

Memorandum on the Need to Improve Internal Transparency and Participation in the WTO

Co-sponsored by: Third World Network , Oxfam International, Public Services International, WWF International, Center for International Environmental Law, Focus on the Global South, Institute for Agriculture and Trade Policy, Africa Trade Network, International Gender and Trade Network, and Tebtebba International Centre for Indigenous Peoples' Rights

This joint memorandum was presented by the co-sponsors to Ministers and Ambassadors of the WTO member states and to the Director General of the WTO and the Chairman of the General Council of the WTO in July 2003.

EXECUTIVE SUMMARY

BACKGROUND

This Memorandum highlights the serious problems of the lack of internal transparency and the lack of participation of developing countries in decision-making processes in the World Trade Organisation.

Our organisations have for several years been involved in WTO issues and the activities of the WTO and we have been able to observe at close range the WTO's operations, methods of work and decision-making procedures. Over the years we have become increasingly concerned about the lack of proper rules of procedures and the lack of transparency and as well as the lack of participation or exclusion of a majority of Members in decision making processes.

Although these shortcomings have been pointed out and highlighted by WTO Members, NGOs and the media, and although reforms have been talked about and promised many times through the years, the situation has not improved. It has in fact worsened.

This lack of internal transparency, participation and democracy is appalling in such an important international organisation whose decisions and actions have such far reaching effects on the lives of billions of people and the environment upon which they depend. It is even more ironic and inexcusable in an agency that prides itself for being a "rules-based organisation" and for championing the principles of "transparency, non-discrimination and procedural fairness."

The Memorandum highlights some of the significant problems in the WTO internal processes under three categories: general problems, processes before Ministerial Conferences, and processes during Ministerials.

The Memorandum also provides several concrete proposals to improve the decision-making processes, again according to the categories of general, before and during Ministerial Conferences.

Without such reforms of the procedures and practices relating to internal transparency and participation, there can be little hope of reforms to the existing imbalances in many of the rules of the WTO which are adversely impacting on the lives of people around the world. Worse, new rules that are detrimental to people and the environment may be introduced.

It is therefore hoped that these proposals will be seriously considered and that they be put in effect in the present crucial period before the Cancun Ministerial and at Cancun itself.

LIST OF PROBLEMS OF DECISION-MAKING PROCESSES IN WTO

The Memorandum provides a comprehensive account of the problems in internal transparency and participation in the WTO decision-making processes. The following is a listing of the problems.

A. General Problems

1. The practice of the consensus system is often unfair to developing countries.
2. The overloaded agenda and too many meetings held simultaneously have put resource deficient developing countries at a great disadvantage.
3. Economic and political pressures are applied on developing countries to influence their negotiating position.
4. There is great difficulty or impossibility to change existing rules, even if they are imbalanced or damaging.

B. Specific Problems in the Processes Linked to Preparations for Ministerial Conferences

1. There is a proliferation of “informal”, undocumented and exclusive meetings, amounting to lack of transparency and inability of many countries to participate.
2. Informal “heads of delegations” meetings are replacing General Council meetings.
3. Many meetings are held at short notice.
4. Documents are often not distributed in time.
5. Some important documents are not available in various languages.
6. WTO discussions and negotiations have increasingly become “chair driven” (driven by the Chairs of formal or informal groups) instead of “member driven”.
7. There is inadequate procedure for selection of and determining the functions of Chairs in the informal processes.
8. The divergence of views among members is often ignored through “clean” draft texts and declarations.
9. Not enough time is given for discussing drafts.
10. There is a major problem of transmission to the Ministerial Conference of drafts that are not approved by members.
11. The neutrality of the secretariat is sometimes not maintained.
12. The holding and proliferation of “Mini Ministerial” meetings involving only a few countries is creating a disguised unelected “steering group”.

C. Specific Problems with Processes During Ministerial Conferences

1. The lack of a functional, operative general committee or assembly that functions as a decision-making forum throughout the Conference.
2. The misuse of the opening ceremony for obtaining approvals for important substantive decisions.
3. The undemocratic adoption of the Draft Declaration as the basis for conference negotiations.
4. The undemocratic selection of chairpersons or so-called “friends of the chair” to conduct negotiations on key issues.
5. The holding of “informal”, undocumented and exclusive meetings that undermine transparency and participation.
6. The views of many members are ignored and not reflected or not properly reflected in the negotiating texts.
7. The operating of the “green room” process excludes many members from meetings and decision-making.
8. Members are also excluded from major decisions of an administrative nature, e.g., extending the conference for an extra day.
9. The holding of an exclusive “last night” marathon meeting.
10. Untransparent production of the new and revised Ministerial Declaration drafts.
11. Proposals by members for amending the draft declaration are ignored.

