

DIANA GHAZARYAN

PhD student at the Chair of International and European Law at Yerevan State University

Head of the Division of Legal Support to State Registration of Legal Persons, Registration of Civil Acts and Notary at the Ministry of Justice of the Republic of Armenia

DECISION-MAKING IN THE WORLD TRADE ORGANIZATION: ANALYSIS FROM THE DEVELOPING COUNTRIES PROSPECTIVE

The decision-making process is one of the main features distinguishing the World Trade Organization from other International organizations. The existing regulation of the decision-making process of the WTO have been subject to discussions on many occasions. It remains actual nowadays. The indications that the WTO has to be cordinally changed are obvious and one of the reasons is the numerous missed deadlines of the Doha Round. According to the initial timetable of the Doha Round, it should have been completed by the end of the 2004. As of 2008, the negotiations were not successful since there were no unity among the participants on many key points, such as agriculture, industrial tariffs and non-tariff barriers, services, and trade remedies¹. After the failure of 2008, the major negotiations were not expected to be resumed by 2009. Nevertheless, intense negotiations, mostly between the USA, China, and India, were held in the end of 2008 in order to agree on negotiation modalities. However, these negotiations did not result in any progress². At the 2011 annual conference of the World Economic Forum in Davos British Prime Minister David Cameron stressed the importance of concluding Doha round by the end of that year, saying “We’ve been at this Doha round for far too long. It’s frankly ridiculous that it has taken 10 years to do this deal.” Ten years of negotiations and the outcome has not been received yet. Thus, the improving of efficiency of decision-making process remains one of the main challenges of WTO nowadays.

Taking into account the fundamental importance of radical changes in decision-making process, the ex-Director-General of WTO Supachai Panitchpakdi established a Consultative Board aimed at providing professional approach. The board was composed of well known scholars and headed by the former Director General Peter Shutherland and was called for to examine the functioning of the organization and to put on the table concrete proposals on the possible reform of WTO decision-making process. As a result of its activity the Board drew up a report “The future of the WTO”³. The report had a good feedback by the members but no any concrete steps were taken

for the realization of the envisaged proposals.

The simultaneous analysis of both the normative basis and its application is of a more importance to understand the nature of the WTO decision making process. According to the Article IV of the WTO agreement the highest decision-making body is the Ministerial Conference, which meets at least once every two years and has the authority to take decisions on all matters under any Multilateral Trade Agreements⁴.

According to Article IX of the WTO Agreement “the WTO shall continue the practice of decision-making by consensus followed under GATT 1947”. The same article also gives an opportunity to decide the matter by voting whether the decision cannot be taken by consensus. In the history of GATT the voting took place only connected with the matters of waivers and accession. After the establishment of the WTO in 1995 voting took place only on the accession of Ecuador and on certain waivers. But after that the General Council agreed that waivers and accessions would also be decided by the consensus only. If the consensus isn’t achieved the decision could be made by voting. Nevertheless, in practice this provision has never been applied. Even when in 1999 the selection of Director-General was deadlocked, some developing countries suggested to use the voting system. However, there was a resistance by the developed countries, who argued that it would be contrary to the way things had been done in WTO before. Jackson justly noted that: “the spirit and practice of the GATT has always been to try accommodating through consensus negotiations procedures the views of as many countries that have power in the trading system. This is not likely to change”⁵.

In January 1948 when the GATT came into the force it had only 23 Contracting Parties and it was not difficult to make decision by consensus. Besides, the efficiency was conditioned with its transparent style of activity since all the members were equally participating in the works of organization and were afforded an opportunity to express and insist on their opinion freely. But current number of members of WTO is 153

and two third of them are developing countries with different levels of economic development, capacities to participate in multilateral trade negotiations. The current system has many disadvantages for developing countries. Although the supporters of the WTO consensus system of decision-making argue that consultations and consensus are of value of smaller countries as it enhance their negotiation leverage in the informal consultations and bargaining that precede decision-making⁶. Another supporting argument is that any Member, including developing countries could have the right to block the decision-making process⁷. But it is a theoretical opportunity which in real life has different expression. Referring to this issue John Jackson noted: “the practice ... is that some countries that have difficulty with a particular decision will nevertheless remain silent out of defense to countries with a substantially higher stake in the pragmatic economic consequences of a decision”⁸.

