
**PROCESS ISSUES IN THE WTO:
STATE OF PLAY NOVEMBER 2002**

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I. INTRODUCTION

1. “Process” issues have been on the agenda of the WTO for a number of years now. Currently, these issues can be divided into three distinct, but closely linked, areas:
 - General issues relating to the internal transparency and inclusiveness of general WTO decision-making procedures;
 - Issues specifically relating to the processes to be used in the Doha-mandated negotiating agenda; and

- Issues specifically relating to the Geneva-based preparatory process leading up to, and including the negotiations to be done at, the 5th WTO Ministerial Conference in Cancun, Mexico, in September 2003.
- 2. Process issues above have been raised, especially by many developing countries, as a reaction to the predominantly informal, non-inclusive, and non-transparent manner in which many major WTO decisions are discussed and finalized – especially by Quad countries with the support of the WTO Secretariat – for formal approval by official WTO bodies (such as the General Council or the Ministerial Conference).¹

II. RELEVANT LEGAL TEXTS AND DOCUMENTS

- 3. It must be remembered that the basis for all discussions regarding decision-making processes must be based on and linked to two major legal texts of the WTO:
 - Article IX (Decision-Making) of the WTO Agreement; and
 - Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council” (WT/L/161, 25 July 1996) approved by the WTO General Council in 1996.
- 4. Following are some of the recent Member submissions, General Council discussions, and Ministerial Conference decisions that have been made with respect to the issues above:

Author	WTO Document Reference
General Internal Transparency and Inclusiveness Issues	
Bulgaria	<i>Internal Transparency</i> (dated 2 November 2000), WT/GC/W/422, 13 November 2000
WTO General Council	<i>Minutes of the Meeting of 17 and 19 July 2000</i> , WT/GC/M/57, 14 September 2000, paras. 132-170
Process for the Doha-Mandated Negotiations	
Cuba, Dominican Republic, Egypt, Honduras, Kenya, Pakistan, Tanzania, Uganda, and Zimbabwe	<i>Establishment of the Trade Negotiations Committee (TNC) and Related Issues</i> (undated), WT/GC/58, 21 December 2001
Cuba, Dominican Republic, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe	<i>Organization of Negotiations Envisaged in the Doha Ministerial Declaration</i> (dated 28 January 2002), TN/C/W/2, 29 January 2002
WTO Ministerial Conference, Fourth Session	<i>Ministerial Declaration</i> (adopted 14 November 2001), WT/MIN(01)/DEC/1, 20 November 2001, para. 49
WTO Trade Negotiations Committee	<i>Minutes of the Meeting of 28 January and 1 February 2002</i> , TN/C/M/1, 14 February 2002
WTO Trade Negotiations Committee	<i>Statement of the Chair of the General Council on the Structure of the Negotiations and Arrangements for Chairing</i> (dated 1 February

¹ For analyses and accounts of the procedural and political shortcomings of current WTO decision-making processes from the perspective of developing countries, see, e.g. Amrita Narlikar, WTO DECISION-MAKING AND DEVELOPING COUNTRIES (TRADE Working Paper No. 11, South Centre, November 2001); and Aileen Kwa, POWER POLITICS IN THE WTO (Focus on the Global South, November 2002).

	2002), TN/C/1, 4 February 2002
Preparatory Process and Negotiations in Ministerial Conferences	
WTO General Council	<i>Minutes of the Meeting of 7, 8, 11, and 15 December 2000</i> , WT/GC/M/61, 7 February 2001, paras. 195-205
Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe	<i>Preparatory Process in Geneva and Negotiating Procedure at the Ministerial Conferences</i> (dated 19 April 2002), WT/GC/W/471, 24 April 2002
Australia, Canada, Hong Kong (China), Korea, Mexico, New Zealand, Singapore, and Switzerland	<i>Preparatory Process in Geneva and Negotiating Process at Ministerial Conferences</i> (dated 27 June 2002), WT/GC/W/477, 28 June 2002
WTO General Council	<i>Minutes of the Meeting of 13 to 14 May 2002</i> , WT/GC/M/74, 1 July 2002, paras. 89-130
WTO General Council	<i>Minutes of the Meeting of 8 and 31 July 2002</i> , WT/GC/M/75, 27 September 2002, paras. 27-84

NOTE: The listing above may not necessarily be complete.

III. STATE OF PLAY OF PROCESS ISSUES DISCUSSIONS

A. General issues relating to the internal transparency and inclusiveness of general WTO decision-making procedures

5. The last major formal discussion among Members on these issues took place during the July 2000 meeting of the General Council. During that meeting, the then-General Council Chair, Ambassador Kare Bryn of Norway, sought to identify, based on his consultations with Members, what he felt were the “mainstream of the discussions” with respect to internal transparency and participation.² (See Annex I for the text)
6. Recent subsequent WTO process-related documents, such as the TNC Negotiating Principles and Practices³ and the draft text of the Procedures for the Appointment of Directors-General⁴ have tended to point to Ambassador Bryn’s statements above as indicative of “best practices” in terms of internal transparency and the participation of Members in decision-making in the WTO.
7. Members should note, however, that at that General Council meeting as well as in subsequent General Council meetings,⁵ some Members have expressed reservations, exceptions, qualifications or commentaries with respect to Ambassador Bryn’s statement. This effectively implies that there is no consensus, especially from

² See WTO General Council, *Minutes of the Meeting of 17 and 19 July 2000*, WT/GC/M/57, 14 September 2000, Para. 134. Subsequently, during the December 2000 General Council meeting, Ambassador Bryn outlined what he believed were the “mainstream of the discussions on the preparation and organization of Ministerial Conferences.” See WTO General Council, *Minutes of the Meeting of 7, 8, 11, and 15 December 2000*, WT/GC/M/61, 7 February 2001, Para. 196.

