

trade hot topics

The Emerging Role of LDCs in WTO Decision-making Process

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Background

Of the 49 least developed countries (LDCs) in the world today, none was a founder member of GATT 1947, but today, 32 are members of the World Trade Organization while 10 more are negotiating accession. The LDCs, therefore, constitute a significant and important constituency in the WTO's 153-strong membership. The practice of decision-making by consensus in the WTO aims to provide every member an opportunity to be heard and to get its concerns addressed before rules are agreed to. Equally, members need to make more effort to achieve their negotiating objectives, as they require every member's support to see their proposals through. It follows that introducing proposals and positions as a group rather than individually makes that task easier. Many coalitions have emerged in the WTO decision-making processes as a consequence. LDCs have also made proposals, on their own as well as by joining larger coalitions, to achieve their negotiating objectives. While it is not clear whether and when the ongoing Doha Round of negotiations will conclude, these emerging coalitions have provided a new dimension to WTO decision-making processes.

This paper explores the emerging role of LDCs in WTO decision-making processes for negotiating rules of the multilateral trading system. LDCs have

not been active in the decision-making process in the GATT and WTO for very long. Even developing countries generally acquired a significant role in this process only during the Uruguay Round. However, the situation appears to have changed markedly in the Doha Round. Not only have the LDCs begun to get a seat in some of the inner group consultative processes in the WTO negotiations, they are also one of only two groups of countries that have made a formal submission to the upcoming Seventh Ministerial Conference of the WTO in Geneva. This paper traces this evolution. Having summarised the historical role of developing countries in GATT decision-making, it surveys some of the coalitions operating in the WTO during the Doha Round and examines the position of the LDCs group as such a coalition.

Decision-making in the WTO

The Agreement establishing the World Trade Organization prescribes the consensus method of decision-making as the primary rule, and voting as a secondary rule in circumstances where a consensus cannot be reached. Each member has one vote. However, since members of the European Communities negotiate in the WTO collectively, their votes are equal to the number of their members. A simple majority of the members constitutes a

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quorum. It is clarified in a footnote to Article IX of the WTO Agreement that consensus is held to exist when no member present at the meeting formally objects to a proposal.

Voting has been sparingly used in the GATT and WTO, except in cases involving waivers, accessions and some amendments. The last recorded decision by vote in the GATT was in 1959, on a recommendation on Freedom of Contract in Transport Insurance¹. The WTO followed this practice of decisions by consensus. After the decision by vote in the case of the accession of Ecuador², the first country to accede to the WTO, even accession decisions have been taken by consensus. Waiver decisions in the WTO have also been decided by consensus. If this trend continues, voting procedures may be of only academic value, and focus of WTO members will remain on how to arrive at a consensus that benefits them.

The decision-making practices followed in the WTO in various dimensions confirm this view. An overwhelming majority of WTO members criticised the Appellate Body for its decision to allow amicus curiae briefs, but no decision was put to vote. A tedious and long winding debate was preferred to voting by the membership when appointing a successor to WTO Director-General Renato Ruggie. The decision taken by the WTO in its 2001 Doha Ministerial Conference to implement the so-called paragraph 6 of the Doha Decision on Public Health by end of 2002 was not implemented even though only one member was objecting; members persevered to reach a consensus in August 2003. A procedural issue of appointment of a facilitator in accordance with the Agreement on Subsidies and Countervailing Measures in the US-Cotton Subsidies dispute was never resolved, absent consensus.

Role played by developing countries in GATT decision-making

Over the first five rounds of negotiations the GATT functioned as a forum for developed countries to collectively lower their tariff barriers. The sixth round saw rules on anti-dumping measures, and the seventh round added voluntary 'codes' accepted by a limited number of members, mostly developed, on this and some other non-tariff barriers. Even though some developing countries were founding members of the GATT, they as well those who joined later were not expected to make any concessions. Developed countries led by the USA and the European Community decided the

agenda for each round and conducted negotiations among themselves to arrive at a set of concessions that they could apply on a most-favoured nation (MFN) basis to all GATT members.

The seventh round, the Tokyo Round, for the first time attempted to tackle tariff and non-tariff barriers systemically. Concessions exchanged on products of interest to developing countries, particularly agriculture and textile products, were naturally lesser as they were not involved in the negotiations as much as the developed countries were. Developing countries never blocked any decisions because no concessions were expected from them and because they benefited from the MFN principle. A secure and predictable multilateral trading system with binding rules, and an effective dispute settlement mechanism, where fair application of rules rather than market power determined trade policies, was a preferred option for developing countries with little political muscle and an uphill task to derive economic benefits from trade liberalisation.