In order to have a comprehensive image of decision making process within the WTO, regard must be had to the disadvantages of Green room notion and informal consultations process.

First of all it is worth to discuss the internal and external aspects of transparency. For the purpose to find out the main essence of the internal aspect of transparency it is of a more importance to turn to one of the main components of WTO decision-making process such as consultations, especially group consultations. Due to the differences in political influence, capacity of negotiations, trade volumes it is obvious that some Members have more direct influence on the final outcome of the decision-making process than others. From the first days of its activity several groups have been formed within the WTO which have played major role in negotiations. It is clear that the creation of several groups within the WTO is based upon their own narrow economic interests which in any case impedes the involvement and active participation of the member states left overboard. The existing situation mostly affects relatively small economies which have also no impact on development of multilateral trading system. The most influential groups were:

the Quad, which included the European Communities, the United States, and Japan. This group used to play an enormous role in the rulemaking process because of large trade interests, political huge influence, and big negotiation capacity of its members. During the Doha round the Quad was replaced by Five Interested Parties (FIPs), then by G-6. FIP group includes the main players of agricultural area, particularly European Communities, United States, Australia, India and Brazil. Although this influential group has also developing country members such as Brazil and India, and many authors mention that these developing countries highlight interests, problems of the developing countries. However, these developing country

members can be distinguished with their huge trade volume. This makes them incomparable with many other developing countries and at the same time proofs the existed notion that these members pursue their own narrow interest. The next important group is G-6 consists of members of FIP and also Japan. This group also played enormous role during the agricultural negotiations. The consultations within this group during Doha round was criticized by the other Members stressing the absence of transparency and real involvement of all other countries to the rule making process. Since the beginning of Doha round there have been created several other groups with the same interest and concerns.

Of course, some existed groups represent mostly the interests of the developing country members (such as LDS group), but these groups are less influential and have small impact on the negotiation process.

The Preamble of the WTO Agreement proclaims that: “there is a need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development”. The achievement of this goal is possible only in case of comprehensive realization of needs of developing countries and putting forward concrete proposals aimed at their full integration into global economy. This process shall be commenced by ensuring guarantees for full and deep engagement of the developing countries in decision-making process.

Nevertheless, the existing system of decision making within the WTO frequently shows the dominant role of the United States, as a superpower, in rule making process in this organization. The similar role in decision-making plays European Communities. The above mentioned statement was proved even since Uruguay round. In November 1992 the United States’ and European Communities’ negotiators at Uruguay round met at the Blair House in Washington for having consultations in order to break deadlock on the issue of reducing agricultural subsidies⁹. They reached compromise among themselves which actually led to the adoption of Agreement on Agriculture of the Uruguay Round.

One of the evidences of lack of transparency and also restriction in participation of developing countries is also the practice of “Green room”. Green room meetings are informal consultations attended by few major players to discuss the main issues of negotiations. The Green room meetings were held in the days of GATT. This practice continued also after creating of the WTO. Green room meetings usually have no more than twenty participants. During the Seattle Session of the Ministerial Conference in 1999 major trade powers and a few developing countries tried to agree on the agenda for a new round in the Green room meetings.

