

**MINISTERIAL-LEVEL MEETINGS AND THEIR OUTCOMES AS LEGAL  
INSTRUMENTS**

**TABLE OF CONTENTS**

I. INTRODUCTION .....	1
II. RELEVANT LEGAL TEXTS .....	2
III. CLARIFYING INSTITUTIONAL LINES OF AUTHORITY DURING MULTILATERAL TRADE NEGOTIATIONS.....	3
IV. THE ROLE OF MINISTERIAL DECISIONS OR DECLARATIONS AS LEGAL INSTRUMENTS ...	4
A. Ministerial Decisions or Declarations as Common Treaty Body Practice.....	5
B. Ministerial Decisions or Declarations as “Soft Law” .....	5
C. Ministerial Decisions and Declarations in the GATT/WTO System.....	6
V. A DEVELOPMENT-FRIENDLY MINISTERIAL DECLARATION AS THE CANCUN OUTCOME..	7
ANNEX 1: MINISTERIAL MEETINGS AND MINISTERIAL DECLARATIONS AS OUTCOMES ...	9

**I. INTRODUCTION**

1. This paper argues that taking into account the history of the GATT/WTO system and the current context of the negotiations, developing countries should push for the adoption of a Ministerial Declaration in Cancún that incorporates decisions or mandates regarding their subjects of interest and pushes forward their development agenda, rather than agreeing to any other outcome that may fail to redress the disarray in which the “development” component of the Doha work program has fallen into.
2. The form of the outcome of the Cancun session of the WTO Ministerial Conference has become an issue of increasing controversy in the context of the preparatory process thereof. As the Chairperson of the General Council in his 8 May 2003 statement at the informal meeting of the Heads of Delegations (HODs) stated: “Every day, both the Director-General and myself consider the question of how our plans relate to the process, the different stages and phases thereof, the possible content of the final package and *the type of document that our Ministers should consider at Cancun* ... Likewise, it is not possible or advisable right now to anticipate the outcome of our work in detail beyond what we all know to be our

- mandates from Doha.”<sup>1</sup> (emphasis added). Recent reports have indicated that various WTO actors – e.g. some Members and some Secretariat staff – have informally raised the idea that in view of the nature of the Cancun session as a “stocktaking” exercise pursuant to the Doha Ministerial Declaration, it need not result in a full-blown ministerial declaration but rather can result simply in a communiqué or procedural decision.
3. “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:
    - (a) General issues relating to the internal transparency and inclusiveness of general WTO decision-making procedures;
    - (b) Issues specifically relating to the processes to be used in the Doha-mandated negotiating agenda; and
    - (c) Issues specifically relating to the Geneva-based preparatory process leading up to, and including the negotiations and their outcomes to be done at, sessions of the WTO Ministerial Conference.
  4. 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).<sup>2</sup>
  5. This informal background note shall focus only on a specific aspect of the third issue area above – i.e. the form and content of the outcomes for sessions of the WTO Ministerial Conference.

## **II. RELEVANT LEGAL TEXTS**

6. It must be remembered that the basis for all discussions regarding decision-making processes are the following two major constitutional and procedural legal texts of the WTO:
  - Article IX (Decision-Making) of the WTO Agreement; and

---

<sup>1</sup> See WTO, *Statements by the Chairman of the General Council and the Director-General to the Informal Consultation at the Level of Heads of Delegation on Thursday, 8 May 2003*, JOB(03)/88, 9 May 2003.

<sup>2</sup> 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).

- 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.
7. These texts basically mandate that the highest decision-making body within the WTO institutional framework is the Ministerial Conference, meeting at least once every two years, or the General Council, meeting as appropriate in between the sessions of the Ministerial Conference.<sup>3</sup> None of these texts, however, provide for any rules to govern the preparatory process for the conduct of the sessions of the Ministerial Conference, nor stipulate the form in which any agreed-upon outcomes of the sessions of the Ministerial Conference should be in. Only the formal procedures for the actual conduct of the Ministerial Conference sessions are provided for in WT/L/161 (25 July 1996). In many instances, however, informal processes often determine the outcomes of the sessions of the Ministerial Conference more than the formal procedures.

