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Rough Trade:

A Critique of the Draft Cancun WTO Ministerial Declaration

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Introduction

To begin by stating the obvious: heading into Cancun, the Doha round negotiations are not going smoothly. The Round's proponents and corporate backers can scarcely be pleased. At the ostensible mid-way point in the talks, nearly every major deadline set in the Doha Declaration has been missed. Even agreement on the so-called "modalities," or negotiating procedures, continues to elude negotiators in key sectors. An item left over from the Doha Ministerial, a flawed accord that limits exports of generic drugs to poor countries without the capacity to manufacture their own, is the only concrete result of nearly two years of almost continuous, intensive negotiations since the last ministerial.

Negotiators have established little common ground in the formal negotiations in Geneva (or even through the series of more exclusive and malleable "mini-ministerials" held in the run-up to Cancun). As a result, simply coming up with a new timetable to meet the missed deadlines will be a major item for ministers in Cancun. It appears at this point that the new deadlines will not be put off for long—probably until the spring of next year. There have reportedly already been informal discussions among the major trading powers about holding another ministerial meeting in Geneva early next year to make the key decisions on negotiating modalities for agriculture, industrial market access and other crucial matters that it is now clear can not be delivered by Cancun.[1]

Nevertheless, to pressurize the situation, the WTO continues to stick stubbornly to the now absurd deadline of January 1, 2005 for wrapping up the entire round (or single undertaking). Nor, despite the obstacles and delays, have the negotiations been scaled back in terms of scope or substance. To the contrary, Cancun may well see controversial new issues added to an already huge and unwieldy agenda. Rather than confronting deep divisions and controversy openly, or accepting limits, the key powers at the WTO continue to resort to subterfuge and brinksmanship to impose text and expand the reach of the WTO.

These tactics will, no doubt, continue to be employed as long as they still get results. They worked at Doha, and may succeed again at Cancun.[2] In both these ministerials, the object has been to compel agreement on the negotiating agenda. So far, even those governments and delegations that are unhappy with the process have grudgingly played along. But as the purpose shifts to imposing legally binding text, the stakes become far higher and manipulative practices become even more objectionable, illegitimate and dangerous.

Therefore, the most important underlying, but officially unspoken, issue of the Cancun ministerial is the legitimacy of the WTO decision-making process and, by extension, the body of law which it gives forth. The intensive efforts of the big trading powers, aided

by WTO insiders, to avoid a repeat of the Seattle debacle have led to increasingly blatant manipulation of decision-making and the exclusion of dissenting views.

The Cancun draft ministerial text is itself an example. It was never agreed to by negotiators as a basis for discussion or decision in Cancun. Rather, as was also the case prior to Doha, the draft declaration has been transmitted by the chair of the General Council's on his "own responsibility." While it contains bracketed sections with various items for decision, the entire text should, in fact, be bracketed.[3] As the 3-page covering letter from the General Council chair and the Director-General admits, there was no agreement in Geneva on most of the structure, content or options in the draft ministerial declaration.[4] Yet, remarkably, the draft text has still been sent to Cancun unchanged.

As will be discussed further in the overview of key issues, the text is biased. In most important respects, it reflects, in descending order, the priorities and interests of the governments and big corporations of the three largest economic powers: the United States, the European Union and Japan. The draft ministerial text also faithfully reflects the WTO's deeply ingrained institutional bias towards what is euphemistically termed "ambition" — ever-broadening and deepening the WTO system by colonizing new regions, economic sectors and fields of government regulation. This inherent bias is checked only where it runs up against the unyielding interests of the big powers, foremost among them the United States.

This paper addresses five of the most important issues that will be in contention at the WTO Cancun ministerial and beyond: agriculture, services, market access for non-agricultural goods, TRIPS and essential medicines, and the Singapore issues.

Overview of key issues

Agriculture

Agriculture has emerged as the lynchpin of the Doha round. To date, despite much discussion, negotiations are basically stalemated. Other aspects of the Doha negotiations have, in turn, slowed as many countries resist movement in other sectors until there are sure signs of a breakthrough in agriculture. As a result, the agricultural talks are now setting the pace for the rest of the Doha round negotiations.

