

# **An Analysis of the WTO's Fifth Ministerial Conference (Cancun, 10-14 September 2003).**

**By Martin Khor**

## **1. COLLAPSE OF THE CANCUN TALKS**

The WTO's Fifth Ministerial Conference in Cancun took place on 14-September 2003. It ended without an agreement on the Ministerial Text.

The decision to close the meeting was announced suddenly by the Conference chairman, the Mexican Foreign Secretary Luis Ernesto Derbez, during informal consultations involving about 30 countries (dubbed the "Green Room" meeting) when agreement could not be reached on the "Singapore issues." The decision to end the meeting, without any substantive Declaration, took participants by surprise as it had been widely expected that the meeting would continue well into the night or the small hours of the morning, or even extended by a day.

## **2. THE CANCUN MINISTERIAL STATEMENT**

The closing session adopted a brief and simple Ministerial Statement in lieu of the substantive Ministerial Text that had been under discussion since its first version appeared in Geneva in July. The Statement expressed appreciation to the host government of Mexico, welcomed Cambodia and Nepal for acceding to the WTO, and said all participants had worked hard to make considerable progress under the Doha mandates, but "more work needs to be done in some key areas to enable us to proceed towards the conclusion of the negotiations."

In the Statement, the Ministers also instructed their officials to continue working on outstanding issues taking fully into account all views expressed in the Conference. "We ask the Chairman of the General Council, working in close cooperation with the Director General, to coordinate this work and to convene a meeting of the General Council at Senior Officials level no later than 15 December 2003 to take the action necessary at that stage to enable us to move towards a successful and timely conclusion of the negotiations... We will bring with us into this new phase all the valuable work that has been done at this Conference. In those areas where we have reached a high level of convergence on texts, we undertake to maintain this convergence while working for an acceptable overall outcome. Notwithstanding this setback, we reaffirm all our Doha Declarations and Decisions and recommit ourselves to working to implement them fully and faithfully."

From the Statement it is unclear whether the 15 December deadline is meant to complete the negotiations on issues (agriculture and NAMA modalities, and a decision on

launching negotiations on Singapore issues on the basis of explicit consensus) that Cancun could not. Neither is it clear what is the status of the Cancun draft texts when discussions resume in Geneva.

### 3. DEADLOCK ON THE SINGAPORE ISSUES

There is a sense of confusion on what actually happened in the last hours of the Cancun conference, whether the talks broke down due to any specific issue or simply the running out of time to resolve the serious divisions on the many key issues, and also how Mr Derbez came to make his decision to close the meeting when he did.

The immediate reason is that there could not be an agreement on the Singapore issues in the exclusive small group consultation known informally as the Green Room meeting. At the early hours of 14 September a meeting of nine Ministers (from the US, EC, Mexico, Brazil, China, India, Malaysia, Kenya, South Africa) was convened by Mr. Derbez lasting from one to three a.m. to discuss the Singapore issues, at which the countries reportedly kept to their known positions.

Later that morning, a larger “Green Room” meeting of about 30 Ministers was convened. It was meant to discuss all the outstanding issues of the conference with the view to resolving the differences. Mr Derbez decided to start with the Singapore Issues. He later explained at a press briefing that he chose this as the first item because it had become the main issue of contention, judging by the reactions to the revised Ministerial Text at the previous night’s heads-of-delegation (HOD) meeting.

At the meeting, the developing countries opposed to starting negotiations reiterated their position that further clarification of all the issues should be undertaken. Mr. Derbez reportedly proposed that for two issues (trade facilitation and procurement) negotiations could begin, but that the other two issues (investment and competition) would be dropped from the agenda. The EC Trade Commissioner Pascal Lamy reportedly agreed that the two issues of investment and competition could be dropped, giving the impression that these would be removed from the WTO altogether (and not just from Doha mandate of starting negotiations on the basis of consensus). The other two issues would then proceed to negotiations.

