

# **The World Trade Organization: A Case for G20 Action on Institutional Reform**

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Failures of substance are often driven by failures in process. Admittedly, the proximate causes for the collapse at Cancun lay in the irreconcilable positions of members over agriculture, the Singapore issues, and cotton subsidies. But the reason why countries adopted the entrenched positions that they did, and why standard negotiating tactics were unable to break the deadlock at Cancun, had much to do with the flaws that

showdown at Cancun. In the second section, I analyze the debates on institutional reform. These debates translate into two contradictory visions of the WTO. They take us beyond some of the important but surface-level improvements that have been incorporated into over-veaking rove s. (differences and suggests ways )TJ-

As a result, member states find themselves bound to an elaborate, intrusive, legally binding and expanding set of disciplines that are arrived at through off-the-cuff, and often contested, decision-making processes. While the democratic deficit of the WTO has several sources, this incongruity between its expansive, legal system (that affects all its members and their populations) and weak, poorly institutionalized procedures that actually go into making that system is perhaps the most critical one. The same incongruity bears considerable responsibility for precipitating the breakdown of negotiations at Cancun.

Reactions to the running of the Cancun ministerial conference have been mixed. Most developing countries at the time of the ministerial and afterwards agreed that at least some processes were vastly improved in comparison to the Seattle ministerial conference.<sup>2</sup> Members were now informed about Green Room meetings and their content, and were also allowed time to consult among themselves and their allies. Interviewees also acknowledged similar improvements in the Geneva preparatory process leading up to the ministerial in the form of open-ended small-group meetings about which members had information and also the possibility of self-selection (in contrast to the old-style Green Room meetings).<sup>3</sup> But while acknowledging these improvements, several interviewees pointed to bigger process-related problems that remained and had even worsened. Some of these problems were a continuation of contested improvisations that had been used in the past, and then cited as precedent for a continuation of these improvisations. Others were innovations introduced at Cancun itself. Neither type of improvisation was usually arrived at through consensual, rational decision-making; they were usually stopgap measures to

be weighted against the position of developing countries through its discussion of the modalities of the negotiation within the Single Undertaking. The reaction of many developing countries to this draft was hostile, with Brazil even threatening to walk out of the ministerial if the text was used as the basis for the negotiation.<sup>6</sup> And yet, even in the face of such opposition, the same text was used as the draft for discussion at the Conference.

The resentment of several developing countries about the use of the Castillo draft as the basis for the negotiations was directed not only towards the substance of the text but also the fact that it was the Chair's text rather than a bracketed text. Until Seattle, bracketed texts had been the norm. Stuart Harbinson, Chair of the General Council prior to the Doha ministerial had gone against this norm (unsurprisingly, given the poor results that the 35-page long bracketed ministerial draft had generated at Seattle) and attempted to forge consensus among the divergent views by presenting his own text. The so-called Harbinson draft had been used as the draft ministerial text for the Doha ministerial conference. But it is worth recalling that the draft had come under severe criticism from some developing countries. Even at that time developing countries had questioned the authority of the Chair to issue such a text and had asserted that the text disregarded their viewpoints.<sup>7</sup> While a Chair's text represents a standard technique by mediators to find a focal point for facilitating agreement for negotiation analysts, this practice lacked the legitimacy that bracketed texts had enjoyed as the norm. Nor was this practice legitimized later through discussion among members and subsequent incorporation into general guidelines for negotiation. And despite its contested history, the same tactic was used once again at Cancun. One interviewee at Cancun remarked:

“Earlier the process was about having a draft based on consensus. Where there was no consensus, the text went into square brackets. Now the Chairperson issues a text and says that he is doing this on his own authority. Theoretically, this text isn't supposed to mean much. But in real texhistory, t 12 15 TD03 Tc0.0447 Tw-.069 Twisregarm

consensus requirement as applying to the modalities of the negotiations, thereby implying that there already existed agreement on starting the negotiations on the Singapore issues. These crucial differences in interpretation were as disruptive as they were inevitable; as the phrase had no legal foundation or precise definition, it left considerable scope for interpretation and dispute among the various parties. There was also little agreement on how the concept and implementation of 'explicit consensus' differed from a normal consensus. The series of proposals and counter-proposals (with the EU and several

