

# WHY SHOULD THE WTO PRESERVE THE CONSENSUS RULE?

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## **Abstrakt v rodném jazyce**

Světová obchodní organizace je ve 21. století ve znamení globalizace považována za jednu z nevlivnějších organizací na světě. Udává tempo vývoji mezinárodního obchodu, slouží jako forum pro obchodní negociace jednotlivých členů a disponuje automatizovaným systémem řešení sporů mezi členy. Je institucionálním výsledkem Uruguayského kola a figuruje jako nástupce GATT 1947, na jehož téměř padesátiletou tradici plynule navázala. I když jsme za těchto posledních padesát let mohli být svědky rozsáhlé liberalizace mezinárodního obchodu probíhající v rámci multilaterálních obchodních kol, současná situace je dosti odlišná. Vyjednávání v rámci stále ještě probíhajícího Doha Round se ocitla ve slepé uličce. Jednou z příčin je početná členská základna Světové obchodní organizace čítající k dnešnímu dni 153 států a samostatných celních území a odlišné zájmy těchto členů. Politická vůle a flexibilita vyřešit danou situaci jako by neexistovala a dohoda, při jejímž uzavření by byli spokojeni všichni členové je v nedohlednu. Za daných okolností je požadovaná forma přijímání rozhodnutí formou jednomyslnosti jen stěží představitelná. Bylo již zaznamenáno mnoho hlasů volajících po změně, a to nahrazení principu přijímání rozhodnutí formou konsensu hlasováním. Toto řešení může znít lákavě, avšak skrývá mnoho úskalí. Tento článek se pokusí čtenáře přesvědčit o důležitosti zachování přijímání rozhodnutí i nadále formou konsensu.

## **Klíčová slova v rodném jazyce**

Světová obchodní organizace, rozhodování formou jednomyslnosti, rozhodování hlasováním, Všeobecná dohoda o clech a obchodu, přijímání rozhodnutí, Doha kolo multilaterálních obchodních jednání, Marrakéšská smlouva, rozvojové země, vyspělé země, role rozhodování.

## **Abstract**

The World Trade Organization is considered to be one of the most influential organization of the world in 21 st. century. It governs the international trade, provides a forum for trade negotiations of its members and dispose of automated dispute settlement mechanism between its members. The World Trade Organization is an institutional result of Uruguay Round and is considered to be a legal successor to GATT 1947, picking up to its almost fifty years tradition again. Although we have been witnessing the large liberalization of international trade proceeding during the multilateral trade rounds, the current situation is very different. The negotiations in terms of still running Doha Round have been leading into a blind corridor. One of the reason of that situation is the numerous membership of the World Trade Organization reaching currently the number of 153 states and separate custom territory possessing full autonomy in the conduct of its external commercial relations and of other matters and the divergent interest of these members. There is a lack of politic will and the flexibility to solve this situation and the mutual agreement, which would satisfy all participants to that negotiations is unthought to happen. This circumstances don't make the reaching of some agreement by consensus rule imaginable. Up to now many voices calling for changing the consensus rule for voting. That solution tends to be attractive, but also hides lots of pitfalls. This article is about to convince the reader how important is to preserve the consensus rule.

## **Key words**

World Trade Organization, decision making by consensus, decision making by voting, the General Agreement on Tariffs and Trade, decision making, Doha Round, Marrakesh Agreement, developing countries, developed countries, role.

## **1. INTRODUCTION**

The question of preserving the consensus rule within the decision-making process has been the subject of discussion for some time. There have been notes supporting the idea of preserving the consensus rule of the decision-making process, but also much criticism of the current WTO decision-making process. A considerable number of arguments provide evidence how important the consensus rule is regarding the credibility and transparency of the international trade system governed by the WTO. The members of the WTO are diverse and have miscellaneous interests, often forming themselves in to groups according to their similar attitudes, and although decision might be adopted more easily if consensus were dropped it would risk undermining the credibility, solidarity and cohesiveness of the organization.

