries, and the current coordinators of the major developing country groupings, chaired by the WTO Director-General or the General Council Chair for the purpose of getting the major Members to discuss divergences in positions on one or more issues and try to come to a common basis for agreement to be subsequently presented to the broader membership. In Geneva, Green Rooms would be attended by the heads of delegation or senior delegates of the invited Members, while in Ministerial Conferences, these would be attended by ministers. Invitations to attend Green Rooms are normally coursed through the WTO Secretariat (e.g. the Director General's office or the Council and TNC Division). These meetings began during the GATT period, especially during the Uruguay Round negotiations;

- d. "Mini-ministerials" – informal meetings of a few Members, usually composed of roughly the same countries as would be attending Green Rooms, but held outside Geneva in the territory of and at the invitation of a host Member for basically the same purpose as Green Room meetings but attended by the ministers of the invited Members. This kind of meetings started in early 2001 in the run-up to the Doha Ministerial Conference, and were again held several times in 2002 and 2003 in the run-up to the Cancun Ministerial Conference;
- e. "informal Heads-of-Delegation (HOD)" – informal meetings of Members at the heads-of-delegation level and open to participation by all Members for the purpose of discussing issues that need to be decided upon by the general membership whether at the General Council or at the Ministerial Conference level. Consensus decisions taken by an informal HOD meeting normally get converted into, or have the same force and effect as, a formal General Council or Ministerial Conference decision.

58. In general, issues would first be discussed in informal working groups before being moved to discussions in confessionals, Green Rooms, mini-ministerials, or informal HOD meetings. The common denominator for all of these informal modes of discussions is that the discussions that take place therein are generally all off-the-record, such that no official records are kept of what was said and who said what. This means that any records of what happened in such meetings will have to rely on the memories of the participants and the direction and tone of discussions therein inferred from the outcomes thereof.

59. The use of informal processes described above may provide Members with a degree of flexibility in discussing issues.<sup>76</sup> However, they more often introduce "ad hoc-ism and uncertainty to the decision-making procedures" and exacerbate the problems of participation, transparency, and inclusiveness that many developing countries face inside the WTO.<sup>77</sup> Informal processes also often tend to provide greater power to the chair and/or the WTO Secretariat/Director-General supporting the chair in terms of directing the

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<sup>76</sup> Narlikar, *supra* note 19, at 9.

<sup>77</sup> *Id.*, at 8-11.

frequency, conduct, extent of participation, and other parameters for the discussions.<sup>78</sup> Because of their very informality, there are no formal mechanisms which Members could use to challenge, for example, the conduct of informal meetings, the extent of their participation and inclusiveness, the role of the chairs, etc.<sup>79</sup> In addition, these informal processes have also been used and often dominated by the major developed countries in terms of setting the agenda and pushing forward their proposals to the rest of the membership.<sup>80</sup> Informal processes have also often worked against the formal participation of developing country coalitions and alliances in WTO negotiations.<sup>81</sup> Finally, the lack of formal written records of the discussions that take place in these informal meetings means that Members (i.e. most developing countries) who were not directly represented in these informal meetings will be negotiating at a distinct and automatic disadvantage. They will have a built-in negotiating handicap due to their lack of sufficient information regarding the negotiating positions of other Members upon which to base their own negotiating positions and strategies. The concept of mutually beneficial negotiated outcomes that is part of the WTO's institutional ethos<sup>82</sup> depends upon all negotiating partners having sufficient information about each other's negotiating positions in order to be able to arrive at mutually satisfactory outcomes.

60. *The problems associated with the use of informal processes to develop consensus can be mitigated through the establishment of rules to govern these informal processes. Among these rules should be those that define:*

- a. how the agenda is set and agreed-to by participants;*
- b. the criteria for the selection of invited participants;*
- c. the procedures for the inclusion of non-invited Members expressing an interest to participate in the meeting;*
- d. the issuance of notifications to participants and the general membership on the date, time, and venue of the meeting;*
- e. the frequency of meetings;*
- f. the keeping of notes or records of the meeting;*
- g. the dissemination or availability of information to non-participants regarding the discussions that took place in the meeting;*
- h. the role and functions of the chair of the meeting;*
- i. the role and functions of the WTO Secretariat staff supporting the meeting;*
- j. the provision of translation and other administrative support services for participants in the meeting*

## 2. *Focusing the WTO Work Program*

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<sup>78</sup> Id., at 10.

<sup>79</sup> See e.g. Sheila Page, *Developing Countries in GATT/WTO Negotiations* (Overseas Development Institute Working Paper, 2002), p. 29.

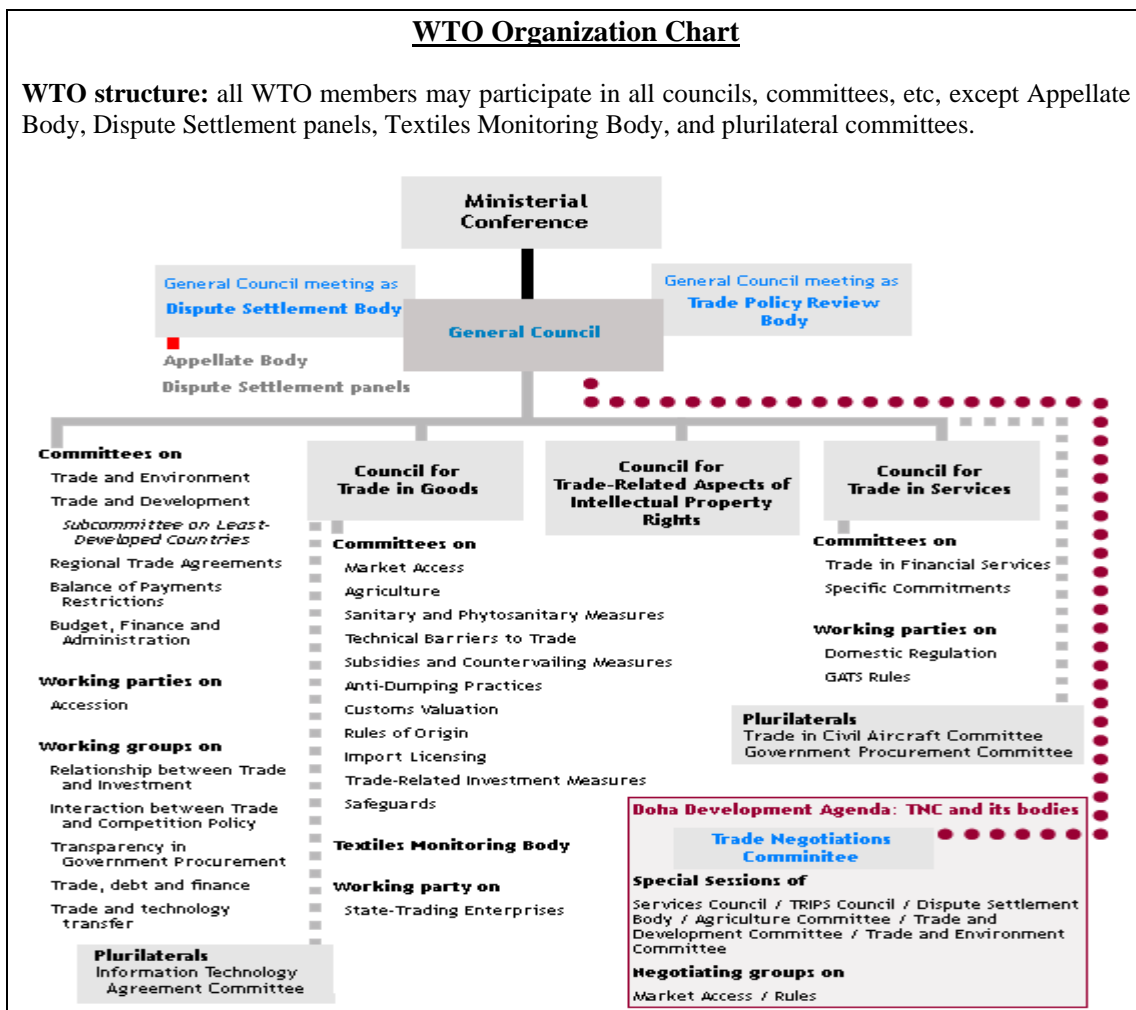
<sup>80</sup> See e.g. Steinberg, *supra* note 19, at 354-55.

<sup>81</sup> UNDP, *supra* note 17, at 88.

<sup>82</sup> See e.g. DMD, para. 2; and WTO Agreement, 1<sup>st</sup>-3<sup>rd</sup> preambular clauses.

