

provided that decisions could be taken by a majority vote,⁶⁴ this has not been the practice in the GATT or in the WTO. Members seem to prefer to use the cumbersome and slow process of decision-making by consensus over the voting procedures allowed for in the rules.

The difficulty with the decision-making procedures in the WTO, in my view, does not result from a "constitutional defect" in the rules, but rather from the preferences and the practice of the Members of the WTO. Changing the procedures for taking decisions is not likely to change the attitudes of WTO Members. Furthermore, changing the decision-making rules would only exacerbate the problems of internal legitimacy within the WTO, because it would increase the perceptions of developing countries that they are not included in the decision-making processes.

During the Uruguay Round, the United States put forward a proposal in the Functioning of the GATT System (FOGS) Group that a management board or committee, consisting of approximately 18 Members, should be established to set policy direction and assist in the management and administration of the system. That idea has resurfaced both among delegations in Geneva and in academic debate,⁶⁵ however, the developing countries remain opposed to any suggestion that would lead to some countries being excluded from any decision-making body.

Despite the objections of smaller and developing countries, a management board is essential and could be made to work in a way that would be inclusive of all WTO Members. The WTO

⁶⁴ Article XXV of the GATT 1947 stipulated, as a general rule, that decisions of the CONTRACTING PARTIES were to be taken by a majority vote (except for waivers and amendments that required a two-thirds majority). However, the practice, throughout most of GATT history, was for decisions to be taken by consensus.

⁶⁵ Sylvia Ostry has long been a strong proponent of this idea. See, for example: Sylvia Ostry, "World Trade Organization: Institutional Design for Better Governance", in Porter, Sauve, Subramanian & Zampetti, *Efficiency, Equity, Legitimacy: The Multilateral Trading System at the Millenium*, Brookings, 2001, 361- 380; Barfield, note 4.