### **III. CLARIFYING INSTITUTIONAL LINES OF AUTHORITY DURING MULTILATERAL TRADE NEGOTIATIONS**

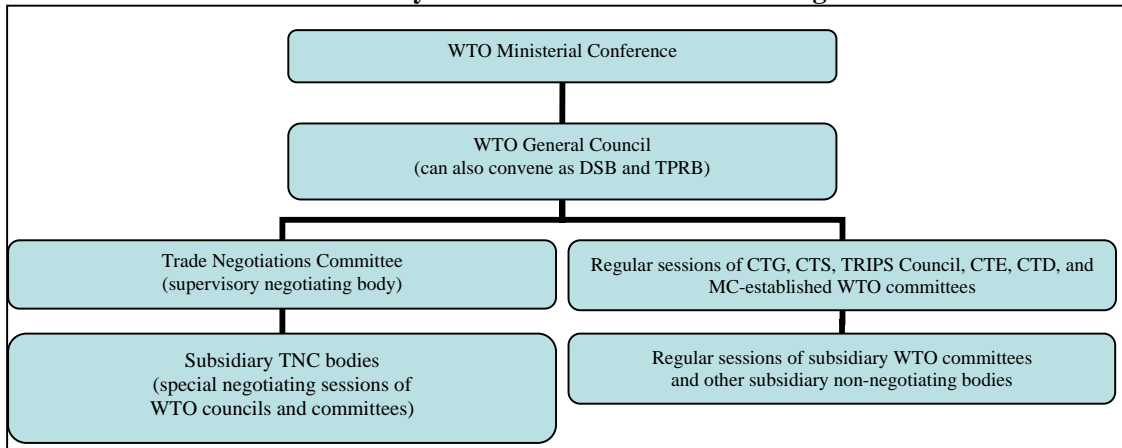
8. The importance of clarifying and coming to common agreement on the processes to be used in the context of sessions of the Ministerial Conference is especially important in view of the conduct of multilateral trade negotiations mandated under the Doha Ministerial Declaration (DMD). As the highest decision-making body in the WTO, the Ministerial Conference is tasked with providing final oversight authority and supervision over the conduct and outcomes of the negotiations being conducted on a day-to-day basis by the DMD-established and Geneva-based Trade Negotiations Committee (TNC) and its subsidiary negotiating bodies. The General Council is tasked with providing regular oversight authority and supervision over the TNC-conducted negotiations in between sessions of the Ministerial Conference.
9. These lines of authority and supervision are clearly recognized in paragraphs 45 and 46 of the DMD, in which the TNC operates under the authority of the General Council and the Ministerial Conference provides “necessary political guidance, and take decisions as necessary.” In effect, under paragraphs 45 and 46 of the DMD, the different TNC-established subsidiary negotiating bodies report to the TNC, which in turn should report to the General Council, which in its turn should report to the Ministerial Conference regarding the overall conduct of the negotiations (see Diagram 1).

#### **DIAGRAM 1**

---

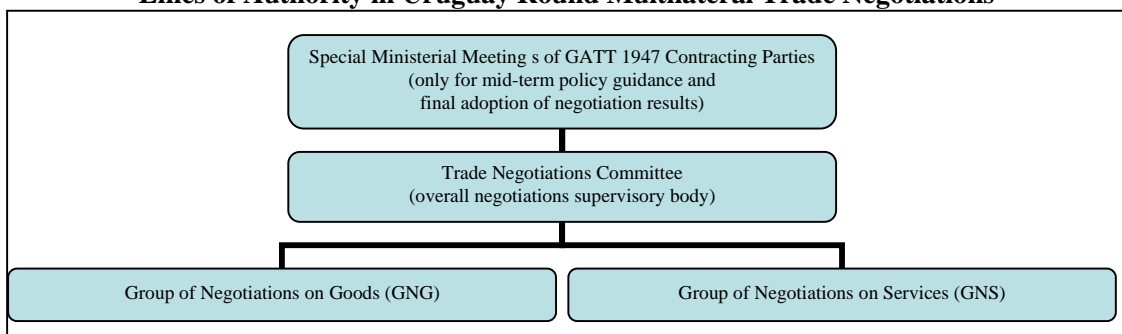
<sup>3</sup> WTO Agreement, art. IV(1).