61. Effecting positive changes in the processes of decision-making will not be as effective unless such changes are coupled with changes in how the WTO defines its work program. An overloaded and unwieldy work program, in which Members are expected to have their representatives engage in simultaneous and multiple discussions or negotiations in various WTO bodies, especially the negotiating bodies, can still result in adverse outcomes for developing countries even if there have been positive changes in the processes of decision-making.

62. Currently, in order to reflect the number of issues on the WTO's work program as defined by both its constitutional legal instruments and by past Ministerial Conference and General Council decisions, there were, prior to the Cancun Ministerial Conference, 35 regular WTO bodies (from the Ministerial Conference and General Council down to the sub-committees and working parties) and nine negotiating bodies (including the Trade Negotiations Committee) created under the Doha work program. The WTO organizational chart below clearly bears this out:



**Key**

- Reporting to General Council (or a subsidiary)
- Reporting to Dispute Settlement Body

■ ■ ■ Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members

● ● ● Trade Negotiations Committee reports to General Council

- The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body.

- The negotiations mandated by the Doha Declaration take place in the Trade Negotiations Committee and its subsidiaries. This now includes the negotiations on agriculture and services begun in early 2000. The TNC operates under the authority of the General Council.

**Source:** *WTO Secretariat, at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org2\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org2_e.htm)*

63. All WTO Members have the right to participate in all the regular and negotiating bodies (except the Appellate Body, dispute settlement panels, Textiles Monitoring Body, and plurilateral committees). However, the effective participation in such bodies by Members involves a capacity question – i.e. it is a function of the size and expertise of the Member’s delegation in Geneva and the extent to which such delegation is provided with adequate and effective technical and policy support from their capital. Of course, much also depends on the Member’s own assessment of the political or economic importance that it attaches to actively participate in a given regular or negotiating body.
64. Looking at participation as a capacity question, it is quite clear that developing countries, in large part, will not be able to match the capacity of developed countries to fully engage in and effectively participate in the discussions and negotiations of all the regular and negotiating bodies at the same time. For example, in 2002, the average size of a developing country delegation to the WTO in Geneva was 3.81 delegates. The range, however, is from zero (in the case of 24 developing country WTO Members that do not have missions in Geneva) to 10 or more for some bigger developing countries such as Nigeria (10), China (11), Brazil (12), and Korea (18), with a total of 385 delegates for all developing countries in the WTO. For developed countries and transition economies (with a total of 262 delegates in Geneva), however, the average delegation size in 2002 was 5.82 delegates per Member, ranging from two delegates for many of the transition economies to more than 15 for the major developed countries (US – 16, EU – 17, Japan – 22). The European Union (EU) also enjoys the benefit of having the missions of the various EC Member and Accession States, with a total of 114 Geneva-based delegates, working with the European Commission’s Geneva delegation (under the European Commission) to the WTO. Furthermore, only a few of the bigger and richer developing countries can count on having adequate technical and policy support and guidance from their capitals, nor have the resources to be able to frequently bring such capital-based experts to Geneva. Most (except for some of the transition economies) developed countries, on the other hand, generally enjoy strong technical and policy support and guidance from their capitals, as well as have the resources to be able to bring such support to Geneva.<sup>83</sup>

<sup>83</sup> The figures above are based on the April 2002 WTO Directory. There are no commonly accepted definitions of “developing” or “developed” countries in the WTO. Classification is by self-ascription. For example, Hong Kong, Korea, Mexico, and Turkey are included in the “developing country” classification even though they are not part of the G-77 and China developing country grouping because they describe themselves as developing countries in the WTO. Singapore is also considered a developing country in the WTO and is a member of G-77 and China. The “developed country”

65. Hence, while the large number of regular and negotiating WTO bodies place a severe strain on the human, technical, and financial resources of all Members, the burden is proportionately more severe on developing countries, in general, than on developed countries.
66. Even with the removal from the WTO work program of the four Singapore issues as a result of the Cancun Ministerial Conference, and hence the automatic dissolution of the four Singapore issue bodies<sup>84</sup> – i.e. the Working Groups on Trade and Investment, Trade and Competition Policy, Transparency in Government Procurement, and the Council for Trade in Goods' Special Session on Trade Facilitation – there will still be 31 regular WTO bodies that Members will have to participate in, as well as the nine negotiating bodies.
67. In the event that, as a result of a flawed process in which the perspectives of developing countries are not reflected, one or more of the Singapore issues are put back on the WTO work program and new bodies are established to deal with such issues (whether as a study process or as negotiations), such re-expansion of the WTO's work program will once again be proportionally more burdensome for developing countries than for developed countries. And since most developing countries have been opposed to Singapore issues since 1996, much valuable resources will have to be diverted by such Members to ensuring that their defensive interests vis-à-vis Singapore issues are protected rather than using such resources to ensure that their pro-active interests vis-à-vis other items on the WTO work program – e.g. developmental issues and agriculture – are advanced.
68. Hence, both capacity implications and substantive issues need to be considered by Members when defining the WTO work program. For developing countries, in view of their resource constraints as well as in view of their developmental interests in the context of the WTO, having a WTO work program that is more focused on trade and trade-related core developmental issues (such as implementation issues and special and differential treatment), rather than expanded to include issues that do not necessarily belong to the WTO's core mandate (such as Singapore issues), would be more advantageous in terms of enhancing their ability to effectively participate and play influential roles in the WTO's decision-making processes and thereby ensure favorable developmental outcomes from the WTO system.

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classification includes transition economies such as Albania, Bulgaria, Croatia, Georgia, Kyrgyz Republic, Moldova, and Poland; countries that are in the process of accession to the European Union such as Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, and Slovenia; countries whose terms of accession to the WTO classified them as “developed” such as Chinese Taipei; and countries that are members of the Organization for Economic Cooperation and Development (OECD) who do not otherwise self-ascribe themselves to be a “developing country”.

<sup>84</sup> See South Centre, *Informal Background Note: The Post-Cancun Legal Status of Singapore Issues in the WTO* (November 2003 draft).

*69. Members, therefore, might wish to consider ensuring that all Singapore issues now remain off the WTO's work program, and that all the Singapore issue bodies remain dissolved. In doing so, the basis can be set for creating a more realistic and workable WTO work program, characterized by a lesser number of WTO bodies conducting simultaneous discussions or negotiations, and thereby enhancing the ability of most developing countries to effectively participate in such discussions or negotiations.*

### III. IDENTIFYING A DEFENSIVE AGENDA ON WTO INSTITUTIONAL REFORM FOR DEVELOPING COUNTRIES

#### A. Process-Related Issues Relating to WTO Institutions Which Require WTO Constitutional Changes

##### *1. Executive Committee or Board*

70. The increasing assertiveness of developing country Members in the WTO in pressing their case as well as their numerical dominance in the WTO membership (69.59 percent of the total current membership) have meant that their concerns can no longer be disregarded or under-reflected in the conduct or outcomes of the working and decision-making processes of the WTO. Furthermore, the increasing membership of the organization (currently 148 countries with approximately 30 more applying for membership) is increasing the pressure on the organization to effect changes in its working and decision-making processes.
71. That such processes – both formal and informal – may be approaching their limits with respect to ensuring transparency, participation, and inclusiveness, while remaining flexible enough to be able to address and respond to different situations, is becoming clearly evident, especially in light of the experiences of Members in recent years with respect to the processes used in the preparatory phases and actual conduct of the Seattle, Doha, and Cancun Ministerial Conferences. The collapse of the Seattle and Cancun Ministerial Conferences (arising mainly from the failure to develop consensus around major procedural and substantive issues under discussion) and the circumstances under which the outcomes of the Doha Ministerial Conference were engineered have prompted calls from developing countries, on the one hand, for the organization to improve its decision-making processes by making them more transparent, inclusive, participatory, and formally rule-based; and from many developed countries, on the other hand, for such decision-making processes to focus more on flexibility, with a focus on enabling officials handling or facilitating discussions, as well as Members' representatives, benefit from flexible and more responsive mechanisms or procedures, including informal ones.
72. One of the suggestions that have been raised by academics and other observers with respect to new mechanisms for decision-making in the WTO is the establishment of an executive committee composed of a subset of around 25-30 Members that would be broadly representative of the general membership, including those Members who usually participate in Green Rooms and mini-ministerials.<sup>85</sup> Among the clearest articulations of the executive committee