Many countries said they had difficulty accepting negotiations on the trade facilitation and procurement. Derbez then adjourned the meeting for more than an hour to enable Ministers to consult with their constituencies on whether they could accept this formula of dropping two issues and negotiating the other two.

During the break, a combined meeting of the ACP, LDC and African Union members decided that they would not change their mandate that negotiations should not start on all four issues. When the Green Room reconvened, some developing country Ministers (including those representing the ACP-LDC-AU groupings) reported they were unable to accept negotiations on any of the issues. Korea reportedly said it could not accept the

dropping of any issue. Derbez then said a consensus could not be reached on the Singapore issues, and thus there was no consensus possible for the whole package of issues. He then made the decision to close the Conference, without having an agreement on any issue, and ended the Green Room meeting.

The lack of consensus on Singapore issues may have been the immediate cause, but the meeting's collapse had broader and deeper roots. For the first three days, the conference focused mainly on the controversial agriculture issue, with the main protagonists being the EU and US on one side, and a newly formed Group of 21 developing countries led by Brazil and India on the other side, and a grouping of 32 other developing countries emerging as an Alliance for Special Products and Special Safeguard Mechanism, which champions the establishment of mechanisms that enable governments to protect their small farmers' livelihoods.

The second revised Cancun Ministerial Text, issued at lunchtime on 13 September, had the effect of intensifying rather than reducing the polarization in the Conference. The developing countries were unhappy that the agriculture text did not answer their concerns. They were outraged with the sections on Singapore issues, as the views and formal proposals of 70 of them (to continue the clarification process and not launch negotiations) had been swept aside. And they were also outraged at the poor treatment of the cotton initiative (which had attracted widespread support) in the text, which one Minister proclaimed to be an insult to Africans and unworthy of the WTO.

The atmosphere was already on the boil when one by one the developing countries took the floor at the HOD meeting to criticize the Text, and at their own regional and national meetings, expressions of their dissatisfaction was even more pronounced.

#### 4. THE UNTRANSPARENT DECISION-MAKING AND DRAFTING PROCESS.

The issue of the manipulative decision-making process, particularly in the drafting of texts, has now come to the fore. The following is the view of a Minister from an Caribbean country: "Here we are with 70 or more developing countries speaking up clearly in the consultations, having a consensus document with language on the Singapore issues, clearly expressed, and the revised Text just ignores their position and takes the opposite position. What kind of organization is this? Who does it belong to? Who does the drafting? Who appointed them? Why waste our time engaging seriously in consultations only to find our views not there at all in the draft?"

In the end it was the WTO's untransparent and non-participatory decision-making process that caused the "unmanageable situation" that led to the collapse of the Cancun Ministerial.

In Singapore (1996), most Ministers had been shut out of the negotiations as only 30 countries were invited to the Green Room that operated throughout the meeting. The uninvited Ministers were angry when they were told at a last informal plenary that they

should agree to a Declaration they had no hand in drafting. They reluctantly agreed only after the Director General promised that exclusionary meetings would not happen again.

In Seattle (1999), the Green Rooms operated again from the start to the end of the meeting. Ministers of the ACP and Africa groups were so outraged at being shut out that they issued a statement they would not join the consensus on any Declaration. The talks collapsed.

At Doha (2001), many informal consultations were held, and the Ministers and officials were kept busy. But the drafting of the various versions of the Declaration were undertaken in an untransparent and exclusionary manner, starting with the General Council chair Stuart Harbinson submitting an unpopular draft “under his own responsibility” and ending with a last draft on the last extended day which everyone was urged to adopt as there was no alternative at the late hour.

The practice of Chairs writing and submitting texts “under their own responsibility” became widespread after Doha, even though many developing countries voiced their unhappiness with it, as the major countries found it convenient to get their positions adopted through this undemocratic practice. The drafts for agriculture and NAMA modalities, and later for the Cancun Text itself, were all drawn up by Chairs and not by the members. All it needed, to suit the interests of the majors, were: a Chair coming from the circles of the majors or compliant to their views; a Secretariat willing to condone or promote it; and a membership that was willing (or unable to successfully object) to be part of the process.