PROPOSALS FOR REFORMS

Changes to the WTO process are long overdue. Many organisations (at international, regional, or national levels) have rules and procedures that enable fair participation of the membership. It is not so difficult to envisage that the WTO also establish and practice similarly fair rules and procedures.

Towards this end, we propose the following:

A. General Proposals

1. The consensus system should be applied in a man-

ner that fully respects the views of developing country members.

2. The views of every member must be respected in a decision involving consensus and explicit consensus, especially in the case of important issues.

3. The WTO should adopt a realistic agenda and work schedule that is fair especially for smaller delegations.

4. Developing countries should not be subjected to economic and political pressure relating to negotiations.

5. Decisions should not be made until all members are technically ready.

6. Developed countries should be ready to resolve development issues (including implementation and special and differential treatment) without exacting a new price.

B. Proposals for Improving Processes Linked to Preparations for Ministerial Conferences

1. Meetings, including “informal consultations”, should be open to all members. The schedule of all meetings should also be made known to all members.

2. There should be more formal meetings of the General Council and the Trade Negotiations Committee, which should be the main decision-making fora instead of informal meetings.

3. Proper notice should be given for all meetings and documents related to meetings should be distributed early enough.

4. There should be agreed procedures for smaller, issue-based meetings in the event these meetings are proposed. Authorisation should come from all members and the meetings should be governed by transparent rules.

5. There should be agreed terms of reference for the roles of chairs of formal and informal groups. Chairs should facilitate discussions among members rather than negotiating with members.

6. Agreed procedures for drafting of texts are needed. It should not be assumed that the Chairs would draft the texts. The practice of a chair producing draft text “under my personal responsibility” should be replaced by drafts approved by all members.

7. There should be a fair reflection of diverse views in texts.

8. Adequate time should be given to members to consider and discuss texts.

9. The secretariat must maintain neutrality.

10. The holding of “Mini Ministerials” should cease.

C. Proposals for Improving Processes During Ministerial Conferences

1. The Opening Ceremony should be only ceremonial in nature and it should not adopt decisions on business matters.

2. A committee of all members to coordinate negotiations and discussions should be the main decision-making forum and which should operate regularly (meeting at least once daily) throughout the conference.

3. The agenda, work programme and the draft declaration and other texts used as the basis for negotiations should be adopted by members at the first business meeting.

4. Members (not the conference chairman) should appoint the chairs and facilitators to conduct discussions and determine their role and terms of reference.

5. All meetings should be inclusive and transparent, minutes should be kept and subject to members’ approval.

6. The drafting of texts and decisions should be done in a transparent and inclusive manner and texts distributed to all. Texts should fairly reflect the divergence of views, if any, among members.

7. The system of holding “Green Room” exclusive meetings should be stopped.

8. There should be proper rules and procedures for smaller issue-based meetings, which should be open to all interested members. Authorisation should come from members who should also receive reports as soon as possible.

9. Proposals for the extension of the conference, amendment of agenda and other process issues should be decided on by all members.

10. The neutrality and impartiality of the Secretariat should be observed during Ministerials.

MEMORANDUM

PART I: BACKGROUND

1. Through this Memorandum, several non-governmental organisations and civil society groups wish to highlight the serious problems of the lack of internal transparency and the lack of participation of developing countries in decision-making processes in the World Trade Organisation.

2. Among the organisations launching this initiative are the Third World Network, Oxfam International, Public Services International, WWF International, the Center for International Environmental Law, Focus on the Global South, the Institute for Agriculture and Trade Policy, the Africa Trade Network, the International Gender and Trade Network, and the Tebtebba International Centre for Indigenous Peoples' Rights.

3. Our organisations have for several years been involved in WTO issues and in the activities of the WTO in Geneva and with policy makers in the capitals. We have thus been able to observe at close range the WTO's operations, methods of work and decision-making procedures.

4. Over the years we have become increasingly concerned about the lack of proper rules of procedures and the lack of transparency and as well as the lack of participation or exclusion of a majority of Members in decision making processes.

5. Although these shortcomings have been pointed out and highlighted by WTO Members, NGOs and the media, and even admitted by previous high officials such as a former Director General and former Trade Ministers, and although reforms have been talked about and promised many times through the years, the situation has not improved. It has in fact worsened.