particular country claimed increased vulnerability and heightened constraints on its already limited bargaining power. Admittedly, in any multilateral negotiation, some bilateral consultations among the negotiating parties are essential to reaching agreement. But such bilateral meetings are qualitatively different from ‘confessionals’ with the Facilitator (that were instituted by Minister Pierre Pettigrew as Facilitator the Singapore issues). Such ‘confessionals’ actually changed the nature of the ministerial forum and tipped the balance even further away from multilateralism, prompting a reaction from several developing countries to dig their heels even deeper with the hard-line position rather than reveal their true reservation values.<sup>11</sup>

And finally, besides the role of the Facilitators, the role of the Chair also came under severe criticism in and after Cancun. Derbez had already aroused the wrath of many developing countries across regions and coalitions with his revised draft declaration that came out on 13 September. This so-called Derbez text was supposed to be a compromise text based on the discussions of the first three days of the conference and responses to the Castillo draft. But most developing countries asserted that it did not adequately address their concerns; some deemed it even worse than the Castillo draft. But if the Derbez text left most developing country parties dissatisfied, his management of the proceedings of the final day of the conference came under even greater criticism.

While several controversies surround the final day of the conference, especially problematic was the decision by Derbez to abruptly call the meeting to a close. All precedent had suggested that the meeting would extend beyond the scheduled date of 14 September (though it is worth recalling that developing countries, particularly the LMG group, had denounced the extension of the ministerial conference at Doha). There were at least some indications of possible compromise, with the EU proposing an unbundling of

among members. If members are left arguing over such obvious procedural matters, it is hardly surprising that they find it difficult to reach agreement over complex issues of substance. Nor is it surprising that in two of the last three ministerial conferences, WTO machinery has come to a screeching halt.

## 2. Proposals for Institutional Reform

While discontent with global economic governance is not new, debates on institutional reform of the WTO entered the mainstream in a serious way after the collapse of the Seattle ministerial. Issues of internal transparency, in particular, were brought under considerable review and rethinking, and reflected in the proposals of countries<sup>12</sup> as well as mainstream deliberations of the General Council.<sup>13</sup> As a result of these debates, some improvements were incorporated in the old style of Green Room diplomacy, effective from the preparatory process leading up to the Doha ministerial. However, these improvements represented mainly cosmetic changes. They did not address the heart of many of the reform proposals that presented polarized views on the nature of the WTO as an international institution. Dissatisfaction of members with the accountability and efficiency of WTO decisions persisted. Hence the agenda for reform was included in Paragraph 10 of the Doha Declaration: “Recognizing the challenges posed by an expanding WTO membership, we confirm our collective responsibility to ensure internal transparency and the effective participation of all members. While emphasizing the intergovernmental character of the organization, we are committed to making the WTO’s operations more transparent...”

Particularly since Doha, with some of the very basic guidelines established,<sup>14</sup> proposals have begun to focus on the remaining, and considerably harder, issues. Two sets of proposals, in particular, typify the polarization of members’ views on what the WTO does and should do, thereby effectively presenting two very different views of global governance. These proposals go back to the preparatory process leading up to Cancun, but their substance has appeared before in a different guise and has been vociferously reiterated in the aftermath of the Cancun ministerial as well.

The first set of views is best represented by a proposal that was put forth by the so-called Like Minded Group (LMG) in April 2002.<sup>15</sup> The proposal was a refinement of proposals that the LMG had advanced formally and informally in the past along very similar lines. The central theme in the proposal was the call for greater certainty. The

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<sup>12</sup> For an analysis of many of the country proposals, see Narlikar, 2001.

<sup>13</sup> E.g. Minutes of Meeting, 17 and 19 July, 2000, Chairman Kare Bryn, WT/GC/M/57.

<sup>14</sup> E.g.: “Minutes of meetings of the TNC and of negotiating bodies should be circulated expeditiously and in all three official languages at the same time. Furthermore, the Secretariat is urged to take all possible steps to ensure the prompt and efficient dissemination of information relating to negotiations to non-resident and smaller missions in particular”; or “The constraints of smaller delegations should be taken into account when scheduling meetings”; and similarly “Chairpersons should be impartial and objective...”, see Statement by the Chairman of the General Council, TN/C/1.