The Doha declaration called for agreement on modalities for further commitments (**NEGOTIATING MODALITIES**) to be reached by March 31, 2003 and for "comprehensive draft schedules based on these modalities to be submitted no later than the fifth ministerial conference." Neither deadline has been met. Efforts to agree on negotiating modalities by the Cancun ministerial have now been abandoned. Instead, negotiators are now aiming at a so-called "framework" for the modalities to be endorsed by ministers at Cancun. A new deadline for full modalities will be set at Cancun, probably for sometime in the spring of 2004.

The chairman's draft declaration addresses the substantive agricultural issues in an annex (Annex A) which hews closely to a deal reached bilaterally between the European and American negotiators. On August 14, the US and the EC issued a joint text on a "framework for agricultural modalities." This text, first mooted at the Montreal mini-ministerial meeting in July, swiftly became the focus of the agricultural negotiations and is the basis for Annex A of the draft ministerial declaration which deals with agriculture. The chair of the Agricultural negotiations, Stuart Harbinson, quickly dropped his earlier draft of negotiating modalities and began promoting the EU-US text as the basis for agreement at Cancun.[5]

Brazil, India and China countered with a competing proposal, that followed the format of the US-EU proposal but differed greatly in substance. The cooperation of the three most important newly industrializing countries may mark an important shift in WTO negotiating dynamics.[6] But, despite garnering the formal support of many developing countries, most of this proposal did not find its way into the draft ministerial text. It is worth recalling that the **URUGUAY ROUND AGREEMENT ON AGRICULTURE** itself was mainly a product of bilateral understandings reached between the United States and the EC, so the playing field itself is already tilted towards US and EU agrifood interests.[7]

The chairman's Annex A is "a framework paper without numbers." It does not include specific figures for the reduction of subsidies or formulas for lowering tariffs. These crucial numbers are left blank and still to be negotiated. The framework does provides direction on each of the so-called "three pillars" of the agricultural negotiations: domestic support, market access and export competition.

On **DOMESTIC SUPPORT** the framework calls for an unspecified reduction in overall support (**AMS**) and a reduced **DE MINIMUS,** the level below which subsidies are deemed not to distort trade. It preserves the contentious **BLUE BOX** (subsidies, primarily employed by the EU and the US, which are labeled less trade-distorting because they are linked to curbs on production). The draft limits blue box subsidies to 5% of the total value of agricultural production and thereafter subjects them to unspecified annual reductions. In a nod to the Brazil-India-China draft, **GREEN BOX** subsidies, subsidies such as disaster relief or environmental protection which are not considered trade-distorting, "remain under negotiation."

On **MARKET ACCESS** the text requires across-the-board, but as yet unspecified, tariff cuts and under a "blended formula." For certain developed country "sensitive products" (for example, Canada's supply-managed commodities) market access is to be increased though a combination of tariff cuts and **TARIFF-RATE QUOTAS.** The text provides for the possibility that developing countries will be subject to different percentages of tariff cuts, but no numbers are included. The text also provides for the possibility that developing countries can negotiate designated "special products" that would be subject to less stringent market access increases. The "use and duration" of the "**SPECIAL AGRICULTURAL SAFEGUARD**" which provides protection against import surges also remains "under negotiation."

On the all-important issue of **EXPORT COMPETITION**, the draft calls for the elimination of **EXPORT SUBSIDIES** on "certain products of particular interest to developing countries" and reduction, "with a view to phasing out," subsidies for other products. On **EXPORT CREDITS**, which are more widely employed by the US, the text is even more open-ended calling for the elimination of the "trade-distorting element" of export credits on certain products of particular interest to developing countries and a reduction effort, with a view to phasing out, on other products. The text follows the EU-US draft in allowing for the continuation of export subsidies. Most of the key aspects (such as the duration and amount of the reductions, as well as the list of products of interest) are unspecified and left for further negotiations. The EU objects to the text's reference to "the end date for phasing out all forms of export subsidies remains under negotiations." The EU insists that there is no mandate for designating an end year for phasing out export subsidies.[8]

The text is tilted in format and substance to shared EU-US understandings and interests. Indeed, knowledgeable analysts argue that the language on export competition is framed in such a way that the EU and the US can readily comply without major reductions, while the market access language would deprive many other countries of the border pro-

tection they need to insulate their farm sectors from dumped products.[9]

