

## **PROCESSES AND THE CANCUN MINISTERIAL CONFERENCE**

### **TABLE OF CONTENTS**

I. INTRODUCTION .....	1
II. UNSATISFACTORY PREPARATORY PROCESS .....	2
III. RECOMMENDATIONS FOR PROCESS AT THE MINISTERIAL CONFERENCE .....	3
A. Reiteration of Existing Suggestions on Process.....	3
B. Timeframe for Influencing the Cancun Agenda .....	4
C. Shaping the Agenda to Provide for Time for Reflection .....	4
ANNEX I.....	6

### **I. INTRODUCTION**

1. Developing countries need to translate numerical advantage in the WTO into negotiating and bargaining leverage by working together and speaking out, as much as possible, with a common position on various issues. It is only through united action and positions that developing countries can, in a power-based negotiating context such as the WTO, ensure that their concerns are effectively reflected and taken into account.
2. Furthermore, developing countries need to determine what their negotiating bottom line is – i.e. what their best alternative to a negotiated agreement (BATNA) is – for each of the various negotiating areas. Clearly, if the potential negotiated outcome can be reasonably construed as eventually making developing countries worse off than before negotiations started, then perhaps the BATNA is simply to walk away from the negotiations.
3. In the main, except for specific areas of interest in agriculture (i.e. elimination of agricultural subsidies and increased market access for developing country agricultural goods), services (mode 4 market access), implementation issues, and S&D, developing countries are not demandeurs in these negotiations. In fact, in most of the areas in which they are currently negotiating (i.e. market access for non-agricultural goods, agricultural market access, services, environment) or are being asked to negotiate (i.e. Singapore issues), it is the developed countries that are the demandeurs.

4. However, there is a lack of positive movement thus far in the areas of interest to developing countries, while the areas of interest to developed countries are being pushed forward hard through a combination of hard negotiating and other pressures in the WTO and political and economic pressure being exerted outside of the WTO. It therefore stands to reason that in general, and given the way that the negotiations are currently being managed, the outcomes of these negotiations are most likely to be favorable to the economic interests of the demandeurs (developed countries) rather to developing countries.
5. A transparent, inclusive, and participatory preparatory process leading up to the Ministerial Conference, as well as the process to be used during such Ministerial Conference, are of primary importance in ensuring that developing countries stand a reasonable chance of having their perspectives be included in the negotiated outcomes from the Conference.

## **II. UNSATISFACTORY PREPARATORY PROCESS**

6. Current informal processes being used in the WTO effectively provide the Chair of the General Council with great flexibility to determine the manner of consultations as well as to issue a “clean” – i.e. bracketless – draft text that, in the Chair’s own judgment and “on his/her own responsibility”, would best reflect where a compromise among the positions of WTO Members could lie.
7. There are currently very strong and clear indications that flexible and informal but non-transparent processes are being used, and will be used, in the run-up to the Cancun session for determining the content and final outcomes of the session.<sup>1</sup> The General Council Chair’s and the Director-General’s emphasis on the need to use flexible and informal consultation mechanisms reporting to the informal HODs meetings rather than the formal mechanisms of the formal General Council and TNC meetings clearly show that: (i) the inherent imbalance between the relative capacities of developed and developing countries’ representatives to the WTO to attend all the WTO meetings that they need to attend will work in favor of the former during the preparatory drafting process; and (ii) no records will be kept of the discussions that would eventually become the basis for the decisions to be taken at the Cancun session and for the type of document to serve as the final outcome thereof, thereby preventing those who were unable to attend the informal HODs meetings from informing themselves of the deliberations that had taken place.
8. Furthermore, while the emphasis on having informal meetings be conducted at the heads of delegation-level may possibly result in fast-tracking the consensus-

---

<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.

building process, at the same time, it could substantially deprive developing country ambassadors, especially, of the advice and support of their technical staff (no matter how limited) during the meetings itself. Given the fact that the ambassadors of most developing country missions often play dual roles in terms of being accredited to both the UN and the WTO, while most if not all developed country missions have separate ambassadors for the UN and the WTO and therefore are able to concentrate and specialize in their separate areas of responsibility (with full technical support from their capitals), such a situation effectively leaves developing country ambassadors at a distinct negotiating disadvantage.