6. This lack of internal transparency, participation and democracy is appalling in such an important international organisation whose decisions and actions have such far reaching effects on the lives of billions of people and the environment upon which they depend. It is even more ironic and inexcusable in an agency that prides itself for being a "rules-based organisation" and for championing the principles of "transparency, non-discrimination and procedural fairness."

PART II: IMBALANCES IN RULES AND SUBSTANCE ARE LINKED TO UNDEMOCRATIC PROCESSES

7. Our organisations have been critical of many of the rules developed in the WTO which we believe to be against the interests of developing countries and detrimental to the rights of local communities, small farmers, workers, consumers, women, indigenous people, and to the environment. We had high expectations when some developing country Members took joint initiatives to correct the imbalances and the defective rules, such as resolving implementation-related issues and strengthening special and differential treatment. But we then witnessed how these commendable efforts have yielded hardly any effective results after years of endless discussions. We are also very critical of proposals and pressures to introduce new issues into the WTO even when many developing country Members are either opposed to or unprepared to begin negotiations. We believe the proposed new agreements will be damaging to development, to the environment, to working people and to vulnerable groups including the poor and women.

8. The rules of WTO have a tremendous impact on the lives of people all over the world. This is why it is so crucial that the correct decisions are made in the WTO.

9. We now believe that original imbalances in the WTO

rules, the failure so far of attempts to reform them, the many missed deadlines after Doha on issues of importance to developing countries, the unsatisfactory content and progress of current negotiations on services, agriculture and industrial products, are in large part linked to the non-transparent and undemocratic decision-making processes in the WTO.

10. These processes are weighted against and work against the developing countries that form the great majority of the Membership. Unless these processes are changed, further initiatives and attempts to reform the existing rules, and to have fair outcomes in current and future negotiations, will fail.

11. It would be difficult to exaggerate the serious adverse consequences if governments fail to act. Hundreds of millions of people's lives and livelihoods are already damaged by the dumping of agricultural products by rich countries in world markets, which is facilitated by the agriculture agreement and the high prices of medicines and other consumer items due to the TRIPS agreement. Reforms to the agriculture and TRIPS agreements, to name just two, are urgently needed. The WTO needs to take stock and change tracks to make sustainable development - rather than a particular economic orthodoxy - its central goal.

12. The key to the needed changes in the content and substance of the WTO's rules and policies is the reform of its decision-making processes. Indeed, the problems related to process in the WTO are acute, and have undermined the WTO's credibility. Unless there are appropriate changes to both substance and process in the WTO, its legitimacy and credibility in the eyes of its main stakeholders and constituencies will sink even further.

PART III: LIST OF PROBLEMS OF LACK OF TRANSPARENCY AND PARTICIPATION AND IMBALANCES IN DECISION-MAKING PROCESSES

13. The following is illustrative of what is presently wrong with the WTO's processes:

A. General

14. Unfair practice of the consensus system. The practice in the WTO is that decisions are made by "consensus." This may at first glance seem to be "democratic."

The problem is that, in practice, consensus often has a double-standard meaning. When the major developed countries agree among themselves, an emerging consensus is said to exist, and all others are asked to "join the consensus." Those countries that do not agree are often cast in an unfavourable light, and thus there is pressure for all countries to conform to the position of the major developed countries. On the other hand, when a majority of countries agree, but one or a few of the major developed countries do not, a consensus is said not to exist.

15. Overloaded agenda and too many meetings put resource deficient developing countries at a disadvantage. There is a very heavy workload and the pace of negotiations is punishing particularly for developing country missions with less capacity and resources. The agenda is too full, and too many meetings are held simultaneously. The developing countries, which have small delegations, are unable to cope and are at grave disadvantage: (i) because they cannot participate effectively; (ii) they are counted as part of the consensus if they are not physically present to air their views. In addition, many developing country members, as well as observer countries and some of those in the process of accession have no permanent mission in Geneva, so they cannot take part in negotiations at all.

16. Political pressures applied on developing countries. Developing countries are subjected to pressures from developed countries, including the use of leverage outside of the WTO. Those countries taking positions that the powerful countries do not like can be subjected to pressures or incentives linked to bilateral aid, IMF-World Bank loans, and more political issues. Developing country diplomats who are viewed to be too "effective" have been known to be removed from their Geneva post after some major developed-country members in the capitals lodged complaints.