In assessing the potential impacts of the agriculture negotiations and this complicated text, it is worth keeping in mind that even if developed countries eliminated all direct subsidies—an unlikely prospect—small-scale producers would find it very difficult to compete head-on with mainly northern industrial agri-food corporations, except, perhaps, in a few niche markets. If the cultural, social and environmental benefits and promise of small-scale food production are to be maintained and enhanced, border protection will continue to be essential. For the foreseeable future, tariffs and other limits (such as special safeguard measures) on imported foods remain the surest way of protecting the small-scale producers in the developing and the developed world from agricultural dumping and unfair import competition.

It is vital that that in the cut and thrust of agricultural negotiations, that these basic power imbalances not be lost sight of. There are compelling reasons, ecological above all, that agriculture should be treated as a special sector insulated from market-opening trade rules and that "non-trade" and development concerns be given far higher priority.

Services

It is fair to say that, although they are of central importance, services will not be one of the more contentious issues *among governments* in Cancun.[10] As is the case with agriculture, the WTO treaty on services—the **General Agreement on Trade in Services (GATS)**—contains a commitment for members to engage in repeated rounds of negotiations to expand the reach of the treaty. Negotiations on the current round began in early 2000 and were, like agriculture, incorporated into the Doha round negotiations. However, in contrast to agriculture—where there are deep divisions among the Quad countries—the Quad is united in its push for broader and deeper GATS commitments. To date, developing countries have taken a fairly passive role in the services negotiations, although there are some signs that this may now be changing.[11]

The Doha declaration set specific deadlines for the services negotiations, namely that

> *"Participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003."*

By the end of August this year, just over 60 member governments had tabled formal requests of *other* countries to make certain specific commitments in *their* services sector. But only about 30 governments, mostly developed countries, have made initial offers for the increased application of certain GATS rules to aspects of *their own* domestic service sectors. Key developing countries that have yet to table offers include Brazil, China, most of South East Asia, and India. This so-called **request-offer process** is scheduled to proceed continuously until the conclusion of the Doha Round.

The request-offer negotiations occur mainly in Geneva and proceed on a bilateral, country-to-country basis. These meetings and the requests themselves are secret, although a number of requests have been leaked. The most notable leak was of the draft of the EU's intial requests, which revealed that the European Commission (EC) is making sweeping demands of other countries. For example, in the case of Canada the EC demanded the elimination of the following measures that Canada has exempted in its current GATS schedule,

- Investment Canada reviews,
- non-discriminatory 10% ownership limits on Schedule I banks,
- local benefit agreements attached to major energy projects,
- restrictions on exports of unprocessed fish,

- public auto insurance monopolies, and
- restrictions on non-resident land ownership.

The leaked text of the EC GATS requests also demands commitments in sectors or subsectors that Canada has not yet fully covered under the GATS. Examples include:

- certain postal and courier services
- a range of cultural services
- energy (including transportation of petroleum and natural gas and investment in wholesale trade services of electricity)
- environmental services (including water distribution through mains)
- alcohol and tobacco distribution, and
- distribution of agricultural products.

There were no specific EC GATS requests regarding education or health services.

Although most requests remain secret, their cumulative effect, if acceded to, would be to eliminate *all* **LIMITATIONS** (that is, country-specific exceptions) in country schedules and to commit *every* sector fully to GATS restrictions.

Beginning in March 2003, a small number of countries tabled their initial formal offers in the GATS negotiations. Some governments, including Canada, made these offers public. Canada's initial offer is primarily a commitment to bind liberalization that Canada has undertaken since January 1, 1995. The offer states that Canada will not make further commitments in health, *public* education, social services and culture.

Like Canada's offer, the other country offers that are in the public domain show that most governments have, so far (with certain exceptions in some sectors) mainly offered to lock in, or bind, existing levels of liberalization. That is, they have offered to lock in those changes that they have made to their domestic services regimes since the GATS came into effect on January 1, 1995.

It is important to stress that these *initial offers* are simply the starting point for ongoing request-offer negotiations. As the EC requests reveal, there will be strong pressure on Canada and other countries to increase their offers. The pressure for further Canadian commitments will likely be most intense in telecommunications, energy, financial services, professional services, private education, and water distribution. A final deal will be struck only in the last days, or hours, of the Doha Round negotiations.

