

THE STATE OF NEGOTIATIONS AND SOME KEY ISSUES AT THE WORLD TRADE ORGANISATION AFTER THE CANCUN MINISTERIAL

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A. THE PROCESS IN THE WTO AFTER CANCUN

The events at the World Trade Organisation's Cancun Ministerial Conference in September 2003 provide an opportunity for rethinking the outcome of the Doha work programme and the future role of the WTO and the trading system.

At Cancun, the developing countries were better able to organise themselves and articulate their interests. There are higher expectations from them that the developed countries will honour the Doha Declaration principle that the interests of developing countries would be at the centre of the work programme.

From Cancun to December 2003

Following Cancun, many WTO members made use of the period to reflect on what happened in Cancun, and how the negotiations should next proceed.

Formal meetings of the subsidiary bodies and all negotiations under the Doha work programme were suspended after Cancun. Instead, the General Council chairman identified four issues (agriculture, cotton, non-agriculture market access or NAMA and the Singapore issues of investment, competition, transparency in government procurement and trade facilitation) and held consultations on these. Developing countries, especially the Africans, made clear they could go along with these four issues, provided other issues (especially the development issues of S and D and implementation) would also be taken up later.

A first round of consultations was completed in mid-November and a second round of consultations was also held with heads of delegation on 9 December 2003. At the 9 December meeting, the Chairman of the General Council indicated that there would be no next texts tabled at the General Council meeting of 15, 16 and 18 December as the differences of views have remained. He was to present a report of the consultations at the December meeting, and propose that the negotiating bodies reconvene their work in February. In essence there had been no negotiating progress since Cancun.

During the informal consultations, only some countries were invited to the "Green Room" meetings. There had been bilateral discussions between the Chair or a senior Secretariat official and some delegations, and there were also a few meetings where 20 to 30 delegations were invited (e.g. agriculture, Singapore issues). Many other countries were in the dark on what had been happening.

What was clear was that there was no convergence of views on any of the four issues during the informal consultations. Also, some developed countries, especially the EU, were not able to take part fully as they are still making up their minds on what position to take (e.g. the EU was in a state of "internal reflection").

The Derbez text (i.e. 13 September draft Cancun Ministerial text which was heavily criticised by many developing countries) was often referred to, as a basis or reference point. However there was no formal decision to use it as the basis for further negotiations. In the consultations, some members were critical of some parts of the text, and said that at best the Derbez text can be one of the reference points but not the only or the main text on which negotiations are to be based.

In a final statement at Cancun, the Ministers authorised that a special meeting of the WTO General Council would take place by 15 December 2003 to carry on the unfinished work of the Ministerial.

This special meeting took place on 15 and 16 December. The Chairman of the General Council announced that there has been no breakthrough in the consultations, that delegations had not been saying anything new, and positions among members were still wide apart. He repeated his proposal that work on modalities should continue in the new year on two Singapore issues, but did not mention what would happen to the other two.

The meeting only "took note" of the Chairman's report and statement, as well as other statements made by the delegations.

Many statements made by developing countries called on the stopping of further work on three Singapore issues. Many developing countries asked that the working groups on Singapore issues do not resume work, but that the political question of what to do on these issues be resolved at the General Council level. Many countries also criticised the Derbez text on agriculture and NAMA, saying that other texts should also be taken as starting points or reference points for future negotiations.

General Council meeting of 11 Feb 2004

After the end-of-year break, the WTO held its first formal General Council meeting for 2004 on February 11. The main function of this meeting was to appoint the new General Council chairman, the Japanese Ambassador to WTO, Shotaro Oshima.

A new slate of chairpersons for the Bodies established under the Trade Negotiations Committee was also appointed. They include Amb. Stefan Johannesson of Iceland for the Negotiating Group on Non-Agriculture Market Access; Amb. Alejandro Jara of Chile for the Special Session of the Council for Trade in Services; Amb. Manzoor Ahmad of Pakistan for the Special Session of the Council for TRIPS; Amb. Tim Groser of New Zealand for the Special Session of the Committee on Agriculture; Amb. Toufiq Ali of Bangladesh for the Special Session of the Committee on Trade and Environment; and Mr Faizel Ismail of South Africa for the Special Session of the Committee on Trade and Development. They will serve until the 6th Ministerial Meeting.