17. Difficulties or impossibility of changing rules. Due to the consensus principle and the way it is currently used, it is very difficult, indeed almost impossible, to change a rule in the WTO once it is made, unless the major developed countries propose the change or support it. It would be very hard for developing countries to succeed in changing rules to their favour, as this would be opposed by at least some of the developed countries. This has proved to be difficult and onerous for developing countries since many rules and agreements at the Uruguay Round were formulated and adopted without the informed participation of many

developing countries. Many countries signed on to agreements such as those dealing with agriculture and intellectual property without adequately appreciating their technicalities or realising their implications.

B. Problems in the Processes Linked to Preparations for Ministerial Conferences

18. All the above points apply but the situation is even worse during the preparatory process for Ministerial Conferences, where major decisions are taken.

19. “Informal”, undocumented and exclusive meetings. Many, even most, meetings are held in “informal” mode, where minutes are not taken, thus adding to their non-transparent nature. Many of these meetings are not announced to all the members, only a few countries are invited to them, and most delegations do not know what meetings are taking place or what was decided in them. No report of the proceedings is made available to members who were unable, or not invited, to attend.

20. Informal “heads of delegations” meetings replacing General Council meetings. There are few formal meetings of the General Council (where minutes are published) as the Ministerial Conference approaches. Instead, “informal heads of delegations” meetings are held, to which only very few officials per country are invited. Minutes of these meetings are not published or confirmed, thus adding to the lack of transparency.

21. Meetings held at short notice. Meetings are often held at short notice. For informal meetings in small groups, delegations are often given only a few hours’ notice, and developing countries find it difficult or impossible to attend at such short notice especially since other meetings are going on.

22. Documents not distributed in time. Documents related to meetings are not distributed early enough for delegations (especially small ones) to consider them properly or send back to capitals for views and instructions.

23. Important documents not available in various languages. Moreover, some documents are in English only. This applies especially to “informal” WTO documents (those carrying a JOB number, drafts of proposed language for texts and decisions, Chairmen’s proposed or draft reports, etc). Thus, several coun-

tries are unable to adequately comprehend the documents, and are unable to send the content to the officials in capitals in a language, which they use.

24. WTO discussions, negotiations becoming Chair driven instead of Member driven. As seen in the preparatory period before Doha and as practically institutionalised during the Cancun preparatory process the consultations on issues are increasingly held by the Chairman of the group (or the General Council Chairman) on a bilateral basis or with a small number of delegations. Many countries are excluded. The negotiations are increasingly between delegations and the Chairman, when the negotiations should be among the Members themselves. This results in members negotiating with Chairs in consultations where records are not made available, rather than amongst themselves.

25. No formal selection procedure or roles of Chairs. The present practice, especially in the Cancun preparatory process, also gives unprecedented powers to individuals as Chairs who have not been properly elected by the membership and who have no defined limits to their roles as chairs. Chairs emerge with their own understanding of various consultations without the membership being able to cross check whether the Chair’s report fully integrates and faithfully reflects all views expressed as these consultations remain informal.

26. Divergence of views ignored through “clean” draft texts and declarations. The views and positions of many countries are not reflected, or not reflected adequately, in the draft elements and decisions, or in the draft Declaration that is taken to the Ministerial Conference. Before Seattle, the views of different delegations were placed together in the same draft. It was transparent where there were differences of positions and easier for a country to identify its own position. Thus the playing field was relatively level as negotiations were carried out on the basis of the different views. However, before and at Doha, the draft text was mainly a “clean document” (without brackets) reflecting the Chairman’s view, and on many issues the positions of many developing countries were not reflected. This puts at a great disadvantage those countries whose views are not represented in the Chairman’s texts. The mere lack of reflection of divergence of views makes it harder for countries to voice divergent views.

27. Not enough time for discussing drafts. Even though there is no consensus on a draft Declaration or other

document, and indeed even if there are serious disagreements on many parts of the draft, the Members are not given enough time to discuss it and to narrow their differences. For example, during the end phase of Geneva preparatory process for the Doha Ministerial in 2001, there were only a few days for members to consider the revised draft of the Doha Ministerial Declaration and when many members asked that changes be made or at least that their divergent views be recorded and transmitted to Doha, this request was not accepted on the ground that there was no time left as the Ministerial would start in a few days.

28. Transmission to Ministerial Conference of drafts that are not approved by Members. The new and appalling practice in WTO is to transmit the draft Declaration or other texts on to the Ministerial Conference as the basis for negotiations there, even though the views of many delegations are not reflected, nor are the differences noted within the draft or on a separate explanatory document. Even though many Members express their frustration, and do not give permission for the draft to be transmitted to the Ministerial Conference, the Chairman of the General Council and the Director General transmit the controversial draft “on their personal responsibility” to the Ministerial Conference. This is what happened before the Doha conference. The transmission of such a draft that disguises the divergence of views makes it difficult for Ministers from developing countries to understand and analyse which views are being held by which countries and also makes it more difficult for them to defend their own position, especially since they may not have the same grasp of technical details as their diplomats and experts.