The services paragraph of the draft Cancun declaration is designed to intensify and accelerate the GATS request-offer process. It calls upon "those participants that have not yet submitted their initial offers to do so as soon as possible." It would also require those countries that have already tabled offers to submit "improved offers" by a deadline to be agreed at Cancun, most likely before the spring of 2004.

Troublingly, the draft text also calls on members to compete the negotiations on rule-making under GATS Article VI.4, [**DOMESTIC REGULATION**] X [**EMERGENCY SAFEGUARDS**], XIII [**GOVERNMENT PROCUREMENT**], and XV [**SUBSIDIES**] in accordance with their respective mandates and deadlines." These rule-making talks include the controversial proposals under Article VI.4 to establish new restrictions on non-discriminatory domestic regulation. The subject matter of these proposed restrictions (e.g. "licensing procedures" and "technical standards") is very broad, cutting across a wide swath of vital public interest regulatory measures. The proposed restrictions are being designed to include some form of "*necessity test*" - that is, domestic regulations affecting services must be demonstrated to be not more restrictive than *necessary;* and that any measures adopted must be *necessary* to achieve a specified legitimate objective. If ever agreed to, these proposed restrictions would be an extraordinary and dangerous intrusion into democratic public policy-making.

As noted previously, the impasse in agriculture has begun to slow the pace in other areas of negotiation, including services. Bra-

zil, for example, has made this linkage clearly, stating that it sees no point in tabling a services offer until there are clearer prospects of gains in agriculture. The converse, however, is that if and when there is a breakthrough in agriculture, there will be overpowering pressure for all governments to ante up substantially in the services negotiations. As a prominent US business coalition stated in a recent letter to President Bush, if agriculture issues can be resolved in Cancun, "on services, the stage is set for an accelerated effort to negotiate major reductions in barriers."[12] As at the very end of the Uruguay Round, major new services restrictions could be enforced and controversial new rules imposed without careful consideration or broader public debate. For those concerned about the GATS' negative impacts on public services, industrial policy and public interest regulation, this is a very troubling scenario.

Non-agricultural goods market access (NAMA)

Paragraph 16 of the Doha Declaration agreed to negotiations "to reduce or as appropriate eliminate tariffs" on all non-agricultural products. These negotiations encompass the full range of products, from natural resources such as fish, minerals and forest products to industrial goods such as chemicals, steel, autos and information technology, among many others.

The Doha Declaration called for negotiating modalities on non-agricultural market access (NAMA) to be agreed, without specifying a date. As in the case of agriculture, negotiators have given up on the prospect of agreeing to modalities by Cancun. Instead, the chair of the NAMA working group has submitted a "framework" or "general guidelines" for reducing tariffs and non-tariff barriers.

Most of the contention, to date, has focused on specific means, or formulas, by which tariffs will be reduced.[13] Tariffs of developed countries are significantly lower, on average, than those of developing and least-developed countries. Tariffs provide significant protection for certain industries in developing countries and are a far more important source of government revenue in the south than the north.

In recent decades, as their tariffs have fallen, developed countries have tended to rely more on **TRADE REMEDY MEASURES**, such as anti-dumping or countervailing duties, to provide protection to domestic industries seeking relief from competing imports. For this reason, some developing countries have linked the results of the NAMA negotiations to results in the rules negotiations, which deal with anti-dumping rules.[14] Brazil, for example, asserts that as soon as one of its industries becomes competitive in developed country markets, its exports face anti-dumping duties.[15]

Again, in contrast to agriculture, the EU and the US are of one mind in seeking deep cuts in tariffs on non-agricultural goods. In mid-August the EU, US and Canada tabled a joint proposal on modalities for NAMA, many of the elements of which form the basis of the draft Cancun ministerial text on NAMA (Annex B). While the US and the EU did not get everything they wanted, the chair's framework NAMA text (Annex B) is clearly biased towards developed country positions and in particular the joint EU-US proposal.

