

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 underlie the institutional design of the WTO. The first section of this paper illustrates how limitations of process precipitated the 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 the decision-making processes of the WTO, and into the heart of what the WTO is and does as an international institution. Hence the third section examines the implications of these differences and suggests ways in which a Leaders' Level G20 might help facilitate a viable deal on institutional reform. The fourth section concludes.

1. Explaining Breakdown at Cancun: An institutionalist perspective

The WTO as it stands today presents a striking paradox: alongside its powerful legalism under the Dispute Settlement Mechanism (DSM) sit GATT-derived institutional informality and de facto improvisation in its decision-making processes. The parent of this paradox is not rational design but historical institutionalism and complex path dependence.

The founding of the WTO in 1995 presented a break from the GATT in several ways. The new DSM was significantly strengthened; the Single Undertaking meant that members had to accept most of the agreements as an all-or-nothing package; and the regulatory reach of the WTO extended markedly beyond traditional border measures and into areas that included services, intellectual property, investment measures, sanitary and phytosanitary barriers to trade, and technical barriers to trade. In the substance of its rules as well as their implementation, the WTO was a qualitatively new and evolved institution. But in the making of its rules and everyday functioning, the WTO preserved the practices of its predecessor. As in the old GATT days, it retains its member-driven character, still arrives at its decisions by consensus, places considerable reliance on informal diplomacy to reach this consensus, and assigns a minimal role to its Secretariat.

¹ The author thanks many of the delegates from developing countries who requested anonymity, but who were very generous in sharing some of their insights at Cancun and afterwards with her. She is particularly grateful to Rudolf Adlung, K.M. Chandrasekhar, Ian Huxtable, Arrmanatha Nasir, Siva Palayathan, Nasim Qureshi, Shishir Priyadarshi and Rorden Wilkinson for stimulating discussions and assistance with key documents. She would also like to thank the organizers of this workshop, particularly Ngaire Woods and Carolyn Deere.

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.² 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).³ 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 deal with a difficult situation and were then slapped onto the medley of informal practices that actually underlie the workings of the WTO.

One example of such contested improvisation that contributed to the confrontational atmosphere at Cancun was the Chair's text that was used as the basis for the ministerial conference.⁴ In the run-up to the ministerial, the Chair of the General Council, Ambassador Carlos Pérez del Castillo, issued a text 'on his own responsibility, in close cooperation with the Director-General.'⁵ The Castillo draft did 'not purport to be agreed in any part on this stage,' and claimed to be without prejudice to any delegation's position on any issue. The accompanying letter from the Chair and the DG further emphasized this point. Nonetheless, the text played an important role in agenda-setting, and was seen by many developing countries as privileging the proposals of some developed countries and marginalizing alternative proposals. For example, on agriculture, Annex A of the Castillo draft incorporated many of the proposals that had been put forth in the EU-US draft. The G20 countries, in particular, felt that the Castillo draft had not paid sufficient attention to their proposals. On the Singapore issues, the draft was seen to

² Interviews, 19-14 September, 2003, Cancun; telephone interviews, delegates from developing countries in Geneva, October 2003. For an analysis of some of the problems with decision-making that were raised after Seattle and in the run-up to Doha, see Narlikar, 2001.

³ On the evolution of Green Room diplomacy, see Narlikar, 2001.

⁴ The argument about the institutionalism of the WTO being rooted in a slapdash improvisation was first presented in Narlikar and Wilkinson, 2004. Some of the examples used in this section draw on the earlier paper.

⁵ JOB (03)/150, 24 August 2003.

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.⁶ 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.⁷ 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 reality, by doing so, he has already set the agenda.”⁸

A negotiation begun on such contested terms was bound to be a fraught one.

Another example of haphazard improvisation and poor use of the implicit norm of precedent can be found in the introduction of the phrase ‘explicit consensus’ at the Doha ministerial. At India's insistence, paragraphs 20, 23, 26 and 27 of the Doha Declaration used a new formula, namely that “negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.” Many developing countries cited the insertion of this phrase as an important gain and took it to refer to the possibility of any negotiation on the Singapore issues. Several developed countries, in contrast, interpreted the explicit

⁶ Interviews, developing country delegates, Cancun, 10 November 2001.

⁷ John Odell, 2002, writes, “Pakistan and India denounced Harbinson for planning to send the single text, omitting their dissenting positions, to ministers without a decision by the member states to authorize him to do so.”

⁸ Interview with a developing country delegate, Cancun, 10 September 2003.

