

# “Reform” of the WTO: Basic Issues & Concerns

---

*Jim Kenworthy, Nathan Associates Inc.*

“Reform” of the WTO wasn’t a significant contributing issue to the collapse of the WTO Seattle Ministerial Conference last December. But, since then, it has become a central issue because of the dynamics of the Seattle preparatory process and the way the Conference itself was conducted. While most Member countries of the WTO actually agree on the need for reform, there is widespread disagreement on the reasons for that need and the nature of the reform indicated. Reform initiatives focus on two basic issues—“transparency” and “decision making.”<sup>1</sup>

## TRANSPARENCY/GREEN ROOMS

The “Quad” developed nations (the United States, European Union, Canada, and Japan) and many of the other OECD nations see reform as a need for “transparency” in WTO operations. They share the view that the goal is to open the internal procedures and operations of the WTO to smaller, newer Member countries (“internal” transparency) while at the same time opening the WTO generally to the global public (“external” transparency). Quad nations’ suggestions for improving *internal* transparency include having the Director General and the Chair of the WTO General Council increase consultation with members through more frequent informal meetings. Other suggestions include video-conferencing with capital-based trade officials, timely flow of documentary information to all Members, Geneva-based briefings for countries with no Geneva-based delegations, and focusing on practical ideas for maximizing the understanding by smaller countries of the scheduling and structuring of WTO operations.

Developed nations’ concerns for *external* transparency are more wide-ranging. The US, the EU, and Canada have all argued for opening up of the WTO to a global constituency beyond that of Geneva-based trade diplomats. Their suggestions for external transparency include: (1) making more WTO documents available to the public; (2) allowing non-governmental organizations (NGOs) to attend regular General Council and committee meetings “in an advisory capacity”; (3) expanding consultations and symposia to include NGO representatives; (4) expanding the use of the internet to reach more “stakeholders”—firms and individuals affected by WTO activities; and (5) opening up the Dispute Settlement process by (a) holding public panel hearings, (b) permitting “stakeholders” (read “NGOs”) to file *amicus* briefs in panel and appellate proceedings.

Developing and least-developed countries call for greater transparency, but for very different reasons. They are concerned with “inclusion” versus “exclusion.” While they agree that a rule-based multilateral trading system should provide predictability and security of international market access, they also feel the formulation of WTO rules should take into account their “special development

---

<sup>1</sup> Originally published in *Trade Trends*, The Washington International Trade Association, Summer/Fall Issue 2000, page 2.

needs and limited capacity to implement resulting agreements.” Having acceded to the WTO and signed the Uruguay Round agreements, they continue to feel excluded from effective negotiation and decision-making within the WTO. Their sense of exclusion centers upon the use of “green rooms” in negotiations and agenda-setting and from the operation of “consensus” in decision-making. Indeed, a recent UNCTAD meeting concluded that the present system is “. . . non-transparent and non-democratic.” Developing Members also suspect proposals to enhance interaction of NGOs are just an effort to involve developed Member protectionist constituencies in WTO activities in a manner contrary to their interests.

Use of “green rooms” is intended to reduce the number of negotiators in order to enhance the efficiency and effectiveness of WTO negotiations. Trade diplomats acknowledge certain realities of negotiation, e.g., (a) the *fewer* the negotiators, the more focused and productive the discussion; (b) the more technically *knowledgeable* the negotiators, the more efficient the discussion; and (c) the *less-open* the meeting, the more candid the exchange. But developing Members point out that another reality is that the more influence a single country or group of countries with common commercial interests and/or agendas have over the logistics and management of green room discussions, the more likely they can determine the outcome. So reliance on green rooms is seen by many Member nations as basically an exclusionary device. For instance, the Seattle green room consultations on the agenda and modalities for a new round of trade negotiations involved only about 25 delegations out of over 100 attending.

### **CONSENSUS/DECISION MAKING**

Even more frustrating for developing Member nations is their sense of general exclusion from most aspects of WTO decision making, attributable by them to the operation of the GATT/WTO principle of “Consensus”. Article IX of the Agreement Establishing the World Trade Organization provides that “the WTO shall continue the practice of decision-making by consensus followed by the GATT 1947” and that, except as otherwise provided [accession, waivers], where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting.” This incorporates into the WTO by explicit statement the former “customary practice” of consensus-based decision-making under the GATT '47.<sup>2</sup> So the GATT and now the WTO, in turn, have had a bias against voting by Members except in very limited situations. Many countries agree that this reflects fundamental differences between the WTO and other international organizations. For instance, the UN premises membership solely on the basis of national sovereignty, so that China exercises one vote the same as Vanuatu. The WTO, however, is concerned with commercial interests and premises membership in terms of a nation’s involvement in international trade, so that the degree of a Member’s influence

---

<sup>2</sup> According to the WTO's own *Guide to the Uruguay Round Agreements*, “Votes were seldom taken in GATT. The Tradition was that decisions were normally taken only after an issue had been discussed to the point at which an agreement had been developed which all countries were ready to support, or at least not to oppose.” - *Guide to the Uruguay Round Agreements*, Section 1.4, page 13, WTO, Geneva and Kluwer Law International, the Hague, 1999.

tends to reflect the scope of its interests in global trade and the impact of WTO agreements and rules on those interests.

The GATT never defined "consensus." When GATT had significantly fewer members, consensus on the resolution of an issue was presumed "unless a member objects." In diplomatic practice, consensus is considered "the absence of dissent"—albeit somewhere short of unanimity. But unanimity is no longer likely in an organization of 138 members with significantly divergent interests. Many developing Members feel they are rarely consulted for purposes of determining consensus and conclude that only a system of on-the-record voting would ensure their effective participation. They react archly when it is explained to them that the purpose of green rooms—to which they are not invited—is to determine consensus—in which they are not counted. Director General Mike Moore admits "the WTO is running on an outdated culture of making decisions . . . with procedures suitable for a much smaller group." EU Trade Commissioner Pascal Lamy labeled WTO procedures "medieval" and has said the WTO needs to be "reviewed, refurbished, and possibly rebuilt. Even the US admits "there is a need to change the rules of the WTO to give smaller countries more of a role with decisions . . . while ensuring that the WTO remains efficient in making decisions . . . and 'able' to overcome the differences in areas where consensus does not exist."

Nearly everyone now realizes the WTO is too large to operate on unanimous consent, nor can it operate effectively if subject to the veto of any single Member. But can it operate effectively, indeed at all, on a one-Member-one-vote basis on every issue confronted? Many members now concede the necessity of developing a new, fairer approach that ensures effective influence of each Member in a way that (a) preserves the essential viability of an organization focused on commercial and economic objectives and (b) sufficiently reflects the economic and *development* concerns of *all* its Members. The goal should be to adopt structures and procedures that retain the principle of "consensus", while ensuring that such consensus accurately reflects the "convergence of interests" that bring together such elements as market size, volume of exports, global competitiveness, on the one hand, and, on the other, stage of economic development and the importance of international trade to such development.

Eventually, the Members of the WTO are going to have to come to terms with respect to both real transparency in WTO operations and effective participation in WTO decision making. "Consensus" may be the ideal for decision making, but the *manner* in which consensus is determined may have to be reconsidered. While not contributing to the unraveling of the Seattle Ministerial Conference, this issue, if left unsettled, can complicate efforts to promote a new round of WTO trade negotiations and, worse, could undermine the viability of the WTO itself.