³ See WTO Trade Negotiations Committee, *Minutes of the Meeting of 28 January and 1 February 2002*, TN/C/M/1, 14 February 2002, Para. 8, endorsing Section B of the General Council Chair’s *Statement to the TNC of 1 February 2002*, TN/C/1, 4 February 2002.

⁴ Job(02)/152, para. 2.

⁵ See, e.g., WTO General Council, *Minutes of the Meeting of 13-14 May 2002*, WT/GC/M/74, 1 July 2002.

developing countries, on the above points as “best practices” with respect to internal transparency and the participation of Members.⁶

8. Hence, there is still a need for Members, especially in view of recent experience, to agree to establish such guidelines with respect to internal transparency and the participation of all Members.

B. Issues specifically relating to the processes to be used in the Doha-mandated negotiating agenda

9. Paragraph 49 of the Doha Ministerial Declaration provides the legal basis for defining the process to be used in the negotiations – i.e. the negotiations are to be “conducted in a transparent manner among participants, in order to facilitate the effective participation of all ...” In December 2001 and January 2002, some developing countries made suggestions regarding the establishment of the TNC and the process for the Doha-mandated negotiations.⁷ Section B of the General Council Chair’s Statement to the TNC on 1 February 2002 (TN/C/1, 4 February 2002), which was endorsed by the General Council during its 1 February 2002 meeting, lays down some negotiating principles and practices to be followed by the TNC and its subsidiary negotiating bodies. These include:

- a reference to paragraph 49 of the DMD vis-à-vis transparency in the negotiations, “in order to facilitate the effective participation of all”;
- a reference to the 17 July 2000 statement of Ambassador Bryn vis-à-vis “best practices” with regard to internal transparency and participation of all Members;
- expeditious circulation and translation into the three official WTO language of the minutes of meetings of the TNC and other negotiating bodies;
- an “overall guideline” that “as far as possible only one negotiating body should meet at the same time”. The TNC is required to keep the calendar of meetings “under surveillance” and that the constraints of smaller delegations should be taken into account when meetings are being scheduled;
- chairpersons of the TNC and negotiating bodies should be impartial and objective; ensure transparency and inclusiveness in decision-making and consultative processes; aim to facilitate consensus and to evolve consensus texts; and reflect consensus or different positions on issues in their regular reports to the overseeing bodies.

10. Intensive discussions also took place with respect to the issue of having then-WTO Director-General Mike Moore be the chair of the TNC. The General Council decided to make the sitting WTO Director-General, by virtue of his position as such, be the *ex officio* chair of the TNC.⁸ Many developing countries during that meeting, however, said that their agreement to having the Director-General chair the TNC

⁶ For analysis on developing country views on WTO decision-making, see, e.g., Amrita Narlikar, WTO DECISION-MAKING AND DEVELOPING COUNTRIES (Trade-Related Agenda, Development, and Equity (T.R.A.D.E.) Working Paper No. 11, South Centre, November 2001), available online at <http://www.southcentre.org/publications/wtodecis/workingpapers11.pdf>. (hereafter Narlikar 2001).

⁷ See WT/GC/58 and TN/C/W/2.

⁸ See WTO Trade Negotiations Committee, *Minutes of the Meeting of 28 January and 1 February 2002*, TN/C/M/1, 14 February 2002, Para. 9, approving Agenda Item 1 of the General Council Chair’s *Statement to the TNC of 1 February 2002*, TN/C/1, 4 February 2002.

was conditioned on the subsequent establishment of clear guidelines that would guide the negotiating process under the TNC and its subsidiary negotiating bodies.

11. Thus far, aside from both Paragraph 49 of the DMD and the TNC-endorsed Section B of the General Council Chair's Statement to the TNC on 1 February 2002, such guidelines have not yet been established. Developing countries might, therefore, consider raising once again the issue of establishing such guidelines for purposes of the on-going Doha-mandated negotiations.