29. Neutrality of the Secretariat. The Secretariat (and especially its Director General) of any membership organisation is supposed to be neutral and impartial, especially if the Members are split on important issues. Yet, before Doha, the then Director General was actively and personally campaigning for the launch of negotiations of the Singapore issues, even though a large number of developing countries were against the negotiation of the new issues. These actions seriously undermined the impartiality of the secretariat. Before the Singapore Ministerial, the then Director General pushed for the introduction of an investment agreement in the WTO, despite strong opposition from many developing countries. These actions by key WTO officials placed developing countries that were opposed to the “new issues” at a grave disadvantage.

30. “Mini Ministerials” creating a disguised unelected “steering group”. There is also a very disturbing trend of some countries organising so-called “Mini-Ministerials” to which only the major developed countries, a few developing countries, and senior WTO Secretariat officials are invited. There is an increasing tendency for business (discussion on key issues) to be carried out through these Mini-Ministerials, thus perpetuating a “super green room” system throughout the year. In effect this creates a non-elected steering committee in disguise and in the process excludes the vast majority of the membership. This establishment of a de facto parallel decision-making system is highly discriminatory against the majority of members who are not invited and undermines the multilateral nature of the trading system.

D. Problems with Processes during Ministerial Conferences

31. Lack of a functional, operative General Assembly. There is no formal “general assembly” that operates throughout the Ministerials. There are formal opening and closing plenary sessions but in between these only informal meetings are held, with no minutes published or adopted. Thus there is a lack of transparency and the lack of a forum for decision-making where Members can officially make their views known, with their views being officially recorded.

32. Misuse of the Opening Ceremony for obtaining approvals for Conference. Opening ceremonies of conferences are supposed to be ceremonial in nature. Important decisions are normally taken at the first business session of conferences. At Doha, the ceremonial Opening Ceremony was made use of to adopt the controversial and disputed Draft Ministerial Declaration (which had not been approved by the General Council for transmission to Doha, and which many Members had requested not to be made the basis for negotiations in Doha) as the basis for negotiations at the Conference. There was no opportunity for Members to discuss whether the text should form the basis for negotiations.

33. Undemocratic adoption of Draft Declaration as basis for Conference negotiation. Raising the matter of the Draft Declaration at the Opening ceremony in Doha means that the WTO Ministerial Conferences do not have a proper procedure for adoption of texts to be used as the basis of negotiations at the Conference.

In Doha, Members were not given the opportunity to comment on them or to suggest revisions or alternatives. In this manner, the draft Declaration that had been so controversial and so contested by Members in Geneva was “adopted” in Doha. This lack of a procedure to adopt the texts for negotiations is a major process flaw in Ministerial Conferences.

34. Undemocratic selection of Chairpersons or so-called Friends of the Chair. In Doha, the conference Chairman personally appointed “Friends of the Chair” to conduct negotiations on specific issues that were contentious. There had been no prior discussion or decision by the General Council or by the Ministerial Conference to give the Chairman the authority to personally select the facilitators for the issues. The appointment by the Chairman (instead of election by Members) of important officials of the Conference who play such a key function in directing or guiding negotiations on critical issues that are unresolved, is a major undemocratic feature of the WTO system. At other international Conferences (e.g. the UN World Conferences), the chairpersons of negotiating groups are elected through an open and transparent process, with each region being able to make proposals for candidates, etc. In the WTO, the criteria with which the facilitators were chosen were not made known. At Doha, those who were appointed ‘Friends of the Chair’ were from the same grouping of countries that supported the launching of a New Round, including negotiations on new issues, and members that did not have the same views (e.g. The Like Minded Group of Developing Countries) were not chosen. Even though several Members at the first plenary meeting questioned the Chairman’s appointment, the Chairman ignored the criticisms and proceeded with the appointments and the work of the groups.

35. Undocumented and closed meetings that undermine transparency. “Informal consultations” were held, led by the facilitators, during the Doha conference. Records of these informal meetings were either not kept, or if kept, they were not made available to the Members or the public. Most meetings were not open-ended. The schedule of open-ended meetings (to which everyone is invited) was usually not known within proper time. The whole scheduling of meetings was unpredictable.