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<sup>85</sup> According to Steinberg, *supra* note 19, at 364, among the earliest suggestions for creating such an executive committee (with permanent seats for the Quad countries, i.e. EU, US, Canada, Japan), or even a UN Security Council-type committee in which the Quad countries would have permanent seats and veto powers, to manage the WTO were raised by the US in 1990 during the Uruguay Round. After



suggestion has been that made by former WTO Director-General Peter Sutherland in October 2000 in a paper that he co-authored. His suggestions are important to note because he is the chair of the “Consultative Board on the Future of the Multilateral Trading System” established by WTO Director-General Supachai Panitchpakdi in June 2003.<sup>86</sup> This board is tasked “to reflect on how to improve the functioning of the organization as it expands to near universal membership, the role of the Secretariat and its resources, and ways to create more effective partnerships with other international organizations and greater public outreach.”<sup>87</sup> In a letter to the Financial Times written shortly after Cancun, Mr. Sutherland indicated that his consultative board will be taking “a serious look at the way the WTO functions.”<sup>88</sup> In Mr. Sutherland’s October 2000 paper, he wrote in reference to the establishment of an executive committee in the WTO that:

Under such a system, the majority of WTO members would delegate authority to a group of roughly two dozen governments to work on their behalf on matters before the General Council, both between and during Ministerial meetings, and other formal sessions. The executive committee’s role would be strictly limited to consensus-building on negotiating frameworks and solutions to specific problems. The executive committee would not have authority to make final decisions on behalf of other WTO members. All WTO members would still need to discuss and sign off on executive committee agreements. But if it were balanced in its composition, accountable, and trusted by WTO members, the executive committee should be able to expedite decision-making by the full membership.

The membership of the executive committee would have to be representative, and should reflect a combination of geographical balance, importance to the multilateral trading system (as measured by trade volume), and caucus size (as measured by the number of countries in a particular income grouping). A handful of major trading nations would have their own seats on the executive committee, but most nations would be represented by countries with which they have regional or economic ties. The members of these groupings would decide amongst themselves which delegation would assume the grouping’s seat, a choice that might vary from meeting to meeting, depending on the subject matter.<sup>89</sup>

73. Under such criteria, among the Members that would, for example, enjoy permanent seats in the executive committee would be: the US, EU, Japan, Canada, China, Korea, Mexico, Israel, and South Africa.<sup>90</sup> Other Members

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discussions with the EU, these suggestions were scrapped in favour of retaining the consensus-based decision-making model followed in GATT practice. Narlikar, *supra* note 19, at 16, states that these proposals have been echoed or reiterated in recent years by various delegations and academics using various formulations.

<sup>86</sup> WTO, *WTO Director-General establishes a Consultative Board on the future of the multilateral trading system*, Press/345, 19 June 2003.

<sup>87</sup> *Id.*

<sup>88</sup> Peter Sutherland, *Cancun was a setback but not a tragedy*, The Financial Times, 18 September 2003.

<sup>89</sup> Peter Sutherland and John Sewell, *Challenges facing the WTO and policies to address global governance* (October 2000), in Gary P. Sampson (ed.), *THE ROLE OF THE WORLD TRADE ORGANIZATION IN GLOBAL GOVERNANCE* (United Nations University Press, 2001), p. 100, available at <http://www.unu.edu/news/wto/ch05.pdf> (last visited 15 October 2003).

<sup>90</sup> See Jeffrey Schott and Jayashree Watal, *Decision Making in the WTO*, in Jeffrey Schott (ed.), *THE WTO AFTER SEATTLE* (Institute for International Economics, 2000), p. 291.

would have to be represented on a regional basis such as: ASEAN, EFTA (Iceland, Norway, Switzerland, Liechtenstein) and Turkey, Australia and New Zealand, North Africa and Middle East, South Asia, Mercosur, Andean Community, Southern and West Africa, Sub-Saharan Africa (including East and Central Africa), and the Central American Common Market together with the Caribbean Community.<sup>91</sup> Each region would then have to appoint a Member from that region to represent and fill that region's seat in the executive committee.

74. By and large, the greater majority of developing countries have, however, opposed the establishment of any executive body or committee in the WTO for consensus-building purposes, and have emphasized that the "Member-driven" nature of the organization be reinforced rather than be subverted by the creation of an executive committee or board, even if it will only have advisory or consultative functions.<sup>92</sup> They have stressed that:<sup>93</sup>

- a. The creation of such a board or committee would serve to institutionalize the existing exclusionary and non-participatory informal mechanisms such as the Green Rooms and mini-ministerials, as well as institutionalize the marginalization of a large number of developing countries from exercising their right to fully participate in the decision-making processes of the WTO. Existing power relations in the WTO will become formalized, thereby limiting the ability of the organization to adapt quickly to possible future changes in such relations as a result of changes in the WTO's membership and of changes in Members' geopolitical and economic relationships with each other in the future;
- b. The binding nature and intrusive potential of WTO decision-making also militates against many developing country Members being willing to give up their sovereign and equal right to partake, on their own account, in the making of decisions that may impact on their development policies in favor of delegating such right to other Members who have seats on the board or executive committee (even if such body is purely advisory in nature);
- c. The diversity of socio-economic and political conditions among developing countries will mean that their interests are likely to differ in many issue areas, such that regional groupings might not be able to adequately reflect and represent such differences of interests;
- d. Many developing countries continue to face resource deficits in their Geneva missions. Hence, the selection of a Member to represent a particular regional grouping might not necessarily still result in better representation for the members of that particular region unless they have an agreement to contribute human, financial, technical, and logistical

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<sup>91</sup> Id.

<sup>92</sup> Narlikar, *supra* note 19, at 17.

<sup>93</sup> Id., at 16-17.

resources to support their regional representative's work in the executive committee or body. Not many developing countries, however, can afford to provide additional resources to support the work of delegates or officials of other developing countries. Even relatively well-resourced developing country regional groupings such as ASEAN and Mercosur have failed to create strong regional machinery in Geneva to support common regional objectives. On the other hand, many developing countries have become increasingly engaged in common or joint formal and informal activities such as the submission of joint papers or proposals – e.g. the African Group, the ACP Group of States, LDCs, the “Like-Minded Group” of developing countries.

75. *Consensus must remain at the core of the decision-making processes of the WTO. Any changes in the institutional mechanisms for decision-making in the WTO must not be made at the expense of the sovereign and equal right of Members to fully participate in the consensus-based decision-making processes of the organization. Seen in this light, suggestions relating to the establishment of an executive committee or board, composed of a sub-set of Members, for the purpose of facilitating consensus-building among Members could lead to potential institutionalized derogations of such right. Furthermore, it could also effectively result in shifting the locus of real WTO decision-making away from the Ministerial Conference or General Council, in which all Members can theoretically participate, and thereby leading to a de facto amendment of the WTO Agreement which states that only the Ministerial Conference, or the General Council in the interim between sessions of the Ministerial Conference, has the sole decision-making authority of the WTO.*

#### B. Process-Related Issues Relating to WTO Decision-Making Which Require WTO Constitutional Changes

##### *1. Recourse to Trade-Weighted Voting*

76. Although Article IX of the WTO Agreement stipulates that recourse to voting on a one country-one vote basis may be done in the event that the consensus rule does not result in any decisions, such recourse to voting has never been resorted to in the WTO's entire history. Developed countries have, in general, been reluctant to agree to resort to voting because of the fact that the dominant majority of Members in the WTO are developing countries. However, this numerical advantage on the part of developing countries have never been taken advantage of by a resort to voting.
77. In late 2002, in relation to the discussions then on-going relating to the procedures for the appointment of WTO Directors-General, there were proposals from some developed countries that at least for that particular purpose, Members could resort to a modified form of voting in the event that the issue could not be settled by consensus. The modification then proposed

was that of a trade-weighted voting rule.<sup>94</sup> This proposal, however, did not make it into the adopted version of the procedures.<sup>95</sup>

78. Trade-weighting of votes would effectively allow developed countries – i.e. US, EU, Canada, Japan – working in concert (which they generally tend to do, in any case), to exercise veto powers in the making of decisions that are not to their liking and to disregard developing countries’ views. Based on the 2003 contributions to the WTO’s budget, the Quad countries’ percentage shares of world trade as are follows:<sup>96</sup>

|                              |          |
|------------------------------|----------|
| United States                | 15.899 % |
| European Union <sup>97</sup> | 39.565 % |
| Japan                        | 6.359 %  |
| Canada                       | 3.945 %  |
|                              | =====    |
| TOTAL                        | 67.056 % |

79. Other developed countries, such as Australia (1.143%), Iceland (0.045%), Israel (0.568%), Liechtenstein (0.025%), New Zealand (0.243%), Norway (0.820%), and Switzerland (1.464%), might be expected to support candidates supported by the Quad, thereby bring the developed countries’ share of trade among WTO Members to 70.076%. The biggest beneficiary of a trade-weighted voting arrangement would be the European Union since it has the biggest trade share and, in a trade-weighted voting arrangement, therefore, the biggest voting share.