C. Issues specifically relating to the Geneva-based preparatory process leading up to, and including the negotiations to be done at, the 5th WTO Ministerial Conference in Cancun, Mexico, in September 2003

12. With barely ten months left before the 5th Ministerial Conference in Cancun, Mexico, in September 2003, WTO Members are once again looking at the processes to be undertaken in preparation for that conference. It will be a crucial meeting because it will enable Ministers to conduct a stocktaking exercise vis-à-vis the implementation and pace of the negotiations under the DMD, as well as to make decisions on the mandates of various issues placed on the WTO agenda under the DMD.
13. Currently, the only formal rules that guide the process for the conduct of Ministerial Conferences (as well as for meetings of the General Council) are contained in the "Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council" (WT/L/161, 25 July 1996). However, based on the experiences of both developing country delegates and from studies made by outside observers⁹ regarding the processes used in the run-up to and during Ministerial Conferences, these rules of procedure tend to be honored more in the breach than in the practice. Furthermore, neither do these rules of procedure provide clear and unambiguous parameters for the exercise by the Chair of the Ministerial Conference, as well as by the Chair of the General Council in the run-up to the Ministerial Conference, of their powers as chairpersons of the meeting.
14. During the December 2000 meeting of the General Council, Ambassador Bryn also set out points "which he believed reflected the mainstream on the discussions on the preparation and organization of Ministerial Conferences."¹⁰ (See Annex II for the text). Some developing countries, such as Bulgaria, India, and Singapore, made comments during that General Council meeting that sought to further flesh out Ambassador Bryn's listing.
15. Given the importance of the upcoming Cancun ministerial conference, and reflecting on the procedural and political flaws of the processes leading up to and during previous Ministerial Conferences, some developing countries have called for the establishment of clear guidelines and rules with respect to the Geneva-based

⁹ See e.g. Aileen Kwa, *POWER POLITICS IN THE WTO (Focus on the Global South, November 2002)*. See also various issues of the South-North Development Monitor (SUNS), at www.sunsonline.org, as well as the relevant WTO ministerial conference webpages on BRIDGES, at www.ictsd.org.

¹⁰ See WTO General Council, *Minutes of the Meeting of 7, 8, 11, and 15 December 2000*, WT/GC/M/61, 7 February 2001, para. 196.

preparatory process and the conduct of the negotiations during the Ministerial Conference itself.¹¹ During the May 2002 meeting of the General Council in which the developing country proposal above was discussed, India, as the presenter for the proposal, raised the following process issues with respect to the conduct of Ministerial Conferences:¹²

- (i) the general issue of procedures to be adopted for Ministerial Conferences and the Geneva process leading up to the Ministerial Conference: different procedures had been followed at Singapore, Geneva, Seattle and Doha;
- (ii) the preparation of the draft Ministerial Declaration: different views had not been fully and clearly reflected, and options for decisions had not been precisely laid out;
- (iii) there had been no discussion by the General Council or the Committee of the Whole on the procedures to be followed by the Ministerial Conference: a decision on the selection and appointment of facilitators appeared to have been taken prior to the meeting and then communicated to the Committee of the Whole, and there had been no inclusiveness or transparency in this process;
- (iv) the organization of meetings: Ministers had had to sit for more than 40 hours at a stretch; and
- (v) last-minute drafts on important issues, which left no time for consultations with stakeholders and other Government departments, or for proper reflection on implications.

16. While many developing countries expressed support for both the thrust and the conclusion the proposal presented by India with respect to the need for clearer procedural guidelines for the preparatory phase and the actual conduct of Ministerial Conferences, many developed countries, and some high-income developing countries, stressed that Members must ensure that they retain procedural flexibility in both the preparatory phase and the actual conduct of the Ministerial Conference. According to the latter, flexibility and non-rigidity in terms of operating procedures vis-à-vis the Ministerial Conference are essential to achieving agreements on the issues that are to be discussed therein.

17. Subsequent to the May 2002 General Council meeting, a response to the developing country proposal was made by a group of developed and high-income developing countries. They called for flexibility and the “need to avoid rigidities” in the preparatory process for, and during, Ministerial Conferences.¹³ This proposal was discussed during the July 2002 meeting of the General Council, with many countries stating that the need for flexibility and the need for the establishment of clear guidelines need not be mutually exclusive.

18. The current preparatory process has been marked by the same informal, non-transparent, and non-inclusive mechanisms that also characterized past ministerial

¹¹ See, e.g., WTO General Council, *Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe – Preparatory Process in Geneva and Negotiating Procedure at the Ministerial Conferences*, WT/GC/W/471, 24 April 2002.

¹² See WTO General Council, *Minutes of the Meeting of 13-14 May 2002*, WT/GC/M/74, 1 July 2002, para. 93.

¹³ See WTO General Council, *Australia, Canada, Hong Kong (China), Korea, Mexico, New Zealand, Singapore and Switzerland – Preparatory Process in Geneva and Negotiating Process at Ministerial Conferences*, WT/GC/W/477, 28 June 2002

conferences. These include, for example, the conduct of “mini-ministerial” meetings attended by senior officials or ministers from a small group of WTO Members, convened upon the invitation of a WTO Member outside formal WTO meeting processes.