9. These processes effectively sidetrack effective participation by most developing countries, and prevent the draft texts from fully reflecting the diversity of opinions and positions that the representatives and ministers of WTO Members have to discuss and negotiate and eventually resolve in the run-up to, and during, the forthcoming session of the WTO Ministerial Conference. Processes need to be devised and adopted that would maximize formal and effective participation by WTO Members, and the reflection of different perspectives in any draft texts.<sup>2</sup>

### **III. RECOMMENDATIONS FOR PROCESS AT THE MINISTERIAL CONFERENCE**

#### A. Reiteration of Existing Suggestions on Process

10. A group of developing countries (including Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe) had outlined, in mid-2002, their suggestions on what the process at Ministerial Conferences should be.<sup>3</sup> Those suggestions need to be raised and reiterated by developing countries (see Annex I), especially with respect to the following points:

- the need for transparency and full participation by all Members, especially developing and least-developed countries and those without missions in Geneva, in the drafting and discussion of the contents and text of any document being negotiated and to be issued in relation to the Cancun session of the Ministerial Conference by the following: (i) various WTO bodies to the TNC and the General Council; (ii) the TNC to the General Council; (iii) the General Council to the Ministerial Conference; and (iv) the Ministerial Conference as the documentary outcome of the Cancun session; and

---

<sup>2</sup> See, e.g. WTO, *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.

<sup>3</sup> *Id.*

- the language of any such documents above must be clear, unambiguous, and be based on consensus. Where this is not possible, such differences should be fully and appropriately reflected in the draft document. This could be done either through listing various options suggested by Members or by the chairperson reflecting different positions on issues. If the majority of the membership has strong opposition to the inclusion of any issue in the draft document then such an issue should not be included therein.

#### B. Timeframe for Influencing the Cancun Agenda

11. In addition, Members need to stress that the WTO Secretariat (through DG Supachai) and Mexico, being the host Member and, therefore, following the tradition of having the host Member serves as the Chairperson for the session of the Ministerial Conference that they are hosting, after requesting or obtaining proposals on items for inclusion in the provisional agenda, must **circulate such provisional agenda for the Cancun session no later than the end of July 2003**, in accordance with Rule 3 of the Rules of Procedure for Sessions of the Ministerial Conference. **Proposals from Members for the inclusion of items in the provisional agenda have to be submitted to Mexico, as the Chairperson for the Cancun session, or to the WTO Secretariat on or before the third week of July 2003**, again pursuant to said Rule 3. Any items proposed for inclusion in the agenda of the Cancun session, but not included in the provisional agenda circulated by the end of July 2003, may be included in the agenda only upon the agreement of the Ministerial Conference at the opening of the Cancun session in the time specifically set aside for discussion and adoption of the agenda.<sup>4</sup>

#### C. Shaping the Agenda to Provide for Time for Reflection

12. With respect to the agenda for the Cancun session, developing country Members could make the following suggestions, **before the third week of July 2003**, in order to ensure that the agenda reflects their concerns and needs with respect to transparency, inclusiveness, and participation:
  - i. The provisional agenda for the conference shall be substantively discussed and adopted as the first item of business to be conducted at the start of the

---

<sup>4</sup> WTO, *Rules of Procedure for Sessions of the Ministerial Conference*, Rule 3, WT/L/161, 25 July 1996, provides that: "The provisional agenda for each regular session shall be drawn up by the Secretariat in consultation with the Chairperson and shall be communicated to Members at least five weeks before the opening of the session. It shall be open to any Member to propose items for inclusion in this provisional agenda up to six weeks before the opening of the session. Additional items on the agenda shall be proposed under "Other Business" at the opening of the session. Inclusion of these items on the agenda shall depend upon the agreement of the Ministerial Conference."

official and substantive proceedings of the Cancun Ministerial Conference after the ceremonial opening thereof.<sup>5</sup> The consideration and adoption of the provisional agenda shall not be made part of the ceremonial opening plenary session of the Cancun Ministerial Conference;

- ii. The agenda should specify and include at least one and a half (1 and ½) hours in the morning before the start of daily negotiations and the same amount of time in the evening after the end of daily negotiations, during which periods no formal or informal negotiating meetings shall be conducted other than meetings by regional or ad hoc groupings of Members who share common negotiating perspectives with respect to various negotiating issues. To this end, the Mexican host government should ensure that proper physical and logistical facilities (including interpretation and communications) are provided for such meetings;
- iii. The agenda should incorporate a period of not less than one-half (1/2) working day or six (6) hours after the circulation of the final draft of the documentary outcomes of the Cancun session of the Ministerial Conference and before the conduct of the final plenary business session to be held to adopt such documentary outcomes, during which period Members shall be free to informally meet and consult with each other on whether to agree to such documentary outcomes or not at the final plenary business session.

---

<sup>5</sup> See id, Rule 5.