80. The World Bank, the International Monetary Fund, and major regional development banks such as the Asian Development Bank and the Inter-American Development Bank, have voting mechanisms on their governing bodies that effectively base the votes of each member government on the amount of their contributions to the capital fund of the organization. These mechanisms effectively provide developed countries (especially the United States and Japan) with more voting power because of their greater economic contributions to the organization. Allowing the WTO to follow in the footsteps of these other international economic institutions in terms of its decision-making processes would further institutionalize and embed the dominance of developed countries not only in terms of global economic power, but also in terms of global political power. Instead, developing countries should seek to ensure that the political and economic space under which they can pursue their

<sup>94</sup> See WTO, *Draft Procedures for the Appointment of Directors-General*, JOB(02)/152, 25 October 2002, para. 21(b).

<sup>95</sup> See WTO, *Procedures for the Appointment of Directors-General*, WT/L/509, 20 January 2003.

<sup>96</sup> See [http://www.wto.org/english/thewto\\_e/secret\\_e/contrib03\\_e.htm](http://www.wto.org/english/thewto_e/secret_e/contrib03_e.htm)

<sup>97</sup> Composed of the following WTO Members: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom. If, as may be expected, the twelve WTO Members who are currently candidates for accession to the EU were to also vote in the same way as the EU, and hence add their trade shares to that of the EU, the total trade weight of the EU in 2003 would amount to 42.045%.

social and economic development strategies would be enlarged, rather than further limited.

81. Furthermore, changing the “one-country one-vote” principle in the WTO will require not only a mere administrative change in the procedures that may be agreed on by the Ministerial Conference or General Council with respect to a particular issue, but will in fact require that an amendment to the WTO Agreement be made. Article IX.1 of the WTO Agreement clearly stipulates that “[a]t meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote.” (underscoring added). The provision does not provide for any qualifications or exceptions as when such “one-country one-vote” rule would not apply. The provision, by using “shall,” is mandatory and does not provide the Ministerial Conference or the General Council with any leeway to do away with, or to revise such rule, under any circumstance.
82. Any revision of the “one-country one-vote” rule in the WTO can be made only by amending Article IX.1 of the WTO Agreement pursuant to the amendatory provisions of Article X.2 of the WTO Agreement. The latter provision requires that any amendment of Article IX of the WTO Agreement “shall take effect only upon acceptance by all Members.” In order for such an amendment of Article IX to be submitted to Members for acceptance, the decision to submit such proposed amendment to the Members for acceptance must have first been taken by the Ministerial Conference by consensus.<sup>98</sup> In treaty terms, “acceptance” refers to each Member having agreed to the amendment in accordance with their respective constitutional procedures for entering into treaties (e.g. ratification by a parliamentary body) and such acceptance has been communicated to the WTO Director-General.
83. *Agreeing to a trade-weighted voting system would do away with the ability of developing countries to use their numerical superiority as political negotiating leverage, and would reduce developing countries to becoming virtual spectators to WTO decision-making. Given the rules-making and rules-enforcing nature of WTO decision-making, developing countries should ensure that they retain the ability to effectively shape and influence such decision-making.*

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<sup>98</sup> WTO Agreement, art. X.1.

#### IV. CONCLUSION

84. An organization with a membership as broad and diverse as that of the WTO cannot long survive on internal governance mechanisms and procedures that effectively marginalize and leave out the greater majority of the membership from effectively influencing the way that decisions are made and implemented. Positive substantive outcomes for developing countries from the negotiations are likely never to arise without any serious changes in the way that these negotiations as well as the day-to-day business of the WTO are conducted. Seen in this light, the process and mechanisms for negotiations and decision-making are as important as the substance thereof.
85. Hence, while retaining the basic nature of the organization as a member-driven organization whose key decision-making principle is consensus, a pro-active agenda for developing countries in the area of WTO institutional reform and governance could involve addressing the following:
- a. the content, direction, and extent of technical assistance being provided by the WTO Secretariat to Members;
  - b. the role of the WTO Director-General with respect to the preparation for and the conduct of WTO meetings, consultations, and negotiations;
  - c. the need to establish and ensure the implementation of clear rules of procedure and guidelines for conduct of their functions and responsibilities by the chairs of WTO bodies;
  - d. the need to establish clear guidelines on the criteria for selection, rules on appointment, roles, responsibilities, and functions of the duly-appointed chairs of WTO bodies;
  - e. the need to establish clear guidelines on the selection criteria and rules on appointment, their responsibility and functions, and the consultation or discussion facilitation procedures or mechanisms to be used by persons informally tasked with assisting formally appointed chairs of WTO bodies (such as the informal group “facilitators” and “friends of the chair”) in conducting informal consultations, negotiations, or meetings in informal settings;
  - f. the 1996 Rules of Procedure need to be reviewed and reassessed by Members with a view towards clarifying its provisions relating to the roles, functions, powers, and responsibilities of the Ministerial Conference and General Council officers; and ensure that their efforts are focused on assisting Members evolve consensual texts, or texts which fairly reflect divergent views, rather than for the Chairs to issue “own responsibility” texts;

- g. to clarify consensus as a means of decision-making in the WTO as requiring “active” rather than “passive” consensus, while retaining consensus as the bedrock of WTO decision-making and the foundation of the legitimacy of its rules and agreements for all Members;
  - h. Members need to review the negotiating principles and practices outlined in the General Council Chair’s statement to the TNC on 1 February 2002 laying down some principles and practices to be observed for the Doha negotiations in light of Members’ negotiating experiences in the various negotiating bodies in 2002 and 2003. Such review should be with a view towards clarifying ambiguities, establishing clearer and more explicit procedural negotiating norms, and creating more institutional opportunities to allow Members to effectively participate in the negotiations;
  - i. the need to review and revisit the 1996 Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council, with a view towards revising them and clarify the procedures to be followed in these meetings, for the preparatory phases as well as for the duration of the meeting;
  - j. the need to establish rules to govern the informal processes used in the WTO;
  - k. the need to focus and establish a more realistic and workable WTO work program by keeping Singapore issues off it, and thereby enhance the ability of most developing countries to effectively participate in it.
86. Developing countries’ defensive agenda with respect to WTO institutional reform and governance would revolve around ensuring that any changes in the institutional mechanisms for decision-making in the WTO must not be made at the expense of the sovereign and equal right of Members to fully participate in the consensus-based decision-making processes of the organization. Suggestions relating to the establishment of an executive committee or board, composed of a sub-set of Members, for the purpose of facilitating consensus-building among Members, or to establish a trade-weighted voting system, should not be agreed to by developing countries.