19. The first was a meeting, convened by the EC, of senior capital-based officials from 25 WTO Members (plus DG Supachai) at the La Chartreuse de Pomier near Annecy, France, on 5 and 6 November 2002.¹⁴ The meeting agenda called for the participants to focus their discussions on the following issues: TRIPS and Health and Special and Differential Treatment/Implementation; as well as devote some time to discussing market access, geographical indications, Singapore issues and the DSU. This meeting was called in order to lay the groundwork for further discussions in the 14 and 15 November 2002 “mini-ministerial” in Sydney, Australia.
20. The Sydney “mini-ministerial” was convened upon the invitation of Australian Trade Minister Mark Vaile in order to help inject momentum into the Doha-mandated negotiating process.¹⁵ The invitees to the “mini-ministerial” were Brazil, Canada, China, Colombia, Egypt, the European Commission, Hong Kong (China), India, Indonesia, Japan, Kenya, Korea, Lesotho, Malaysia, Mexico, New Zealand, Nigeria, Senegal, Singapore, South Africa, Switzerland, South Africa, Thailand, Trinidad and Tobago, the United States, and the WTO Secretariat (through DG Supachai).¹⁶
21. In an official report, the Australian government stated that the ministers present at the meeting “showed strong commitment” to resolve the TRIPS and Public Health issue by the end of 2002. The invited ministers also discussed implementation, special and differential treatment for developing countries and trade related technical assistance. Other Doha negotiating issues such as market access in agriculture, industrials and services were also discussed, with particular emphasis on the time frames and deadlines that have been set to establish the negotiating modalities in those areas, with ministers indicating their resolve to meet the deadlines in all negotiating areas including agriculture. Ministers also discussed a range of other issues including trade and environment, trade and investment, trade and competition policy, rules, trade facilitation, regional trade agreements, geographical indications, transparency in government procurement and also on the rules surrounding the dispute settlement processes of the WTO. (See Annexes III and IV).
22. There are also indications that the Annecy and Sydney meetings are only the first of a series of closed-door and “attendance by invitation only” informal meetings, whether by ministers, senior capital-based officials, or Geneva-based delegates, in the run up to Cancun. Japan has reportedly offered to host another “mini-

¹⁴ These were the EC, Egypt, Kenya, South Africa, Lesotho, Zambia, Japan, Korea, India, China, Hong Kong (China), Singapore, Malaysia, Thailand, US, Canada, Brazil, Mexico, Chile, Uruguay, Jamaica, Australia, New Zealand, Switzerland, and Hungary. See Letter of EC Ambassador Trojan with the agenda for the meeting, dated 31 October 2002.

¹⁵ See http://www.trademinister.gov.au/releases/2002/mvt096_02.html

¹⁶ See http://www.dfat.gov.au/trade/doha_informal_ministers_nov02_meeting_facts.html

ministerial” in February 2003 which will focus on the agriculture negotiations, while Egypt has also reportedly offered to host a subsequent “mini-ministerial” in the period “between the meetings in Japan and Cancun.”¹⁷

23. Developing countries, including those who may be invited to these informal meetings, might wish to consider raising once again process issues – i.e. transparency, inclusiveness of participation, effect of the meeting outcomes on on-going discussions and negotiations – with respect to the roles and functions of these meetings vis-à-vis the preparatory process for Cancun. Developing countries might wish to reiterate views with respect to ensuring that the preparatory process for, and the actual conduct of, Ministerial Conferences are done subject to clear rules and procedures.

IV. CONCLUSION

A. General issues relating to the internal transparency and inclusiveness of general WTO decision-making procedures

24. Work on specifically dealing with and resolving general issues relating to internal transparency and the effective participation of Members seem to have been left aside. Members have not yet managed to arrive at definitive and clear guidelines with respect to the general issues on internal transparency and effective participation of Members in the day-to-day workings of the WTO. This may be due to the pressure of work on other issues – especially the on-going negotiations.
25. Developing countries might, therefore, wish to flag these issues up again for further discussion in the General Council in its 2003 work program. The Chair of the General Council, during the December 2002 General Council meeting, can be formally requested to:
- (a) submit a report to the first General Council meeting in 2003 regarding the status of discussions on these issues; and
 - (b) incorporate discussion of these issues as a standing agenda item in General Council’s 2003 work program, with the objective of having a clear resolution on these issues by the end of 2003.

B. Issues specifically relating to the processes to be used in the Doha-mandated negotiating agenda

26. After initial discussions on issues relating to the process for the conduct of the Doha-mandated negotiations in December 2001 and January 2002, work on further clarifying and detailing the guidelines to be followed in such negotiations have not gone forward. It seems to have stopped after the first TNC meeting in February 2002, wherein the DG was approved as the *ex officio* TNC Chair and wherein the TNC also endorsed the “TNC Negotiating Principles and Practices” contained in the General Council Chair’s statement to the TNC at that meeting.

¹⁷ David Pruzin, “Two More ‘Mini-Ministerials’ Considered by WTO Members Before Cancun Gathering”, International Trade Daily, 20 November 2002. (copy of article on file with South Centre)

27. Given the preference expressed by many developing countries regarding the creation of clear guidelines to be followed by the TNC and its subsidiary negotiating bodies in conducting the Doha-mandated negotiations, developing countries might wish to raise these issues up again during the December 2002 meeting of the TNC for inclusion in the 2003 work program of the TNC.
28. Developing countries, perhaps, should request the chairs of the various negotiating bodies to include, in their reports to the December 2002 TNC meeting, a discussion on the formal and informal negotiating processes and procedures used or agreed upon by their respective negotiating bodies.
29. In addition, the Chair of the TNC, before or during the December 2002 TNC meeting, should be requested to:
 - (a) submit a report to the first TNC meeting in 2003 on the status of discussions on these issues and the state of play of formal and informal negotiating processes and procedures in the various negotiating bodies;
 - (b) incorporate discussion of these issues as a standing agenda item in the TNC's 2003 work program leading up to the 5th Ministerial Conference in Cancun, with the objective of having that Ministerial Conference issue a decision on these issues.

