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**Reforming WTO Decision Making:  
Lessons from Singapore and Seattle**

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# REFORMING WTO DECISION MAKING: LESSONS FROM SINGAPORE AND SEATTLE

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## Abstract

As developing countries began to participate more actively in GATT activities, the so-called “concentric circles model” became the organization’s *de facto* way of coping with the problem that while membership in virtually every GATT body was open to all members, once the active participation in a meeting exceeded a certain number (say 25), the group’s work became increasingly cumbersome, inefficient and ultimately impossible. Under this model, an issue-specific “inner circle” of members functions as a discussion, debate and negotiating group for the issue at hand. It either reports the results of its efforts to a larger circle of members, or directly to the entire membership, which is asked to take a consensus decision on the recommendations. Carried over to the WTO, this model was heavily criticized by many countries at the first WTO Ministerial Conference in Singapore in December 1996, and was again even more roundly—and publicly—attacked at the 1999 Ministerial Conference in Seattle.

This paper argues that in those instances in which it is impossible to constitute an inner circle—or “green room meeting”—without excluding one or more WTO members wishing to be included, continued reliance on the informal concentric circles model can only progressively damage the WTO’s ability to function, as well as its internal and external credibility. It then goes on to make the case for creating a formal “WTO Consultative Board” whose design and operating procedures would draw on the strong points of both GATT’s Consultative Group of 18 (1975-87) and the IMF/World Bank Boards, while at the same time avoiding the shortcomings—from a WTO perspective—of both. The discussion includes a look at which WTO members are likely to initially oppose the creation of such a Board, and which members could be expected to support the proposal.

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## I. A BRIEF OVERVIEW OF DECISION MAKING AT TWO WTO MINISTERIAL CONFERENCES

SINGAPORE, December 12, 1996. The first Ministerial Conference of the World Trade Organization (WTO) was held in Singapore on 9-13 December 1996. The Singapore Ministerial Declaration issued at the end of the conference was based on a draft prepared in Geneva containing agreed text on all but certain sensitive issues, including textiles and clothing, labour standards, investment, and competition policy. At the conference, an “inner circle” composed of ministers from 34 of the WTO’s 128 members took responsibility for arriving at agreed text on the remaining issues.

The late evening session on December 12<sup>th</sup> was devoted to getting a consensus on the draft declaration that had been finalized that day by the 34-member inner circle. Most of the other 90 or so WTO members which had delegations in Singapore took the floor in turn, each making virtually identical interventions consisting of three points: first they thanked the 34 members of the inner circle for their hard work; second, they said that although they had some reservations on certain points, they could join the consensus in favour of the draft declaration; and third, that the way in which the draft declaration had been prepared was undemocratic, unfair and disgraceful, that they were no longer willing to accept a decision-making processes that always presented them with *faits accomplis*, and that they attached the highest priority to fundamentally revising the way important decisions are arrived at in the WTO. The Conference Chairman (Singapore’s Trade and Industry Minister) and the WTO’s Director General solemnly assured delegations this topic would be put at the top of the work agenda when the members resumed their work in Geneva the following month. Few people with knowledge of the inner workings of the WTO were surprised when this experience failed to produce any improvements in WTO decision-making procedures.

Three years later, almost to the day, the venue shifts to Seattle.<sup>2</sup>

SEATTLE, December 3, 1999. Largely as a result of wide differences among WTO members concerning the desirability of including a number of complex and sensitive issues on the agenda of a new round, coupled with a preparatory process in Geneva seriously

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<sup>2</sup> There was an intervening Ministerial Conference held in Geneva in May 1998, devoted mainly to establishing the work program for preparations for the Seattle Ministerial and to a celebration of the 50<sup>th</sup> anniversary of the GATT/WTO system.

compromised by the prolonged and acrimonious process earlier in the year of selecting a new Director General, WTO ministers arrived in Seattle with little or no agreed text for a “Seattle Ministerial Declaration” launching a new round of multilateral negotiations. Near the end of the conference, the usual way of arriving at decisions (as exemplified by the 34-member inner circle at Singapore) broke down completely. This time comments by countries excluded from the “green room meetings” the name frequently given to inner circle meetings found their way into the popular press. For example:

“No one combs our hair in our absence,” said a furious Ugandan, as the talks lurched towards collapse. (*The Observer*, December 5, 1999)

“From the very beginning, we saw that the process was flawed,” said Charles Norris, trade minister of the Dominican Republic. “We want to make sure that the WTO pays attention to our needs.” (*Wall Street Journal*, European edition, December 6, 1999)