Formulas for tariff reduction are highly technical. Their actual impact depends on various parameters and coefficients which determine the resulting cuts in tariff rates. Without specifying numbers or coefficients, the draft NAMA text calls for tariff reductions through a **"NON-LINEAR" FORMULA**. Such a formula, while its actual impact depends on terms yet to be set, is explicitly designed to cut higher tariff rates (characteristic of developing countries) more deeply than lower ones (characteristic of developed countries.)[16]

The NAMA draft also contains a "sectoral tariff component." This would include

sectoral tariff reduction schemes such as "zero-for zero" accords which have been repeatedly proposed to eliminate tariffs in sectors such as fisheries or forest products. Despite pressure from the US and the EU, the current draft does not make participation in this sectoral tariff component mandatory.

The Doha mandate for NAMA also states that "the negotiations shall take fully into account the special needs and interests of developing and least-developed countries, including though less than full reciprocity in reduction commitments." There are sharp differences in view between the Quad and developing countries on how to implement "special and differential" treatment. Developing countries have insisted on greater leeway in maintaining tariffs through different rules and formulas recognizing their special status. Developed countries, particularly the US, have strongly attacked proposals for a "two-tier trading" system. The EU and the US want deep tariff cuts applying to all members, particularly high-income developing countries, with longer phase-in periods for the poorest countries. The US, in particular, is determined to press for an overall, single set of rules applying to all countries. It seeks to deflect concerns about "special and differential" treatment though transitional measures such as "negotiating credits for autonomous liberalization," "technical assistance" and "capacity-building" intended to assure that developing countries implement commitments.

At this point, the text contains no specific deadline for agreement on full NAMA modalities. It is very likely that any new deadline for NAMA modalities will be the same as that for agricultural modalities.

Significantly, the NAMA negotiations are also explicitly mandated to reduce or eliminate "**NON-TARIFF BARRIERS** (NTBs)" in all non-agricultural sectors. While negotiators' attention has so far focused mainly on tariff reduction, addressing NTBs could pose challenges to an open-ended variety of natural resource conservation, environmental protection, consumer protection, labour standards, and a range of other non-tariff measures that affect trade in goods. Annex B "recognize(s) that NTBs are an integral part of these negotiations and request(s) participants to intensify their work on NTBs." In particular, it "encourage(s) all participants to make notifications on NTBs by 31 October 2003 and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs." This is a potential sleeper issue that needs to be carefully watched.

TRIPS and essential medicines

At the Doha WTO Ministerial in November 2001, governments adopted a Declaration on the TRIPS Agreement and Public Health. The Declaration reaffirmed the existing rights of WTO member governments to take advantage of exceptions to the Trade-related Aspects of Intellectual Property (TRIPS) Agreement to ensure greater access to essential medicines.

This statement was hammered out at the insistence of developing countries and human rights organizations attempting to cope with the HIV-AIDS pandemic and other pressing health problems. Currently, over 42 million people worldwide have HIV and 95% of them live in the developing world. The World Health Organization estimates that approximately 2 billion people lack regular access to essential medicines, including anti-retroviral treatment for HIV-AIDS.

An issue left unresolved at Doha was that some countries in need of more affordable generic drugs cannot make effective use of **COMPULSORY LICENSING** because they lack domestic manufacturing capacity in the pharmaceutical sector.[17] They must therefore import medicines by finding an exporter willing to supply generic drugs.[18] However, TRIPS Article 31(f) imposes a restriction on the use of compulsory licensing in potential supplier countries that do have pharmaceutical manufacturing capacity, because it stipu-

lates that any compulsory license issued must be "predominantly" for the purpose of supplying the domestic market of the country in which such authorization to use a patented product, without the consent of the patent-holder, is granted. This limits the ability to use compulsory licensing in one country to produce generic medicines for export to countries in need. Paragraph 6 of the Declaration directed the TRIPS council to find an "expeditious solution" to this problem by the end of 2002.

Negotiations at the TRIPS Council throughout 2002 ended in deadlock in December, 2002. After intense year-long negotiations, all countries except the US were willing to accept a compromise draft text (**THE "MOTTA TEXT"**) setting out a so-called "solution."