ANNEX I

*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

**Excerpt**

**Preparatory process in Geneva**

The aim of the process should be to finalize the agenda for the Ministerial Conference and a broad work programme flowing from the agenda, to be proposed for consideration at the Ministerial Conference. The Geneva process should aim to finalize a draft ministerial declaration, which reflects the priorities and interests of the entire membership. The following elements should guide the preparatory process:

- (i) All consultations should be transparent and open-ended. The preparatory process should be conducted under the close supervision of the General Council and chaired by the Chairman of the General Council. Any consultations or meetings held outside this process are not part of the formal preparatory process. Any negotiating procedure to be adopted should be approved by Members by consensus at formal meetings.
- (ii) The draft agenda should be drawn up only after Members have been given an opportunity to express their views. Once the agenda and its parameters are agreed upon, changes may be permitted only if so decided by the entire membership.
- (iii) There should be frequent formal meetings of the General Council to take stock of the progress in the preparatory work and minutes should be drawn up of such meetings. This would help Members who do not have delegations in Geneva and will give an indication of the status of work to capital based officials. In view of the difficulty that non-Geneva based delegations have in sending representatives for such meetings, a formal meeting of the General Council should be scheduled either just before or just after the Geneva Week, for such delegations.
- (iv) There should be sufficient time for delegations to consider documents to facilitate proper consideration by and consultation with the capital.
- (v) Language of draft ministerial declaration should be clear and unambiguous. The draft ministerial declaration should be based on consensus. Where this is not possible, such differences should be fully

and appropriately reflected in the draft ministerial declaration. This could be done either through listing various options suggested by Members or by the chairperson reflecting different positions on issues. If the majority of the membership has strong opposition to the inclusion of any issue in the draft ministerial declaration then such an issue should not be included in the draft declaration.

(vi) The work on the declaration should be completed in Geneva to the maximum extent possible. Only those issues, which are reflected either as options or where the chairperson has reflected different positions should be left for the ministers to deliberate and decide at the ministerial conference.

(vii) A draft ministerial declaration can only be forwarded to the Ministerial Conference by the General Council upon consensus to do so.

(viii) In the preparatory process for the Ministerial Conference the Director-General and the Secretariat of the WTO should remain impartial on the specific issues being considered in the ministerial declaration.

(ix) Sectoral work by working groups is an effective way for expediting resolution of pending issues. The number, structure and chairpersons/facilitators for such working groups should be decided in the General Council in Geneva, in advance of the Ministerial Conference through consultations among all Members.

### **Process at Ministerial Conferences**

- (a) The agenda for the conference should not be adopted at the ceremonial opening session, but at the first formal plenary session immediately thereafter.
- (b) A Committee of the Whole should be established at all Ministerial Conferences. This Committee should be the main forum for decision-making. All meetings of the Committee of the Whole should be formal.
- (c) The chairpersons including facilitators, who would conduct consultations and meetings on specific subjects at the Ministerial Conference, should be identified by consensus in the preparatory process in Geneva, through consultations among all Members. Such persons should be persons from Members that do not have a direct interest in the subject assigned for consultations.
- (d) Consultations by chairperson/facilitator should be at open-ended meetings only. The chairperson/facilitator could convene meetings of proponents and opponents on the subject assigned and any other interested Member should be free to join

- such meetings. For this to be achieved, the schedule of each meeting shall be announced at least a few hours before the meeting.
- (e) Consultations should be transparent, inclusive and all Members should be given equal opportunity to express their views. Chairpersons/facilitators should report to the Committee of the Whole periodically and in a substantive way.
  - (f) All negotiating texts and draft decisions should be introduced only in open-ended meetings.
  - (g) Late night meetings and marathon negotiating sessions should be avoided.
  - (h) Language of declaration should be clear and unambiguous. All drafts shall be considered and finalized in a drafting committee to be appointed for that purpose by all Members and membership of which should be open to all Members.
  - (i) The Secretariat and the Director-General of the WTO as well as all the chairpersons/facilitators should assume a neutral/impartial and objective role. They shall not express views explicitly or otherwise on the specific issues being discussed in the Ministerial Conference. Specific rules to conduct the work of the Chairs and Vice-Chairs of the Ministerial Conference should be elaborated.
  - (j) Discussions at the Ministerial Conference on the draft ministerial declaration should focus on issues not agreed upon in the Geneva process and the various alternate texts developed at Geneva.
  - (k) Any new draft on specific issues should be circulated to all Members well in advance so that Members have sufficient time to consider them. To ensure transparency in the negotiating process any draft on specific issues should clearly indicate the Member(s) suggesting the draft.
  - (l) The duration of Ministerial Conferences should be in accordance with the schedule agreed upon in Geneva, as many delegations make their travel and accommodation arrangements accordingly. If an extension is required, it shall be formally approved through consensus.
  - (m) In various meetings, formal as well as informal, during the Ministerial Conference arrangements should be made for the Ministers to be accompanied by at least two officers. It is the right of any Member to designate its representative and in this connection the Heads of Delegations has the discretion to mandate his/her officials to speak on his/her behalf.





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>