“Green rooms aren’t in the WTO Glossary. Which clause is it in? Which article?” demanded Nicchoro Mwwanda, a technical expert for the Kenyan delegation. (*Wall Street Journal*, European edition, December 6, 1999)

A tendency to deny the seriousness of what had happened was already evident among some delegates soon after their return to Geneva. It is helpful, therefore, to further “document” the situation by quoting from other press reports from Seattle and the immediate post-Seattle period:

Separate meetings of African and of Latin American and Caribbean countries Thursday night issued declarations threatening to quit the talks. “African countries are being marginalised and generally excluded,” read the African press release. (*Wall Street Journal*, European edition, December 6, 1999)

. . . the “green room discussions,” the next level of debate, this time mostly between the rich countries, were excluding the poor. At least one African delegate was physically barred from attending. (*The Observer*, December 5, 1999)

The WTO’s reputation for secrecy and elitism criticised by outside protestors - was even roundly endorsed within its own ranks when many countries’ delegates were excluded from the final round of talks held behind closed doors at the convention centre as leading nations tried desperately, but ultimately in vain, to hammer out a talks-saving pact. (*Financial Times*, December 6, 1999)

The “green room” format was activated, that is, a single committee limited to 25 countries designed to make rapid progress in a short space of time. Developing country delegates, the intended beneficiaries of the new policies of transparency and inclusion, were outraged. Denouncing a return to what they charged were practices that sought to marginalize them, they pointedly warned they were ready to block consensus. Delegates contacted late Friday night after the breakdown were sharply critical of the conference and its organizers, arguing that they once again had been excluded from the real sources of power. (AFP, December 4, 1999)

The vast majority of developing countries were shut out of the whole green room process. They were not even informed which meetings were going on or what was being discussed. Ministers and senior

officials of most developing countries were left hanging around in the corridors or the canteen, trying to catch snippets of news. (*The Guardian*, December 15, 1999)

In the immediate aftermath of the failed Ministerial, press reports quoted France, Japan and the WTO's Director General on the need for reform:

TOKYO - France and other nations agreed on the "necessity of having a WTO ministerial meeting on its organization and procedures to make it more efficient, transparent and democratic," [Prime Minister Lionel Jospin] said. (*International Herald Tribune*, December 17, 1999)

TOKYO - Japan plans to appeal to its trade partners to set up an advisory organization within the World Trade Organization (WTO) aimed at ensuring greater transparency in the world trade body's decision-making process, government sources said Monday.

Tokyo expects the advisory organization to consist of representatives from some 20 to 30 nations, including both industrial and developing nations, and make proposals to reflect the interests of various WTO member countries, they said.

But any proposals put forward by the advisory organization would be nonbinding in view of the WTO's consensus-oriented decision-making rules, they said. (Japan Economic Newswire via Dow Jones, January 3, 2000)

AUCKLAND - "It is evident that the way in which the WTO member governments reached decisions needs to be re-evaluated," [Director General Mike] Moore wrote in a column in the New Zealand Herald newspaper.

"All significant decisions are made on the basis of consensus. Clearly, this principle must be retained. You cannot have a system of rules which are enforceable by a binding disputes settlement system unless everybody accepts those rules," he said.

"Final decisions are always made in the general council or by the ministerial conference. But the deal-brokering that takes place in any negotiation is impossible in a room with 135 ministers.

"Everybody acknowledges the need to have smaller groups thrash out the compromises, but no one wants to be excluded from those groups." (AFP via News EDGE, January 5, 2000)

PARIS - France will propose reforms to the World Trade Organization at the start of its six-month stint as EU president beginning in July, French Trade Secretary Francois Huwart said Thursday.

Several ministers said [after the disastrous meeting in Seattle] that a key reason for their inability to narrow their differences was the sheer size of the organization, which made it difficult to achieve democratic discussion without the proceedings becoming too unwieldy to make any progress. (Agence France-Presse, January 13, 2000)

GENEVA - [Japan's International Trade and Industry Minister Takashi] Fukaya said Japan thinks it is useful to set up a small, informal forum in the WTO and that it is necessary to establish criteria for choosing the participants, such as trade volume, gross domestic product (GDP) and geography.

He also said it is important to ensure that the contents of its discussions are conveyed to non-participants. (Kyodo News International, Inc., January 13, 2000)

And, at the end of March in Geneva,

GENEVA - [WTO] delegates on Tuesday started discussing how to improve the body's decision-making process to avoid a repetition of the collapse last December of attempts to launch a new trade round.

