

MC14 in Yaoundé: Implementation of Consensus in Ministerial Preparations

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An Analytical Note on the Evolving Consensus Practices in the Lead-Up to MC14, 23 February 2026

Abstract

This Analytical Note examines four procedural developments in the preparations for MC14 against the consensus requirements of Article IX:1 of the Marrakesh Agreement. These concern: (i) the transmission of the draft fisheries subsidies decision without a formal meeting of the negotiating body; (ii) the General Council Chair's requirement that Members pre-secure consensus before proposed text can be considered for the Ministerial Declaration; (iii) the conduct of WTO Reform consultations outside formal WTO bodies; and (iv) the separation between the consensus-governed agenda and the non-consensus modalities that shape the Conference programme. Each development engages with one or more of the safeguards embedded in the treaty definition of consensus. The Note observes that these evolving practices, which have not been formally authorized by the membership, may have particular implications for developing countries and LDCs with limited delegation capacity.

Context

The preparations for the Fourteenth Ministerial Conference (MC14), scheduled for 26–29 March 2026 in Yaoundé, have given rise to several procedural developments that merit careful examination. Four processes, in particular, illustrate evolving interpretations of the consensus principle under the WTO Agreement. This Note examines each development against the legal framework of Article IX:1 of the Marrakesh Agreement, with a view to supporting developing country Members in engaging constructively with the MC14 preparatory process.

The Legal Framework

Article IX:1 of the Marrakesh Agreement provides: "The WTO shall continue the practice of decision-making by consensus followed under GATT 1947". Footnote (a) defines consensus: "The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision".¹

This definition contains three cumulative elements: (i) a meeting of a WTO body; (ii) the presence of Members at that meeting; and (iii) the absence of a formal objection to the proposed decision. Each of the developments discussed below engages with one or more of these elements in ways that warrant further reflection.

1. Silent Procedure in the Negotiating Group on Rules

On 20 February 2026, the Chair of the Negotiating Group on Rules (NGR) circulated a communication on the Draft Ministerial Decision on Fisheries Subsidies (RD/TN/RL/195/Rev.1). Rather than convening a formal meeting, the Chair stated that "unless Members indicate otherwise by COB on 2 March, I would recommend that document 195/Rev.1 be transmitted to Ministers through the General Council for their action at MC14."

¹ Marrakesh Agreement Establishing the World Trade Organization, 15 April 1994, Article IX:1, footnote (a).

Subsequent indications suggest that, in light of Members' reactions, the Chair is reconsidering this approach with a view to convening a formal meeting of the NGR before any recommendation is made. It is understood that the Chair was seeking an efficient way forward under time pressure, and that he has been responsive to Member feedback in reflecting on his initial proposal.

Silent procedures have been used in WTO practice, though typically in specific and limited circumstances. Prior instances have generally involved either prior authorization by the body concerned (as when the Committee on Budget, Finance and Administration agreed at its meeting of 11 November 2024 to use silent procedure before endorsing the WTO Pension Plan amendments on 15 November 2024), or application to factual and administrative matters during exceptional circumstances (as with certain Committee on Trade Facilitation decisions in 2021 and 2023).

While any move back toward a formal meeting would be welcome, the episode illustrates how approaches associated with silent procedures are gradually being used to operationalize consensus in areas that go beyond routine or administrative business.

Even under the revised approach, questions remain about the procedural basis for transmitting a draft Ministerial Decision to MC14 without a formal meeting of the NGR. The subject matter is a draft Ministerial Decision of considerable substantive significance. No prior meeting of the NGR authorized the Chair to transmit the text on the basis of a procedure other than consideration at a formal meeting. The absence of a meeting deprives Members of the procedural safeguards that a formal session affords, including the right to take the floor, raise points of order, and formally register positions on the text.

2. The General Council Chair's Approach to the Ministerial Declaration

The General Council (GC) Chair has adopted a particular approach in the preparations of the MC14 draft Ministerial Declaration (RD/GC/48, dated 5 February 2026). The Chair issued a deliberately "minimalist" text and indicated: "I do not intend to engage myself or the wider membership in a process to negotiate language on such issues."

In subsequent meetings, the Chair has stated that the General Council is "not a negotiating forum." This characterization may merit further consideration in light of the WTO Agreement. Article III:2 provides that "the WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations." Article IV:2 provides that the General Council conducts the Ministerial Conference's functions in the intervals between conferences, which include the negotiating function. The GC Rules of Procedure (WT/L/161) also contemplate deliberative engagement, including the introduction of proposals and amendments (Rules 28–32), the conduct of debate (Rules 19–22), and decision-making by consensus (Rule 33).

Two aspects of the Chair's approach to consensus are worth examining:

Consensus as a precondition for engagement: Members wishing to add substantive language to the Declaration are expected to first "secure consensus" among themselves before bringing proposed text to the Chair. Under the standard interpretation of Article IX:1, however, consensus is normally the result of deliberations within a WTO body, not a precondition that individual Members must meet before their proposals can be considered. This approach risks placing a significant burden on proponents, particularly smaller delegations to build consensus informally and outside structured or facilitated processes. Consensus should emerge from a negotiated process that fully respects the sovereign right of all Members to submit proposals or propose amendments at any stage.

