

MEMORANDUM ON THE NEED TO IMPROVE INTERNAL TRANSPARENCY AND PARTICIPATION IN THE WTO

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 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 manner 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.