<sup>15</sup> WT/GC/W/471, 24 April 2002, Communication from Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe. For an analysis of the negotiating strategies of the LMG, see Narlikar and Odell, 2003.

LMG argued that "... uncertainty in the process makes it difficult for many Members to prepare themselves for the conferences. Some basic principles and procedures for this Member-driven organization need to be agreed upon, so that both the preparatory process and the conduct of the Ministerial Conference are transparent, inclusive and predictable."

Suggesting ways in which their goal of greater certainty could be achieved, the LMG proposal focused on the preparatory process in Geneva, the ministerial conference and the additional issue of the venue of the ministerial conference. Almost all the specific proposals suggested ways in which negotiators could be locked into adhering to processes and substance that were agreed upon by the membership as a whole. For instance, the group proposed that "Any negotiating procedure to be adopted should be approved by Members by consensus in formal meetings"; and further, "Once the agenda and its parameters are agreed upon, changes may be permitted only if so decided by the entire membership." The document insisted that "The draft ministerial declaration should be based on consensus. Where this is not possible, such differences should be fully and appropriately reflected in the draft ministerial declaration" and that "A draft ministerial declaration can only be forwarded to the Ministerial Conference by the General Council upon consensus to do so". It also advanced the position that work on the whole declaration should be completed in Geneva as far as possible. The LMG further argued that facilitators for working groups should be elevated, the

instead of the non-transparent informal meetings.” The proposal asks that the holding of mini-ministerials should cease as “this practice discriminates against the vast majority of members that are not invited.”<sup>18</sup> Facilitators need to be selected by all members and not just the conference chairman, and they should be accountable to all members and not just the conference chairman.

The second view, and almost a polar opposite to the proposals supported by the LMG, the African countries and some NGOs, is typified in a proposal put forth jointly by Australia, Canada, Hong Kong, Korea,

point is especially noteworthy. The LMG-type view and the 8-member view, despite their many significant differences, agree on the principle of arriving at decisions by consensus.<sup>22</sup> The EC, in contrast, has reiterated the problems of reaching consensus. In a paper dated 25 September 2003, the EC stated "... the first and fundamental question of organization is whether it is possible to pursue any meaningful, comprehensive progress in the WTO only on the basis of consensus..."<sup>23</sup> It proposed two possible solutions to this problem. It proposed the creation of a WTO I that covered GATT-type classical areas and extended to the entire membership, and the creation of a WTO II that operated on "an optional plurilateral basis" to a wider set of areas. It also suggested the establishment of a small group representative of the membership at large that would seek compromises, which could be accepted or rejected by the General Council. Pascal Lamy has reiterated the idea of establishing a consultative group in subsequent speeches.<sup>24</sup> The proposal of a consultative group of some kind received extensive attention in the aftermath of Seattle and encountered strident opposition from many developing countries.<sup>25</sup> It is to the credit of the other members, including the LMG, the African Group and the 8-member group, that they have shelved this emotive issue (at least for the time being) and have chosen to confront some of the other demons of the WTO. Until these, more immediate and possibly more substantive questions are addressed, changing governance structures by establishing a consultative body are likely to only worsen the legitimacy crisis facing the WTO.

The reason why the LMG proposal and the 8-country proposal have proven to be irreconcilable is partly that they are based on conflicting interests and abilities. The LMG view is in keeping with Stephen Krasner's argument that developing countries seek authoritative regimes. Their search for greater certainty, and hence more formalized and tighter rules, derives from their comparatively limited capabilities to understand and negotiate the increasing technicality of an expanding set of issues that fall within the mandate of the WTO. Countries with well-identified proactive interests in the WTO and an ability to pursue them, in contrast, stress the virtues of flexibility and attach considerable importance to the diplomacy that has traditionally provided the groundwork for GATT and WTO negotiations. The key differences in these two views are highlighted in the table below. The implications of these differences, however, go beyond simply what the proposals themselves say. They translate into two competing visions of the WTO as an international organization, as the next section argues.