At an informal session of the body's General Council, envoys from the 135-member WTO also confirmed their guiding principle of making all decisions by consensus, trade source said.

The WTO will tackle the tasks of improving the "transparency and efficiency" of decision-making

simultaneously, trade sources said.

Participants also suggested organizing more regular contacts through video conferencing and discussed how to make information more easily available to all members.

Japan suggested having the contents of discussions at informal meetings reported to formal meetings, thereby giving all members opportunities to express their opinions. (Kyodo News International, Inc., March 29, 2000)

The frustration and anger of countries routinely excluded from the green room meetings was not limited to their experiences in Seattle: “Throughout the preparatory process [in Geneva] many of [the smaller countries] complained about semi-official meetings where the majority of Members could not participate.” (ICTSD 2000, p. 4)

For the benefit of those readers who may be unfamiliar with the workings of the WTO, it is worth calling attention to three points. First, a very large proportion of the routine work takes place in committees, councils and other groups - that is, not in inner circles/green rooms.

Second, the processes by which WTO members discuss, debate and negotiate issues is distinct from the organization’s reliance on consensus to *adopt* decisions (the members have made it very clear they plan to keep the emphasis on consensus decision making). Any organization with a large membership, and in which all groups, committees and councils are open to all its members, is going to have a problem functioning, regardless of whether it takes decisions by consensus or by simple majority. It is that particular problem—the process by which the WTO members arrive at the point where the entire membership is asked to adopt a particular decision—that is the subject of this paper.

Third, the question of reform of the WTO’s decision-making process is not a North/South issue. Large and influential developing countries are regular participants in the green room meetings. It is, instead, a classic “insider/outsider” issue, with the industrial countries and “important” developing countries on the inside, and all other WTO members on the outside.

## II. THE “CONCENTRIC CIRCLES” MODEL

The inner circle/green room formula for creating discussion, consultation and negotiating groups small enough to function efficiently is known more generally as the concentric circles model.<sup>3</sup> An issue-specific inner circle of members, varying in number (for

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<sup>3</sup> The discussions in Parts II and III draw on Blackhurst (1998).

example, from 8 to 34) depending on whether the topic is narrow and of interest to only a few members, or broader and of interest to a larger number of members, functions as a discussion, debate and negotiating group. It either reports the results of its efforts to a larger circle of members, which then repeats the process and sends the results of its efforts on to the next wider circle of members, or it reports directly to the entire membership. In either case, at the end of the process the entire membership generally is asked to take a consensus decision on the recommendations coming from the more restricted circle(s).

Simplifying somewhat, the evolution of the concentric circles model can be traced partly to the fact that for much of GATT's history, most developing countries were neither interested in, nor encouraged to be interested in, participating actively in the "management" of the GATT system—which meant that, for the most part, an inner circle could be constituted without excluding any (or at any rate, very many) of the members desiring to participate. When developing countries began to participate much more actively in GATT and then WTO activities, the concentric circles model became the organization's *de facto* way of dealing with a very fundamental problem: while membership in virtually every WTO body is open to all WTO members (currently 136), once the active participation in a group/committee exceeds a certain number (say 25), discussion, debate and negotiation become increasingly cumbersome, inefficient and ultimately impossible. Organizations with a large membership traditionally deal with this problem by having an executive committee or board with a limited membership. As is discussed below, for example, the IMF and the World Bank have 24-member executive boards, and the UN has the Security Council. There is no corresponding limited-membership *formal* body in the WTO.

The reasons behind the growing participation of developing (and transition) economies in GATT/WTO activities suggest very strongly that this trend can only intensify:

- The membership is growing. There were 67 non-OECD GATT contracting parties in 1986 when the Uruguay Round was launched. At the time of the Seattle Ministerial, the WTO had 103 non-OECD members, with some 30 others in various stages of the accession process.
- Over the past 15 years a large number of developing countries—and virtually all the transition economies—have come to accept the view that a more liberal trade regime, and fuller integration into the global economy, must be a key part of their



development strategies. And they understand that active participation in the WTO not only contributes importantly to both goals, but also allows them to have a say in the evolution of the multilateral trading system.<sup>4</sup>

- In the Tokyo Round the GATT began to write rules for policies applied “inside the border” and that process continued in the Uruguay Round (especially services, the protection of intellectual property, and sanitary and phytosanitary measures). At Seattle, delegates were discussing investment, competition policies, environment and workers’ rights. Virtually all of these “inside the border” issues are far more politically sensitive than policies applied at the border (tariffs, quotas and export subsidies), and as the GATT/WTO takes on these issues, countries are less and less willing to sit on the sidelines and let other countries do the work.
- Under the GATT, many of the rules governing trade-related policies were—officially or *de facto*—optional for developing countries. Under the WTO’s “single undertaking” every member is subject to all the rules.
- And finally, whereas under the GATT any member had the power to block a dispute settlement case that it objected to, that option no longer exists. WTO dispute settlement progresses automatically and a final decision by the Appellate Body is binding and cannot be appealed.