C. Issues specifically relating to the Geneva-based preparatory process leading up to, and including the negotiations to be done at, the 5th WTO Ministerial Conference in Cancun, Mexico, in September 2003

30. Especially in the third quarter of 2002, much attention has been focused on discussions relating to the preparatory process for, and the actual conduct of negotiations during, the 2003 WTO Ministerial Conference in Cancun. However, not much movement has been had on these issues in recent months. Developing countries might, therefore, wish to flag these issues up again in the December 2002 meeting of the General Council. Developing countries might also wish to push for a resolution of these discussions at least by March 2003 so as to ensure that the processes to be used in the WTO leading up to the Cancun Ministerial Conference are clear, transparent, and inclusive.
31. The Chair of the General Council, before or during the December 2002 General Council meeting, can be formally requested to:
 - (a) submit a report to the first General Council meeting in 2003 regarding the status and state-of-play of discussions on these issues; and
 - (b) incorporate discussion of these issues as a standing agenda item in General Council's 2003 work program, with the objective of having the General Council come up with a clear resolution and decision on these issues by the end of March 2003.

ANNEX I – AMBASSADOR BRYN’S POINTS RELATING TO INTERNAL TRANSPARENCY AND EFFECTIVE PARTICIPATION OF MEMBERS

- Members generally did not see the need for any major institutional reform which could alter the basic character of the WTO as a Member-driven organization and its decision-making process;
- There was also a strong commitment of the Members to reaffirm the existing practice of taking decisions by consensus;
- Members seemed to recognize that interactive open-ended informal consultation meetings played an important role in facilitating consensus decision-making;
- As a complement to, but in no way a replacement of this open-ended consultation process, consultations might also take place with individual Members or groups of Members. In such cases, in order to ensure that the consultations contribute to the achievement of a durable consensus, it was important that:
 - Members were advised of the intention to hold such consultations;
 - Those Members with an interest in the specific issue under consideration were given the opportunity to make their views known;
 - No assumption should be made that one Member represented any other Members except where the Members concerned had agreed on such an arrangement; and
 - The outcome of such consultations was reported back to the full membership expeditiously for consideration.

Source: WTO General Council, *Minutes of the Meeting of 17 and 19 July 2000*, WT/GC/M/57, 14 September 2000, Para. 134

ANNEX II – AMBASSADOR BRYN’S POINTS RELATING TO THE PREPARATORY PROCESS FOR, AND CONDUCT OF, MINISTERIAL CONFERENCES

- First, Members generally seemed to consider the main functions of the Ministerial Conference to be to provide the possibility for political involvement in the ongoing work of the WTO, give political guidance for future priorities, and allow for decision making by Ministers. Whether this would be in the form of a Ministerial Declaration would depend on the agenda of each individual Ministerial Conference.
- Second, Members saw merit in having a maximum of flexibility in the process leading up to, and including, Ministerial Conferences. Any guidelines for the preparation and conduct of Ministerial Conferences should be broad and flexible taking into account the agenda of each Conference.
- Third, there was broad recognition of the need to establish an efficient, Geneva-based preparatory process which would allow for solutions to be worked out in advance for most issues, particularly when decisions by Ministers were required. The setting up of any negotiating structure and working groups as well as chairmanships should also be agreed during the preparatory process.
- Fourth, there seemed to be broad agreement among Members that the Chairman of the General Council with the support of the Director-General and the Secretariat should assume a central role in the preparatory process as well as during the Ministerial Conference, especially in the negotiation of any agreed outcome. A host country would normally provide the Chairperson of the Conference who would chair the ministerial debate.
- Fifth, Members generally considered that the Marrakesh Agreement already provided the flexibility needed regarding the frequency of Ministerial Conferences.
- Sixth, Members reiterated that Ministerial Conferences should be held at the WTO Headquarters unless the Ministerial Conference or the General Council decides to accept an offer by a Member to host a Ministerial Conference.
- Seventh, it remained clear that a strong, inclusive, and transparent process leading up to, and including, Ministerial Conferences, was fundamental in order to ensure a successful outcome. Furthermore, there seemed to be a common understanding throughout the Membership that the working methods during the preparatory process as well as during the Ministerial Conference, should be built on the positive experiences which had evolved within the organization over the past year.

