

**SUGGESTIONS ON PROCEDURAL OPTIONS BASED ON THE 1996 WTO
RULES OF PROCEDURE FOR SESSIONS OF THE MINISTERIAL
CONFERENCE WITH RESPECT TO SOME ISSUES**

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I. INTRODUCTION

1. This short note is prepared by South Centre for developing country delegations arising from suggestions and discussions made during a meeting held at the South Centre on 3 September 2003. It suggests some procedural tactics that could be used to address some process-related issues of concern raised by developing countries with respect to:
 - the use of the 24 August 2003 General Council Chair's draft ministerial text as the basis for Cancun ministerial discussions;
 - the appointment of "facilitators" and "friends of the chair" by the Chair of the Ministerial Conference; and
 - the possibility that an extension of time of the Ministerial Conference may be effected.
2. It is hoped that this paper will be of use to developing country delegations as they prepare for the Cancun Ministerial Conference.

II. USE OF 24 AUGUST CHAIR'S TEXT AS BASIS FOR CANCUN NEGOTIATIONS

3. In the proposed order of business for the Cancun Ministerial Conference, the adoption of the agenda is supposed to take place right after the first business session of the conference has been opened upon the conclusion of the statement by GC Chair del Castillo.¹ This is in accordance with Rule 5 of the 1996 Rules of Procedure for Ministerial Conferences, which requires that the first item of business at each session shall be the consideration and approval of

¹ See WTO, Proposed Order of Business (for Cancun Ministerial Conference), WT/MIN(03)/5, 25 August 2003.

the agenda.² In the proposed agenda circulated to Members in Geneva in early August 2003, Item 3 thereof proposes “Action by Ministers” which is “expected to include a Ministerial text and decisions ...”³ Following right after the adoption of the agenda will be a discussion on the organization of the work of the ministerial conference.

4. In this context, the Chair of the Ministerial Conference should formally inform ministers of his receipt of the GC Chair’s cover letter and the 24 August draft text and propose that the 24 August text, bearing in mind the GC Chair’s cover letter, be used as the basis for ministerial discussions. The MC Chair can do this either at this juncture in which the question of adoption of the agenda is opened to the floor, or at the juncture in which the organization of work in the ministerial conference will be discussed after the adoption of the agenda.
5. In either case, these would represent an opportunity for those developing countries that have concerns with respect to the 24 August text to:
 - formally raise their concerns and object to the use of that text as the basis for the ministerial discussions as a point of order under Rule 18 of the 1996 Rules of Procedure;⁴ or
 - developing countries with their own textual proposals may also formally raise those proposals, as a point of order, at these junctures and request that their own textual proposals be also considered as among the texts that will be officially considered as the basis for ministerial discussions.
6. In the event that the MC Chair renders an adverse decision, ministers can challenge the decision and request that it be put to a decision by the Ministerial Conference in accordance with Rule 28 of the 1996 Rules of Procedure – i.e. decision-making by consensus or, due to lack of consensus, decision by simple majority vote.

III. MINISTERIAL CONFERENCE OFFICERS

7. Under Rule 12 of the 1996 Rules of Procedure, the Ministerial Conference is required to elect a Chairperson and three (3) Vice-Chairs. There is no provision in the rules with respect to the appointment of “facilitators” or “friends of the chair” as Ministerial Conference officers. The election of the Chair and the three Vice-Chairs, as well as the proposal for the appointment by the Chair of “facilitators” and “friends of the chair” are likely to be made during the discussion on the organization of work of the ministerial conference.

² WTO, Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council, WT/L/161, 25 July 1996.

³ WTO, Provisional Agenda (for Cancun Ministerial Conference), WT/MIN(03)/W/1, 6 August 2003.

⁴ Rule 18 says: “During the discussion of any matter, a representative may raise a point of order. In this case the Chairperson shall immediately state the ruling. If the ruling is challenged, the Chairperson shall immediately submit it for decision and it shall stand unless overruled.”

8. Note that while the MC Chair is authorized, under Rule 17 of the 1996 Rules of Procedure to “direct the discussion, accord the right to speak, submit questions for decision, announce decisions, rule on points of order and, subject to these rules, have complete control of the proceedings”, there is nothing in the rules that specifically authorizes (nor prohibits) the MC Chair to make such appointments. In this regard, the following options can be taken:
9. First, Ministers might wish to raise a point of order under Rule 18 to raise concerns with respect to:
 - (i) the authority of the MC Chair to make such appointments;
 - (ii) what the exact official role of the MC Chair appointees will be in the context of the ministerial conference and the legal basis thereof; and
 - (iii) the status of the outcomes that may be arrived as a result of the discussions conducted under the “facilitators’ and the “friends of the chair.”
10. Second, ministers might also wish to suggest that, considering the crucial role that “facilitators” and “friends of the chair” have played in previous ministerial conferences, their appointments by the MC Chair should be made subject to the approval of the Ministerial Conference meeting in plenary session.

IV. EXTENSIONS OF THE MINISTERIAL CONFERENCE

11. In the proposed order of business for the Cancun Ministerial Conference circulated in late August 2003, the official schedule of the ministerial conference runs from the formal opening of the meeting on the morning of 10th September 2003 and its formal closure in the late afternoon of 14th September 2003. This proposed order of business may be raised by the MC Chair for agreement by the Ministerial Conference in plenary session during its first business session.
12. The 1996 Rules of Procedure do not contain any rule that govern or are applicable to extensions of time for proceedings of the Ministerial Conference. However, the MC Chair may, citing his power to exercise “complete control of the proceedings” under Rule 17, in the event that extensions of ministerial conference is necessary, resort to various parliamentary procedural techniques such as stopping the official clock, adjourn the formal plenary session, and reconvening the plenary session in informal mode outside of the official ministerial time. In any event, the business of the ministerial conference would not be deemed officially concluded until all items on the approved agenda have been officially dealt with and concluded.
13. On the other hand, assuming that the proposed order of business had also been adopted by the formal plenary as an integral part of the organization of work of the ministerial conference, in which the business of the ministerial conference is supposed to be concluded by 6 pm of 14th September 2003, it could also be argued that any changes in the adopted order of business, such as

an extension of the time needed for the ministerial conference to conclude its meeting, likewise have to be approved by the formal plenary. Members should note that the issue of the duration of the meeting once such duration has been fixed by agreement of the formal plenary is a matter that needs to be addressed and decided by the formal plenary if any changes need to be made thereto.

14. Therefore, in the event that the MC Chair informs Members than an extension of the ministerial conference meeting time will be made, a point of order under Rule 18 could be raised to argue that:

- (i) such proposal for extension needs to be formally put to the formal plenary session as a proposed amendment to the adopted order of business as part of the organization of work of the ministerial conference; and
 - (ii) that such a proposal has to be approved by the Ministerial Conference meeting in formal plenary session.
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