**ANNEX 1:A – GROUPINGS AND COALITIONS AMONG WTO MEMBERS DURING THE CANCUN MINISTERIAL CONFERENCE**

| Issue              | Group/Coalition                      | Members   |
|--------------------|--------------------------------------|---|
| <b>Agriculture</b> | <i>Andean Community</i>              | Bolivia, Colombia, Ecuador, Peru and Venezuela (WT/MIN(03)/W/7, 5 September 2003)   |
|                    | <i>Central American countries</i>    | Honduras, Nicaragua, Panama and Dominican Republic (WT/MIN(03)/W/10, 5 September 2003)  |
|                    | <i>Caribbean Community (CARICOM)</i> | The Caribbean Community (CARICOM) has 15 Member States. For the full list, see <a href="http://www.caricom.org/">http://www.caricom.org/</a> . (WT/MIN(03)/W/11, 8 September 2003)  |
|                    | <i>G-10</i>                          | Bulgaria, Chinese Taipei, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Norway and Switzerland (WT/MIN(03)/W/12, 10 September 2003). There is no written formal record, however, of Mauritius having joined the group.   |
|                    | <i>G-20</i>                          | Argentina, Brazil, Bolivia, China, Chile, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Thailand, and Venezuela. (WT/MIN(03)/W/6, 4 September 2003; WT/MIN(03)/W/6/Add.1, 9 September 2003; and WT/MIN(03)/W/6/Add.2, 30 September 2003). El Salvador was a member of the group but withdrew from it on 12 September 2003. Colombia, Costa Rica, and Peru were members of the group but withdrew on various dates in September and October 2003.   |
|                    | <i>SP/SSM Alliance</i>               | Antigua and Barbuda, Barbados, Belize, Botswana, Cuba, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Honduras, Indonesia, Jamaica, Kenya, Mauritius, Mongolia, Montserrat, Nicaragua, Nigeria, Pakistan, Panama, the Philippines, Saint Kitts, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia, and Zimbabwe (WT/MIN(03)/14, 9 September 2003; WT/MIN(03)/14/Add.1, 12 September 2003). There is no written formal record, however, of Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, Haiti, Mauritius, Montserrat, Saint Kitts, Saint Lucia, Saint Vincent and the Grenadines, and Suriname having joined the group, although the CARICOM joint proposal on agriculture on 8 September 2003 (WT/MIN(03)/W/11) closely reflected the SP/SSM proposals of the SP/SSM Alliance.  |
|                    | <i>AU-ACP-LDC Alliance</i>           | WTO Members who are Member States of the following groups: African Union (AU); Africa, Caribbean, and Pacific Group of States (ACP); and Least-Developed Countries (LDCs). (WT/MIN(03)/W/17, 12 September 2003). <ul style="list-style-type: none"> <li>• The ACP groups 77 developing countries from Africa, the Caribbean, and the Pacific. For complete list of ACP member countries, see <a href="http://www.acpsec.org/gb/jointass/acplist.htm">http://www.acpsec.org/gb/jointass/acplist.htm</a>.</li> <li>• The AU groups 52 African member countries. For complete list of current AU membership, see <a href="http://www.africa-union.org/Member_states/member_states_a.htm">http://www.africa-union.org/Member_states/member_states_a.htm</a></li> <li>• LDCs include 49 countries classified by the United Nations as LDCs, of which currently 32 are WTO Members, eight are negotiating their accession, and two are currently WTO Observer States. For complete UN list, see <a href="http://www.unctad.org/Templates/webflyer.asp?docid=2929&amp;intItemID=1634&amp;lang=1">http://www.unctad.org/Templates/webflyer.asp?docid=2929&amp;intItemID=1634&amp;lang=1</a>.</li> </ul> |



|                         |   |  |
|-------------------------|---|--|
| <b>Singapore issues</b> | <b>G-90</b>   | <p>Bangladesh on behalf of LDCs, Botswana, China, Cuba, Egypt, India, Indonesia, Jamaica on behalf of the Caribbean Community, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Venezuela, Zambia, and Zimbabwe, <i>Media Release by a Group of Developing Countries on the New Issues</i>, 10 September 2003.</p> <ul style="list-style-type: none"> <li>• The Caribbean Community (CARICOM) has 15 Member States. For the full list, see <a href="http://www.caricom.org/">http://www.caricom.org/</a>.</li> <li>• LDCs include 49 countries classified by the United Nations as LDCs, of which currently 32 are WTO Members, eight are negotiating their accession, and two are currently WTO Observer States. For complete UN list, see <a href="http://www.unctad.org/Templates/webflyer.asp?docid=2929&amp;intItemID=1634&amp;lang=1">http://www.unctad.org/Templates/webflyer.asp?docid=2929&amp;intItemID=1634&amp;lang=1</a>.</li> </ul>  |
|                         | <b>AU-ACP-LDC Alliance</b>                              | <p>WTO Members who are Member States of the following groups: African Union (AU); Africa, Caribbean, and Pacific Group of States (ACP); and Least-Developed Countries (LDCs). (WT/MIN(03)/W/19, 12 September 2003).</p> <ul style="list-style-type: none"> <li>• The ACP groups 77 developing countries from Africa, the Caribbean, and the Pacific. For complete list of ACP member countries, see <a href="http://www.acpsec.org/gb/jointass/acplist.htm">http://www.acpsec.org/gb/jointass/acplist.htm</a>.</li> <li>• The AU groups 52 African member countries. For complete list of current AU membership, see <a href="http://www.africa-union.org/Member_states/member_states_a.htm">http://www.africa-union.org/Member_states/member_states_a.htm</a></li> <li>• LDCs include 49 countries classified by the United Nations as LDCs, of which currently 32 are WTO Members, eight are negotiating their accession, and two are currently WTO Observer States. For complete UN list, see <a href="http://www.unctad.org/Templates/webflyer.asp?docid=2929&amp;intItemID=1634&amp;lang=1">http://www.unctad.org/Templates/webflyer.asp?docid=2929&amp;intItemID=1634&amp;lang=1</a>.</li> </ul> |
|                         | <b>West African Economic and Monetary Union (UEMOA)</b> | <p>Benin, Burkina Faso, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, Togo (WT/MIN(03)/17, 13 September 2003)</p>  |
| <b>Cotton</b>           | <b>West and Central Africa (WCA) Group</b>              | <p>Benin, Burkina Faso, Chad, Mali (TN/AG/GEN/4, 16 May 2003; TN/AG/GEN/6, 4 August 2003; WT/MIN(03)/W/2, 15 August 2003; WT/GC/W/511, 22 August 2003; WT/MIN(03)/W/2/Add.1, 3 September 2003)</p>   |

**ANNEX 1:B -- GENERAL STATEMENTS OF DEVELOPING COUNTRY GROUPS PRIOR TO THE CANCUN MINISTERIAL CONFERENCE**

- **Common Market for Eastern and Southern Africa (COMESA)**, *Nairobi Ministerial Declaration on Preparations for EPA Negotiations and the 5<sup>th</sup> WTO Ministerial Conference*, 28 May 2003 (WT/L/519, 18 June 2003)
- **Argentina, Bolivia, Botswana, Brazil, Chile, China, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, Gabon, Guatemala, Honduras, India, Malaysia, Mexico, Morocco, Nicaragua, Pakistan, Paraguay, Peru, Thailand, Uruguay, Venezuela, and Zimbabwe**, *The Doha Agenda: Towards Cancún*, 4 June 2003 (TN/C/W/13, 6 June 2003)
- **Southern African Development Community (SADC)**, *Lusaka Ministerial Statement on Preparations for EPA Negotiations and the 5<sup>th</sup> WTO Ministerial Conference*, 7 June 2003
- **Least-Developed Countries**, *Dhaka Ministerial Declaration and LDC Negotiating Position for the Doha Round*, 2 June 2003 (WT/L/521, 26 June 2003)
- **Union Economique et Monetaire Ouest Africaine (UEMOA)**, *Ouagadougou Ministerial Declaration on the Fifth WTO Ministerial Conference at Cancun*, 19 June 2003
- **African Union**, *Mauritius Ministerial Declaration and African Union Common Position on the Fifth Ministerial Conference of the WTO*, 20 June 2003 (WT/L/522, 8 July 2003)
- **African, Caribbean, and Pacific (ACP) Group of States**, *Brussels Declaration on the Fifth Ministerial Conference of the WTO*, 1 August 2003
- **Caribbean Community**, *Caribbean Ministerial Declaration on the Fifth WTO Ministerial Conference*, 6 August 2003
- **G-77 and China**, *Ministerial Declaration of the Group of 77 and China on the Fifth WTO Ministerial Conference at Cancun, Mexico, 10-14 September 2003*, 22 August 2003 (WT/L/536, 25 August 2003)
- **Arab Countries**, *Recommendations of the Arab Ministerial Meeting in Preparation for the Fifth WTO Ministerial Conference*, 25 July 2003 (WT/L/537, 27 August 2003)