The drafting by Chairs shifted the WTO from a member-driven to a Chair-driven organization. Instead of negotiating with one another, members were negotiating with the Chair. But the drafts, because they usually reflected the views of the powerful minority, lacked the support of most of the developing country members (who were often outraged that the texts were one-sided in favour of the Quads and did not reflect their positions) nor public legitimacy.

In Cancun, this Chair-driven process continued and became the norm. The appointed (and thus unelected) Facilitators became all powerful as they not only conducted consultations but were responsible for drafting of reports and texts. The Conference Chair became responsible for the revised Ministerial Text.

No one among the participants is sure how the drafting is done, or who does it. It is known that the Secretariat plays a major role. And when the revised Text came out on Saturday at 1pm, it again revealed biases (some of them blatant) towards the developed countries.

By now, there were only 28 hours to the scheduled end of the Conference. It was evident from the HOD meeting and later at the Green Rooms that the developing countries were this time much better organized (through their own regional and national processes) and better prepared to face the processes and substantive debates.

An attempt to reproduce a Doha ending (i.e. ram through an unpopular text on ground that there is no alternative, and that a “collapse” of a Ministerial would lead to the breakdown of the trading system and the global economy) would have led to an open revolt by developing countries.

Thus, the Mexican Minister made a rational decision that the best option is to close the Conference with a simple statement instead of risking a real catastrophe.

With the Cancun Ministerial collapse, the issue of the WTO’s decision-making and text-drafting process has again emerged to the fore. That the Ministerials are run without rules and proper procedures can no longer be ignored if the system is to survive. Having a failure rate of two out of three of the most recent Ministerials is not a record any organization can be proud of.

Mr. Pascal Lamy, at a closing press conference, himself termed the WTO as having a “medieval organisation” and a “not so rules-based organisation” But it is one which he has himself used to great effect in Doha to great effect, to push through the unpopular decision on Singapore issues.

Mr. Lamy also called for reforms to the decision-making system of the WTO. This is interesting, because the EU and other major developed countries had been blocking efforts by many developing countries to undertake reforms to bring about internal transparency and the participation of developing countries. In February 2002, after the Doha experience, many developing countries had put forward a set of proposals (in February 2002) on establishing procedures for Ministerials and their preparatory process, and that the EU with other developed countries had blocked a decision based on these proposals. Just a few weeks before Cancun, developing countries again tried to raise the issue of the need to have proper procedures for Ministerials, including for drafting texts. Several international NGOs also launched a campaign for internal transparency and participation in the WTO.

But these attempts for more democracy in the WTO house were rejected swept aside by the major developed countries. Their argument had been that Ministers must be given the “flexibility” to run Ministerials the way they want without being hampered by procedures. The developing countries are apprehensive that the major developed countries would like to retain their grip over the drafting of texts and the operation of Green Room meetings, and also to be able to repeat the Doha experience of pushing developing countries into adopting last-minute Texts.

If this system continues, then each Ministerial would be a poker game, whose fate depends on last-minute brinkmanship, with powerful countries trying their luck and using various methods to push their way through, and developing countries organizing themselves to resist the pressures.

In Doha it worked for the majors. In Cancun it didn't. If things don't change, it will be another gamble in Hong Kong or wherever the next Ministerial is held (since the proposal to hold the next Ministerial in Hong Kong was never adopted in Cancun). Holding the trade system hostage to the poker-like game of brinkmanship is however full fraught with risks, as the record of two failures out of three meetings shows. The ultimate lesson of Cancun is that the organization must change its decision-making and text-drafting procedures to accommodate the participation of the developing countries.