The last round of negotiations in GATT, the Uruguay Round, was different. Not only were developing countries expected to make tariff concessions, new areas of business like services and intellectual property rights were brought in. Over the seven years of negotiations, it became evident that developed countries had substantive demands of developing countries. For developing countries joining a consensus no longer meant just MFN benefits; it involved tariff reduction commitments, adherence to new or better elaborated standards in goods trade, and rules in new areas of trade. That is when GATT decision-making became a critical issue for them.

Developing country tariffs were generally very high, rendering it feasible for them to agree to tariff cutting formulas that bound their tariffs to levels that still allowed some tariff policy space. However, as mentioned, negotiations in the Uruguay Round involved other areas like services and intellectual property rights. These were new issues for them. The concept of single undertaking was added to the rubric, thus making their cost-benefit analysis even more complicated.

¹ It was reported by SUNS (see <http://www.sunsonline.org/trade/process/during/8485/cparties/09280085.htm>) that the decision to call a special session of the contracting parties in 1985 to discuss the launch of the Uruguay Round also involved voting. However, it is not a vote recorded in the General Agreement on Tariffs and Trade (GATT) records.

² Footnote 1 to Document WT/ACC/ECU/5 dated 5 August 1995, available at www.wto.org.

Although developing countries used coalitions in other intergovernmental settings, for example through the G-77 and China³ group in the United Nations, they did not use these coalitions as effectively in the Uruguay Round for various reasons, one among them being the diversity of their trade interests and another the lack of capacity to organise themselves. They ended up participating in their individual capacity. Wherever similarity of concerns demanded⁴, some developing countries got together to submit joint proposals during the negotiations. These coalitions, where they existed, were based on issues under negotiations rather than on any formal groups of developing countries wishing to represent their common interests. Thus began the emergence of tactical coalitions in trade negotiations.

The focus of the negotiating overtures of most developed countries was on the more advanced of developing countries having bigger markets and better opportunities for their businesses. However, given the benefits of the MFN clause, it was politically difficult to discriminate among developing countries⁵. In 1971, least developed countries were identified as a well defined subgroup of developing countries under the United Nations. The Enabling Clause in the GATT in 1979 provided special benefits for them. It thus became possible to give LDCs more flexibility for example in terms of the tariff bindings, transition periods, and technical assistance. This resulted in the LDCs being considered as a formal coalition eligible for more benefits than developing countries in general.

Role of coalitions in the Doha Round decision-making processes

Given that consensus is the preferred decision-making process in the WTO today, the role played by informal processes of arriving at decisions cannot be understated. There was no fixed periodicity for launching new GATT rounds of negotiations. They were launched when the main players decided that it was time to undertake further tariff reductions or make other trade rules. The GATT secretariat provided a forum for these main players to undertake informal discussions in what became known as the Green Room simply because of the colour of the walls of the room. The major trading partners exchanged concessions among themselves in these discussions. The Green Room comprised of up to eight countries until the Tokyo Round. As broader and systemic rule-making issues entered the rubric in the Uruguay Round, a full Green Room

could have had as many as 30 countries. The WTO continued this GATT practice of taking decisions on trade negotiations informally among the main players in the Green Room and then building consensus around those decisions in concentric circles of consultative processes.

The innermost circle of the main players (the Quad), comprising the USA, the European Union, Japan and Canada, constituted the core of the Green Room, and often met before an issue reached the Green Room. Other developed countries in the room included Australia, New Zealand, Norway and Switzerland. Developing countries in the room included Argentina, Brazil, Chile, China, Egypt, Hong Kong, India, Korea, Mexico, Pakistan, South Africa and Thailand, Indonesia or Philippines. LDCs were not present in the Green Room.

In the previous rounds, some small countries not on the high table of decision-making in GATT used coalitions to force recognition of their collective interests. The Nordic countries, for example, negotiated as a group in the Uruguay Round and earlier. A group of agriculture exporters (the Cairns group) similarly formed a coalition in the Uruguay Round. The plethora of issues before the Doha Round and the diversity of interests of members have expanded this number, and about a dozen coalitions are in operation in the Doha Round.