**ANNEX 2:A – POWERS AND FUNCTIONS OF THE WTO DIRECTOR-GENERAL**

| <b>Power or Function</b>  | <b>Legal Basis</b>  |
|---|---|
| Serve as head of the WTO Secretariat  | <b>WTO Agreement, Art. VI.1</b>   |
| Appoint WTO Secretariat staff and determine their duties and conditions of service  | <b>WTO Agreement, Art. VI.3</b><br>General Council, <i>Decision on Conditions of Service Applicable to the Staff of the WTO Secretariat</i> , WT/L/282, 21 October 1998, Annex 2: Staff Regulations; Pension Plan Regulations; and Staff Rules                                    |
| Present annual budget and financial estimate to WTO Committee on Budget, Finance, and Administration  | <b>WTO Agreement, Art. VII.1</b>  |
| Serve as depository for WTO agreements and their amendments, instruments of acceptance for amendments to WTO agreements, Members' accession instruments, and notices of withdrawal of membership          | <b>WTO Agreement, Art. X.7; XIV.3; XIV.4; XV.1 Agreement on Government Procurement, Art. XXIV.2; XXIV.10(a); XXIV.14 Agreement on Trade in Civil Aircraft, Art. 9.1.3; 9.6.1; 9.10.1</b>  |
| Perform other duties as may be required by the Ministerial Conference or the General Council  | <b>WTO Agreement, Art. VI.2 in relation to IV.1, IV.2 and VI.4</b>  |
| Offer good offices, conciliation or mediation, in <i>ex officio</i> capacity, to assist Members in settling disputes  | <b>Dispute Settlement Understanding, Art. 5.6</b>   |
| At the request of either party to a dispute, determine the composition of dispute settlement panels if there is no agreement on the panelists within 20 days after the date of establishment of the panel | <b>Dispute Settlement Understanding, Art. 8.7</b>   |
| Appoint an arbitrator if a Member fails to comply with dispute panel or Appellate Body recommendations or rulings   | <b>Dispute Settlement Understanding, Art. 22.6</b>  |
| Present annual report setting out major activities of the WTO and highlighting significant policy issues affecting the trading system   | <b>Trade Policy Review Mechanism, para. G.</b>  |
| Communicate with heads of IMF and World Bank for purposes of cooperation to achieve greater coherence in global economic policy-making  | <b>Marrakesh Decision on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policymaking, Para. 5</b>  |
| Convene meetings of the General Council by a notice issued not less than 10 days prior to the date of the meeting   | General Council, <i>Rules of Procedure for Meetings of the General Council</i> , WT/L/161, 25 July 1996, Rule 2   |
| Serve as <i>ex officio</i> Chair of the Trade Negotiations Committee established by the Doha Ministerial Declaration until 1 January 2005 (does not create precedent for the future)                      | Trade Negotiations Committee, <i>Minutes of the Meeting of 28 January and 1 February 2002</i> , TN/C/M/1, 14 February 2002, Para. 12, approving Section C, Agenda Item 1, of the General Council Chair's <i>Statement to the TNC of 1 February 2002</i> , TN/C/1, 4 February 2002 |

**NOTE:** This list includes major functions of the Director-General of the WTO but may not be treated as a complete and exhaustive listing thereof.

**ANNEX 2:B – RULES GOVERNING THE EXERCISE OF POWERS AND FUNCTIONS OF  
THE WTO DIRECTOR-GENERAL**

| Rule   | Legal Basis  |
|--|--|
| Not seek or accept any instructions from any government or any authority external to the WTO<br><i>(also applies to other WTO Secretariat staff)</i>           | WTO Agreement, Art. VI.4   |
| Refrain from any action which might adversely reflect on his/her position as an international official<br><i>(also applies to other WTO Secretariat staff)</i> |  |
| Responsibilities should be exclusively international in character<br><i>(also applies to other WTO Secretariat staff)</i>                                      |  |
| Be impartial and objective as TNC Chair  | Trade Negotiations Committee, <i>Minutes of the Meeting of 28 January and 1 February 2002</i> , TN/C/M/1, 14 February 2002, Para. 8, endorsing Section B of the General Council Chair's <i>Statement to the TNC of 1 February 2002</i> , TN/C/1, 4 February 2002 |
| Ensure transparency and inclusiveness in decision-making and consultative processes in Doha negotiations as TNC Chair  |  |
| Facilitate consensus   |  |
| Seek to evolve and reflect consensus texts, or if not possible, reflect different positions on issues  |  |
| Closely cooperate with General Council Chair and chairs of subsidiary negotiating bodies   |  |

**NOTE:** This list includes the major rules that govern the exercise by the Director-General of the WTO of his/her functions but may not be treated as a complete and exhaustive listing thereof.

## ANNEX 3:A – CHAIRPERSONSHIPS OF THE MAIN WTO BODIES (1995-2003)

| WTO Body   | WTO Member of Origin of Chairperson      |  |                                      |  |   |   |   |   |   |
|--|--|--|--------------------------------------|--|---|---|---|---|---|
|  | 1995                                     | 1996                                     | 1997                                 | 1998                                     | 1999  | 2000  | 2001                                    | 2002  | 2003  |
| General Council                                  | <i>Singapore</i><br>(Amb. Kesavapany)    | Switzerland<br>(Amb. Rossier)            | <i>Brazil</i><br>(Amb. Lafer)        | Canada<br>(Amb. Weekes)                  | <i>Tanzania</i><br>(Amb. Mchumo)            | Norway<br>(Kare Bryn)                       | <i>Hong Kong</i><br>(Mr. Harbinson)     | Canada<br>(Amb. Marchi)                     | <i>Uruguay</i><br>(Amb. Perez del Castillo) |
| Dispute Settlement Body                          | Australia<br>(Amb. Kenyon)               | <i>Brazil</i><br>(Amb. Lafer)            | New Zealand<br>(Amb. Armstrong)      | <i>Tunisia</i><br>(Amb. Morjane)         | Japan<br>(Amb. Akao)                        | <i>Hong Kong</i><br>(Mr. Harbinson)         | New Zealand<br>(Amb. Farrell)           | <i>Uruguay</i><br>(Amb. Perez del Castillo) | Japan<br>(Amb. Oshima)                      |
| Trade Policy Review Body                         | <i>Colombia</i><br>(Amb. Osorio Londono) | Ireland<br>(Amb. Anderson)               | <i>Pakistan</i><br>(Amb. Akram)      | <i>Tanzania</i><br>(Amb. Mchumo)         | Belgium<br>(Amb. Noirfalissee)              | <i>Bangladesh</i><br>(Amb. Chowdhury)       | Finland<br>(Amb. Huhtaniemi)            | <i>Kenya</i><br>(Amb. Chawahir Mohamed)     | Ireland<br>(Amb. Whelan)                    |
| Council for Trade in Goods                       | Japan<br>(Amb. Endo)                     | <i>India</i><br>(Amb. Naranayan)         | Norway<br>(Amb. Johannessen)         | <i>Costa Rica</i><br>(Amb. Saborio Soto) | New Zealand<br>(Amb. Farrell)               | <i>Uruguay</i><br>(Amb. Perez del Castillo) | Hungary<br>(Amb. Major)                 | <i>Malaysia</i><br>(Amb. Supperamaniam)     | Czech Republic<br>(Amb. Hovorka)            |
| Council for Trade in Services                    | Sweden<br>(Amb. Manhusen)                | <i>Philippines</i><br>(Amb. Bautista)    | <i>Korea</i><br>(Amb. Joun Yung Sun) | Japan<br>(Amb. Akao)                     | <i>Hong Kong</i><br>(Mr. Harbinson)         | Canada<br>(Amb. Marchi)                     | <i>Brazil</i><br>(Amb. Amorim)          | Ireland<br>(Amb. Whelan)                    | <i>Senegal</i><br>(Amb. Camara)             |
| Council for TRIPS                                | <i>Hong Kong</i><br>(Mr. Harbinson)      | New Zealand<br>(Amb. Armstrong)          | <i>Chile</i><br>(Amb. Luz Guarda)    | Hungary<br>(Amb. Major)                  | <i>Uruguay</i><br>(Amb. Perez del Castillo) | <i>Singapore</i><br>(Amb. Chak Mun See)     | <i>Zimbabwe</i><br>(Amb. Chidyausiku)   | <i>Mexico</i><br>(Amb. Perez Motta)         | <i>Singapore</i><br>(Amb. Menon)            |
| Committee on Trade and Development               | <i>Malaysia</i> (Amb. Siraj)             | <i>Morocco</i> (Amb. Benjelloun-Toumi)   | <i>Mauritius</i><br>(Amb. Baichoo)   | <i>Bangladesh</i><br>(Amb. Chowdhury)    | <i>Senegal</i><br>(Amb. Diallo)             | <i>Jamaica</i><br>(Amb. Smith)              | <i>Uganda</i><br>(Amb. Irumba)          | <i>Bangladesh</i><br>(Amb. Toufiq Ali)      | <i>Mauritania</i><br>(Amb. Lemine)          |
| Committee on Trade and Environment               | <i>Argentina</i><br>(Amb. Sanchez Arnau) | <i>Argentina</i><br>(Amb. Sanchez Arnau) | Finland<br>(Amb. Ekblom)             | <i>Singapore</i><br>(Amb. Chak Mun See)  | Hungary<br>(Amb. Major)                     | <i>Gabon</i><br>(Amb. Bike)                 | <i>Chile</i><br>(Amb. Jara Puga)        | <i>Turkey</i><br>(Amb. Demiralp)            | Slovak Republic<br>(Amb. Brno)              |
| Committee on BOP Restrictions                    | Germany<br>(Mr. Witt)                    | Germany<br>(Mr. Witt)                    | United Kingdom<br>(Mr. Jenkins)      | United Kingdom<br>(Mr. Jenkins)          | Poland<br>(Mr. Jodko)                       | Czech Republic<br>(Amb. Hovorka)            | <i>Colombia</i><br>(Amb. Jose Gomez)    | Romania<br>(Amb. Filip)                     | <i>Pakistan</i><br>(Amb. Ahmad)             |
| Committee on Budget, Finance, and Administration | France<br>(Mr. Metzger)                  | Japan<br>(Mr. Yokota)                    | Canada<br>(Amb. Weekes)              | Switzerland<br>(Mr. Meier)               | France<br>(Ms. Dubois-Destrizais)           | <i>Turkey</i><br>(Mr. Akil)                 | <i>Malaysia</i><br>(Amb. Supperamaniam) | United Kingdom<br>(Mr. McMillan)            | <i>Hong Kong</i><br>(Mr. Law)               |
| Committee on Regional Trade                      |  | Canada<br>(Amb. )                        | Canada<br>(Amb. Weekes)              | Belgium<br>(Amb. )                       | <i>Thailand</i><br>(Amb. )                  | <i>Philippines</i><br>(Amb. )               | France<br>(Ms. Dubois- )                | <i>Zimbabwe</i><br>(Amb. )                  | <i>Mauritius</i><br>(Amb. )                 |