There was also a lengthy discussion on whether a decision on could be taken on having the 6th Ministerial Conference later this year. Countries in favour of this such as the US, Canada, Morocco, Singapore, Thailand and others felt that by fixing a date now for the next Ministerial meeting would exert a positive pressure on the negotiations to produce concrete outcomes for the Ministerial. Others including, Cuba, China and Jamaica pointed out that it would be premature to set a date for the next Ministerial given the fact that negotiations have not started and it would therefore be difficult to gauge whether there would be sufficient progress to justify a ministerial. The EC while agreeing that the Ministerial Conference should be based on progress made would like to have the meeting before December 2004. In any case, Hong Kong, China (which had been chosen earlier as the host of the 6th Ministerial) pointed out that it would require a decision by the members immediately, if they were to host the Ministerial. It would need at least ten months to prepare for the Ministerial Conference. (Goh 2004).

A major development was that the General Council meeting did not appoint Chairpersons for the working groups on three of the Singapore, i.e. investment, competition and transparency in government procurement. The implication is that these working groups will not be meeting, at least for the time being. However the Chairman of the General Council Amb. Carlos del Perez Castillo indicated the issues would still be kept alive by his successor and attempts would be made to start multilateral negotiations on at least two of the issues (transparency in government procurement and trade facilitation). (See section on Singapore Issues for further details).

Future developments

The negotiating groups are expected to start meeting again in the third week of March, beginning with the agriculture and NAMA issues.

Meanwhile, from late January, there was a flurry of activity outside Geneva, with “mini-Ministerials” being convened by Switzerland at Davos (end of January) and by Kenya in Mombasa (in mid-February). The US Trade Representative and EU trade commissioner have also been travelling extensively to meet their colleagues in many developing countries. The Group of 20 developing countries (on agriculture issues) have held their own Ministerial meetings, and also met with the EU to discuss agriculture.

These activities can be taken as efforts to get the negotiations to start again in earnest in Geneva. There is a wide belief that there is a “window of opportunity” for the talks to make a breakthrough by July or August, otherwise events such as the US presidential elections and the changeover of Commissioners in the European Commission will complicate matters and delay any further progress in the negotiations. The negotiations on agriculture and NAMA are expected to be in two stages: agreeing to a broad framework (which would not contain figures), and developing the full modalities (which would contain figures). There is an informal target that the first phase be completed by mid-year, and if that is done then the modalities may be completed before the end of the year. However, given the still wide divergence of positions among Members, it is unlikely that such a quick result can be achieved. Moreover, some developing countries have argued that it is better to negotiate modalities straightaway, as it is difficult or even misleading to negotiate a framework without having figures in it.

There is also still a lot of speculation whether a full Ministerial meeting will be convened later this year.

The following are some of the main aspects in the negotiations or discussions on some of the key issues. Some comments and analysis are also made von these issues, from a development perspective.

B. AGRICULTURE

After Cancun, two rounds of consultations were held on agriculture before the end of 2003. There was no convergence of views among the members and groupings and the General Council chair concluded that "there was no negotiating mood and no basis for a new text."

India produced data to show that the "blended approach" for market access would disadvantage developing countries as they would be subjected to much deeper tariff cuts than developed countries, due to their different tariff profiles. A preliminary estimate is that developed countries would be subjected to 25-30 percent average tariff reduction, whilst the developing countries would have average reduction of 30-70 per cent.

However the General Council chairman indicated that the Derbez text would be the main reference for future negotiations.

The Derbez text has many imbalances and problems. It would allow the developed countries to maintain or even increase domestic support and elude elimination of export subsidies and credits, whilst imposing even steeper tariff cuts on developing countries and providing less S and D aspects to them.

On **DOMESTIC SUPPORT**, developed countries will be able to retain their high subsidies and indeed to raise them. The Blue Box category continues to be maintained and the criteria for the Blue Box is relaxed, thus allowing an expansion of use. There is no cap on the Green Box, only a reference to reviewing its criteria. It is likely the developed countries can maintain or increase their overall domestic support by switching from one kind of subsidies to other kinds.

On **MARKET ACCESS**, the text has different commitments for developed and developing countries in important respects. The developed countries will adhere to a "blended formula", which had been originally proposed by the EC and US, with three categories: (i) a percentage of tariff lines subjected to average cut and a minimum per line; (ii) a percentage subjected to a Swiss formula; (iii) a percentage to be tariff free.

This blended approach enables the major countries to place their high-tariff items in a category [i.e. category (i)] for lower tariff cuts and thus elude removing tariff peaks which block developing country products.