In the run-up to the 2003 Cancun Ministerial Conference, the USA and the EU made a proposal on agriculture negotiation on which the developing countries with both export interest and defensive interest were unhappy. That resulted in the creation of the G-20 group. It comprised important developing countries like Brazil, China, India and South Africa. Their voice could not be ignored as their markets were the most sought after by the developing countries. When the negotiations resumed in the following year, the G-20 played an important role in shaping the contours of negotiations on agriculture. Equally importantly, the USA and the EU recognised the need to work together with Brazil and India to make any progress in the negotiations. Accordingly, the new quad of USA, EU, Brazil and India emerged.

³ During the negotiation of the Enabling Clause in 1979 (Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, L/4903), however, this group was quite active and effective.

⁴ The 'Like-Minded Group' was one such configuration active during that Round.

⁵ All developing countries were characterised as 'less developed countries' in Part IV of GATT negotiated in 1964

Table 1: Some Active Country Groupings in the WTO Negotiations

Grouping	Composition	Nature	Issue Coverage
ACP	Developing countries from Africa, Caribbean and the Pacific	Formal	All issues
Africa Group	African developing countries only	Formal	All issues
LDCs	Least-developed countries only	Formal	All issues
RAMs	Recently acceded members of the WTO	Formal	Uruguay Round plus concessions
GRULAC	Latin American countries	Formal	All Issues
Proponents of Small, Vulnerable Economies work programme	Select developing countries and LDCs	Informal	All issues
G-20	Select developing countries and LDCs	Informal	Agriculture
G-33	Select developing countries and LDCs	Informal	Agriculture
G-10	Select developed and developing countries	Informal	Agriculture
NAMA 11	Select developing countries and LDCs	Informal	Non-agriculture market access
Friends of Fish	Select developed and developing countries	Informal	Fisheries subsidies

Taking a cue from the strength of groups like G-20, large developing countries got together to constitute NAMA-11 to make joint proposals on industrial market access. A group of developed and high-income developing countries with highly defensive interests in agriculture led by countries like Norway, Iceland and Switzerland constituted G-10. Another group was constituted by some countries with defensive interests in agriculture, led by countries like India and Indonesia, constituting G-33. Small and vulnerable economies constituted another group. Most of these groups were constituted on a need basis where commonality of positions on specific issues drove their creation and continuation to acquire a stronger voice in the negotiations. The success of G-20, G-33 and NAMA-11 groups in particular in getting their message clearly across to the negotiating group chairs and thereby influencing draft texts at various stages of their formulation and updates has provided another dimension to these groups. Even on issues which were not in the initial common positions of these groups are discussed within the groups in an effort to arrive at common positions. One consequence of these successes has been a strong desire of group members to retain their unity in the wake of opposing negotiating overtures from outside such groups. Many epitaphs have been written and re-written on them since their creation, but they continue to flourish, at least for the time being.⁶

A different set of more concrete groups have existed even before these issue-based groups emerged. These are the regional groups like GRULAC, the African Group and the ASEAN Group, and some

other like-minded large groups like the ACP Group, the recently acceded members (RAMs) and the LDCs Group. In order to overcome resource constraints, the interests of member countries of these groups are often represented by a country co-ordinator. Such co-ordinator typically informs the rest of the members of the group of the discussions in WTO negotiations. Typically these groups have consultations prior to negotiations so that a commonly agreed stand can be taken by the co-ordinator. Some of these groups have separate co-ordinators for specific areas negotiation. The LDCs Group comes in this category.

Sometimes these coalitions get together to constitute even larger groups to show their numerical strength either to block or move proposals in the negotiations. For example, the LDCs Group, the ACP Group and the AU (African Union) Group got together as G-90 in the Cancun Ministerial Conference to oppose the so-called Singapore Issues. In the 2005 Hong Kong Ministerial Conference, G-20, G-33 and NAMA-11 joined them to constitute the G-110 and went together on the stage in the plenary session to show the unity of developing countries. Some large coalitions also get formed around issues. A group of 108 countries, for example, signed a proposal on the process to negotiate on the relationship between the Convention on Biological Diversity and the TRIPS Agreement of the WTO.

⁶ This is no guarantee, however, of their unity remaining intact in the end game of the Doha negotiations. Though of a different and less concrete character, some similar groups or arrangements had formally and informally worked during the Uruguay Round, but few survived until the end game.