Many NGOS and public health experts active on this issue still consider the Motta text to be seriously flawed. The so-called "solution" puts new obstacles to effective implementation in the path of both exporting and importing countries — rendering it of dubious worth in practical terms. It is entirely possible that very few affordable generic drugs will reach those in need as a result of this agreement. Simpler and better legal solutions, such as permitting exports as "a limited exception to a patent right" favoured by the WHO, NGOS such as MSF and some developing countries were rejected outright by developed countries (including Canada) working closely with the brand-name drug multinationals.

The Motta text provides for a "waiver" from WTO rules until a permanent amendment can be enacted.[19] But the Motta text still puts a number of obstacles in the path of both importing and exporting countries. For example, compulsory licenses must be issued by both the exporting and importing countries, and the exporting country must remunerate the patent-holders. Both exporting and importing countries must also notify these licenses to the WTO, although they do not require WTO approval. These procedures render importing countries dependent on decisions and negotiations between exporting governments and brand-name drug manufacturers that will be made outside their borders and political processes. The Motta text stipulates that drugs must be specially labeled to discourage diversion to third markets and there is a "best endeavours" commitment to use special packaging, potentially adding to the cost of such exports.

In fact, the deal sets up new hurdles to the effective use of compulsory licensing in developing countries lacking manufacturing capacity, obstacles that countries with such capacity do not face. Médicins sans Frontièrs (MSF), argues that the text treats these, generally poorer, countries as "second-class" members of the WTO.

Public health advocates and some experts also assert that these restrictions find no support in either the TRIPS Agreement or the Doha Declaration.

Nevertheless, the US, representing the interests of the brand-name pharmaceutical companies, remained dissatisfied with the Motta text, and insisted on a number of further conditions, including limiting it only to certain diseases.[20] As noted, negotiations therefore broke down with no agreement at the end of 2002.[21]

Since then, the US and the big pharmaceutical companies have pushed to weaken further an already flawed text. At their insistence, the December 2002 Motta text will now be accompanied by a chairman's statement. After exclusive negotiations between the US (representing pharmaceutical companies), Brazil and India (representing generic manufacturers) and Kenya and South Africa (representing countries with health crises), the new statement was finally acceded to by the WTO General Council on August 31, 2003.

The US and drug company push to restrict the scope of the exemption from Article 31 (f) to address only certain diseases was rebuffed. But the chairman's statement creates addi-

tional obstacles to the flow of more affordable drugs to countries in need.

It stipulates that the new system "be used in good faith to protect public health, not as "an instrument to pursue industrial or commercial policy objectives." It contains admonitions against diversion of drugs to other markets and toughens the language stipulating that exports be specially packaged, coloured or shaped to discourage such diversion. It elaborates the notification procedures and provides for review of the implementation of the system. Finally, it states that the OECD countries will opt out of the system as importers, as will Eastern European countries when they accede to the European Union.

These hurdles will increase the costs of implementing the system, limit its use to certain countries, and provide new opportunities for the US to apply pressure on governments not to use the new system. Civil society groups, including MSF, Oxfam, and the Third World Network, immediately denounced the Chair's statement. Referring to the Motta text, Ellen 't Hoen of MSF commented that "the proposed deal poses so many hurdles and hoops to jump through that we are really worried it may not work at all."[22]

Even after the United States obstructed and weakened this overdue pledge, the new system is already cynically being show-cased as a major achievement of the Cancun ministerial. African countries have signalled that they will try to use the system to get supplies of urgently needed drugs. Brazil and India have also signalled their intention to take the steps needed to authorize exports. One can only hope that, despite the new obstacles, they can succeed. But the main lesson to be drawn from the difficult paragraph 6 negotiations is that the US and its drug companies are grimly determined, contrary to the spirit if not the letter of the Doha Declaration on the TRIPS Agreement and Public Health, to protect their profits by frustrating the flow of more affordable generic dugs to those in desperate need.

Singapore issues

In one of its most contested passages, The Doha Ministerial Declaration referred to possible negotiations on **INVESTMENT, COMPETITION POLICY, TRANSPARENCY IN GOVERNMENT PROCUREMENT**, and **TRADE FACILITATION**. These four issues are known as **THE SINGAPORE ISSUES**, because they were first added to the WTO agenda for discussion at the Singapore Ministerial meeting in 1996.

At Doha it was agreed, after much armtwisting, 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 modalities of negotiations." In other words, negotiations on these matters should proceed only if all WTO members give their approval at the upcoming Cancun ministerial.