The developed countries have very high tariff peaks for critical products (of export interest to developing countries), and many tariff lines with moderate tariff levels, and some that are low. The blended approach was devised by the EU and US to suit their tariff profile and their interests. The products with presently high tariffs can be placed in category (i) and subjected to small decreases. Other tariff lines at moderate or low levels can be placed in category (ii) whilst the existing lines at zero or very low levels can be placed in category (iii). Thus, the major developed countries can use the blended formula to escape serious cuts.

However, the text on market access treats developing countries very poorly.

Firstly, they are also subjected to the blended approach. This will result in much steeper cuts for developing countries generally as compared to developed countries, the developing countries have more tariff lines with higher bound tariffs.

The **blended formula for developing countries** comprises three categories of products with different rates of reductions: (i) a percentage of products to be subjected to an average tariff cut with a minimum rate for each line; designated Special Products (with conditions to be determined) will be subjected to a minimum percent linear cut. (ii) a percentage of products to be subjected to a Swiss formula reduction; (iii) a percentage of products to be subjected to 0 to 5 percent tariff.

Thus developing countries have to commit to very significant reductions. Only in one category will there be an average reduction target, and even

here there is a minimum cut for each tariff line. The SP category is also subjected to a minimum cut. On two other categories, the tariffs are subjected to steeper cuts---under a Swiss formula (with much steeper cuts) or to reductions to very low levels (0-5 percent). Under the Swiss formula, the higher the tariff, the steeper will be the cut; and since many developing countries have rather high agriculture bound tariffs, they will be subjected to steeper cuts. Under the third category, the commitment is even stricter as tariffs have to be brought down to 0-5 percent. Of course it is important to know what is the percentage of tariff lines are to be in each category. The developed countries are likely to press to maximize the portions of tariffs in the second and third categories, in which case a large majority of developing countries' tariffs will be subjected to very steep cuts.

Since developing countries have little or no capacity to provide subsidies, this serious erosion of their ability to use tariffs to protect farmers against imports will have severe adverse implications on rural livelihoods and poverty eradication objectives. In the Geneva draft (24 August 2003) the obligations were bad enough but there was a flexibility for developing countries whether or not to have the Swiss formula applied to them. This flexibility is now removed.

The major developed countries insisted that developing countries commit to opening their markets more, and the revised draft has bowed to their influence. This is most unfair because many developing countries are already suffering from increases of agricultural imports (artificially cheapened by subsidies) and the only tool they have (i.e. tariffs) to counter unfair competition from the rich nations is being removed very significantly through the Draft.

Data from the study by India show that the blended formula would result in developed countries having to reduce their tariffs by only 30% on average, whilst developing countries would have to reduce by 30-70 percent on average.

Secondly, there is inadequate treatment of Special products (SPs) and Special safeguard mechanisms (SSM) in the draft. More than 30 developing countries had formed an Alliance for SPs and SSM in Cancun to press their case for strong SP and SSM mechanisms, in which they can self-select certain products as SPs which would not be subjected to tariff cuts, and in which an SSM can be used in a simple and effective way to counter import surges (reflected in an increase in import volume, and/or a decrease in import prices). The developing countries argued that these two instruments are required to protect their farmers' livelihoods and food security. The draft mentions these two concepts in a very inadequate way. SPs are only mentioned in para 2.6 (i) where the following restrictions apply: (a) they can only be selected from one

category of products in the blended approach; (b) there will be conditions attached, which are to be determined. On SSM, there is only a mention that its establishment will be "subject to conditions and for products to be determined. This opens the road for so many conditions and so few products to qualify that in the end the mechanism will have limited use.

On **EXPORT COMPETITION**, the draft is similar to the Geneva text, and contains its weaknesses. The text basically adopts the US-EU proposal, in which both parties agree to tolerate each other's protection in equal measure (making use of the term "in parallel") in relation to export subsidies and export credits. Thus there is no date placed for elimination of subsidies, nor of credits. This violates the Doha mandate that export subsidies will be reduced with the aim of phasing them out. Now the draft states that "the question of the end date for phasing out all forms of export subsidies remains under negotiations."

IMPLICATIONS

The implications of the Derbez text on agriculture are that:

(a) The developed countries will be able to continue maintaining high domestic support. They can also continue export subsidies and concessional export credits, with no time bound commitment for elimination. The blended formula also allows them to have low reductions in tariffs, and the tariff peaks (including in products of interest to developing countries) will continue with slight reductions.