Consensus as a constraint on ambition: By noting that "there is no readiness to repeat the 'outcome document' exercises" or to "engage in line-by-line negotiations," the approach may discourage Members from tabling proposals, given that the threshold for inclusion (pre-secured consensus) can be difficult to achieve outside a structured negotiating process.

The Chair has also indicated a fallback option: if even the minimalist text cannot be agreed, the outcome would be "a statement to be prepared and issued by the MC14 Chairperson under his own responsibility." Such Chair's statements have been used in past Ministerial Conferences and do not require consensus, but they nonetheless mark a departure from the standard practice of adopting Ministerial Declarations by consensus among all Members.

3. The WTO Reform Facilitator's Process

The WTO Reform process has been conducted through an informal process led by a Facilitator appointed by the GC Chair. The Facilitator has convened meetings, prepared reports, and circulated Draft Ministerial Statements on WTO Reform along with a post-MC14 Work Plan containing thematic pillars, timelines extending to MC15 in 2028, and phased activities.²

A notable evolution across successive drafts concerns the attribution of responsibility. The earlier draft (3 February 2026) stated: "This draft flexible Post-MC14 Work Plan has been prepared under the responsibility of the WTO Reform Facilitator." The later draft (17 February 2026) removes this attribution. The Work Plan text is now presented without a disclaimer of authorship, which could create an impression of emerging consensus where none has been formally established.

There are also questions about the modalities of engagement. Consultations have been conducted primarily in small groups rather than in plenary, and the Facilitator has organized closed-group breakout sessions. On three occasions when the GC Chair convened plenary meetings, the floor was not opened for discussion in two of them. The Facilitator is now asking Members whether they "can live with" the text, a formulation that, while pragmatic, is procedurally distinct from submitting a proposal for formal deliberation in a meeting where all Members are present and can assess whether consensus exists.

Several Members have raised concerns that the three focal issues in the reform text (decision-making, development, and level playing field) may disproportionately affect developing countries and LDCs. These concerns warrant careful attention in any process that aims to produce outcomes acceptable to the full membership.

4. The Relationship between the Agenda and Modalities

Under Rule 5 of WT/L/161, the first item of business at each Ministerial Conference is the "consideration and approval of the agenda." This procedural checkpoint enables Members to exercise collective authority over the Conference programme. The MC14 provisional agenda (WT/MIN(26)/W/1, dated 19 February 2026) follows the practice established since MC6 (2005) of not listing substantive issues by name.

Footnote 1 of WT/MIN(26)/W/1 states: "MC14 modalities, containing the structure of the Conference sessions and the overall programme, will be communicated in due course." The modalities document determines which issues receive dedicated Ministerial Sessions, who facilitates them, and in what format. This document is circulated as an INF note "for

² See South Centre analyses on the procedures and substantive implications of the WTO Reform process, available at: <https://www.southcentre.int/tag/wto-reform/>

information" under the Director-General's responsibility and is not subject to formal consensus.

This creates an asymmetry because consensus is required for the agenda, which contains limited substantive detail, while the modalities, which contain the actual substantive architecture of the Conference, are not subject to consensus. At the December 2025 GC meeting, the Chairperson invited Members to "endorse the overall assessment on the way forward towards MC14."³ The GC "so agreed." The United States immediately intervened, stating that "Item 2 is not an action item or an item for decision" and that "we did not agree to anything and we should not be held responsible for agreeing to anything under that item." In response, the GC Chairperson clarified that what had been endorsed was only "the overall preparedness of identifying the overall focus of our work, not each and every detail in the various reports," and treated this as sufficient to proceed with the preparatory framework. The GC Chairperson did not treat this as a formal objection, and the preparatory process continued unchanged. This sequence not only raises questions about how objections are treated, but also about whether formulations such as "the GC so agreed" on an "overall assessment on the way forward" can subsequently be invoked as implying consensus support for modalities that were never formally put to a decision, notwithstanding explicit attempts by some Members, such as the United States, to disavow any agreement under that item.

Observations

The procedural developments examined in this Note reflect a broader pattern in which the formal requirements of consensus under Article IX:1 of the Marrakesh Agreement are being applied in ways that depart from the treaty text. Each development engages differently with the safeguards embedded in footnote (a) to Article IX:1: the fisheries subsidies text is being advanced without a formal meeting of the negotiating body; the pre-secured consensus requirement may limit the deliberation that would ordinarily precede a consensus determination; the reform facilitator's process has proceeded without formal submission to a WTO body; and the agenda-modalities distinction channels consequential preparatory decisions through an instrument that is not subject to member approval.

These developments may have particular implications for developing countries and LDCs, whose smaller delegations face challenges in simultaneously monitoring parallel informal processes, closed-group consultations, and compressed timelines. The consensus principle in Article IX:1 was designed to protect the sovereign equality of all Members by ensuring that no decision is taken over a Member's formal objection. When the procedural pathways leading to the moment of decision are structured in ways that constrain the ability to raise and register concerns effectively, the protective function of consensus may be weakened.

None of these procedural developments have been formally authorized by a decision of the GC or a prior Ministerial Conference. They represent evolving institutional practices that have developed alongside, but outside, the treaty framework. As Members prepare for MC14, greater attention to the procedural integrity of the preparatory process may help ensure that outcomes enjoy the broadest possible support and legitimacy.

³ General Council, "Minutes of the Meeting held on 16–18 December 2025," WT/GC/M/222, 13 February 2026.

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