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 different coalitions of developing countries as the battling protagonists), as well Option 1 and Option 2 of the Castillo draft, were all a product of these ambiguities. At least some of these confusions and misunderstandings could have been avoided had the Doha Declaration been negotiated on principles written in the WTO rather than new ones improvised in the last minute to beat consensus into shape.

Some equally controversial procedures were used at the ministerial itself. Once such practice was the appointment of ‘Facilitators’ to assist the Chairperson of the conference, Mexican Foreign Minister Luis Ernesto Derbez, in negotiations in different subject areas. Five Facilitators were chosen: the ministers of Singapore, Hong Kong, Kenya, Canada and Guyana to assist respectively in the areas of agriculture, non-agricultural market access (NAMA), development, Singapore issues, and other issues. This practice had a precedent in the ‘Friends of the Chair’ at Doha, and in fact went back to the days of the GATT. But it was one that had always attracted rumblings of discontent by developing countries.⁹ It generated even greater opposition in Cancun,¹⁰ despite the fact that considerable effort had gone into ensuring geographical representation and developing country participation in the group of Facilitators. In good measure, the resentment of developing countries against the practice of choosing Facilitators derives from the fact that there exist no rules – explicit or implicit – on the basis of their selection. They are not appointed by election or consensus, nor is it obvious exactly at what stage or by which criteria the candidates are actually chosen. And even though the role of these Facilitators is little more than to act as mediators, they enjoy considerable powers of agenda-setting by deciding whom to invite for consultations, the agenda of the meeting, the duration of the meeting, and eventually whose views will be included in the text. Lack of transparency in the appointment of individuals to these key positions expectedly heightens existing levels of distrust.

In addition to the more general complaint about lack of transparency in the selection of ‘Friends of the Chair’, several developing countries expressed extreme dissatisfaction with respect to the way the Facilitators actually managed Cancun. One delegate gave the author the example of a meeting that had been called to discuss development-related aspects of a particular issue and had been scheduled to last four hours. However, the Facilitator shortened the meeting to two hours and spent the next two hours holding consultations with individual countries. In the absence of its allies, the

⁹ The reason why the practice had not generated an open challenge in GATT days may be attributed to the lower levels of active engagement by developing countries and also lower stakes in the agreements. It is open to debate whether the same practice may not have generated considerably greater opposition at Doha had the external pressures for reaching an agreement (not least the context of post 9/11) not been so great.

¹⁰ Interviews in Cancun, 10-14 September; telephone interviews September-October 2003.

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.¹¹

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 the Singapore issues rather than their inclusion as a package. Various conspiracy theories circulated in the corridors in Geneva afterwards, ranging from the Derbez-gave-in-to-US-pressure theory to Derbez-was-incompetent theory. Amidst these allegations, what is usually ignored is that the whole point of belonging to an institution like the WTO is that it provides members with a credible set of rules and guidelines within which they can operate. In practice, however, despite its heavily legal content, the WTO leaves its standard operating procedures undefined. As a result, even such a mundane issue such as the extension of a conference deadline (which should be a relatively simple issue to provide a ruling on, either way) becomes a matter of endless bickering and confrontation

¹¹ In fact, a new negotiating process that is diametrically opposed to the Pettigrew process seems to have generated greater progress in resolving the impasse on agriculture recently. The current Chair of the Committee on Agriculture asked members to negotiate among themselves in the Agriculture Week rather than through an open-ended process with him as a mediator. Different groups of countries met with each other, for instance the G33 (also known as the Alliance on Strategic Products and Special Safeguard Mechanism) met with the US, and engaged in direct and more open dialogue. Such discussions among members are supposed to have contributed to confidence-building among members. The onus of deciding whom to consult with or when to do so fell on the members themselves, with a process of self-selection overcoming the problems of inclusion and exclusion. Of course whether this new formula would work in other situations, or even yield a positive outcome within agriculture, remains to be seen. The existence of clearly defined coalitions over agriculture simplified the process of consultation, which may not be the case where interests are more disparate. But this negotiating method provides an interesting contrast with the Pettigrew confessionals. Telephone interview with a delegate from a developing country, 24 May 2004.

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 countries¹² as well as mainstream deliberations of the General Council.¹³ 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,¹⁴ 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 2002.¹⁵ 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

¹² For an analysis of many of the country proposals, see Narlikar, 2001.

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

¹⁴ 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.