Source: WTO General Council, *Minutes of the Meeting of 7, 8, 11, and 15 December 2000*, WT/GC/M/61, 7 February 2001, Para. 196

ANNEX III – SYDNEY INFORMAL MEETING OF TRADE MINISTERS 14-15 NOVEMBER 2002

Australia hosted an informal meeting of ministers from 25 WTO member countries in Sydney from 14-15 November 2002. WTO members represented at the meeting included: Brazil, Canada, China, Colombia, Egypt, the EC, Hong Kong China, India, Indonesia, Japan, Kenya, Korea, Lesotho, Malaysia, Mexico, New Zealand, Nigeria, Senegal, Singapore, South Africa, Switzerland, Thailand, Trinidad & Tobago, and the USA. The WTO Director General, Dr Supachai Panitchpakdi also attended. The object of the meeting was allow an opportunity for informal exchange on issues and to help inject momentum into the Doha negotiations in the lead up to the Fifth WTO Ministerial Meeting to be held in Cancun, Mexico, in September 2003.

Discussions amongst ministers suggested a broad convergence of views on various elements to access to medicines for developing countries. Ministers considered a paper presented by the Chair of the TRIPS Council which provided the basis for moving towards consensus on this issue, by setting out a proposal to allow improved access to medicines and to treat HIV/AIDS, tuberculosis and malaria and other epidemics. This convergence of views still remains to be fine-tuned in Geneva but Ministers showed a strong commitment to resolve this issue by the end of this year.

Discussions covered a range of issues surrounding implementation, special and differential treatment for developing countries and trade related technical assistance, which directly impinge on the concerns of developing countries. Core Doha negotiating issues such as market access in agriculture, industrials and services were also discussed, with particular emphasis on the time frames and deadlines that have been set to establish the negotiating modalities in those areas. There was a clear indication emanating from discussions at this meeting of the resolve of ministers to meet these deadlines across all negotiating areas including agriculture.

Ministers also discussed a range of other issues including trade and environment, trade and investment, trade and competition policy, rules, trade facilitation, regional trade agreements, geographical indications, transparency in government procurement and also on the rules surrounding the dispute settlement processes of the WTO.

Source: Australian Department of Foreign Affairs and Trade

**ANNEX IV -- WTO SYDNEY MINI-MINISTERIAL FINAL PRESS CONFERENCE (15
NOVEMBER 2002)**

MR VAILE: Ladies and gentlemen, thank you very much. I apologise for the delay. We've had ministers working since 8 o'clock this morning and it has been a very long and trying day through some very, very important discussions. As we've indicated from the outset, this is an informal mini ministerial meeting of ministers: 25 in all. As well as Dr Supachai, the Director-General of the WTO. Unfortunately Dr Supachai has had to move off quickly to catch a flight.

We've covered a range of issues today. Today's discussions does not result in an official communiqué; does not result in an undertaking out of this meeting: it's about building momentum amongst ministers. It is an opportunity since the first time of launch of the Doha round for ministers to have an informal discussion. The results of those discussions are reflected and taken back into Geneva by our ambassadors and our delegations. As I say, it has been a very, very productive day today. We've covered a range of issues, starting this morning with the TRIPS and public health issue; the access to medicine issue, which was a clear mandate out of the Doha meeting last year, to be addressed by the end of 2002.

We also covered a range of issues surrounding implementation, special and differential treatment, technical capacity-building, as far as developing countries were concerned. Then we went on to what a number of ministers described as the core business of the WTO and that is the market access issues and market access across agriculture, industrials and services, with the time frames and deadlines that have been set to establish the modalities in those areas.

This afternoon, we've had a lengthy discussion on a category called 'Other Issues' which are quite extensive and cover environment, investment, competition, rules, trade facilitation, regional trade agreements, geographical indications, government procurement and also touching on the rules surrounding the dispute settlement processes of the WTO.

We have identified a number of areas where there is forward movement, I suppose. If I can just identify very clearly to you in terms of the flavour of the meeting.

In terms of the public health and the TRIPS issue, we had a very productive discussion on that issue this morning which indicated forward movement, convergence of views; there certainly is a flavour now, as far as that issue is concerned, as it goes back to Geneva and we were able to identify areas where there needs to be some fine tuning.

The Chair of the TRIPS Council had presented a paper before leaving Geneva that tried to encapsulate all the views. That has been discussed here and I think that there's a higher level of confidence that that issue may be resolved by the end of this year. It is a difficult and very sensitive issue but, as I say, the differences – there's been a significant convergence and, again, a strong will and spirit in this discussion to address that critical issue which is probably as much a moral commitment issue than an economic one but we need to balance those issues.

In terms of market access across those range of areas, across the three key areas, we had established the deadline for modalities for industrials. We already had mandated a date for agriculture and services. There has been a clear indication out of the discussions here and a stronger commitment to meet those deadlines, particularly in the areas of the area of agriculture. There is certainly a strong view expressed in terms of creating balance; that these issues need to generally move forward together.

So, again, out of this meeting there's been new issues filtered to the surface that we need to deal with. There's a clear understanding of the challenges ahead. We have had, this afternoon, a discussion of the processes that we need to move towards as we go towards the meeting in Cancun next year.

The last discussion this afternoon was introduced by Minister Derbez, the Mexican Minister who will chair the fifth ministerial in Cancun next year and gave us a flavour of what his expectations are in terms of what needs to be done in the intervening period.

We need to understand that the WTO processes are evolving. We have seen - and those of you that have followed this process particularly since Seattle and in the intervening years since Seattle have seen - changes in the way it operates, changes in some of the informal mechanisms and this is one where there is an opportunity for ministerial points of view to be injected into the process.