(b) This enables the major developed countries not only to protect their domestic markets but to continue to "dump" artificially cheapened subsidized products on the global markets. Developing countries will thus continue to suffer: (1) reduced exports in their markets and in third markets; (2) the threat of cheap products entering their own markets.

(c) Given this, developing countries should have been allowed to not to undertake commitments (or significant commitments) to further reduce their only instrument (i.e. tariffs). However the blended formula is also applied to the developing countries, and because of their having a different tariff profile, this will most likely result in their having to endure even steeper tariff cuts than the developed countries or that they had to undertake during the Uruguay Round.

(d) If the Derbez text is taken as the framework, there is thus a real danger that developing countries can be expected to suffer higher incidence

of import surges, with adverse consequences for rural livelihoods and incomes and for food security.

COMMENTS

1. There should be higher ambition in eliminating the Amber and Blue Box domestic support measures of the developed countries and to review the Green Box measures, with the view of reclassifying some of them as Amber Box subsidies (to be subjected to reduction and elimination), and capping and reducing the rest.
2. On market access, the developed countries should commit to meaningfully reducing tariff peaks and escalation of products of interest to developing countries. The blended formula should not serve as an escape scheme from this commitment. There should be a high average reduction for developed countries,
3. The developing countries should not be asked to commit to make more tariff reductions of a significant kind. This is especially in view of the great likelihood that protection will remain high in the developed countries, especially in view of domestic concerns in the major countries.
4. The blended formula as proposed in the Derbez text is unsuitable for developing countries and should not be accepted. Moreover the Special Products category should be given more prominence and importance in the aspect of market access.

Thus for developing countries there could be a two-tier system:

Category 1 where no reduction commitments apply. This can comprise special products (products related to rural livelihoods, food security and significant contribution to economy, etc) and other products which are vulnerable to further tariff reductions (for example because the tariffs are already very low).

Category 2 with average overall reduction target of a certain percentage. This percentage should be lower than that for developed countries and not higher than the Uruguay Round. The calculation of the average percent shall be based on tariff lines in Category 2.

5. The concept of Special Products should be applied not only in market access but also to domestic support and export competition. Special

products should also have additional flexibility in relation to the reduction commitments in these two areas.

6. Para 2.8 on Special Safeguard Mechanism for developing countries should be strengthened to ensure that all products that are affected by import surge or price decline etc are covered, that the injury test is not required, and that the mechanism is easy to use. The conditions for use must not be cumbersome as to render the mechanism of little utility. A simple set of trigger points should be established which are easy to calculate and to use.

C. NON AGRICULTURE MARKET ACCESS (NAMA)

During the post-Cancun consultations on NAMA up to December 2003, the Chair of the General Council proceeded on the basis of the Derbez text. He has also indicated this text would be the basis for further negotiations.

However there are many problems in the Derbez text for developing countries, many of which have expressed their strong reservations or objections.

These are the most serious or contentious issues as contained in the Derbez text's Annex B on NAMA:

* **Para 3** retains the directive that the negotiating group continue work on a **non-linear formula applied on a line-by-line basis**. This formula dictates that there be steeper and steeper percentage tariff cuts, the higher are the tariffs. Many developing countries have and require higher tariffs to protect their small industries. The non linear formula will drastically reduce their tariffs and threaten their domestic industries.

* Para 4 tirt 2 dictates that unbound tariff lines shall also be subjected to the non-linear approach, after they are bound at (twice) the applied rate. This would have very serious implications for many countries. It would mean that after the exercise, (a) the presently unbound tariff lines will be bound, and (b) in many cases the new tariff rates would be below (and in some cases significantly below) the present applied rate. The flexibility for raising applied rates would be eroded.

* Para 6 on the "sectoral tariff component" (i.e. accelerated tariff reduction eventually to zero) retains its controversial line that "participation by all participants will be important", implying it will be mandatory. This is against the demand by most developing countries that

such a scheme should only be voluntary. If adopted, the draft would commit developing countries to eliminate tariffs on seven sectors or more, many of which contain local industries whose survival would be seriously threatened. (Annex B does not state which sectors are involved, and thus the door is open to cover even more than the 7 sectors mentioned in the proposal of the Chairman of the NAMA Group in Geneva).

COMMENT

Domestic industries in many developing countries are already facing problems including closure and loss of jobs due to tariff reductions. There is an additional problem of loss of government revenue.