## **Divergent Views on WTO Reform**

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<sup>22</sup> Note that the commitment to consensus varies in degree. In the case of the LMG this commitment is enthusiastic and reiterated; in the case of the eight-member group, consensus seems to be accepted as the only workable alternative though not the best one.

<sup>23</sup> The Doha Development Agenda after Cancun, issued by the European Commission, Directorate-General for Trade, Brussels, 25 September 2003.

<sup>24</sup> Speech by Pascal Lamy, European Parliament Kangaroo Group, Brussels, 27 January 2004.

<sup>25</sup> Narlikar, 2001.

<b>LMG Proposal and Associated Views</b>	<b>Eight-member group Proposal and Associated Views</b>
Virtues of Formal Rules Resulting Proposals: <ul style="list-style-type: none"> <li>• No mini-ministerials</li> <li>• Get decision in Geneva (politicians susceptible to greater pressures/ limited awareness)</li> <li>• Appoint facilitators in Geneva with clear consensus</li> <li>• Bracketed text/ text reflecting different options; NOT Chair’s text</li> <li>• Clear rules of procedure on preparatory meetings/appointment of chairs</li> <li>• Maintain clear records of meetings</li> </ul>	Virtues of Flexibility and Informality Resulting Proposals: <ul style="list-style-type: none"> <li>• Leave space for ministerial conference, though also efficient Geneva process</li> <li>• Importance of political involvement and commitment</li> <li>• Any guidelines for ministerial conference be broad and flexible</li> <li>• Individual consultations may be necessary but the holding of such consultations and their outcomes should be reported to the full membership</li> </ul>
Limit Mandate	Not explicit on mandate, but recognizes the tight table that will “call for a process that does not build in unnecessary delays or procedural hurdles”
Centrality to Bureaucrats and Technocrats	Centrality to Politicians

### 3. Implications of Differences: Two Competing Visions

The differences between the two sets of proposals discussed in the previous section in effect suggest two very different visions of the WTO as an international organization and ways in which its accountability to its different stakeholders can be managed.

Implicit in the first vision, as typified in the LMG paper, is a view of the WTO as a highly technocratic organization. Developing countries (even larger ones like India, let alone the LDCs) find it difficult to deal with the expanding agenda of the WTO. Based on their experience at ministerial conferences in the past, they have seen that their politicians are susceptible to considerable pressure. This pressure derives not simply from the economic facts of market size and dependence on external markets, plus the susceptibility of politicians to pressure through cross-issue linkages. Rather, the vulnerability of politicians from developing countries stems from the fact that they are poorly equipped to deal with the technicalities of the negotiation, particularly when compared to their counterparts from the developed countries. This leads to a greater reliance and hope in their negotiators rather than their politicians. As a result, the LMG proposal as well as others from developing countries have stressed the importance of reaching agreement in Geneva; one interviewee at Cancun went so far as to say that the ideal scenario would be

that the politicians were allowed to do little more than rubber-stamp the decisions reached at Geneva.<sup>26</sup>

Limited resources (especially in terms of their presence in Geneva and size of delegations, along with the increasing demands placed on these small delegations through an expansion of the number of meetings) underlies the search for greater certainty of rules and procedures by developing countries. The same weakness also lies behind some of the more extreme demands that formal records be maintained of all meetings (which would, if implemented, destroy the very foundations of WTO diplomacy). The resulting vision, on balance, is of a limited organization with a well-circumscribed mandate and tightly bound by a clearly-specified set of rules and procedures.

The unfavourable reaction of some developed countries to such proposals is not surprising. The explanation is partly power political: developed countries stand to gain significant advantages from bilateral interactions that underpin the informal diplomacy of the WTO. Additionally, the politicians of developed countries are considerably more well-equipped to deal with the technicalities of WTO negotiations, especially as they are assisted by armies of government officials, consultants, representatives of the private sector and NGOs at a ministerial leeway. A political process increases their bargaining clout in comparison to a strictly technocratic one. It helps to retain the character of the WTO as a political organization, even though the substance of its agreements deals with technocratic areas. The resulting vision is of an expansive organization that cuts across issue areas, and is driven by politics rather technicalities and detailed rules.