The Marrakesh agreement establishing the World Trade Organization recognizes two primary modes of general decision-making such as consensus and voting. In spite of that given option, the WTO bodies continue to follow the practice of GATT 1947 of decision-making by consensus<sup>1</sup>. Someone might ask about the reasons for this practice, when the consensus decision-making process could take a great deal of time.

## **2. WHY SHOULD THE WTO PRESERVE THE CONSENSUS RULE?**

The procedure of decision-making is embodied in article IX of Marrakesh Agreement as following:

*„The WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.“<sup>2</sup>*

Pursuant to above mentioned article of the Marrakesh Agreement, Members first try to take decisions by consensus. Footnote 1 to the article IX provides nearer definition of what does consensus for within WTO decision-making means. The consensus is then reached, if no member present at the meeting when the decision is taken, formally does not object to the proposed decision. Thus consensus differs then from unanimity<sup>3</sup>.

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<sup>1</sup> Matsushita, M., Schoenbaum, T., Mavroidis, P.: The World Trade Organization: Law, Practice, and the Policy, Oxford: Oxford University Press, second edition, 2006, str. 12.

<sup>2</sup> The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations, Cambridge: Cambridge University Press, 2007, str. 8-9.

<sup>3</sup> Van den Bossche, P. The Law and Policy of the World Trade Organization: Text, Cases and Materials, Cambridge: Cambridge University Press, 2006, str.141.

In the text below will be explained, we should preserve the consensus rule also for the future. Firstly, the WTO is a member driven organization, arising on to the international trade scene in 1995 and based on almost 50 years tradition and experience of GATT. From 23 contracting parties in the early beginning, a global international leading trade organization with 153 members has been created which lays testimony to the great success and credibility of this organization. The credibility of WTO is narrowly related to the internal need of democracy. Current consensus system is a symbol of democracy and one of the positive elements weighed by a state when considering entry to the organization. The WTO is theoretically democratic, due to the fact, that all members are equal and have one vote, contrary to the International Monetary Fund, World Bank or EU, where rich nations hold far more votes than the poorer one. Preserving the consensus rule has essential importance for the WTO to be democratic and credible for its members.

At the same time we have been witness to some attempts to change this consensus rule into voting system. A well known case is the Director General elections in 1999, when the members could not agree, who should become a new Director General. They almost turned to the voting system, but in the end found a solution appointing Mike Moore for 3 years and Supachai also for 3 years. Thus both groups of the battle were satisfied. Also examples from history are the best evidence for why the consensus rule should be kept. The number of developing and LDC countries in the WTO is much larger than developed ones. The latter would never allow the consensus rule to be change into a voting system, because the opinion of developing countries and LDCs would always prevail. The developed countries are aware of their importance as trade actors in the WTO and they do not want to lose this privilege.

Finally, the consensus principle which is at the heart of the WTO system and which is a fundamental democratic guarantee is not negotiable<sup>4</sup>. The text of the consensus principle can be found in art. IX Decision-Making of Marrakesh Agreement, where it is explicitly written, that the WTO shall continue the practice of decision-making by consensus followed under GATT 1947. This means, that there has been a long tradition verified by practise.

### **3. CONCLUSION**

In conclusion, the consensus rule is one of the fundamental attributes of democracy and credibility of the WTO. Without this rule a potential member could not really give up its sovereignty to this organization. The general decision-making by consensus gives all members veto power and make them feel equivalent apart from their existing world trade share or political power. Also for current members it is important to preserve the consensus rule concerning their safety and role, which they obtained during their accession, facing at that time, WTO conditions. In consensus decision making the minority goes along with the majority unless there is a serious objection. The majority is on the other hand aware of the need of the minority. Everybody might be then in the end satisfied with being in the ambient of credibility, solidarity and cohesiveness.

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<sup>4</sup> Moore, M. Black on Track for Trade and Development, addressed to UNCTAD. Can be found at [www.wto.org](http://www.wto.org).

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