## **5. SOME OF THE KEY ISSUES IN THE CONFERENCE AND THEIR IMPLICATIONS FOR DEVELOPING COUNTRIES**

The Conference in Cancun faced many key issues and problems. The developed countries, led by the US and EU, pushed hard to get their agenda accepted – opening up markets in the developing world for their goods, services and companies, whilst continuing to protect their own turf especially in agriculture. The developing countries have learnt that the developed countries are very reluctant to give them access to their markets; that excessive import liberalization is damaging their local farms and firms; and that they should not be dragged into further commitments to open up too rapidly. They have also tried to strengthen the special and differential treatment for developing countries and to resist expansion of WTO into new areas (the Singapore issues). The following are some of the key issues during the conference.

### **The Development Issues**

The Doha Declaration pledged to place the needs of developing countries at the heart of the Doha work programme. Post-Doha, there was supposed to be a strong development dimension to the WTO's work. This has not been delivered. There has been no substantial progress on implementation issues (the programme intended to rectify the imbalances in the existing Uruguay Round rules) nor on strengthening special and differential treatment (S&D) for developing countries. Most of their proposals have met with hostility from the rich countries. Implementation issues have been downgraded and neglected, whilst the 24 S&D proposed decisions in the Cancun draft lack commercial value and do not expand policy space. The TRIPS and health "solution" for countries with no or inadequate manufacturing capacity is riddled with so many conditions and restrictions as to render it practically useless: it is a concession made by developing countries (and not by developed countries) to settle the issue before Cancun.

Worse, in the negotiations on agriculture and industrial tariffs (or non-agriculture market access), the Doha Declaration assurances that developing countries' needs will be fully taken account of have been cynically thrown to the winds. The developed countries are proposing to drastically press down developing countries' tariffs in agriculture and particularly in industrial goods, without regard to the disastrous effects on local farms, firms and livelihoods. The present Cancun draft text is biased towards the US-EU proposals. In services, the rich countries have a long list of "requests" for developing

countries to give up their regulations and allow foreign firms to take over the local business. And worse will come if the developed nations succeed in pushing Singapore Issues as negotiating items for new WTO agreements.

In short, the deadlines on development issues have been missed and the assurances that development concerns will be “fully taken into account” have been discarded. At Cancun, the developing countries submitted a proposal to amend the text (the Draft Ministerial Text). However their proposal was not reflected in the revised Draft.

## **Agriculture**

This issue became the largest battle at Cancun. In mid-August the US and EU got together and proposed: (a) a deal in which they would not have to give up or even reduce their domestic subsidies and they can escape from the Doha goal of eliminating export subsidies and disciplining export credits; (b) a “blended” formula for cutting tariffs in which their high tariffs can escape the net whilst the developing countries would end up with deeper cuts in more products; (c) nothing substantial on S&D for developing countries.

This so frustrated the developing countries that 21 of them (including Brazil, India and China, South Africa)) combined to come up with their own proposal that would: (a) commit the developed countries to significantly reduce their domestic subsidies of all types, and eliminate their export subsidies, whilst applying the “blended formula”; (b) provide S&D for developing countries, with less tariff reduction commitments, and the introduction of “special products” (SPs) and a special safeguard mechanism (SSM) against import surges. However the G21 proposal has rather weak provisions for SPs and SSM. has rather weak. Some developing countries would like more meaningful S&D treatment and formed an Alliance for SPs and SSMs during Conference.

The draft Cancun text on agriculture (especially in Annex A) has practically adopted the US-EU framework, with some weak and inadequate provisions for developing countries, some of which (like the SSM) would come with conditions and have still to be negotiated. The same framework was retained in a revised draft of the Ministerial Text that was issued on 13 September.

## **Non-agriculture market access (NAMA)**

Developing countries could suffer immense damage to their industrial sectors if the Cancun draft is accepted. There is already much evidence of de-industrialisation (closure of local firms and loss of jobs) in many developing countries due to past liberalization. The Cancun draft would make the situation even more critical. This draft basically reflects the US-EC-Canada position, put forward in August in Geneva, which is aimed at a steep and quick cut in developing countries’ industrial tariffs. The pious rhetoric of the

Doha Declaration that the “negotiations shall take fully into account the special needs and interests of developing countries and LDCs including through less than full reciprocity in reduction commitments” has been set aside by the developed nations (and the Chairman) by putting in place proposals giving the opposite effects.