The second view would hence support the increased and proactive involvement of politicians, be it in mini-ministerials, more ministerials, or some outside initiatives such as the G20 leaders' initiative that could give further guidance to the WTO when the organization seems to be floundering. These are certainly commendable aims. However, the involvement of politicians assumes two things: a) that politicians are able to understand the technical nature of the existing WTO agreements and of course potential areas under negotiation and b) that vertical accountability actually works.<sup>27</sup> Involving politicians more actively in the WTO, one could argue, would increase the accountability of the organization, through representation, to its real stakeholders, i.e. the peoples of member countries whose lives are so profoundly affected by WTO regulations. Unfortunately, especially when developing countries are concerned but also in studies pertaining to developed countries, both assumptions are suspect.

populations of developing countries are even less likely to penalize governments by voting them out of power for a particular position that the government took over some esoteric WTO matter. Hence greater involvement of politicians may give the veneer of legitimacy to WTO decisions in the short-run, but it is doubtful if it will actually improve the lot of developing countries in the WTO. And the continued disenfranchisement of developing countries in the WTO is unlikely to further the sustainability of the organization.

The first vision that limits the mandate of the WTO and binds it to a stringent set of rules attaches centrality to bureaucrats and technocrats. In this scheme, vertical accountability does not work. But the behaviour of its members and thereby the reach of this member-driven organization itself may still be governed by applying principles of horizontal accountability.<sup>29</sup> The principals of the agents, the politicians, may not understand what their agents are doing. But other agents within particular countries and at the international level could be assigned the tasks of monitoring and enforcement. The best way of overcoming the ever-expanding democratic deficit of the WTO may well be through the path of horizontal rather than vertical accountability. Under such a scheme, the WTO would retain and reinforce its character as a member-driven organization. The onus of ensuring monitoring and enforcement of penalties would fall on the members themselves. As with other national technocratic organizations, all its proceedings would not be revealed to the public eye through recorded minutes. As per the proposal of the group of eight countries, considerable scope for the informal diplomacy that underlies the workings of the WTO would still remain as members engage in trade-offs and linkages. But the political pressures that come to bear upon the organization especially at the time of a ministerial would diminish. The venue of any high-level meeting would no longer need to be a member country. Meetings would be arranged at the Geneva headquarters, thereby significantly reducing the costs and confusion that have become associated with most ministerial conferences.

Within such a scheme, where would the role of a forum such as a Leaders' Level G20 fit in? If the argument advanced so far is a valid one, and particularly against the background of the resentment among developing countries against small group meetings in the past, a G20 Heads of Summit initiative should tread very cautiously. Any involvement in the WTO would of course have to be based on what the G20 hopes to achieve through such engagement. Two levels of involvement seem possible. First the G20 could operate outside of the WTO but keep its eye on the negotiations of the Doha Development Agenda, somewhat akin to the role of the G8 in the world economy. But as the first section of this paper illustrated, the problem with the WTO seems to be less institutionalization, not less. Having a G20 outside of the WTO holding preparatory mini-ministerials is likely to worsen the problem of missing institutions inside the WTO. The second and alternative pathway that the G20 could take would be to embed itself more explicitly inside the machinery of the WTO. Similar to the consultations that have



facto rules and procedures that are improvised in the WTO in the name of the informality and flexibility required of a member-driven organization. The paper recognizes that the organization needs to tread a difficult balance between flexibility and certainty, informality and formality, and politicization and legalization. It suggests that one of the best ways to do so may be to restrict the mandate and nature of the WTO to a technocratic organization that is controlled through the principles of horizontal accountability rather than vertical accountability.

If such a vision of the WTO is accepted, the most constructive Leaders' Level G20 involvement will have to be at the periphery of the WTO and will need to be one among many such initiatives. The greatest positive contribution of a commitment of G20 leaders to WTO process would be to create awareness and capacity in their respective countries about WTO issues. It may also help in building new capacity-building initiatives among member countries. But either as a more institutionalized forum within the WTO or a central mini-ministerial body helping build consensus from the outside, a Leaders' Level G20 is likely to lack legitimacy and may contribute to further polarization within the WTO between the developed and developing worlds.

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