¹⁵ 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 needed to be decided upon in advance of the ministerial conference in Geneva after consultation with all members. On the ministerial conference, the LMG proposed an even more stringent tying of hands. For instance, it stated that the late night meetings and marathon negotiating sessions should be avoided and extension of the conference could only be allowed after a consensus on this among all members. Schedules of any consultations by the chairperson/facilitator should be announced at least a few hours before the meeting. Another proposal, this time by a group of African countries, reiterated the importance of a "transparent, democratic, all-inclusive and consultative decision-making process" and emphasized the adoption of procedural rules to facilitate this process.¹⁶ The African proposal, similar to the LMG proposal, urged that an official Committee of the Whole or plenary should function as the main decision-making body at the ministerial, and that any decision to extend the conference must have the approval of all members.

Some NGOs have advanced proposals along very similar lines. A memorandum issued by ten, mainstream NGOs on 13 July 2003 proposes that "Meetings should all be official, with minutes taken down and circulated to Members for amendments or confirmation."¹⁷ Akin to the LMG proposals to improve certainty in the negotiation process through greater formality, the NGO proposal calls for more formal meetings of the General Council and the TNC, "which should become the main decision-making fora

¹⁶ WT/GC/W/510, 14 August 2003, Proposals for Inclusion in the draft text for Cancun, Communication from Benin, Botswana, Kenya, Mauritius, Nigeria, Senegal, Sierra Leone, Tanzania, Uganda, Zambia and Zimbabwe.

¹⁷ Memorandum on the need to improve internal transparency and participation in the WTO, prepared by The Third World Network, Oxfam International, Public Services International, WWF International, The Center for International Environmental Law, Focus on the Global South, The Institute for Agriculture and Trade Policy, The African Trade Network, the International Gender and Trade Network, The Tebtebba International Center for Indigenous Peoples' Rights, 13 July 2003.

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.”¹⁸ 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, Mexico, New Zealand, Singapore and Switzerland.¹⁹ This proposal makes a direct reference to the LMG draft and presents an alternative view on many of the points presented in the LMG proposal. In contrast to the call for explicit rules and clearly laid down procedures, the 8-country proposal argues that “Prescriptive and detailed approaches to the preparatory process are inappropriate and will not create the best circumstances for consensus to emerge in the Cancun meeting.” It stresses the importance of flexibility in a member-driven organization. In direct contrast to the LMG proposal that suggests a suspicion of ministerial-level processes, this proposal argues that “The preparatory process should leave space for the Ministerial Conference to take up those issues which call for resolution at the ministerial level.”

The tensions between these two views are not new and have proven extremely difficult to reconcile. A commendable attempt to marry the two viewpoints was made in the Draft of the Chairman’s statement in December 2002.²⁰ The “non-paper”, in consonance with some of the LMG-type demands, emphasized the importance of transparency, information, sufficient time for delegations to consider documents, regular meetings at the General Council level, completion on the draft declarations to the maximum extent possible in Geneva itself. It gave another nod to the LMG draft by suggesting that “the Chairpersons/facilitators should report back to the Committee of the Whole periodically and expeditiously in a substantive way.” In keeping with the second view, however, the non-paper also emphasized that “The Chair of the Ministerial Council should... be provided with an appropriate amount of flexibility in the consensus-building process.” But the fundamental disagreements between the two views persisted and are reflected in the minutes of the meeting in which the non-paper was also discussed.²¹ The paper was not endorsed given the many differences that members continued to have (e.g. bracketed texts or not; direction to ministers or not; would informal meetings be considered a part of the process or not, and so forth).

Any discussion on the proposals of WTO reform will be incomplete without mentioning the position of the EC, particularly when one recalls Pascal Lamy’s tirades after Seattle and after Cancun about the WTO being a “medieval organization”. One

¹⁸ For a detailed analysis of the mini-ministerials and controversies surrounding them, see Wolfe, 2004.

¹⁹ WT/GC/W/477, 28 June 2002, Preparatory Process in Geneva and Negotiating Process at Ministerial Conferences, Communication from Australia, Canada, Hong Kong, Korea, Mexico, New Zealand, Singapore and Switzerland.

²⁰ JOB(02)/197/Rev.1, 6 December 2002, Internal transparency and effective participation of members in the preparatory process in Geneva and organization of ministerial conferences.

²¹ WT/GC/M/77, 13 February 2003, Minutes of meeting held in the Centre William Rappard on 10-12 December and 20 December 2002, Chairman Mr Sergio Marchi (Canada).

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.²² 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..."²³ 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.²⁴ 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.²⁵ 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

²² 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.

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

²⁴ Speech by Pascal Lamy, European Parliament Kangaroo Group, Brussels, 27 January 2004.

²⁵ Narlikar, 2001.