36. Views of Members ignored and not reflected in the negotiating texts. Although there was the appearance

that Members were being consulted, the views of large numbers of countries were not reflected (or not adequately reflected) in the new drafts of the main Ministerial Declaration that were produced in Doha, and especially in the sections on the Singapore issues. This is very unlike the normal procedures in UN conferences, where drafting is done openly by Members, with all countries allowed to participate, and with the text containing the different views available to all. More recently, the different proposals and positions and the process of amendments have been projected on a big screen in the negotiating room so that everyone can clearly follow the negotiations. In the case of WTO Ministerial conferences, as most recently seen in Doha, the drafting of WTO texts is non-transparent. Indeed, it is not known to Members, let alone the public, how the texts were drafted, or by whom, and on whose authority.

37. “Green Room” process excludes Members from meetings. In Singapore and at Seattle, almost all the negotiations on the draft Declaration were carried out in the so-called “Green Room” exclusive process, where only a few countries were invited and allowed to participate. Security guards stood outside the meeting rooms to prevent uninvited Members, including Ministers, from entering. Shouting matches between guards and “uninvited” officials could be observed. Most Ministers and officials were shut out of the process and were left “languishing in the corridors, canteens and in hotel rooms” in the colourful language of one diplomat. At and after Singapore, the then Director General of the Secretariat promised this exclusionary process would never happen again. Yet it re-emerged in Seattle. The entire process was non-inclusive and indeed seriously exclusionary and discriminatory. It ran completely against the most-favoured nation (MFN) treatment sub-principle that is so prominent in the GATT/WTO non-discrimination principle. The process was also extremely untransparent. Up to now, it has not been revealed who made the decision to adopt the “Green Room” process, who selected the invited delegations, on what basis, and what were the legal basis or rules of procedure (if any) for these exclusive meetings.

38. Members excluded from major decisions, e.g., extending the Conference. At Doha, when it was clear that a majority of developing countries were against the launch of negotiations on the Singapore Issues, a decision was made to extend the conference by one day. The decision for extension was not made by the Mem-

bers, as no proposal for extension was put before the Members and indeed there was not even a formal Assembly or Committee in which such a proposal could be put forward and a decision taken. Up to now it is not clear who made the decision, nor under which procedure. Many Ministers, who had booked their flights out, did leave as scheduled, as they did not have advance knowledge nor had their views been sought on the matter, and they missed the important last (extended) day's events.

39. Exclusive “last night” marathon meetings. On the final night at Doha, a marathon “Green Room” exclusive meeting was held involving a small number of countries. Once again, it is not clear who chose and invited the participants, on what criteria and legal and procedural basis. Again, Members who were not selected were not allowed into the room and some were stopped by security guards. During the meeting, the Director General played an important and partial role. Moreover, new drafts of texts were brought in for consideration, some (reportedly the section on environment) at around 3am. Again, the whole process was non-transparent, non-inclusive and discriminatory. Some of the senior Secretariat staff again played a critical role in facilitating and sometimes in leading the process.

40. Untransparent production of the new Declaration draft. A new draft of the main Declaration arrived on the last (extended) day in Doha, which reflected even less the views of a large number of developing countries, especially on the Singapore issues. Many ministers were not even aware on 14th November 2001 (the final day) afternoon, when they adopted the declaration in the plenary, that fundamental changes have been made to the earlier draft that had been brought out on 13th November.

41. Proposals for amending the Draft Declaration ignored. At the last “informal” plenary session, many countries proposed changes but due to the lateness of the hour (“the planes will leave in a few hours”), the pressure of time became an additional factor why the suggested changes to the declaration were not accommodated. At the end, an unsatisfactory compromise was reached in which the Conference Chairman read an understanding on the Singapore issues regarding the nature of an explicit consensus. Members continue to dispute one another's interpretation of what an explicit consensus requires.

PART IV: OUR PROPOSALS

42. From the above experience, it is clear that lack of proper procedures, the proliferation of non-transparent “informal meetings”, the way important decisions and declarations are drafted and produced for adoption, the Green Room process, etc, all add up to a most unacceptable process that is top-down, authoritarian and undemocratic. Ironically the supposed principles which the WTO is supposed to uphold in its rules — transparency, non-discrimination, procedural fairness — are grossly violated in its processes.

43. It is this process that underlies much of the decision-making and that contributes to the many unbalanced and inappropriate rules and agreements of the WTO.

44. Changes to the WTO process are long overdue. Many organisations (at international, regional, or national levels) have rules and procedures that enable fair participation of the membership. It is not so difficult to envisage that the WTO also establish and practice similarly fair rules and procedures.