**Lines of Authority in WTO Multilateral Trade Negotiations**



10. The institutional structure used during the Uruguay Round negotiations was more straightforward, with the two major negotiating groups – the Group of Negotiations on Goods (GNG) and the Group of Negotiations on Services (GNS) – reporting to the Uruguay Round TNC, and the latter finally reporting to the special ministerial-level meetings of the GATT 1947 Contracting Parties for policy guidance and final adoption of the results of the negotiations (see Diagram 2). This was due to the provisional nature of the application and implementation of the GATT 1947, and its consequent lack of a permanent institutional framework under which the conduct, oversight, and supervision of the trade negotiations could take place.

**DIAGRAM 2**  
**Lines of Authority in Uruguay Round Multilateral Trade Negotiations**



**IV. THE ROLE OF MINISTERIAL DECISIONS OR DECLARATIONS AS LEGAL INSTRUMENTS**

11. As the discussion above indicates, the role of ministerial-level meetings or conferences as the final decision-making forum for multilateral trade negotiations, whether under the GATT 1947 or under the WTO, is well-recognized. Hence, any decisions or declarations from such ministerial-level meetings or conferences that

provides guidelines or parameters for the mandates and conduct of such multilateral trade negotiations are of great importance and influence in shaping the final outcomes of the negotiations.

#### A. Ministerial Decisions or Declarations as Common Treaty Body Practice

12. The issuance of declarations or decisions as the final outcomes of a ministerial-level international meeting is common practice among many international intergovernmental organizations such as the United Nations Organization or the World Trade Organization. Many treaties often allow or provide for mechanisms through which their treaty bodies – i.e. the highest decision-making bodies in which the States parties to the treaty are represented by senior- or ministerial-level officials – can adopt substantive decisions that could affect the manner or means of treaty compliance.
13. Thus, in international treaty body practice, the issuance of ministerial-level decisions or declarations has often been the standard formal mechanism through which such treaty bodies have announced, detailed, and embarked upon substantive programs of action designed to implement their treaty mandates. Ministerial-level decisions or declarations are often quite different from ministerial-level communiqués or progress reports. Ministerial-level decisions or declarations often contain substantive terms that have normative impacts on future State and treaty body behavior, while ministerial-level communiqués or progress reports would normally would not.

#### B. Ministerial Decisions or Declarations as “Soft Law”

14. The legal effect of these ministerial-level declarations or decisions on the obligations of States parties, however, needs to be assessed on a case-by-case basis. They may not be legally binding in the “hard law” sense in that they do not create treaty-based State obligations such that any non-compliance therewith could theoretically be redressed or remedied through recourse to some sort of institutionalized dispute settlement mechanism. However, in the sense that they are “soft law” and create legitimate expectations among States parties concerning future behavior, they may possess significant normative weight with respect to future State actions even though non-compliance with such legitimate expectations might not be subject to recourse to the institutional dispute settlement mechanisms.
15. Hence, within the WTO framework, only those agreements that are covered by the Dispute Settlement Understanding (DSU)<sup>4</sup> may be considered as containing

---

<sup>4</sup> See DSU, Appendix 1.

“hard law” treaty obligations on the part of WTO Members.<sup>5</sup> All the other ministerial decisions and declarations that came out of the Uruguay Round and incorporated in the Uruguay Round Final Act, as well as the subsequent ministerial declarations and decisions of the first to the fourth sessions of the WTO Ministerial Conference, can be considered as “soft law” instruments. While not having the nature of treaty obligations, they nevertheless also provide for agreed-upon norms and legitimate expectations of future conduct that WTO Members are bound to comply with.