Against this background, it is hardly surprising that the current informal (that is, opaque) and exclusionary process for deciding which WTO delegations to invite into green room meetings has come under increasing pressure.

Supporters of the concentric circles model stress that WTO members which have a strong stake in the outcome on a particular issue can gain access to the inner circle setup to deal with that issue, and that such custom-designed, issue-specific groups are more likely to operate efficiently and effectively in the WTO context than “fixed membership” groups, such as the IMF and World Bank Executive Boards or the UN Security Council. This model is also viewed as contributing to the consensus approach to taking decisions. Members which were not in the inner circle, it is argued, will know that it was up to them to have made their

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<sup>4</sup> Although the vast majority of WTO members account for only a tiny proportion of world trade, a very large number of these “tiny traders” have ratios of trade to GDP that are higher than the corresponding ratios of the big traders. For such countries, trade and the fair and efficient functioning of the multilateral trading system are crucial to their economic futures.

claim for involvement earlier, rather than to block a consensus when the recommended decision is put to the entire membership.

The concentric circles model—heavily criticized by many WTO members in Singapore, and even more heavily criticized in the preparations for and activities in Seattle—has confronted two kinds of problems. The less serious of the two, which should not be too difficult to solve, involves the perceived lack of transparency regarding what takes place in green room meetings (since, for the purposes of this article, “inner circle” and “green room meeting” are largely synonymous, I will generally use the latter term). A better organized dissemination of information and documents to non-participants *in time for them to react and have an input* will be a major part of any solution (perhaps the four Deputy Directors General could play more of a role here).

A much more serious problem occurs when the number of members demanding to participate in a green room meeting exceeds the limit imposed in order ensure the group’s efficiency and effectiveness. Certainly there are, and will continue to be, many issues which are of vital interest to only a limited number of WTO members. With equal certainty, we can be confident that—as in Singapore and Seattle—there will be issues of sufficiently broad interest to the membership that it will be necessary to exclude a significant number of interested members from the green room. Moreover, for the reasons noted above (the increasing membership, the WTO’s growing involvement in politically sensitive policy areas, and so on), there is bound to be an increase in the number of instances in which it will be impossible to accommodate all the members desiring to participate in green room meetings.

Although the concentric circles model, in one or another of its possible versions, continues to enjoy significant support among a number of WTO members (for reasons that are explored below), it is very difficult to avoid drawing two conclusions from the preceding discussion:

- In those instances in which interest among WTO members in the issue at hand is sufficiently narrow that a green room group can be constituted without excluding any member desiring to participate, this model functions well and should continue to be used. In other words, as a venue for special types of discussion, debate and negotiation, green room meetings—as well as bilateral meetings and all the other “processes” that have been developed over the years in the GATT/WTO—will

continue to be used.

- In those instances in which it is impossible to organize a green room meeting without excluding one or more WTO members wishing to be included, continued reliance on the concentric circles model can only progressively damage the WTO's ability to function, erode its internal and external credibility, and push the organization even further back in the direction of more and more issues being seen—falsely and very unproductively—in North/South terms. Clearly the WTO needs an efficient-size sub-group of members for the purpose of discussing, debating and negotiating draft decisions that can be put to the entire membership for adoption. What needs changing is the basis for putting together such a sub-group, for deciding which delegations will be in the room and which delegations are excluded. The new basis needs to be one that is fully transparent, predictable and equitable in the eyes of *all* WTO members.

One option for creating such a new sub-group of WTO members is developed below.

First, however, it will be helpful to take a brief look at two types of sub-groups, one from the GATT and one from the IMF and World Bank.