All these coalitions have played an effective role in ensuring wider consultation during negotiations. This added a new dimension to the Green Room discussions as well. While earlier WTO Director-General would most likely constitute the Green Room based on the interest shown by individual members through their proposals or interventions on specific proposals, the Director-General now has the option of calling in co-ordinators of these coalitions and leaving it to them to consult with their members. It has become more relevant to call in these co-ordinators also because of the systemic nature of many issues before the Green Room, given that formula approaches and groupings-based flexibilities are often part of draft Chairs texts.

WTO's Director-General and members in general find it convenient to use these coalitions to manage the pressures of the concentric circles model of decision-making referred to earlier. Including coalitions in such decision-making processes also has the advantage of flexibility for members to shape their alliances as negotiations progress and focus shifts to different aspects of the negotiations. Of course, continuing use of these coalitions would largely depend upon the durability of these coalitions themselves. For that, it may become increasingly important for individual members of the coalitions to search for best fits of their common positions; a negotiation process in itself. It is no wonder, therefore, that the Director-General of the World Trade Organization – in his capacity as Chairman of the Trade Negotiations Committee – as well as Chairs of the respective negotiating groups have started more frequently underlining the need for members to negotiate among themselves.⁷

For these coalitions also these group efforts have become a way of arriving at compromises within the groups, thus ironing out some of the divergences in the effort to generate consensus. During the course of the Doha Round negotiations, the LDCs Group has also had some successes in this regard.

Role of LDCs in the Doha Round decision-making processes

The Doha Round has already lasted longer than any previous round, and will conclude only when 'everything is agreed' by each member. LDCs constitute a significant group in the WTO, and given the need to arrive at a consensus for every decision, their numbers count, particularly when they act collectively. The important issue from a LDC point of view is that their coalition has a seat at the high table and has been able to secure some interim decisions

to their benefit. Two can be easily pointed out: the decision on duty-free-quota-free market access (DFQF) in the Hong Kong Ministerial Conference⁸, and the agreement that cotton will get a more ambitious treatment in terms of elimination of export subsidies, reduction of trade distorting domestic support and duty-free-quota-free access for cotton exports from LDCs⁹. Another pending but inevitable decision is a waiver for preferential market access for services of export interest to the LDCs.

Bolstered by the decision on DFQF at Hong Kong, the LDCs have started co-ordinating more closely on issues of their interest and providing the required political push for getting it implemented with better market access terms than agreed at Hong Kong. At the recently concluded Sixth Trade Ministers Meeting of LDCs at Dar es Salaam, LDCs have made a call upon the WTO members to agree on their specific demands. First, they have asked for implementation of the decision already taken in Hong Kong on DFQF by 2010. Second, they have asked for a waiver on preferential and more favourable treatment to services and service suppliers of LDCs. Third, they have asked for an ambitious, expeditious and specific outcome for cotton trade-related aspects, in particular the elimination of trade distorting domestic support measures and export subsidies, and the granting of DFQF market access for cotton and cotton by-products originating from LDCs. They have asked for an 'early harvest' on these issues. Additionally, the 84-paragraph long Dar es Salaam Declaration urges for specific LDC-friendly decisions on all other areas of negotiations.

An important point to be noted regarding this Declaration is that it was negotiated in advance among the LDCs and arrived at compromise language on some issues that were contentious even within the LDCs Group. This may also have required them to give up on a more ambitious set of demands from some of them. For example, the Declaration does not mention some of the demands articulated in the informal negotiations in Geneva relating to product coverage in DFQF, and their position on the WTO members likely to be disproportionately affected by the proposed non-reciprocal preferences in the

⁷ This should be differentiated from the other and more recent call of some that bilateral processes should go in parallel with the multilateral processes of negotiations. This latter issue is beyond the scope of this paper and has therefore not been dealt with.

⁸ See paragraph 47 of the Hong Kong Ministerial Declaration and its Annex F.

⁹ See paragraph 11 of the Hong Kong Ministerial Declaration.

¹⁰ Paragraph 47 of the Doha Ministerial Declaration launching the round provided for provisional or definitive implementation of any agreements arrived at earlier than the proposed end date of conclusion of the round, or early harvest.

NAMA negotiations¹¹. On the one hand, this indicates that the LDCs may have preferred realism rather than ambition in order to reap the benefit of taking common positions. On the other hand, this becomes a valuable input into the concentric circles of negotiations being conducted in the Doha Round.