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| Agreements  |  | Weekes) |                                   | Noirfalisse)                      | Jirapaet)                         | Custodio)                         | Destrizais)                       | Chidyausiku)                      | Meetoo)                           |
|---|--|---------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| Working Group on Trade and Investment   |  |         | Thailand<br>(Amb. Jirapaet)       | Thailand<br>(Amb. Jirapaet)       | Korea<br>(Amb. Man Soon Chang)    | Korea<br>(Amb. Man Soon Chang)    | Turkey<br>(Amb. Demiralp)         | Brazil<br>(Amb. Seixas Correa)    | Brazil<br>(Amb. Seixas Correa)    |
| Working Group on Trade and Competition Policy   |  |         | France<br>(Mr. Jenny)             | France<br>(Mr. Jenny)             | France<br>(Mr. Jenny)             | France<br>(Mr. Jenny)             | France<br>(Mr. Jenny)             | France<br>(Mr. Jenny)             | France<br>(Mr. Jenny)             |
| Working Group on Transparency in Government Procurement   |  |         | Venezuela<br>(Amb. Corrales Leal) | Venezuela<br>(Amb. Corrales Leal) | Costa Rica<br>(Amb. Saborio Soto) | Costa Rica<br>(Amb. Saborio Soto) | Costa Rica<br>(Amb. Saborio Soto) | Costa Rica<br>(Amb. Saborio Soto) | Costa Rica<br>(Amb. Saborio Soto) |
| Working Group on Trade, Debt, and Finance   |  |         |                                   |                                   |                                   |                                   |                                   | Colombia<br>(Amb. Gomez)          | Colombia<br>(Amb. Gomez)          |
| Working Group on Trade and Transfer of Technology   |  |         |                                   |                                   |                                   |                                   |                                   | Iceland<br>(Amb. Johansson)       | Iceland<br>(Amb. Johansson)       |
| <b>Doha Work Program Negotiations (including Built-In Agenda from Uruguay Round - January 2000 to September 2003)</b> |  |         |                                   |                                   |                                   |                                   |                                   |                                   |                                   |
| CTS Special Session   |  |         |                                   |                                   |                                   | Canada<br>(Amb. Marchi)           | Canada<br>(Amb. Marchi)           | Chile<br>(Amb. Jara)              |                                   |
| Committee on Agriculture Special Session  |  |         |                                   |                                   |                                   | Peru<br>(Amb. Bernales)           | Peru<br>(Amb. Bernales)           | Hong Kong<br>(Mr. Harbinson)      |                                   |
| Negotiating Group on Market Access  |  |         |                                   |                                   |                                   |                                   |                                   | Switzerland<br>(Amb. Girard)      |                                   |
| Negotiating Group on Rules  |  |         |                                   |                                   |                                   |                                   |                                   | New Zealand<br>(Amb. Groser)      |                                   |
| CTE Special Session   |  |         |                                   |                                   |                                   |                                   |                                   | Gabon<br>(Amb. Bike)              |                                   |
| TRIPS Council Special Session   |  |         |                                   |                                   |                                   |                                   |                                   | Korea<br>(Amb. Eui Yong Chung)    |                                   |
| DSB Special Session   |  |         |                                   |                                   |                                   |                                   |                                   | Hungary<br>(Amb. Balas)           |                                   |
| CTD Special   |  |         |                                   |                                   |                                   |                                   |                                   | Jamaica                           |                                   |

| Session                          |              |                 |              |              |              |                 |                | <i>(Amb. Smith)</i> |                |
|----------------------------------|--------------|-----------------|--------------|--------------|--------------|-----------------|----------------|---------------------|----------------|
| <b>Total No. of Chairs</b>       | <b>10</b>    | <b>11</b>       | <b>14</b>    | <b>14</b>    | <b>14</b>    | <b>16</b>       | <b>16</b>      | <b>24</b>           | <b>24</b>      |
| <i>From Developing Countries</i> | <i>5</i>     | <i>5</i>        | <i>7</i>     | <i>7</i>     | <i>7</i>     | <i>11</i>       | <i>10</i>      | <i>15</i>           | <i>15</i>      |
|                                  | <i>(50%)</i> | <i>(45.45%)</i> | <i>(50%)</i> | <i>(50%)</i> | <i>(50%)</i> | <i>(68.75%)</i> | <i>(62.5%)</i> | <i>(62.5%)</i>      | <i>(62.5%)</i> |
| <i>From Developed Countries</i>  | <i>5</i>     | <i>6</i>        | <i>7</i>     | <i>7</i>     | <i>7</i>     | <i>5</i>        | <i>6</i>       | <i>9</i>            | <i>9</i>       |
|                                  | <i>(50%)</i> | <i>(54.55%)</i> | <i>(50%)</i> | <i>(50%)</i> | <i>(50%)</i> | <i>(31.25%)</i> | <i>(37.5%)</i> | <i>(37.5%)</i>      | <i>(37.5%)</i> |
| <b>Year</b>                      | <b>1995</b>  | <b>1996</b>     | <b>1997</b>  | <b>1998</b>  | <b>1999</b>  | <b>2000</b>     | <b>2001</b>    | <b>2002</b>         | <b>2003</b>    |

## Notes:

1. Korea, Singapore, Hong Kong, Turkey, and Mexico are considered “developing countries”. Czech Republic, Slovak Republic, Hungary, and Romania are considered “developed countries.”
2. This document is compiled from lists of WTO bodies’ chairpersons issues by the WTO Secretariat and made available online at [www.wto.org](http://www.wto.org).
3. This does not include the chairpersons of subsidiary WTO bodies.

**ANNEX 3:B -- FREQUENCY OF SERVICE AS WTO BODY CHAIRS BY WTO MEMBERS  
(1995-2003)**

| Developing Countries    |  | Developed Countries     |  |
|-------------------------|--|-------------------------|--|
| WTO Member              | No. of WTO Bodies<br>Chaired: 1995-2003        | WTO Member              | No. of WTO Bodies<br>Chaired: 1995-2003        |
| Argentina               | 2  | Australia               | 1  |
| Bangladesh              | 3  | Belgium                 | 2  |
| Brazil                  | 5  | Canada                  | 8  |
| Chile                   | 4  | Czech Republic          | 2  |
| Colombia                | 4  | Finland                 | 2  |
| Costa Rica              | 6  | France                  | 10   |
| Gabon                   | 3  | Germany                 | 2  |
| Hong Kong               | 7  | Hungary                 | 5  |
| India                   | 1  | Iceland                 | 2  |
| Jamaica                 | 3  | Ireland                 | 3  |
| Kenya                   | 1  | Japan                   | 5  |
| Korea                   | 5  | New Zealand             | 6  |
| Mexico                  | 1  | Norway                  | 2  |
| Malaysia                | 3  | Poland                  | 1  |
| Mauritius               | 2  | Romania                 | 1  |
| Mauritania              | 1  | Slovak Rep.             | 1  |
| Morocco                 | 1  | Sweden                  | 1  |
| Pakistan                | 2  | Switzerland             | 4  |
| Peru                    | 2  | United Kingdom          | 3  |
| Philippines             | 2  |                         |  |
| Senegal                 | 2  |                         |  |
| Singapore               | 4  |                         |  |
| Tanzania                | 2  |                         |  |
| Thailand                | 3  |                         |  |
| Tunisia                 | 1  |                         |  |
| Turkey                  | 3  |                         |  |
| Uganda                  | 1  |                         |  |
| Uruguay                 | 4  |                         |  |
| Venezuela               | 2  |                         |  |
| Zimbabwe                | 2  |                         |  |
| <b>Total Countries:</b> | <b>Total No. of WTO<br/>Bodies Chaired: 82</b> | <b>Total Countries:</b> | <b>Total No. of WTO<br/>Bodies Chaired: 61</b> |
| <b>30</b>               |  | <b>19</b>               | <b>61</b>                                      |

## Notes:

1. The Chairpersonships of the TNC negotiating groups for the years 2002 and 2003 are counted two chairpersonships, i.e. one chairpersonship each for 2002 and 2003.
2. Among developing countries, the countries most often selected to chair a WTO body from 1995-2003 were: Hong Kong (7); Costa Rica (6); Brazil and Korea (5 each); and Chile, Colombia, Singapore, and Uruguay (4 each). Among developed countries, these were: France (10), Canada (8), New Zealand (6), Hungary and Japan (5 each), and Switzerland (4).