The Derbez text contains elements as stated above that will worsen the situation as it would oblige developing countries to bind almost all their presently unbound tariffs, and subject the tariffs to steep cuts through the non-linear and sectoral approaches. For many countries, an implementation of the Derbez text will mean further de-industrialisation with little or no hope of ever developing an industrial base for development.

The Derbez text should therefore not be the basis for future negotiations.

It is especially important that developing countries not be subjected to the "non-linear" and sectoral approaches.

(1) Developing countries should be given the flexibility to determine their own rate of tariff reduction. This could be similar to the Uruguay Round approach, in which developing countries were given a target of average overall reduction of 27%, with the flexibility to choose the rates of each tariff line. Moreover, products and industries that are sensitive or important need not have any tariff reduction.

(2) Developing countries also had the option in the Uruguay Round of choosing the scope of binding. This flexibility should also be retained, as was the case in all previous Rounds.

(3) The sectoral approach should not be applied to developing countries.

(4) LDCs should be exempted from further tariff reduction obligations.

(5) There are however many developing countries that are not LDCs but with characteristics similar to LDCs in relation to the poor state of their domestic industries. Thus flexibility should be given to developing countries, not only LDCs.

D. THE SINGAPORE ISSUES

At Cancun, about 90 developing countries (including ACP, Africa and LDC countries and many Asian countries) made clear they were not prepared to begin negotiations on any of the Singapore issues, and they would at best be prepared to further clarify the issues. It was clear there was no consensus to begin negotiations on any of the issues.

On the final day, at the "Green Room" meeting, the EC said it was prepared to drop two issues (investment, competition) and possibly a third (i.e. transparency in government procurement) from the WTO agenda altogether. The implication of "dropping from the WTO agenda" meant that the issues would no longer be discussed, even at the working group level. At a press conference at the end of the Cancun meeting, European Commissioner Pascal Lamy reiterated his position and implied that it would stand even after Cancun.

However, the EC has indicated it would like to keep its options open. It says it is willing to drop some of the issues "from the single undertaking". But what this means is unclear. It implies that on some of the issues, the EC would still try for starting multilateral negotiations and to be part of the single undertaking. On other issues, which are "removed from the single undertaking", it could still want discussions to carry on at the working groups, which could lead to multilateral rules at a future date (not necessarily to be established when negotiations end on other topics such as agriculture), or to plurilateral negotiations and rules negotiations. Among the possibilities it has raised is to retain some of the issues (investment, competition) as discussion issues with the option of plurilateral agreements, whilst having other issues go into the negotiating mode. This seems at present to be the EC's preferred option. These present options are not the same as the Lamy offer to drop three issues from the WTO altogether. They represent an attempt to salvage the situation for the EU, retreat from Mr. Lamy's Cancun offer and to keep the all the issues still alive, so that there remains a possibility that all these issues can still be the subjects of WTO agreements in the future.

At the post-Cancun consultations, the General Council chair made a proposal of "2 plus 2" i.e. having two issues (investment and competition) continue in a discussion mode, including clarifying whether the plurilateral approach is feasible, whilst having the two other issues enter into negotiations. This seems quite in line with the EC position.

During the October-December 2003 consultations, many developing countries voiced opposition the "2 plus 2" proposal of the Chair. Many of them proposed that three of the Singapore issues be dropped altogether, as had been offered in Cancun by the EC. They also opposed the plurilateral approach, as the WTO is a multilateral organization. They also fear that although such an approach may appear to give members the right not to join, in the end the developing countries would feel obliged to join. Moreover, this would open the way for more issues to enter the WTO in future through the plurilateral route.

Most of the developing countries do not want negotiations to start on any of the issues. Many of them also think it would be futile to resume discussions at the working groups in a "business as usual" way, when the EC had already indicated in Cancun that it was willing to drop two or three of the issues. It would be best for them if the Singapore issues were removed from the Doha work programme, and that the WTO focus on trade issues.

At the General Council meeting of 15 December 2003, 45 developing countries (including Bangladesh (on behalf of the LDC Group), Botswana, China, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Uganda, Venezuela, Zambia and Zimbabwe) issued an important joint communication on Singapore Issues: The Way Forward (WTO 2003).