Thus, LDCs have started leveraging their strength in numbers to negotiate fairer rules for themselves in the multilateral trading system. More importantly, they have learned the art of making compromises within their group so as to offer a common agreed position of the whole group before the rest of the WTO membership. It is pertinent to note that the Dar es Salaam Declaration containing the demands of the LDCs in the Doha Round is one of the only three formal submissions for the upcoming Geneva Ministerial Conference. It is equally pertinent that the LDCs appear to have recognised that consensus has eluded them within their group for making a formal request to seek an agenda item for the ministers to agree to the early harvest they have sought in the Declaration.

Conclusion

An interesting debate has erupted in academic circles relating to the governance structures of the WTO, where some rate it as a medieval organisation while others provide well thought out formulations of a management board best suited to the current complexity of decision-making processes in the organisation. Some WTO members have suggested a draft decision for the upcoming Seventh Ministerial Conference of the WTO in Geneva from 30 November to 2 December 2009 calling upon the ministers to invite the General Council to establish an appropriate deliberative process to review the organisation's functioning, efficiency and transparency and consider possible improvements, while recognising the high priority of the successful

conclusion of the Doha Development Agenda (DDA) negotiations. This paper does not explore such wider institutional reforms for the WTO. It focuses on the existing formal and informal consensus-building mechanisms in the WTO and how the LDCs fit into these mechanisms.

In keeping with the trend elsewhere in the consensus-building processes in the WTO negotiations, LDCs as a group have started actively participating in the development and sharpening of negotiating stances of coalitions within the WTO that feed into the concentric circles of negotiations expected to lead to a successful conclusion of the Doha Round once the missing political will returns to the negotiating table. This is a good portent for this group of the smallest and the weakest of the formally recognised groups of WTO members. Given resource constraints faced by LDCs coupled by the need for greater advocacy in advancing their interests and the usefulness/effectiveness of informal coalitions, LDCs need to strengthen and enhance their involvement and use of coalitions to advance their negotiating objectives and other concerns in WTO decision-making. In this way, LDCs would be able to use minimal resources to enhance their gains from the WTO decision-making process.

It is hoped that the LDCs will increasingly work as a group in pursuing their negotiating objectives. They have man and material resource constraints, no doubt, but assistance and facilitation by various donors and think-tanks can be used to partly address them. More importantly, increasing their collective knowledge and awareness of issues needing decisions as the Doha Round proceeds towards conclusion, and seeking convergences that have LDC-wide benefits, is required. The Declaration at the Sixth LDC Trade Ministers Meeting in Dar es Salaam in October 2009 is a good starting point.

¹¹ See Paragraph 30 and Annex 4 of the NAMA Chair's text of 6 December 2008 (WTO document number TN/MA/W/103.Rev 3)

¹² See WT/MIN (09)/W/1 dated 16 October 2009.

International Trade & Regional Co-operation Section at the Commonwealth Secretariat

This Trade Hot Topic is brought out by the International Trade and Regional Co-operation (ITRC) Section of the Economic Affairs Division (EAD) of the Commonwealth Secretariat, which is the main intergovernmental agency of the Commonwealth - an association of 53 independent states, comprising large and small, developed and developing, landlocked and island economies - facilitating consultation and co-operation among member governments and countries in the common interest of their peoples and in the promotion of international consensus-building.

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15-17 June 2009: Workshop on Strengthening Skills of Government Officials in Sub-Saharan Africa on Commercial Diplomacy and Trade Policy Issues, held in Nairobi, Kenya

10 June 2009: Prime Ministerial Caribbean Banana Policy Review Meeting, held in Castries, St Lucia

10 June 2009: Discussion meeting on Challenges to Small States in the Multilateral Trading System, organised during the World Trade Week, UK (8-12 July 2009), held in London, UK

9-10 June 2009: Commonwealth Investment Experts' Meeting, held in London, UK

18 May 2009: Seminar on Preference Erosion: How Much and What To Do About It?, held in London, UK

22-23 May 2009: Workshop on Trade Policy and Trade Agreements for the Members of the Parliament of Bangladesh, held in Dhaka, Bangladesh

31 March-1 April 2009: Brainstorming Workshop - The Doha Round: Securing Development Outcomes for Small Economies and LDCs, held in Hampshire, UK

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