Developing country members, which were not invited to participate in Green room meetings, revolted because of unequal opportunities of participation, lack of transparency and impossibility to represent their opinions. This was the main reason of failure of Seattle round¹⁰. Some authors justify the practice of Green room meetings stressing that it is practically impossible to involve all 153 members of WTO in discussions of controversial issues and reach a consensus. They mention that broad participation of members would make consultations ineffective. This approach is not legitimate and contradicts the equality principle. In practice the problem is not in quantity of members but in different interests of countries. The influential players during the Green rooms meeting agreed on basic elements of regulations of WTO with making some concessions to each other. Consequently, the legal texts adapted as a result of the negotiations, do not reflect the concerns of the developing countries and mostly set out the agreements reached during the above motioned consultations. Thus, the mechanism such as Green room meeting, which aimed at reducing the number of countries actively participating in the consultations and presenting all other members the preliminary agreements reached during this meetings, is not transparent and not effective and mostly hinder the opportunity of developing countries' participation in decision making process. Ex General-Director of the WTO Mike Moore stressed that: "the consensus system which is at the heart of the WTO system and which is a fundamental democratic guarantee is not negotiable"¹¹. At the same time, as it was mentioned above, the proponents of consensus rule frequently note that it is not possible or practical to involve all 153 Members in negotiations which aimed at reaching adoption of certain decision on controversial issue. However, how we could speak about democratic guarantee when the consensus rule led to the reduction of many countries participation in decision-making process. According to the Markus Krajewski for ensuring democratic decision-making it is essential to involve either directly, or more likely through representation, those that will be affected by the decision taken. Besides, decisions must be reached as a result of open and transparent exchange of rational arguments¹². In the case of WTO decision-making system it is obvious not democratic and not transparent nature of it.

Not transparency of the decision making process is also proved by the practice of the mini-ministerial meetings since the start of Doha round. These meetings can be described as informal meetings of Trade Ministers from selected Members. According to the proponents of this mechanism the Mini-ministerial meetings are helpful as ministers from the main-player countries can meet and speak with each other in an informal setting and subsequently come to agreement on important trade matters¹³. These meetings were just-

ly criticized. Ministers who are not invited to participate in these meetings express their concerns about lack of equal opportunity to express their views and positions.

Taking into account the rising criticism and discontent there have been a number of proposals to create an executive body within the WTO for facilitating decision making process. However, no concrete steps have been undertaken for realization of those proposals. The 2004 Sutherland report on "The Future of WTO" recommended that Mini-ministerial meeting should be replaced by the establishment of a "Senior level consultative body" similar to the one which has been operating within the GATT for many years. For making the membership of this body effective the number of participants shouldn't exceed 30 Members. While most seats might filled on a "rotating basis-drawing" taking into account different criteria, "geographical areas, regional trading agreements or mixed constituencies", the permanent presence of certain members would be "a must" given the significant of their trade flows¹⁴. The opponents of the creation of consultative body envisage that it will be difficult for one member to fully represent the other Members since the interests and concerns are very diverse among them. And the next concern they express is that it may be very difficult to decide the members of such body¹⁵. Turning to the proposal on creation of consultative body, it is important to mention that it will facilitate the decision making process. At the same time the establishment of permanent representation is unjustified since it is obvious that this structure would be composed of the members from superpowers. This will put their existed dominant role on the legal ground, which, in its turn, will diminish the involvement of the developing countries. Thus, the permanent membership must be excluded and a rotation principle should be established upon the principle of equal membership.

Taking into consideration existing problems of organization of negotiations Ministerial Declaration adopted by Ministers at Doha in November 2001 stipulates that: "overall conduct of the negotiations shall be supervised by a Trade Negotiations Committee under the authority of the General Council". Trade Principles and Practices guiding the work of Trade Negotiations Committees were endorsed in the course of Negotiations Committee meeting held in February 2002. This document stressed the importance for conducting the negotiations in a transparent manner among participants, and also reflects the next important principle of inclusiveness stipulating the need of facilitating the effective participation of all Members¹⁶. However, these provisions are mostly declarative and cannot be realized without setting up effective institutional mechanisms.

Another element of transparency linked with the WTO decision-making disadvantages is external

transparency. Particularly, NGOs have been demanding for a participation opportunity in the decision-making process in order to ensure the democratic and legitimate nature of this process. Article V of the WTO Agreement stipulates that General Council is empowered: “make appropriate arrangements for consultations and cooperation with non-governmental organizations concerned with the matters related to those of the WTO”¹⁷. In 1996 the General Council adopted guidelines on relationship with NGOs¹⁸. Analysis of this guidelines shows that it has defensive nature. Particularly according to the guidelines “it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings”. Many authors fairly mention that in fact, the WTO is really the only intergovernmental organization that has no formal arrangements with NGOs¹⁹. However some steps have been done for involvement of NGOs. As a way of communication with them WTO held symposia’s which were informal meetings and provided the opportunity for NGOs to discuss specific issues with representatives of WTO Member countries.