We believe that certainly is productive and certainly was part of the discussion this afternoon. And I might ask Minister Derbez just to make some quick comments on the process between now and Cancun next year and Cancun is going to be a critical mid-point in this process moving towards the mandated conclusion date for the round of the first of January 2005; and so it's something that everybody agreed to today - that we need to be in good shape as far as the round is concerned by the time we get to Cancun. So I might just ask Luis, who's the chair of the meeting in Cancun next year, if he would like to make some comments before we go to questions. Questions need not just be directed to me but all the ministers are here and happy to answer questions.

MINISTER DERBEZ: Minister Vaile never told me that I had to pay for my dinner. Can I say that one of the concerns that we have is now to look at the process, not just one meeting in Cancun as a point, but rather the whole process that we have to take between the deadlines that were set up at Doha. One of the things we discussed today was actually the involvement of the ministers during this process. That means from today until the Cancun meeting in September. It should consist of a series of exchange of views, presentations, discussions so that we can make sure that the deadline that we have set ourselves for many of these items, many of the points on the agricultural modalities on the specific things on the TRIPS, all these things have deadlines, should be fulfilled and, therefore, we should be fulfilling our commitment on the way.

As Mr Vaile put it, we should be looking at those issues that are now floating to the surface and be sure that we know about them; that we discuss about them; that we exchange our views about them here not only the Minister that are here but also the rest of the ministers in an informal fashion so that in the long run, by the time we get to Cancun those issues have been identified, possible solutions have been put on the table and an exchange of views has taken place during the process.

And we are looking at this as a process rather than one point in time and that is the thing I would like to continue to do in a way that will allow us to have several exchange of views in the coming months in an informal manner and that way we will make sure that by the time we get to Cancun we will have already discussed as ministers and providing solutions to the ambassadors to Geneva or how should these issues be tackled

MR VAILE: Okay, questions. I think we have got some microphones in the room.

QUESTION: Very nice to see all the Ministers together in this kind of show but issue to issue, there have been sharp differences between all the members. An example used who represent the CAIRNS in a big way. What would you say on an issue like GI protection and article 23 for the items many developing countries are asking. Similarly, if you take up, you know, countries which have said that to meet the agriculture deadline; you have to move into other areas; you have to bring about results in other areas. So what we here towards today's meeting is a very divided message that comes back to Geneva in terms of the differences remaining as they are and the very little qualitative change come back to what has happened in Geneva.

MR VAILE: As the chair of this meeting, it is a very comprehensive agenda and a comprehensive challenge we set and tasked ourselves with in Doha last year. We set an ambitious target in terms of the time frames and the deadline to meet the outcome. The one thing that has come out of this discussion, and certainly came out of Doha, given that all the members of the WTO agreed to the mandate and the launch of the round, was that we are committed to trying to achieve something.

Now, of course, at every discussion at every meeting along the way there's going to be differences of opinion but the only way that you can start trying to close the gap between those positions is to continue the process of discussion and engagement. Pascal, please join us.

So, of course there's different points of view. Of course - and they are reflected and that's why we belong to this organisation but we still continue to keep coming; we keep on coming to meetings; we keep the faith in

terms of the rules-based system because we know that thus far it has delivered benefits and there are some significant opportunities in terms of benefits that can be delivered in the future.

I'm not going to specifics, but as a general comment - and I'll ask if any others would like to make a comment on the general point - that if you listen to what Minister Derbez just had to say, is that there is a significant amount of work in progress. And we can all sort of up stumps and walk away and we are not going to achieve anything but if we keep on engaging in discussions like this, where new information, little bit of flexibility surfaces, when one side sees that and the other side can move a little bit, we have proven in the lead-up to Doha that that resulted in an outcome.

Obviously, because we are still all totally engaged in this process, we believe that the process can conclude this round in a way that is acceptable to all parties and that may not necessarily deliver everybody's ideal outcome but it certainly will deliver an outcome.

QUESTION: I wanted to ask the Indian Minister has there been a real breakthrough on the TRIPS and the public health issue ... what's your view on that? I wanted your view that the negotiations about the trips and public health issue and has there been a breakthrough for agreement?

MINISTER SHOURIE: Yes, I think so and that is actually even in regard to the questions which there was disagreement. On that there was the least difficulty. Actually, everyone endorsed the need for urgently meeting deadlines of December 31; second, that the draft which had been circulated by the Mexican Chair of that Committee, was an extremely good basis on which to build. All of us, I think, contributed by suggesting what other points and which clarifications may be further examined by the committee. And that was a flying start to the whole meeting.

And I might just add to what you said about this agreement, even when different points of view have been expressed on a particular issue, in fact in one particular case, even those who were expressing those divergent points of view said but we will be tabling specific proposal is in the coming weeks and months which should become the basis for convergence. After all, if you get those, and I think I reflect that accurately in cases like agriculture. So it was a most constructive meeting. That I think on public health you will see by December and a breakthrough in this regard. Am I overstepping my –

MR VAILE: Not at all. We are, just on that issue, as I did highlight earlier, what comes from here is a disposition from this group of ministers in terms of convergence on some of the sensitive issues; an indication of where there needs to be some fine tuning and that needs to take place in the general council in Geneva, and that's where that goes back to. But I think that at least this has provided the opportunity for most of, or a lot of, the stakeholders to come together and make some comments and move on it. Okay.