### C. Ministerial Decisions and Declarations in the GATT/WTO System

16. Under the GATT/WTO system, ministerial-level decisions or declarations have generally been prepared, negotiated upon, and eventually issued on the occasion of ministerial-level meetings of GATT Contracting Parties/WTO Members as the legal instrument used to identify and mandate commonly-agreed future courses of State action in furtherance of previous GATT/WTO treaty obligations. That is, ministerial decisions or declarations are normally and generally expected and prepared-for outcomes for ministerial-level meetings within the GATT/WTO system.
17. In some ministerial-level meetings, however, the differences of views among the GATT Contracting Parties/WTO Members have precluded the issuance of such ministerial-level decisions or declarations. Of the nine (9) ministerial-level meetings of GATT Contracting Parties/WTO Members since 1982, seven (7) have had their outcomes reflected in the issuance of a formal ministerial decision or declaration, while two (2) have not had such formal outcomes (See Annex 1).
18. As “soft law” instruments, ministerial decisions or declarations normally cannot override or amend “hard law” treaty obligations contained in the WTO Agreement and its annexed trade agreements.<sup>6</sup> Rather, such decisions or declarations are among the legal instruments through which the WTO Ministerial Conference (or the WTO General Council in between sessions of the Ministerial Conference) makes known its decisions, carries out its functions, and establishes essentially normative courses of action for WTO Members pursuant to the WTO Agreement and its annexed trade agreements.<sup>7</sup> Subsequent ministerial decisions or declarations may, however, override or amend previous ministerial decisions or declarations.
19. The “soft” – i.e. not subject to dispute settlement mechanisms – nature of such ministerial decisions or declarations, if coupled with some interpretative

---

<sup>5</sup> This would include the various understandings, declarations, and the Marrakesh Protocol that form integral parts of GATT 1994

<sup>6</sup> Only amendments agreed-to and ratified by WTO Members in accordance with the provisions of Article X of the WTO Agreement can have the effect of amending treaty obligations.

<sup>7</sup> See WTO Agreement, arts. IV(1) and IX.

ambiguity in the terms used in the ministerial decision or declaration, could also result in some WTO Members (usually the more trade-dominant ones) effectively deciding not to comply with the normative standards established by the ministerial decision or declaration, being secure in the knowledge that such non-compliance cannot be used as the cause of action for the initiation of enforceable dispute settlement proceedings by other WTO Members. A recent case in point is the implementation of paragraph 6 of the Doha Ministerial Declaration on the TRIPS Agreement and Public Health, wherein the sole refusal of one powerful WTO Member to agree to either the plain text interpretation or even the compromise interpretation agreed upon by all other WTO Members has blocked the effective implementation of the declaration.

20. On the other hand, as effectively norm-setting “soft” legal instruments, ministerial decisions or declarations have been instrumental in putting into effect various actions on the part of WTO Members, such as entering into focused discussions or negotiations in various trade-related areas. A case in point in this regard would be the Doha Ministerial Declaration. In this regard, the processes that are used in drafting and agreeing upon the contents of the ministerial decision or declaration would be crucially important, especially for developing countries, in terms ensuring that their perspectives and issues are accurately reflected and positively addressed in the text.

#### **V. A DEVELOPMENT-FRIENDLY MINISTERIAL DECLARATION AS THE CANCUN OUTCOME**

21. In the current WTO negotiating and political context leading up to the fifth session of the WTO Ministerial Conference in Cancun, a ministerial declaration that is drafted and agreed-upon through a formal, fully participatory, recorded, and transparent negotiating process, should be the main outcome of the Cancun session of the WTO Ministerial Conference.
22. Developing country WTO Members should not be satisfied with a ministerial declaration that does not address and remedy such failures, or with any other instrument – such as a ministerial communiqué or progress report – that does not set out substantive normative standards to address and remedy such failures.
23. The ministerial declaration should be focused on addressing and providing substantive normative remedies for failures in effectively complying with the normative standards for promoting the WTO’s development agenda – i.e. implementation-related issues, special and differential treatment, TRIPS and public health, agricultural reform, etc. – set out in the various ministerial declarations and decisions coming from the Doha session. The content of the ministerial declaration should address the following issues:

- provide clear and explicit decisions in those issues for which the Doha Ministerial Declaration requires the Cancun Ministerial Conference to make a decision (e.g. paras. 20, 23, 26-27, 32, 34-37, 41, 45 of the Doha Ministerial Declaration; and para. 11.1 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns);
  - how the various negotiating bodies can effectively address the development dimension of the Doha trade negotiations, including clear and explicit decisions to resolve and conclude the implementation-related issues and SDT negotiations;
  - continue implementation of the Doha negotiating mandates, with particular focus on the development dimension, without adding new negotiating mandates over new issues onto the negotiating agenda.
24. Any failure to come out with a ministerial declaration that does the above would effectively condone such failures in promoting the WTO's development agenda, and further tilt the negotiating playing field in favor of WTO Members whose negotiating agenda prioritize their trade liberalization interests over the developmental interests of developing countries.