The elements which are of great concern in the Cancun draft (Annex B) include: (a) Commitment to a “non-linear formula” approach, in which the higher the tariffs, the higher the reductions (since most developing countries have higher bound tariffs, they would be hit much harder than developed countries where most tariffs are low; (b) Mandating developing countries to increase the coverage of their tariff bindings to at least 95%, and then reducing the tariffs; (c) Bringing presently unbound tariff lines or products under reduction discipline by multiplying the present applied rates by two and then subjecting them to reduction by the formula approach; (d) Committing all members to a “sectoral initiative” to zero tariff through a fast track time frame for seven sectors. These proposals were objected to by developing countries generally during the Geneva negotiations, but they were included nevertheless in the Cancun draft. If they are accepted, then the policy space for industrial development will be very much reduced, and the viability of many firms and industries in the South -- and millions of industrial jobs -- would be threatened.

At Cancun, developing countries continued to make their points. But the revised draft Ministerial Text did not take their concerns on board and was essentially similar to the earlier draft.

### **The Singapore Issues**

Since the 1996 Singapore Ministerial, there has been a fierce North-South tussle, with developed countries pushing for the WTO to take on new agreements on investment, competition, transparency in government procurement and trade facilitation, and most developing countries resisting. The issues have since been “discussed” with no commitment to “negotiate” new agreements. At Doha, the developed countries made headway (through manipulative tactics) with a Declaration that states that negotiations on the four issues will begin after the Fifth Ministerial (i.e. Cancun)—but this decision will have to be taken on the basis of an explicit consensus on modalities of negotiations.

Since Doha, the disagreements have continued (and indeed increased) in the discussions on each of the issues. This led most developing countries to take the position that there is no common understanding of the issues, and thus no basis for even discussing modalities (let alone having a consensus on them), that issues would have serious implications for their socio-economic development if they have to undertake new obligations, that there is no basis for starting negotiations and that Cancun should decide instead that the issues be further “clarified” instead. The developed countries (led by EU and Japan) argue the opposite: that an irreversible decision was made in Doha to start negotiations after Cancun, and this should be affirmed on the basis of “modalities” they have put forward.

These two options – to start negotiations, or to only continue discussions – are in the Cancun draft. But the “start negotiations” camp have an unfair advantage in that their version of modalities is included in Annexes, even though this is objected to by developing countries.

At Cancun, the countries opposing negotiations formed an alliance and presented their proposals to the Facilitator of the working group on Singapore issues. He however ignored their views. In the revised Cancun Ministerial Text, negotiations are launched immediately for procurement and trade facilitation whilst negotiations for investment will take place at the same time as the modalities of negotiations for agriculture and NAMA are finalized. Negotiations will not take place only in the case of competition.

Many developing countries objected to the text on Singapore issues. At a Green Room meeting, an “offer” was made by Pascal Lamy to drop two of the issues but launch negotiations on two others. The developing countries did not agreed to this. Thus the deadlock continued, until the Conference was closed.

### **Status of These Issues after Cancun**

Since the Ministerial broke down without a Declaration, the “action” will be relocated to Geneva, where work will continue on the modalities of negotiations on agriculture and NAMA. Presumably the deadline for ending the negotiatons in the Doha programme will remain as 1 Jan. 2005. It is unclear at this stage whether the resumed Geneva negotiations will make use of the revised draft of the Cancun Ministerial.

Regarding the Singapore Issues, it is even more unclear what their status is. The Doha mandate was for the clarification of these issues and for Ministers to decide whether to launch negotiations. Since no decision was taken, it is unclear whether the Working Groups on these issues will reconvene to carry on their discussions, or whether the discussions on these issues will only resume at the next Ministerial Conference.