45. Towards this end, the following are among our proposals:

A. General

46. The consensus system should respect the views of developing country Members. The consensus system should not be made use of by major developed countries as a “veto” against proposals, which have the support of a majority of the developing country Members. Also, when proposals are put forward by the major developed countries and these are not agreed to by some developing countries, the major countries should accept that these other countries are merely exercising their right under the consensus system, and not seek to portray them as some kind of “enemies” of the multilateral system which are “blocking consensus.”

47. Views of every Member must be respected in a decision involving consensus and explicit consensus. In the case of important issues, especially where it has been specified by Members that a consensus or an explicit consensus is required for a decision to be adopted, the views of each Member must be recognised and respected, including the right not to agree to a proposed decision.

48. Adopt a realistic agenda and work schedule that is fair especially for smaller delegations. The WTO should not take on a workload that is too heavy for small developing countries to handle. Negotiations should not be scheduled for too rapid a pace. There should not be more than two meetings going on at the same time, to enable small delegations to participate.

49. Developing countries should not be subjected to economic and political pressure. Developed countries should not use pressure (some of which amounts to bullying and blackmail) on developing countries to “pull them into line” with their positions. Nor should they use trade preferences, bilateral aid, military aid, the dependence of developing countries on loans from the international financial institutions, as points of leverage to get the developing countries to agree.

50. Decisions should not be made until all Members are technically ready. Decisions and agreements should not be made until and unless all Members, especially the developing countries, are able to understand the technicalities of the issues and the implications for their economies and societies.

51. Developed countries should be ready to resolve development issues without exacting a new price. Developed countries should stop taking the attitude that existing rules and agreements cannot or should not be changed unless other parties are willing to pay a new price. They should be sympathetic to the requests for amending and clarifying the agreements in ways that are in line with the interests and needs of developing countries. They should therefore be more forthcoming in accepting effective solutions to implementation issues and special and differential treatment proposals.

B. Processes Linked to Preparations for Ministerial Conferences

52. Meetings and schedules for meetings should be open. All Members should know all the meetings, and Members should participate in and have knowledge of the entire schedule of meetings, including agenda, participants and outcomes. Meetings should all be official, with minutes taken down and circulated to Members for amendments or confirmation.

53. More formal meetings of General Council and TNC. There should be many more formal meetings of the

General Council and the Trade Negotiating Committee, which are open to all Members. These should become the main decision-making fora instead of the non-transparent informal meetings.

54. Proper notice of meetings and documents distribution. Proper notice should be given for all meetings and documents related to meetings should be distributed early enough for full consideration by all Members.

55. Procedures for smaller, issue-based meetings. In the event that smaller issue-based meetings are proposed to be held to discuss or resolve certain issues, authorisation to hold these meetings should come from all members. Such meetings should also be governed by rules to ensure transparency and fairness. The rules could include the following: (a) the authority wishing to convene a group meeting should announce in the plenary that he is convening such a meeting and indicate the purpose of the meeting, and it should be subject to plenary approval; (b) the authority should announce the list of invitees and also announce that any other delegation which feels that it has a strong interest in the subject matter is also entitled to attend the group meeting; (c) as early as possible after the meeting, the authority convening the meeting should report to the plenary the gist of proceedings/outcome of the meeting; (d) such group meetings should be designed to facilitate consensus building rather than to take decisions behind the back of a large number of Members.

56. Role of Chairs. Terms of reference for the roles of the Chairs of the various Councils, Committees and formal or “informal” issue-based groups must be drafted by WTO members. The role of Chairs should be to facilitate discussions among the Members. The increasing trend of negotiations being held between delegations and the Chair should stop, especially since there are no records of what transpires at these meetings, and all the information resides with the Chair, who is then given too much power to interpret the situation. The negotiations should mainly be among Members themselves.

57. Drafting of texts. It should not be assumed that the Chairs would draft the texts that then form the basis of negotiations or discussions. Texts should be drawn up in a transparent and fair manner by Members. Members must agree on the latest text, which

can contain the different position of the Members. The practice of a Chair producing a draft text “under my personal responsibility” should stop.

58. Fair reflection of diverse views in texts. The views and positions of different Members should be adequately reflected in the draft Declaration and in draft elements and decisions. The different views should be listed out in the same document so each Member’s view has the chance to be part of the negotiated texts. The new custom of producing “clean texts” by the Chairman makes the process non-transparent because the differing views are not listed as the starting point of negotiation.