### III. GATT'S EXPERIENCE WITH THE CG.18

In 1975 GATT's contracting parties established, on a temporary basis, a body that in a limited way resembled an executive board. Called the Consultative Group of Eighteen (CG.18), it was made a permanent body in 1979 and held its last meeting in 1987, as the Uruguay Round moved into high gear.<sup>5</sup> In its report to the GATT Council recommending that it become a permanent body, the CG.18 stated

It is strongly believed in the Group that the GATT should have at its disposal a small but representative group which would permit existing and emerging trade policy issues to be discussed in confidence among responsible officials from capitals, and thus facilitate an effective concertation of policies in the trade field. (GATT 1980, p.285)

The CG.18, which met from two to four times a year, was not expected to deal with management issues (“How do you run an organization where every committee is open to

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<sup>5</sup> The Group included nine alternate members who were allowed to participate fully in the discussions. However, they were provided with only one seat each, in contrast to the two seats (one for an advisor) provided to each of the 18 regular members. Membership in the CG.18 was increased to 22 in 1985.

every member?"), but rather to fulfil the major countries' desire for a manageable size, issue-oriented *consultative* body whose participants would be senior officials from capitals.

Any thought of using the CG.18 as a rough blueprint for designing a new group that would move into action whenever a green room meeting could not accommodate all WTO members wishing to participate, would have to begin by acknowledging that the CG.18 suffered—at least from today's perspective—from a serious transparency problem. GATT contracting parties which did not have a seat on the CG.18 were barred from the meetings and did not receive CG.18 documents. A near-exclusive reliance on officials from capitals would also be unworkable, since the new group presumably would, periodically, need to meet much more frequently than the CG.18. On the other hand, given the stated desire of WTO members to continue to rely on consensus decision making, any new group should follow the CG.18's fundamental principle of *not* taking any formal decisions, but rather only making recommendations to the entire membership.

#### IV. THE "EXECUTIVE DIRECTOR'S" MODEL

A board composed of 24 Executive Directors is the principal decision-making body in both the IMF and the World Bank. The Fund's Executive Board meets at least three times a week, while the Bank's Board of Executive Directors normally meets twice a week. Although there is provision for weighted voting in both organizations, both organizations try as much as possible to work on the basis of consensus.

Eight Executive Directors represent individual countries on the IMF Board (China, France, Germany, Japan, Russia, Saudi Arabia, the United Kingdom and the United States), and 16 represent groupings of the remaining 174 members. The same eight countries have individual seats on the World Bank's Board of Executive Directors. In the IMF, 13 of the 16 groups that share a Board seat have between 6 and 14 members, one has only four members (two of which are India and Bangladesh), and two groups of African countries have 20 and 22 members, respectively. The country composition of the 16 groups of World Bank members is very similar to that of the 16 IMF groups.<sup>6</sup>

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<sup>6</sup> The country composition of the 16 "shared seat" groups in each organization may be found on their respective web sites.

Considering that the WTO is a rules-based organization whose *raison d'être* is the provision of legally binding constraints on what countries can do in the area of trade-related policies, *and* that it is a one-country, one-vote organization (in contrast to the weighted voting in the IMF and World Bank), it is *very* unlikely that WTO members would be willing to create a board of executive directors which could take decisions that bind the entire membership.

## V. A “WTO CONSULTATIVE BOARD”

The option developed in this paper for a new sub-group of WTO member countries involves creating what might be called a “WTO Consultative Board.”<sup>7</sup> It would not be necessary to have predetermined, regularly scheduled meetings since the Board normally would meet only when a green room meeting could not accommodate all WTO members wishing to participate. The design and operating procedures of the new Board would draw on the strong points of both the CG.18 and the IMF/World Bank Boards, while at the same time avoiding the shortcomings (from the perspective of the WTO’s needs) of both.

As with the CG.18 (and the concentric circles model), the WTO Consultative Board would *not* be empowered to take decisions that bind the general membership. It would consult, discuss, debate and negotiate, but its output would be limited to recommendations put forward to the entire membership for approval/acceptance. And, as with the executive directors model, the Board would be a formal part of the WTO organization chart, and the Board’s composition—which members have a seat at the table and when—would be fixed (that is, predictable), presumably with the largest traders having individual seats and the remaining WTO members divided into groups, each with one seat that is shared among the members of the group on a rotating basis.

### (1) *Minimizing the exclusivity of a WTO Consultative Board*

A major challenge would be to minimize the exclusivity of the Board in the eyes of members which would have a seat at the table only on a rotating basis. The fact that the

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<sup>7</sup> Obviously there are other possible names for the new group. Including “consultative” (or an approximate synonym, such as “advisory”) in the name would emphasize the fact—very important in dealing with the “exclusivity” problem discussed below—that the group is not empowered to take decisions.