**ANNEX 1: MINISTERIAL MEETINGS AND MINISTERIAL DECLARATIONS AS OUTCOMES**

Ministerial Meeting Participants	Place and Year	Ministerial Outcome
GATT 1947 Contracting Parties	Geneva 1982	Ministerial Declaration of the Thirty-Eighth Session of the GATT Contracting Parties, GATT Doc. Ref. W.38/4, 29 November 1982. This established the GATT Work Program for the 1980s
GATT 1947 Contracting Parties	Punta del Este 1986	Ministerial Declaration of 20 September 1986. This launched the Uruguay Round of multilateral trade negotiations.
Uruguay Round TNC	Montreal 1988	<p>This was the mid-term review of the conduct of the Uruguay Round. While the TNC was expected to adopt the results of the trade negotiations as contained in the reports of the GNG and GNS, no ministerial declaration was issued due to the collapse of the negotiations at that meeting. Only a four-part procedural decision was issued that:</p> <ol style="list-style-type: none"> <li>1. mandated a senior officials-level TNC meeting in Geneva in April 1989;</li> <li>2. put the negotiating results achieved thus far on hold until the April 1989 meeting;</li> <li>3. mandated GATT DG Dunkel in his capacity as TNC Chair to conduct high level consultations on agriculture, textiles, TRIPS, and safeguards (the areas on which no agreements were reached) in the period up to the April 1989 meeting; and</li> <li>4. required the entire package of subjects -- results achieved at Montreal on other items -- to be reviewed at the April 1989 TNC meeting.</li> </ol>
Uruguay Round TNC	Brussels 1990	A 400-page bracketed report of various elements in each of the 15 negotiating areas needing ministerial decision, including a draft of the Uruguay Round Final Act, was the subject of negotiations in Brussels. However, no ministerial declaration or decision was issued as a result of the collapse of the trade negotiations at that meeting.
GATT 1947 Contracting Parties	Marrakesh 1994	The Uruguay Round Final Act (UR FA) was issued. Signatories to the UR FA committed their governments to: (i) seek ratification of the WTO Agreement and its annexed trade agreements; and (ii) adopt various agree-upon ministerial decisions and declarations reflecting other results of the Uruguay Round trade negotiations.
WTO Members (1 <sup>st</sup> Session of the WTO Ministerial Conference)	Singapore 1996	Singapore Ministerial Declaration, WT/MIN(96)/DEC/, 13 December 1996
WTO Members (2 <sup>nd</sup> Session of the WTO Ministerial Conference)	Geneva 1998	Geneva Ministerial Declaration, WT/MIN(98)/DEC/, 20 May 1998
WTO Members (3 <sup>rd</sup> Session of the WTO Ministerial	Seattle 1999	A 32-page draft ministerial declaration was forwarded to ministers for negotiation and adoption. However, no ministerial declaration was issued due to the collapse of negotiations regarding the

Conference)		contents of the draft declaration.
WTO Members (4 <sup>th</sup> Session of the WTO Ministerial Conference)	Doha 2001	Doha Ministerial Declaration, WT/MIN(01)/DEC/1, 14 November 2001 Doha Ministerial Declaration on the TRIPS Agreement and Public Health, WT/MIN(01)/DEC/2, 14 November 2001 Doha Ministerial Decision on Implementation-Related Issues and Concerns, WT/MIN(01)/17, 14 November 2001

---



Chemin du Champ d'Anier 17  
Case postale 228, 1211 Geneva 19  
Switzerland

Telephone : (41 22) 791 8050  
Fax : (41 22) 798 8531  
Email : [south@southcentre.org](mailto:south@southcentre.org)

Website:  
<http://www.southcentre.org>