59. Proper time required to consider and discuss texts. Members should be given sufficient time to discuss the drafts and to narrow their differences. Whatever drafts are submitted to the Ministerial Conference should be the result of adoption by consensus in the General Council.

60. Drafts must fairly reflect different views. If Members are unable to agree on some parts of a draft Ministerial Declaration or other draft texts, the contending views can be put in square brackets. The Ministerial Conference can then decide on the final formulation of these parts of the texts. This is a common practice in international conferences, including in the United Nations system. In several major conferences, including the UN Summits, texts with many “square brackets” have been sent on to the Summits or Ministerial-level conferences, and the differences have been resolved at the meetings with a consensus reached on the texts. The WTO Ministerial Conferences should be treated no differently.

61. The Secretariat must maintain neutrality. The Secretariat, and especially the Director General and other senior officials must be (and be seen to be) neutral and impartial at all times, especially if the Members are split on important issues.

62. Holding of “Mini Ministerials” should cease. Members should not continue the practice, which is proliferating, of holding “Mini-Ministerials” before Ministerial Conferences. This practice discriminates against the vast majority of members that are not invited. In the meanwhile, decisions taken at such “Mini-Ministerials” should not be made use of by participants to influence the multilateral preparatory process in Geneva.

C. Problems with Processes During Ministerial Conferences

63. Opening ceremony should be only ceremonial. The opening ceremony of the Conference should be only ceremonial in nature. It should not be used to adopt the Conference agenda or work programme, to adopt drafts of texts that form the basis of Conference negotiations, or to affirm the appointment of Conference officials.

64. General Assembly of Members should operate regularly throughout Conference. At the start of the Ministerial, a “General Assembly” or in UN language a “Committee of the Whole” should be formed, comprising all the Members, to conduct and oversee discussions and negotiations. This is separate from the official plenary sessions where Ministerial speeches are made. It should meet in formal mode regularly, and at least once a day. It should be the main forum in which decisions, especially the important decisions regarding negotiations, are made. Records of the meetings should be circulated promptly and subjected to approval.

65. Adoption of negotiating drafts. The agenda, work programme and the draft declaration used as the basis for negotiations, should be discussed, if necessary amended, and adopted, at the first business meeting of the whole membership.

66. Election of Chairs and facilitators. The Facilitators or Chairs for conducting discussions or negotiations of specific issues should be selected by all the members, and not by the Conference Chairman. Their role and terms of reference should be specified by all the Members. They should be accountable to all the members and not only to the Conference Chairman.

67. All meetings should be inclusive and transparent. The meetings organised by the Chairs and Facilitators should be open-ended, and minutes should be kept and subject to approval of the Members present. The views of all Members should be transmitted to drafters of the decisions.

68. Drafting of texts and decisions should be transparent and inclusive, and texts distributed to all. The process by which decisions and texts are drafted should be transparent and participatory, and it should be decided by all Members, which should be allowed to be present at meetings where decisions are drafted. The latest

drafts of texts on all issues being discussed should be made available to all Members who should be kept informed on all issues at all times. These should also be presented to all Members at official plenary sessions to be held at least once a day.

69. Green Room system should cease. The practice of the “Green Room” system, or exclusive meetings, to which only a few countries are invited to participate on behalf of all, should be stopped.

70. Proper rules and procedures for smaller issue-based meetings. In the event that during a Ministerial Conference it is felt that meetings should be held to discuss or resolve certain issues, authorisation to hold these meetings should come from the general assembly of Members. Such meetings should also be governed by rules to ensure transparency and fairness. The rules could include the following: (a) the authority wishing to convene a group meeting should announce in the plenary that he is convening such a meeting and indicate the purpose of the meeting, and it should be subject to plenary approval; (b) the authority should announce the list of invitees and also announce that any other delegation which feels that it has a strong interest in the subject matter is also entitled to attend the group meeting; (c) as early as possible after the meeting, the authority convening the meeting should report to the plenary the gist of proceedings/outcome of the meeting. (d) Such group meetings should be de-

signed to facilitate consensus building rather than to take decisions behind the back of a large number of Members.

71. Extension of the Conference and other process decisions. Any proposal to extend the Ministerial meeting or to amend its agenda should be decided upon by all the Members in a general assembly or committee of the whole. Other decisions involving processes of the Conference should be decided in similar fashion.

72. Neutrality of Secretariat should be observed. During the Ministerial Conference, the Secretariat has an important role to play to ensure that the procedures and the decision-making system are fair, balanced and allow the developing countries to participate fully. It should itself take great pains to ensure that it is neutral and impartial during the Ministerial Conference, and is seen to be so.

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