While most developed countries, including Canada, support negotiations on all four Singapore issues, many developing countries, including India and China, remain strongly opposed, especially on the matter of investment. Whether to proceed with negotiations in these four areas has shaped up as one of the major, and most controversial, decisions at the upcoming Cancun ministerial.

The chairman's draft declaration sets out two options for decision by ministers: either to continue discussions at the working group level or to commence negotiations according to specific modalities set out in annexes to the draft declaration. For each of the four Singapore issues, Ministers are asked to decide either to "commence negotiations" according to the modalities described in the annexes or "that further clarification of the issues be undertaken in the working group."

Although the draft declaration plainly presents diverging options, the Singapore issues section of the text (like other parts of the draft declaration), is still strongly tilted in favour of the developed country proponents' position. For example, the draft declaration

sets out proposed negotiating modalities for each of the four Singapore issues in annexes. As India and a group of developing countries have pointed out, this betrays a bias towards commencing negotiations by not providing any elaboration on the second option, the issues to be clarified. These countries demanded, in an August 27 letter to the General Council chair,[23] that the draft ministerial declaration be changed to spell out issues that need to be clarified before negotiations proceed. That proposal contained detailed draft annexes specifying issues that need to be clarified at the working group level before negotiations could commence. These were not, however, included in the draft declaration.

Even more problematically, as the letter points out, "the Annexes D, E, F, and G to the Draft Ministerial text, that reflect the view of proponents on modalities, gives (sic) a distorted view, that the Annexes have been discussed by members."[24] The Castillo-Supachai cover letter transmitting the draft declaration admits this very serious shortcoming, noting that "Ministers should therefore be aware that the draft modalities contained in Annexes D-G *were not the product of negotiations*, although they do *reflect the views of a range of proponents* that varies according to the issue (emphasis added)." This remarkable admission strongly indicts WTO negotiating and decision-making processes. Whatever the outcome of the Singapore issues at Cancun, this revealing episode is a very bad portent for the development of future texts.[25]

On the eve of the Cancun ministerial, it is abundantly clear that there is no "explicit consensus" to commence negotiations on the investment issue nor, in all probability, on the competition issue. It remains to be seen if consensus can be forced on these or the remaining Singapore issues, where many developing countries also have expressed reservations.

Heading into Cancun, the Europeans and Japan are badly isolated on the Singapore issues. The EC, in particular, is opposing the "unbundling" of the Singapore issues, and continuing to insist that negotiations commence in all four areas. India and other developing countries appear equally determined to withhold the necessary consensus to start negotiations, particularly on the investment issue. This standoff will undoubtedly provide considerable drama at the Cancun meeting.[26]

But one can only marvel at how adept US positioning on the Singapore issues has been. The United States and its corporate community have been indifferent towards investment and competition policy talks at the WTO from the beginning, fearing a "low-standards" investment agreement and preferring to go it alone on competition policy. While the Europeans bear the brunt of developing country anger for pushing these issues, the US may be able to insert its own preferred items of trade facilitation and government procurement on to the negotiating agenda — and even to determine negotiating modalities — while attention is diverted to the more controversial issues.

Endnotes

1 "Key WTO members informally discuss new ministerial after Cancun, ***Inside US Trade***, August 29, 2003.

2 For an excellent account of pressure tactics employed at Doha, see Aileen Kwa, ***Power Politics at the WTO: developing country perspectives on decision-making processes in trade negotiations***, Focus on the Global South, 2002.

3 Bracketed text indicates areas of disagreement.

4 "In circulating this text on 24 August we made clear that it did not purport to be agreed in any part at that stage, that it had not been possible to include many of the proposals submitted by delegations, and that it was without prejudice to an y delegation's position on any issue. These observations continue to apply.

5 Draft Declaration for Cancun to be determined by WTO Super Powers," Institute for Agriculture and Trade Policy, Geneva Update August 22, 2003, Geneva.

6 Ibid. Institute for Agriculture and Trade Policy, Geneva Update August 22, 2003, Geneva.

[7] The so-called Blair house Agreement of November 1992, as subsequently modified. "… not surprisingly, some smaller countries, including developing countries, found it a source of irritation at the end of the [Uruguay] round that the final Agreement should be closely modeled on a bilateral deal between the USA and the EU." Michael Trebilcock and Robert Howse, The Regulation of International Trade, (Routledge, 1995, p. 209.)