QUESTION: Last year in Doha there was a framework in place. What outcomes were here...

MR VAILE: It goes on this question over here: the more you discuss these things, there is a bit of flexibility shown here and a bit shown there and, all of a sudden, ministers can see where there can be movement; whereas I am not being critical of our delegations in Geneva but often there are entrenched positions and it takes a discussion such as this, informal as it is, to see some new elements that might start opening the door; and I think there's a sense of that happening and it now needs to go back to be dealt with in Geneva. Yes, the end of 2002 is mandated in terms of achieving this outcome. I think that after our discussions during the course of this meeting there should be more confidence that that may be achieved.

QUESTION: There is a Spanish program that says ... the devil is in the detail. Out here you have the broad communiqué, what about details. It entails entrenchment ... What countries will benefit? All of the countries; just part of them. And taking the other assumptions, so don't you think that these will be stumbling blocks on the way to Doha, which ministers won't be able to solve...

MR VAILE: No, I don't think they will be stumbling blocks but the "devil being in the detail" is quite an apt description for a lot of the work that is done in the round, and that is exactly the reason why we need to bring ministers together from time to time to address that. But, yes, there is a need for a lot of detail. I mean, some of these discussions are very legalistic. The outcomes we need to be certain of; we need to be sure of. What,

from a political perspective, ministers need to inject and give a clear indication of is the political will to do something and that is what we try and display.

We employ a raft of officials to deal with a lot of the detail. We have ultimately got to sign off on it but I think that the expression of political will is very, very important and can I report that we have seen a significant level of that during the course of today's discussions.

MINISTER SHOURIE: On one detail which you mentioned as to why skepticism is not warned both on the question of what would be the country that would benefit or would be eligible for issuing compulsory licences as well as on what would be, which countries would be allowed to export. I can report as a personal participant there was no disagreement at all. On those specific things the Mexican draft was very clear and everybody endorsed on, on many other details on which we might ...

QUESTION: Murray Griffin from International Trade Reporter. I was wondering if perhaps Mr Shi or Minister Zoellick could comment on progress with regard to S and D issues today.

MINISTER ZOELLICK: First, I want to thank Mark Vaile and the other Australian colleagues for hosting us because I found these Ministerials to be critical in the process of launching the Doha development agenda. And I remember many of you were asking the same questions then about whether we would be able to succeed.

And the reason that they're so critical is this really gives a chance to have the intersection of some of the political judgments that ministers need to have with some of the economic details. And particularly on the S and D issue. Something that I think all of us are committed to try to do is try to stick with the deadlines that we set at Doha and we know there's a combination of development issues that are supposed to be undertaken by year end. And Dr Supachai, who has had to go to the airport otherwise he would make this point - had proposed the idea of a package and a package that would partly deal with some of the S and D issues, partly deal with some of the implementation questions, partly deal with some of the issues of accession, some of the LDC's some of us discussed the possibility of capacity building that is related to that and, frankly, in that part of the discussion, I think there was a good general sense about how to try to approach that.

Now, we have to see at year end, whether that's able to come together, but on this issue, as well as on the TRIPS and medicine issues which is another key piece, I sensed a very strong convergence. We are not totally there yet. But I certainly come away believing this is something we should do by the end of the year and I believe it's something we can and will do by the end of the year

MR VAILE: Okay, one more question. We are a bit tight for time because we used it up in the meeting.

QUESTION: I am just wondering if I can ask the Minister for Lesotho to talk on the TRIPS issue

MR VAILE: Certainly.

SPEAKER 3: Could you - I didn't get it. Could you go over the question again please?

QUESTION: I was just wondering if you could perhaps give a précis of your talk to the meeting about the HIV AIDS issue and the TRIPS, the drugs agreement.

MINISTER MALIE: Yes, the trips and public health issue is one of the issues that was discussed and, really, as indicated by my colleague here, what we have come here for is to catalyse the process. That is ongoing and, really, we were working on that to make sure that we put in the necessary political wheel for the Geneva process to be able to come up with a decision that was agreed upon and that the TRIPS declaration in Doha. So that what we are looking at, we are looking at the process of making sure that medicines are made available to the sub Sahara countries, the Asian and other places that have been struck by HIV AIDS and I think a lot of progress has been made this morning.

So we certainly are looking forward to the Geneva process to be able to complete the decisions that were taken in Doha on that issue. Thank you very much

MR VAILE: Thank you very much, ministers. If I could just thank all my ministerial colleagues for their participation in this meeting here in Sydney. We certainly agreed that it's been successful and, ladies and gentlemen, of the media thank you very much for your attendance and forbearance with the flexible timetable today but I must admit and acknowledge that the ministers have worked very hard and spent many, many hours discussing some very sensitive issues and I would personally thank them and it certainly augers well for the rest of the round. Thank you very much.

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