Board could not take decisions would be vitally important from this perspective. Surely the other major factor would be transparency. I believe it would be crucial, as regards both substance and political acceptability, to make the work of the Board *fully* transparent and accessible to all the members.

All WTO Consultative Board documents could be made available simultaneously to all WTO members. One could imagine an arrangement whereby members which were not at the table would be able to watch the deliberations of the Board in their delegation offices on secure closed-circuit television. Another option, the pros and cons of which are hard for me to judge, would be to set-up the meeting room with a table and chairs in the centre for the current members of the Board, surrounded by seating for all the other WTO members, who would be free to observe—but not intervene in—the proceedings. Along with increasing the political acceptability of such a Consultative Board, a high degree of transparency along these lines would facilitate subsequent efforts to get a consensus because countries which were not members of the Board would be aware of the nature of the “give and take” involved in arriving at a decision to recommend to the entire membership.

Another way to minimize the exclusivity of the Board, or at least the perceived downside to the exclusivity, would be to use broad similarities in interests and viewpoints on trade-related issues as the basis for composing the groups of WTO members which share seats. In that way, the members of any particular group—when it was not their turn to be at the table—would feel that at least their group’s seat was occupied by a country which shared many of their concerns and priorities in the trade area. Composing the groups on this basis would not be an insurmountable task.<sup>8</sup>

## (2) *Size of a WTO Consultative Board and the allocation of seats*

The question of how many seats the Board should have would be very contentious.<sup>9</sup> One option for getting around this politically charged issue would be to follow the practice of the IMF and the World Bank, whose sub-groups for discussion, debate and negotiation—that

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<sup>8</sup> According to the World Bank web site, the country groups in the Board of Executive Directors “. . . more or less represent geographic regions with some political and cultural factors determining how they are constituted.”

<sup>9</sup> Witness the current debate over proposals to expand the membership of the U.N. Security Council (see, for example, the *International Herald Tribune* of 5 April 2000).

is, their respective Boards—each have 24 members.

Allocating seats surely would be the most contentious part of the task of creating a WTO Consultative Board. One approach would be to base seat allocation on some combination of three criteria: share of world trade and share of world GDP, “tempered” by the fact that the WTO is a one-country/one vote organization (the Board, of course, would never vote because it could not take formal decisions). Whatever the criteria, it is very likely that the United States, the European Union and Japan—which together account for nearly one-half of world merchandise trade (excluding intra-EU trade)—would have individual seats. The members of ASEAN could share a seat, as could members of other regional groupings. And so on.

As in the IMF and World Bank boards, the groupings could be self-selected and could have the option of “self-changing” their composition, say once every two years. The countries in each group could also be given the freedom to decide how often to rotate the occupancy of the group’s seat at the table. In general, the principle could be to allow as much flexibility as possible, in order to accommodate a variety of situations (that can change over time).

A decision to have 24 seats would mean that the groups that share seats in the Consultative Board would have, on average, noticeably fewer members than the groups that share seats on the Fund and Bank Boards, for two reasons: WTO membership is likely to remain below that of the Fund and the Bank (182 and 181, respectively) for some time; and a WTO Consultative Board presumably would have fewer single-country seats than the eight single-country seats in the Fund and Bank Boards (for example, individual European Union member countries, three of which occupy individual country seats on the IMF and World Bank Boards, would not be candidates for seats on the WTO Board because the EU speaks for its 15 members in the WTO).

The members of ASEAN share, among themselves, responsibility for covering WTO activities. In the case of the General Council, responsibility for covering the meetings and, when needed, intervening on behalf of the ASEAN group, is rotated among the members every six months. When it is the turn of one of the newer members of the ASEAN, which is less experienced in WTO matters and may have fewer human resources available, the other ASEAN members help that country carry out its responsibilities (preparation of interventions

and so forth) vis-a-vis the General Council. Among other things, this is an important learning process for those newer and less experienced members.