[8] "Agriculture text invites universal criticism, Inside US Trade, August 27, 2003.

[9] Stuart Clark, Canadian food Grains Bank, oral presentation to CCIC briefing on September 5, 2003.

[10] This is also the view of a highly placed corporate lobbyist and spokesperson on services, "At the World Trade Organisation meeting in Cancun next week, liberalisation of international trade in services will not be top of the agenda, or a particularly controversial issue. At the same time, the outcome of the Cancun talks will be crucial to the prospects for opening up trade in services - the largest sector of the economy in virtually every country around the world. Sir Leon Brittan, Chairman, High Level Group on Liberalisation of Trade in Services, UBS Investment Bank, letter to the Financial Times of London, September 3, 2003.

[11] A group of developing countries led by India have begun to press developed countries to make greater commitments in mode 4, the movement of natural persons. Countries such as India envision the temporary movement of persons as a commercial opportunity, while certain other developing countries are probably pushing on this issue for tactical reasons, believing that it is a sensitive area for developed countries.

[12] Letter from US Trade to George W. Bush, September 3, 2003.

[13] Tariffs are taxes on imported goods. They can be levied on an ad valorem basis (that is, as a percentage of the value of the good) or on a specific basis, that is as a fixed amount per unit imported (e.g. $5 per hundred kilograms). Specific tariff rates on Canadian products and those of a number of other countries can be searched on-line at the Industry Canada web site http://strategis.ic.gc.ca/epic/internet/inibi-iai.nsf/vwGeneratedInterE/bi18487e.html. .

[14] "Chairman Lowers Ambitions for Industrial Market Access, " Inside US Trade, August 22, 2003.

[15] Ibid.

[16] There are many different and complex formulas that can be applied to reduce tariffs. All are of two basic types, tariff-independent formulae which reduce rates by the same percentage regardless of the initial tariff rate and tariff-dependent formulae which take into account the initial tariff rates and are designed, by various means, to cut higher tariff rates more deeply than lower ones. See WTO, Note by the Secretariat, Formula approaches to tariff negoations, 11 April, 2003. TN/MA/S/3/Rev.2

[17] A compulsory license is a government authorization, for public purposes such as the protection of health, to use a patented product, without the consent of the patent-holder. Royalties must be paid to the patent holder.

[18] I have benefited in this section from several excellent presentations by Richard Elliott of the HIV-AIDS Legal Network in Toronto. Any errors or misinterpretations are mine alone.

[19] The amendment is to be "based, where appropriate" on the conditions in the Motta text, leaving the door open to future wrangling.

[20] Canada had consistently supported US efforts to restrict any 'solution', including arguing that it should be limited to only certain diseases.

[21] Following this, the US announced a unilateral moratorium on its initiating dispute settlement proceedings against countries using compulsory licensing to address public health needs, but the terms of its moratorium were narrow and largely dismissed by NGO activists as a public relations move.

[22] Quoted in ICTSD Bridges Weekly, Vol. 7,Number 29, 28 August, 2003.

[23] Letter from K. M. Chandrasekhar to Carlos Perez del Castillo, August 27, 2003, re: paragraphs 13, 14, 15, and 16, dealing with Singapore issues, of the draft Cancun ministerial text contained in document Job(03)/150/Rev.1

[24] Ibid.

[25] The proposed Singapore issue negotiating modalities also stick to the overall deadline for completion of January 1, 2005. For example, the draft investment and transparency in government procurement texts would be due by June 30, 2004. This deadline is already virtually impossible to meet for the primary elements of the Doha round, to insert other highly complex and contentious issues within this framework is highly problematic. It is further evidence of continuing disregard for the circumstances of smaller delegations and of hubris on the part of the proponents of an ever-expanding WTO system.

[26] Even if some Singapore issues that are deferred at Cancun, negotiations could be undertaken at a future date. The draft states that "The situation does not provide a basis for the commencement of negotiations in this area." This wording could make the decision whether to commence negotiations on any remaining Singapore issues a standing item on the WTO ministerial agenda.

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