The paper states: "The co-sponsors of this paper, therefore, are of the view that all further work on Trade and Investment, Trade and Competition Policy and Transparency in Government Procurement should be dropped." This indicates the view that the issues be dropped completely from the WTO, implying that there be no further discussions, even at the level of working groups. On the fourth issue (trade facilitation), they asked that only further discussions and clarifications be continued (i.e. there be no start of negotiations). They also made it clear that they are "against the efforts for the adoption of a plurilateral approach in respect of any multilateral issues because such an approach is systemically unsuitable for a consensus-based multilateral organisation like the WTO. A plurilateral approach could lead to a two-tier system of membership, which would be contrary to the basic character of the WTO." (WTO 2003).

At a press conference on 15 December 2003, the alliance of three major developing-country groupings (African Union, LDCs and ACP), comprising about 90 countries, the Botswana Ambassador, Charles Ntwaagae (coordinator of the ACP Group in WTO), stated: "Our alliance has long proclaimed that the Singapore Issues are not priority issues for us. Ideally our position is that all these issues should be dropped completely from the WTO agenda. We form a majority of the membership. If it happens, it will demonstrate a very important principle regarding respect for the will of the majority, given that the WTO is a member-driven organisation." He also rejected a plurilateral approach or an opt-in opt-out approach which he said would undermine the multilateral trading system and create a two tier system. (Goh 2003).

At the WTO's first General Council meeting of the year on 11 February 2004, the Members did not appoint Chairpersons for the working groups on three of the Singapore, i.e. investment, competition and transparency in government procurement. The implication is that these working groups will not be meeting, at least for the time being. According to trade officials, after making the announcement of the Chairs for the regular bodies former Chairman of the General Council Amb. Carlos del Perez Castillo said: "You see that I have not made any suggestions for the Chairpersons of the Working Groups on the Singapore Issues. This is for practical reasons so as not to complicate agreement on the entire of Chairpersons. Since all delegates have no convergence on the substantive areas of these issues." However, he also said that "by not making the appointment of the chairpersons at this time is without prejudice to these working groups or to the member countries' positions on this question." (Goh 2004).

He then reminded the meeting of what he had said on the Singapore Issues during the last General Council in Dec 2003. According to Castillo, work that has started on the Singapore Issues will continue. "We will continue to explore the possibilities of an agreement of a multilateral approach to the issues of Trade Facilitation and Transparency in Government Procurement and that this work will take place in the General Council with the assistance of the Director-General and Deputy Director General." On the issues of investment and competition, he said: "These consultations could also offer at the appropriate point an opportunity to take up the question of what treatment they might receive in the future." He also made clear that these consultations would not prejudice the positions of members nor the outcomes.

The implication is that although the working groups would not be meeting (at least for the present), the Singapore issues would still be discussed at the level of the General Council, and would be the subject of informal consultations under the direction of the General Council chairperson. Although there is an appearance that the issues are downgraded, they are likely to revive (and perhaps with considerable force) at a future date, and especially as the next Ministerial Conference approaches.

COMMENT

Most developing countries have not been in favour of having the four Singapore issues enter the WTO, and especially not as the subjects of legally binding rules, as they fear these rules would restrict their development policy space and also incur costs. At Cancun, they were able to make their concerns noticed.

Before and at Cancun, the developing countries took the position that there was no consensus on modalities and thus no basis to commence negotiations on any of the Singapore issues, and that thus the process of clarification of issues should continue.

However, on the last day in Cancun, EC showed that it was ready to drop two or even three of the issues altogether from the WTO agenda. It also indicated at the end of the Cancun meeting that it would retain this position.

This demonstrated that the Singapore issues are not really of such great importance in themselves for the EU, which were the main demandeurs. After Cancun, they have also said that they are not the demandeurs. If they are not the demandeurs anymore, then the argument can be made that they can agree to drop these issues.

In the new situation at and after Cancun, many developing countries have taken the position that at least three of the Singapore issues should be dropped from the WTO agenda altogether. There need not be any further discussion at the working group level as well. This is a sound position, as new agreements on these issues in the form envisaged by the proponent countries could have serious adverse effects on the development prospects of developing countries.

In particular, an investment agreement in WTO could have restricted the policy space to governments to regulate the entry and conditions of operations of foreign investors, which would also have been given “national treatment.” Performance requirements such as equity requirements and technology transfer could have been prohibited. There would be freedom for foreign investors for the transfer of funds. The definition of foreign investor was in dispute during the working group discussions, with the US insisting that it include portfolio investors and investments. If this had been accepted, there would have been serious implications for financial stability as governments would then find it difficult or impossible to control the inflow and outflow of funds.