There is no reason why each of the groups sharing a seat on a WTO Consultative Board should not function in much the same way. Cooperation among the self-selected group members to support whichever member currently occupies the seat would help compensate for the shortage of experienced professionals—in Geneva and in support units back home—that plague so many of the middle and lower income WTO members. It would be an important learning process—and morale builder—for the officials involved, both in Geneva and in capital. Domestically, the much more active involvement of these countries in important WTO activities—remember, they include the 90 or so members which have been routinely excluded from the green room meetings—would raise the profile of the WTO, and trade policy in general, in government circles and in the private sector. Governments which have been slow to recognize that commercial diplomacy has replaced political diplomacy as the critical priority for countries pursuing economic development would be encouraged to reallocate scarce human resources away from activities, abroad and at home, that contribute little or nothing to the country's economic development, and put those resources to work on the WTO.<sup>10</sup>

The latter point calls attention to one of the most damaging aspects of the green room model, with its opaque basis for deciding which delegations are allowed into the room, and its *de facto* permanent exclusion of more than three-quarters of the WTO membership. *It is only human nature that if a country's senior trade officials—the Geneva ambassador and the cabinet minister responsible for trade—feel marginalized by the WTO, they will be inclined to marginalize the WTO at home.* A new kind of sub-group of WTO members along the lines of a WTO Consultative Board could go a long way toward solving this problem.

### (3) *Where will the opposition come from?*

There is likely to be two overlapping sources of opposition to the proposal that a formal WTO Consultative Board be created to consult, discuss, debate and negotiate

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<sup>10</sup> See Blackhurst, Lyakurwa and Oyejide (2000) for a specific proposal, involving the WTO's 38 members from Sub-Saharan Africa, along these lines.



whenever a green room meeting cannot accommodate all WTO members that wish to participate.

First, there is very little doubt that the strongest and most vocal opposition to replacing the concentric circles model will come from a majority of the 20 to 30 members which are big enough to demand entry to any inner circle/green room they are interested in, but not big enough to demand an individual seat on the new Board. (A good idea of which delegations are in this category can be obtained by subtracting the United States, the European Union and Japan from the 25 countries reportedly invited to the green room meetings in Seattle, or from the 34 countries that drafted the Singapore Ministerial communique. Keep in mind that the 15 individual members of the European Union do *not* participate in the green room meetings.) Not long after their return from Seattle, at least some delegates from countries admitted to the Seattle green room meetings were privately denying that the green room model had been seriously discredited by what happened in Seattle—the same process of “denial” that helped torpedo the post-Singapore deliberations on decision-making reform. They argue that the press and isolated WTO delegations greatly exaggerated the extent to which the necessity of excluding many WTO delegations from the green room meetings had created serious problems.<sup>11</sup> Even worse are the frequently heard patronizing remarks to the effect that the excluded delegations had nothing productive to contribute because they were unprepared and ignorant of the issues.

It is important not to underestimate the amount of hard work undertaken by the regular participants in WTO green room meetings—virtually all of whom are drawn from the same group of 20 to 30 WTO delegations—nor the extent to which the individuals involved have contributed to the functioning of the WTO. At the same time, the excluded countries no doubt view the group of essentially permanent green room participants as an exclusive “club” which has assumed responsibility for “running the WTO.” Regular green room participants may not think of themselves as a club, but there is little doubt that many of them will exhibit a very club-like desire to protect their prerogatives against demands or proposals for reform that involve sharing those prerogatives more widely among the membership. And while it is

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<sup>11</sup> Here it is important to emphasize that this paper does *not* argue that the Seattle Ministerial failed because of the controversy over the exclusion of so many countries from the green room meetings. It is an open question what the impact of that controversy on the outcome of the Ministerial would have been *if* there had not been such fundamental disagreements over proposals for the agenda of a new round.

undoubtedly true that many of the 90 plus excluded delegations often are less well briefed on the issues, there is very much a “chicken and egg” aspect to the situation—why should a delegation bother to use up scarce human resources to be fully prepared on the issues when it knows from experience that it will not be consulted on them?

A second source of opposition—and one which might find one or more of the United States, the European Union and Japan allied, at least to some degree, with other green room members—is the argument that it would be politically impossible to obtain a consensus on a proposal to replace the concentric circles model with a *formal* new body along the lines of a WTO Consultative Board. Without putting it to the test, there is no way of knowing whether or not this assertion is correct. What does seem clear is that if the 90 or so routinely excluded WTO members decide that they are no longer willing to be a part of the implicit consensus supporting the green room model, it will become totally unworkable.