In 2000 the General Council organized informal consultations referring to the issue of “external transparency”. The main topic for discussion was participation of civil society in activities of the WTO. The important issue was also the discussion on NGO’s participations at decision-making process. During this consultations the then WTO Director-General, Mike Moor, stressed clearly. “They {civil society} should be given a voice but not a vote”.

It is doubtless that NGO’s involvement in tis process can increase the awareness of the public in respect of the WTO activities and also provide its accountability. However, this perception also has its opponents. For example, many authors argue that involvement of NGOs in WTO decision-making process will lead to the capturing of this process by special interests²⁰.

Nevertheless, NGOs must have valuable input in decision-making process. First of all their participation will ensure the external transparency. On the other hand they can represent the specific interests of developing countries.

Besides the transparency the problem for developing countries participation is also derives from lack of capacity for participation and putting forward concrete proposals. Although a small group of influential developing countries, including, China, India, Brazil, undoubtedly participate very effetely in the WTO rulemaking process. However, many other countries are marginalized as of lack of specialized negotiators and practice in the area. For example, during the Seattle session WTO Director-General Mike Moore divided the ministerial agenda for several sections and created discussion groups according to the agenda and invited all delegation to participate in each

discussion²¹. But this practice was no useful either as developing country delegations had difficulty covering all of the working groups and thus claimed for not effective and nondemocratic organization of negotiations. USA, Japan, EU and Canada have large teams of specialized professionals in Geneva. But in contrast many poor developing countries cannot even afford one. Some steps although have been taken towards this issue. For example, guidelines have been drawn up and agreed on the number of simultaneous formal meetings which can take place²². Besides technical assistance funding has been used for providing resources for some delegations from developing countries²³. The capacity of many countries is going to be a big concern which needs concrete steps and big technical assistance.

Speaking about decision making it is also useful to analyze the practice of other international organizations on decision-making activities In the majority of international organizations, such as the United Nation and its related specialized bodies, there is a voting system for decision making which is differ from the WTO consensus based system. The voting system, from example, is used at the General Assembly, the Security Council, Human Rights Council, the Economic and Social Council, WHO, ILO and est. There are also examples of financial international organizations such as World Bank, IMF and est. The proponents of consensus system mention that the consensus is the main feature which allows differentiating WTO from other organizations and making it unique. Nevertheless, the decision-making process reflects the effectives, transparency and promptitude of international organization. The selection of decision-making system for the organization should be based on ensuring the abovementioned principles but not unicity. The consensus based system cannot proof its ability of the application of the above mentioned principals, especially in case of developing countries.

It is easy to meet a literary notion that “the WTO is member – driven organization” which means that whatsoever decision is taken in the frame of the WTO, it should be driven by its members. But practical analyses of the WTO decision-making process shows that the United States and European Communities are still the most important players at the WTO and if there is no agreement among them no any decision will be taken.

In 2002 there was a discussion in WTO relating to the possibility of using voting system at a “certain stage of negotiations or in the course of regular proceedings”. But the members couldn’t come to agreement on whether the result should be adopted by a single majority, or trade-weighted majority²⁴.

It is justly mentioned that the changing of consensus rule will be very difficult as the decision to

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make such change will need consensus of all members. The 2004 Sudheerland report on “The Future of WTO” recommended that it would be possible to use the current system of consensus further but with mixing with voting system opportunities. He suggested that voting could be used on procedural and consensus on substantive matters²⁵.