Dropping the issues would also avoid further tensions as to whether there can be an explicit consensus on modalities, and whether negotiations on the issues can be launched, and if so when, etc. The WTO would then not be further burdened with issues that have divided the membership for so many years, and it would be more free to carry on its real work of trade negotiations.

E. SPECIAL AND DIFFERENTIAL TREATMENT (SDT) AND IMPLEMENTATION ISSUES

SDT and Implementation are currently known as the “development issues” in the WTO. Developing countries negotiated hard and successfully to give these two issues high priority status as negotiating issues (and as part of the single undertaking) in Doha Declaration and the Doha work programme.

The negotiations on SDT involve strengthening existing SDT provisions in the WTO rules. They are also to include the establishment of new SDT provisions where required, and to develop a whole framework for SDT, but these two aspects have yet to start. On

“implementation issues”, the developing countries had put forward more than a hundred proposals for clarifying or improving the WTO rules on various topics, in order to iron out problems of implementing the WTO agreements.

However, after Doha, the developing countries were very disappointed that these issues were not taken seriously by the developed countries. On SDT, a decision was taken on several issues, but they were mostly issues of less importance, whereas on issues of major importance, there was no agreement. On implementation, the issues were widely dispersed among several subsidiary bodies of the WTO and it has become difficult for Members to follow the progress of the negotiations, or the lack of it.

The marginalisation of these two issues continued after Cancun when they were not included in the issues selected by the Chairman of the General Council for informal consultations.

Several developing countries are preparing the case that these issues be placed again at the centre of the Doha work programme, with an appropriate place for coordinated negotiations on the various aspects, and a regular time schedule.

F. DECISION-MAKING PROCESS

The failure of the Cancun meeting to get a decision was significantly due to the WTO's flawed processes of decision-making at three levels: generally, in preparations for Ministerial Conferences and at the Ministerial Conferences themselves. The WTO has not yet made the journey from being an exclusive club of GATT where decisions are made by a few and mostly in informal ways, to a multilateral and democratic system of 130 over members, most of which are developing countries.

Unlike most other multilateral organizations (eg the UN excepting the Security Council), which are more open and participatory, most important decisions at the WTO are made in informal mode, and involving a few members, with the rest expected to agree. Minutes are not kept of the informal meetings, and drafts of texts are increasingly written by the Chairperson, assisted by the Secretariat. Drafts do not reflect the diversity of views, but usually contain "clean texts", and members are expected to negotiate with the Chair instead of among themselves. In these circumstances, it is no wonder that when drafts appear at the last hour, it is anyone's guess whether they will be accepted or rejected by some members. At Cancun, the "clean draft" produced on 13 September lunchtime was heavily criticized by many members at an informal meeting on 13 September night, and there was no possibility that the divisions could be bridged by the next day (the final day of the conference).

In the post-Cancun Geneva process, once again the Chair of the General Council was holding his own consultations with various members, and sometimes with groupings of 30 delegations. Many delegations have been in the dark and do not know what is happening and have complained that they and their views are not represented at the Green Room meetings. Many also request that they can talk face to face with other delegations instead of each Member negotiating with the Chair. The failure after Cancun to get real negotiations going again, and the failure to be closer to a successful outcome, are signs that the untransparent and non-inclusive process of Green Room meetings do not work.

Several NGOs before Cancun issued a joint Memo on The Need to Improve Internal Transparency and Participation in the WTO (TWN et al 2003). They correctly predicted that Cancun and other Ministerials stand a high chance of ending in failure, if current practices continue. The WTO has a record of two failures in the last three Ministerial Conferences. There is also discontent with the day-to-day functioning. Thus a reform of the decision-making process, to make it more participatory, is urgently required. It is important that any reform process makes the system more transparent and participatory, instead of its ending up less transparent and participatory.

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Annex

WORLD TRADE ORGANIZATION

WT/GC/W/522
12 December 2003

(03-6602)

General Council
15, 16 and 18 December 2003

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SINGAPORE ISSUES: THE WAY FORWARD

Joint Communication from Bangladesh (on behalf of the LDC Group), Botswana, China, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Uganda, Venezuela, Zambia and Zimbabwe

The following joint communication, dated 12 December 2003, is being circulated at the request of the Delegations of Bangladesh (on behalf of the LDC Group), Botswana, China, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Uganda, Venezuela, Zambia and Zimbabwe.