A corollary of these observations is that, since they are the ones who routinely get excluded, it should not be difficult to convince the 90 or so medium and small size WTO members of the advantages of having a formal and fully representative alternative to the concentric circles model, one that can be activated whenever relying on a green room meeting would involve excluding WTO members. *Sharing a seat may not be ideal, but it's a lot better than never being allowed in the room.*

A discussion of which countries are likely to oppose or support the creation of a WTO Consultative Board would be incomplete without a brief mention of the response of many of the major countries to the signing, in Seattle, of the Agreement establishing the new Advisory Centre on WTO Law (the only success in Seattle). The Centre is a new international organization which is completely independent of the WTO. The rationale for creating the Centre is simple and compelling. While large and wealthy WTO members can afford to have experienced trade lawyers as regular full-time members of their delegations, this option is not available to most middle and lower-income developing countries. They must turn to very expensive outside lawyers when they need qualified legal assistance. The main purpose of the new Centre is to help correct this imbalance by providing subsidized legal assistance to developing countries—in other words, to help them defend their legal rights in the WTO.

Developed countries were asked to join the Agreement and provide financial support. However, for several of them the usual keen interest in a “level playing field” seems

to have evaporated when it comes to countries' ability to enforce their WTO rights. For example, the European Union (which strongly opposed the creation of the Centre), the United States, Germany, France and Japan—all firm believers in the rule of law at home and in a rules-based trading system—did not sign the Agreement in Seattle.<sup>12</sup> Although this development does not necessarily imply that the countries which failed to support the creation of the new Centre would be “unenthusiastic” about the creation of a WTO Consultative Board—and the more active participation of the middle and lower-income developing countries in WTO activities that would result—the implications are not particularly encouraging.<sup>13</sup>

## VI. PREDICTABILITY, TRANSPARENCY AND ABOVE ALL LEGITIMACY

Since any new sub-group of WTO members responsible for discussing, debating and negotiating an issue would be used only when a traditional inner circle/green room could not accommodate every member wishing to participate, the predictability, transparency and legitimacy of the new “sub-group process” would be critically important. From this perspective, the IMF and World Bank Boards have two very important characteristics: the Board is a formal part of the organization's structure, and *every* member country's “participation rights” in the Board are fully transparent and predictable. In other words, because the IMF and World Bank Boards are integral parts of the respective organizations each is a formal part of the organization chart they have predictability, transparency and, most important of all, *legitimacy*. This contrasts with the green room model or for that matter, with any new informal, ad hoc WTO group that countries might be considering as a cosmetic response to the events in Seattle (and Singapore) which lacks predictability, typically suffers from serious transparency problems, and has none of the legitimacy that comes from being a

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<sup>12</sup> Regarding the European Commission's position, see the *Financial Times* editorial of 18 February 1999. Nine developed countries did sign the Agreement in Seattle: Canada, Denmark, Finland, Ireland, Italy, the Netherlands, Norway, Sweden and the United Kingdom. Further details of the Centre are available on the WTO web site <<http://www.wto.org>> in the section on the Trade and Development Centre.

<sup>13</sup> The current state of the WTO's technical assistance budget is another reason to worry about the attitude of at least some of the major countries toward efforts to increase the ability of medium and lower-income developing countries to participate more fully in WTO activities. See Blackhurst, Lyakurwa and Oyejide (2000).

*formal* part of the institution's organizational structure (witness, for example, the above quote from the Kenyan delegate in Seattle).

This is why I believe it would be a very serious mistake if the perceived political difficulty of agreeing on a formal change in the WTO's structure led the member countries to create yet another informal ad hoc "group" or "forum." Any informal group or forum risks collapsing in acrimony and distrust at the first serious confrontation because it would have no "structural strength" and would suffer from a "deficit of legitimacy." The new group must be a formal part of the organization on the WTO organization chart *and* connected by a solid line, not a broken line, to the rest of the chart<sup>14</sup>

## VII. A BRIEF SUMMING UP

The risk facing the WTO is that the political challenge of getting a consensus on a fundamental reform of the decision-making process along the lines proposed in this paper, coupled with the GATT/WTO's traditional pragmatism, will create a nearly irresistible momentum to attempt to "muddle through." If the member countries and the Director General give in to this temptation, the prospects for the WTO realizing its full potential will be very bleak indeed.

As for the 90 or so WTO members which are routinely excluded from green room meetings, the choice is clear. If they want to see the creation of a formal and fully representative sub-group of WTO countries along the lines of a WTO Consultative Board, where

- each of them would have the opportunity to periodically occupy a seat at the table,
- when they were not in the seat, they would know it is occupied by a fellow group member which shares their views on many issues, and which would listen to them when they want to make an input,

they will have to fight for the change. The countries that have grown accustomed to "running the show" at the GATT and now the WTO are not going to hand it to them on a silver platter.

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<sup>14</sup> An option to consider in building support for a formal Consultative Board would be to agree to include a "sudden death" clause that provides for a trial period of, for example, three or four years.

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