Summing up we can state that the appropriate steps must be taken to provide that the decisions of the WTO reflect the whole spectrum of different members’ interests, including different groupings and geographical areas. United States and European Communities must realize that 2/3 of the organization are developing countries. Though, they could continue to play leadership role in rulemaking but at the same time they should overcome their narrative interests and be more sensitive towards the interests and concerns of developing countries. It is obvious that consensus rule has proved its slowness and inefficiency which has a huge negati-

ve impact on further development of multilateral trading system. The main disadvantage of acting system is lack of transparency. The main steps should be done towards ensuring inclusiveness of all members, including developing countries. First of all it is important to ensure delivery of information on consultations conducted by any group of Members. Entire membership should be informed in a timely manner on discussions concerning any issue. Next important step is to provide opportunity for all members to express their concerns and proposals during the consultations, take concrete steps to capacity rising of developing countries for participation in negotiations. Enlargement of more active participation of NGOs will be step forward which will raise the external transparency of organization and will ensure the public awareness on WTO activities and multilateral trading system.

¹ Fergusson Ian F. (18 January 2008). “World Trade Organization Negotiations: The Doha Development Agenda”. Congressional Research Service. <http://www.nationalaglawcenter.org/assets/crs/RL32060.pdf>. Retrieved 26 July 2008.

² Beattie Alan (31 July 2008). “Hangovers but no anger on the morning after”. *Financial Times*. <http://www.ft.com/cms/s/0/fe2186c0-5e97-11dd-b354-000077b07658.html>. Retrieved 2 August 2008

³ Report by the Consultative Board to the Director General Supachai Panitchpakdi. The Future of the WTO: Addressing the Institutional Challenges of the Millennium (WTO 2004). http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.htm

⁴ The full text is available: http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm

⁵ J. Jackson, *The World Trade Organization: Constitution and Jurisprudence* (Royal Institute of International Affairs, 1998), page 45.

⁶ See Sun Zhenya *Decision Making in the World Trade Organization (2008) The WTO: Governance, Dispute Settlement and Developing Countries* (Juris Publishing, USA).

⁷ See the same place.

See Stuart Harbinson. *Great Expectations, Hard Times: Dickensian Decision-making at the World trade Organization*

⁸ J. Jackson, *The World Trade Organization: Constitution and Jurisprudence* (Royal Institute of International Affairs, 1998), page 46.

⁹ *The Uruguay Round and Developing Economics*. Edited by Will Martin, L.Alan Winter. World Bank Discussion Papers, 1995, Washington DC.

¹⁰ B. Hoekman and M. Kostecki, *The political Economy of the World Trading System: The WTO and beyond*, 2 edition, Oxford University Press, 2001. Page 239.

¹¹ M. Moore, *Back on Track for Trade and Development*, keynote address at the UNCTAD, Bangkok, on 16 February 2000, Available http://www.wto.org/french/news_f/spmm_f/spmm24_f.htm

¹² See M. Krajewski, “Democratic Legitimacy and Constitutional Perspectives of WTO Law”, *Journal of World Trade*, 2001, page 167-86.

¹³ See Sun Zhenya *Decision Making in the World Trade Organization (2008) The WTO: Governance, Dispute Settlement and Developing Countries* (Juris Publishing, USA).

¹⁴ Report by the Consultative Board to the Director General Supachai Panitchpakdi. *The Future of the WTO: Addressing the Institutional Challenges of the Millennium* (WTO 2004). Para 323, 325. http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.htm

¹⁵ See Sun Zhenya *Decision Making in the World Trade Organization (2008) The WTO: Governance, Dispute Settlement and Developing Countries* (Juris Publishing, USA).

¹⁶ *Trade Principles and Practices guiding the work of Trade Negotiations Committees*, February 2002, available http://www.wto.org/english/tratop_e/dda_e/tnc_1_01feb02_e.htm

¹⁷ The full text is available: http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm

¹⁸ *Guidelines for arrangements on relations with Non-Governmental Organizations*, Decision adopted by the General Council on 18 July 1996. Available http://www.wto.org/english/forums_e/ngo_e/guide_e.htm

¹⁹ See for example the speech of Mary Robinson at the panel discussion on “Decision-making at the world trade organization: An Analyses of a member-driven organization”. Available at http://www.jurispub.com/cart.php?m=product_detail&p=8191

²⁰ See J. Dunoff, “Misguided debate over NGO participation at the WTO”, *Journal Of International Economic Law*, 1998, page 437, see also Dominic Eagleton, “Under the Influence: Exposing Undue Corporate Influence over Policy-making at the World Trade Organization”, January 2006, Actionaid International.