LMG Proposal and Associated Views	Eight-member group Proposal and Associated Views
Virtues of Formal Rules Resulting Proposals: <ul style="list-style-type: none"> • No mini-ministerials • Get decision in Geneva (politicians susceptible to greater pressures/ limited awareness) • Appoint facilitators in Geneva with clear consensus • Bracketed text/ text reflecting different options; NOT Chair’s text • Clear rules of procedure on preparatory meetings/appointment of chairs • Maintain clear records of meetings 	Virtues of Flexibility and Informality Resulting Proposals: <ul style="list-style-type: none"> • Leave space for ministerial conference, though also efficient Geneva process • Importance of political involvement and commitment • Any guidelines for ministerial conference be broad and flexible • Individual consultations may be necessary but the holding of such consultations and their outcomes should be reported to the full membership
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.²⁶

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.²⁷ 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.

As I have argued earlier, the capacities of politicians from developing countries to engage actively in WTO negotiations is limited due to resource constraints. They lack the research backing and numerous officials that ministers from developed countries have to assist them, besides having several other immediate claims on their time and vulnerability to external pressures. Second, several studies have shown that vertical accountability seldom works when it comes to foreign policy even in developed countries.²⁸ The

²⁶ Interview, 10 September 2003, Cancun.

²⁷ For more on issues of accountability, see Woods and Narlikar, 2001.

²⁸ Dahl, 1999; Woods and Narlikar, 2001.

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.²⁹ 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 recently been held on agriculture among coalitions, the G20 could constitute itself into a cross-issue and long-standing group. But the problem here is that unlike the coalitions of the WTO (including the ones on agriculture such as the G20 of Cancun), the Leaders'

²⁹ Schedler et al, 1999; Woods and Narlikar, 2001.

Level G20 is very much an artificially and externally constituted idea.³⁰ It has little base in common interests or a common identity that might unite members not at the WTO level. This means that the only way in which the G20 might be able to operate as semi-permanent to permanent group within the WTO would be in the form of a consultative group of some kind. Recall, however, that developing countries have already expressed their opposition to any form of consultative group at any level in the WTO and are unlikely to react well to an institutionalization of a Leaders' Level G20 within the standard operating procedures of the WTO at any stage of a negotiation. Particularly if the aim of a Leaders' Level G20 engagement in the WTO is to improve process by enhancing internal transparency and improving accountability, the effort is likely to backfire especially badly. It will not improve vertical accountability and will ensure a de facto marginalization of the greater part of developing countries from the negotiating process.³¹ An adverse reaction against a G20 Leaders' Level consultative process may well ensue despite the fact that the G20 list includes developing countries within its ranks.

The argument so far suggests that the direct involvement of a Leaders' Level G20 in the WTO is likely to be less constructive than might be hoped. Given especially the limitations of vertical accountability, it is unlikely to improve the longer-term legitimacy of WTO decisions, particularly when developing countries are concerned. Indirectly, however, the commitment of a Leaders' Level G20 may generate some positive effects at the domestic levels of the member countries. It could prove key to provoking national level interest and initiative in WTO matters, and could also further bilateral assistance and exchange of technical cooperation and capacity-building. Insofar that coalitions of developing countries in the WTO have also engaged at the ministerial level to raise their profile and indicate the level of their commitment to the group (such as the Cancun G20 or the Cairns Group), a Heads of State summit might provide an additional forum in which countries are able to engage in dialogue. Note however that coalitions such as the G20 of Cancun or the Cairns Group rely extensively on the "expert level" to engage in the actual negotiation process. As the Leaders' Level G20 is primarily a top-down idea and lacks a base of common interests and identity at the WTO level (let alone a people-to-people level), it remains to be seen if the G20 can or should operate viably at the technical level.

4. Conclusion

This paper has identified some of the institutional inadequacies of the WTO that contributed to the breakdown at Cancun. It has suggested that the problem lies in the de

³⁰ In fact, "Gerry Helleiner has denounced its lack of legitimacy, its restricted agenda and the fact that it was a US originated initiative," see Tussie, 2004. Diana Tussie also warns us of the risks of a Leaders' Level G20 drawing linkages between issues of debt and finance, and trade. This risk is in fact especially high because a high-level political involvement is likely to generate such linkages that would work to the detriment of the WTO as an international organization and their developing country members.

³¹ Saying that such a consultative body will not be a decision-making one does not alter the problem; developing countries have realized that they need to be inside the consultative body from early on if they are to understand the central debates of a negotiation. This participation is especially important if they are to exercise a credible threat to say no in the final decision-making stage.

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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