**ANNEX 4 -- AMBASSADOR BRYN'S POINTS RELATING TO INTERNAL TRANSPARENCY  
AND EFFECTIVE PARTICIPATION OF MEMBERS**

- Members generally did not see the need for any major institutional reform which could alter the basic character of the WTO as a Member-driven organization and its decision-making process;
- There was also a strong commitment of the Members to reaffirm the existing practice of taking decisions by consensus;
- Members seemed to recognize that interactive open-ended informal consultation meetings played an important role in facilitating consensus decision-making;
- As a complement to, but in no way a replacement of this open-ended consultation process, consultations might also take place with individual Members or groups of Members. In such cases, in order to ensure that the consultations contribute to the achievement of a durable consensus, it was important that:
  - Members were advised of the intention to hold such consultations;
  - Those Members with an interest in the specific issue under consideration were given the opportunity to make their views known;
  - No assumption should be made that one Member represented any other Members except where the Members concerned had agreed on such an arrangement; and
  - The outcome of such consultations was reported back to the full membership expeditiously for consideration.

Source: WTO General Council, *Minutes of the Meeting of 17 and 19 July 2000*, WT/GC/M/57, 14 September 2000, Para. 134

**ANNEX 5 -- GENERAL COUNCIL CHAIR STATEMENTS ON THE PREPARATORY PROCESS FOR, AND ORGANIZATION OF, MINISTERIAL CONFERENCES  
December 2000 and December 2002**

| General Council Chair Ambassador Bryn<br>(December 2000)   | General Council Chair Ambassador Sergio Marchi (December 2002)   |
|--|--|
| <ul style="list-style-type: none"> <li>• First, Members generally seemed to consider the main functions of the Ministerial Conference to be to provide the possibility for political involvement in the ongoing work of the WTO, give political guidance for future priorities, and allow for decision making by Ministers. Whether this would be in the form of a Ministerial Declaration would depend on the agenda of each individual Ministerial Conference.</li> <li>• Second, Members saw merit in having a maximum of flexibility in the process leading up to, and including, Ministerial Conferences. Any guidelines for the preparation and conduct of Ministerial Conferences should be broad and flexible taking into account the agenda of each Conference.</li> <li>• Third, there was broad recognition of the need to establish an efficient, Geneva-based preparatory process which would allow for solutions to be worked out in advance for most issues, particularly when decisions by Ministers were required. The setting up of any negotiating structure and working groups as well as chairmanships should also be agreed during the preparatory process.</li> <li>• Fourth, there seemed to be broad agreement among Members that the Chairman of the General Council with the support of the Director-General</li> </ul> | <p><b>II. The Preparatory Process for Ministerial Conferences</b></p> <ul style="list-style-type: none"> <li>• The preparatory process shall be conducted under the authority of the General Council.</li> <li>• Informal consultations as part of this process should be transparent and inclusive. As a complement to open-ended meetings, smaller consultations may also take place involving individual Members or groups of Members. In order that such consultations contribute to the achievement of a durable consensus, the following guidelines should be reaffirmed: <ul style="list-style-type: none"> <li>- Members should be advised in advance of such consultations;</li> <li>- Members with an interest in the specific issue under consideration should be given the opportunity to make their views known;</li> <li>- No assumption should be made that one Member represents any other Members except where the Members concerned have agreed on such an arrangement;</li> <li>- The outcome of such consultations should be reported back to the full membership expeditiously for its consideration.</li> </ul> </li> <li>• Meetings of the General Council should be held at regular intervals throughout this process, including at the senior officials level as appropriate, to take stock of the progress in the preparatory work. Taking into account the difficulty that non-Geneva based delegations have in participating in these meetings, every effort should be made to schedule a formal meeting of the General Council around the Geneva Week.</li> <li>• Sufficient time should be given for delegations to consider documents.</li> <li>• Work on the draft declarations should be completed in the preparatory process to the maximum extent possible, so that Ministers are in a position to focus on outstanding political questions. The language of the draft ministerial declarations should be clear and unambiguous.</li> </ul> <p><b>III. Ministerial Conferences</b></p> <ul style="list-style-type: none"> <li>• The organization of the preparatory process, as well as of the Ministerial Conference itself, should take into account the specific and unique issues facing each conference. The Chair of the Ministerial Conference should therefore be provided with an appropriate amount of flexibility in the consensus-building process. He/she should be made aware of and respect the best practices applied in the preparatory process and the elements set out in this statement.</li> </ul> |

|  |   |
|--|---|
| <p>and the Secretariat should assume a central role in the preparatory process as well as during the Ministerial Conference, especially in the negotiation of any agreed outcome. A host country would normally provide the Chairperson of the Conference who would chair the ministerial debate.</p> <ul style="list-style-type: none"> <li>• Fifth, Members generally considered that the Marrakesh Agreement already provided the flexibility needed regarding the frequency of Ministerial Conferences.</li> <li>• Sixth, Members reiterated that Ministerial Conferences should be held at the WTO Headquarters unless the Ministerial Conference or the General Council decides to accept an offer by a Member to host a Ministerial Conference.</li> <li>• Seventh, it remained clear that a strong, inclusive, and transparent process leading up to, and including, Ministerial Conferences, was fundamental in order to ensure a successful outcome. Furthermore, there seemed to be a common understanding throughout the Membership that the working methods during the preparatory process as well as during the Ministerial Conference, should be built on the positive experiences which had evolved within the organization over the past year.</li> </ul> | <ul style="list-style-type: none"> <li>• Ministerial Conferences should be organized in such a way as to facilitate the work of Ministers in giving political guidance and taking decisions.</li> <li>• Members recognize the value of the involvement of capital-based senior officials. Accordingly, and having regard to the specific nature and requirements of each Ministerial Conference, serious consideration should be given to the holding of a Senior Officials Meeting immediately prior to the Ministerial Conference.</li> <li>• A Committee of the Whole should be established at Ministerial Conferences. This Committee should be the principal forum for consensus building. The Committee of the Whole should ensure that all Members are given equal opportunity to express their views.</li> <li>• If necessary, sectoral work by individual working groups is an effective way for building consensus and expediting resolution of pending issues. Taking into account progress made in the preparatory process, the number, structure and chairpersons/facilitators for such working groups should be announced in advance in the interest of transparency and to assist Ministers and their delegations in their preparations.</li> <li>• Consultations to be held by the chairpersons/facilitators should be announced at open-ended meetings of the Committee of the Whole. Chairpersons/facilitators should report back to the Committee of the Whole periodically and expeditiously in a substantive way.</li> <li>• In organizing these and other consultations, the Chairpersons and facilitators should seek to coordinate as much as possible to facilitate the participation of all delegations.</li> <li>• The right of Members to designate their representatives to meetings is fully recognized. Heads of Delegations have the discretion to mandate officials to speak on their behalf.</li> <li>• Sufficient time should be set aside each day at the Ministerial Conference to allow for delegations to coordinate among themselves.</li> <li>• An extension of a Ministerial Conference should take place only in exceptional circumstances.</li> </ul> |
| <p>Source: WTO, <i>General Council -- Minutes of the Meeting of 7, 8, 11, and 15 December 2000</i>, WT/GC/M/61, 7 February 2001, Para. 196</p>   | <p>Source: WTO, <i>General Council – Minutes of the Meeting of 10-12 and 20 December 2002</i>, WT/GC/M/77, 13 February 2003, para. 318, taking note of WTO, <i>General Council Chair’s Statement on Internal Transparency and Effective Participation of Members in the Preparatory Process in Geneva and Organization of Ministerial Conferences (Revision)</i>, JOB(02)/197/Rev.1, 6 December 2002.</p>   |



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