²¹ P. Shuterland, J. Sewell and D. Weiner, “Challenges Facing the WTO and Policies to Address Global Governance”, *The Role of World*

Trade Organization Global Governance, United Nations University Press, 2001. Page 88.

²² Guidelines on the Arrangements for Scheduling of WTO Bodies, WT/L/106, adopted by the General Council

²³ See Stuart Harbinson, “Great expectations, hard times: Dickensian Decision-Making at the World Trade Organisation?”. (2008) The WTO: Governance, Dispute Settlement and Developing Countries (Juris Publishing, USA).

²⁴ See Sun Zhenya Decision Making in the World Trade Organization (2008) The WTO: Governance, Dispute Settlement and Developing Countries (Juris Publishing, USA).

²⁵ Report by the Consultative Board to the Director General Supachai Panitchpakdi. The Future of the WTO: Addressing the Institutional Challenges of the Millennium (WTO 2004). Para 323, 325. http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.htm

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Որոշումների ընդունումը Առևտրի համաշխարհային կազմակերպությունում. վերլուծություն զարգացող պետությունների տեսանկյունից

Որոշումների ընդունման գործընթացի արդյունավետության և թափանցիկության ապահովումը Առևտրի համաշխարհային կազմակերպության (այսուհետ՝ ԱՀԿ) հիմնական մարտահրավերներից է: Խնդրին վերաբերող բարեփոխումների ու փոփոխությունների իրականացումն առ այսօր ԱՀԿ-ի օրակարգի հրատապ հարցերից է:

Հոդվածը նվիրված է ԱՀԿ շրջանակներում որոշումների կայացման գործընթացի, մասնավորապես, այդ գործընթացում զարգացող պետությունների դերակատարման վերլուծությանը:

Միջազգային ասպարեզում՝ պայմանավորված իրենց քաղաքական դերակատարմամբ, առևտրի շրջանառության ծավալներով, բանակցություններ վարելու կարողությամբ, ԱՀԿի որոշ անդամներ առավել անմիջական ազդեցություն ունեն որոշումների կայացման գործընթացի վերջնական արդյունքի վրա: Ջարգացող պետությունների ոչ արդյունավետ և լիարժեք մասնակցությունը մեծապես պայմանավորված է դրանց բանակցություններին մասնակցելու համար անհրաժեշտ ներուժի բացակայությամբ: Սույն հոդվածի շրջանակներում վերհանվել են որոշումների կայացման գործընթացի արդի խնդիրները, առավել խորը անդրադարձ է կատարվել այդ գործընթացի թափանցիկության ներքին և արտաքին դրսևորումներին:

Հոդվածը նպատակ է հետապնդում վեր հանել ինչպես զարգացող պետությունների տեսանկյունից որոշումների կայացման գործընթացի բացասական կողմերն ու առկա թերությունները, այլև ներկայացնել դրանց հաղթահարման կոնկրետ կառուցակարգեր:

РЕЗЮМЕ

Процесс принятия решений в ВТО: анализ с точки зрения развивающихся стран

Эффективность и прозрачность в процессе принятия решений являются основными задачами, с которыми в настоящее время сталкивается ВТО. Необходимость реформ и изменений системы принятия решений ВТО остается в повседневной повестке дня организации. Данная статья посвящена анализу процесса принятия решений в ВТО, подчеркивая роль и участие в ней развивающихся стран. Благодаря различиям политических влияний, способностью переговоров, объемов в торговле очевидно, что некоторые государства-члены имеют более непосредственное влияние на конечный результат процесса принятия решений, чем другие.

В работе подробно проанализированы вопросы прозрачности в процессе нормотворчества, с ее внутренними и внешними проявлениями. Основной целью статьи является выявление отрицательных сторон процесса принятия решений в рамках ВТО, с точки зрения развивающихся стран, а также рассмотрение возможных решений для уменьшения существующих проблем.