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1. In the Doha Ministerial Declaration (paragraphs 20, 23, 26 and 27), relating to the Singapore issues, Ministers stated that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at **that** Session on the modalities of negotiations. It is thus clear that a decision on modalities, by explicit consensus, is required before negotiations can commence. Certain elements were identified for clarification, besides which Members were free to raise other issues of relevance. A work programme on each of these issues was adopted, which was to be completed in the period until the Fifth Session.
 2. However, during this period, various elements relating to each of the four issues remained unclear. More importantly, there was significant divergence of views among

Members on each of the Singapore issues. A group of countries, in response to the Chairman's Draft Ministerial Text (Job(03)/150/Rev.1), indicated, in their Ministerial Conference document (WT/MIN(03)/W/4 dated 4 September 2003), the various elements that need to be clarified in respect of each of these issues.

3. At the Cancún Ministerial Conference, discussions on the Singapore issues were held under a Facilitator. A large number of developing country Members expressed concern, *inter alia*, about the impact that multilateral rules on the four Singapore issues would have on their domestic policies and the fact that they have neither the negotiating resources nor the capacity to implement obligations, which such multilateral rules will entail. A revised text was produced by the Chairman of the Cancún Ministerial Conference (Job (03)/150/Rev.2 dated 13 September 2003). The revised text on Singapore issues, however, did not address the concerns of the majority of Members, who expressed their strong opposition to it. As a consequence, no decision was taken at the Cancún Ministerial Conference by explicit consensus on the modalities of negotiations on any of the four Singapore issues. The Ministers, in their Statement (WT/MIN(03)/20) adopted on 14 September 2003, instructed officials to continue work on outstanding issues and asked the Chairman of the General Council, working in close co-operation with the Director General, to co-ordinate this work. The Ministers also stated, *"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 of texts, we undertake to maintain this convergence while working for an acceptable overall outcome."*

4. Subsequent to the Cancún Ministerial Conference, the Chairman of the General Council has held informal discussions with Delegations on these issues. However, the fact remains that on all these issues, there continues to be significant divergence of views among Members, and in the absence of explicit consensus, there is no basis for the commencement of negotiations.

5. Article III:2 of the Marrakesh Agreement Establishing the WTO makes it clear that "the WTO shall provide the forum for negotiation among its Members concerning their multilateral trade relations.....". The core competence of the WTO lies in trade in goods and services. The co-sponsors of this paper believe that binding disciplines on Singapore issues would certainly not only curtail the policy space for developing countries but would also entail high costs, which many developing countries cannot afford at their present level of development. Moreover, due to continued division over such a long period among Members on the status and substance of the Singapore issues and in the interest of early completion of this round of negotiations, we should concentrate our efforts first and foremost on issues of core competence of the WTO namely, agriculture, non-agricultural market access, services and development issues.

6. It is also important to note that in the Green Room process at Cancún, one major proponent of the Singapore issues was willing to drop further work on two issues, namely, Trade and Investment and Trade and Competition Policy. During further discussions in the Green Room meeting, it became clear that there was no consensus on

the need for any multilateral disciplines on Transparency in Government Procurement and hence, there was a suggestion that further work on this issue may also be dropped. The co-sponsors of this paper, therefore, are of the view that all further work on Trade and Investment, Trade and Competition Policy and Transparency in Government Procurement should be dropped.

7. With regard to Trade Facilitation, work on clarification of various aspects of this issue may continue in the light of the interest expressed by several Delegations. However, this work should be carried out in parallel with the other segments of the Doha Work Programme and there should be no attempt to seek an early harvest on Trade Facilitation in advance of progress on core issues in Doha Work Programme. This work must also address the points raised by a group of developing and least developed countries, which are contained in Ministerial Conference document (WT/MIN(03)/W/4 dated 4 September 2003) such as cost of compliance, justification of any binding rules subject to the DSU, commitment for provision of technical and financial assistance to meet the cost of compliance and implementation of any possible multilateral framework. Furthermore, after completion of the clarification process, a decision would need to be taken on the modalities, by explicit consensus, before negotiations can commence.

8. The co-sponsors would also like to make it clear that they are against the efforts for the adoption of a plurilateral approach in respect of any multilateral issues because such an approach is systemically unsuitable for a consensus-based multilateral organisation like the WTO. A plurilateral approach could lead to a two-tier system of membership, which would be contrary to the basic character of the WTO.
