

Comments on the Draft Cancun Ministerial Text of 24 August 2003

by Martin Khor

The Draft Cancun Ministerial Text of 24 August 2003 is a very imbalanced one, laden with provisions which are detrimental to the developing countries' interests, Martin Khor points out in the following analysis of the key clauses in the document.

1. Introduction

The revised draft Cancun Ministerial Text was issued by the Chairman of the WTO General Council "on his own responsibility" on the night of 24 August. It was discussed by the WTO delegations on 25-27 August during the General Council meetings. It is being transmitted unrevised (despite complaints from many WTO members) and will now most likely become the main basis for the negotiations in Cancun. The Third World Network (TWN) has serious concerns about the process surrounding the draft text as well as its substance. It would be a disaster if much of its contents are adopted.

2. A Very Rushed and Unsatisfactory Process

The process surrounding the draft text was very rushed and unfair, especially since decisions based on it will affect the lives of so many hundreds of millions of people. Very little time has been given to delegations and the public to review and act on it. It is the first document with substance for the negotiations in Cancun, as the first draft (July) was only "skeletal" in nature. Yet this revised draft appeared only on 24 August night, just some two weeks before Cancun. There has been hardly any time for delegations to read it, send it to their capitals, get feedback and give their

views. It was first discussed by the WTO membership on 25 August afternoon in an informal General Council meeting, and then at a formal General Council meeting on 26-27 August.

No agreement was reached on the contents of the draft during the meetings. Indeed, many developing-country delegations expressed concerns, dissatisfaction and disagreement with the draft text and its process. The North-South divide in the General Council was especially evident on agriculture, non-agricultural market access (NAMA) and the Singapore issues.

In light of these differences, the formal General Council meeting should have been extended in order to allow members to have their say and to make proposals on what text to transmit to Cancun and how. But under the flawed process, the draft is being sent on to Cancun under the pretext that it is on the personal responsibility of the Chairman of the General Council.

The practice of the Chairman sending a text to a Ministerial Conference on his own responsibility started in Geneva before the Doha Ministerial Conference in 2001. It was done despite the protests of many delegations, which had insisted (to no avail) that only a draft approved by members could form the basis of negotiations. The unaccepted text became the basis for the negotiations at Doha. Many developing countries demanded after Doha that this practice be

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stopped. But it seems that the notorious Doha experience will be repeated for Cancun on the ground that there is no time for a redrafting.

During the General Council meetings on 26-27 August, several developing countries called either for the draft text to be revised, or for their own positions to be presented as alternative options in separate annexes and/or in a cover letter containing an adequate description of the divergent views and of some of their documents.

Many governments as well as NGOs had called for the following principles to be adhered to with respect to the draft text: Different and divergent views of members must be fully reflected in the text that will form the basis for negotiations. Delegations should submit their views or positions and these should be reflected in the revised text in square brackets. At the very least, the views of different delegations should be placed in a compilation document in an annex to the Cancun draft. In the case where a cover letter is to be sent, it should detail the different views and a draft of this letter should be distributed and approved by members in Geneva before Cancun.

None of these principles was adhered to. The General Council Chairman, Carlos Perez del Castillo, has said that he will not alter his draft text. He has instead prepared a cover letter, co-signed by the WTO Director-General, Dr Supachai Panitchpakdi, to be sent to Ministers to accompany the draft text, but members have not been consulted on the content of the cover letter.

Given the above, it will be all the more important to ensure fair play at Cancun and that the views of members which do not agree to certain parts of the draft text will be fully reflected and considered. Otherwise, it will be yet another proof that there is no level playing field in the WTO.

3. Major Problems with the Content

Overall, the draft text is very imbalanced, with many aspects of it damaging to the developing countries' interests. On the "developmental aspects" of the Doha agenda, i.e., TRIPS and health, implementation issues, special and differential (S&D) treatment, there is little or no gain for developing countries nor for the least developed countries (LDCs).

On the core issues of "market access", the developed countries are not giving up their protectionist privileges in agriculture. But the developing countries are asked to take on new onerous obligations to open up their markets in agricultural and industrial products, with also an exhortation to participate in services liberalization. The parts on agriculture and non-agricultural market access in particular are extremely damaging for development prospects.

On the Singapore issues (viz., investment, competition, government procurement and trade facilitation), there is the saving grace in this text that two options are placed in square brackets for each of the issues. The first option for each issue is to start negotiations, and an annex is attached providing the terms of reference for conducting them. Unfortunately, these annexes are based on the extreme positions taken from or drafted by the main proponents of negotiations, i.e., the EC and Japan. The second option states that the situation does not provide a basis for commencing negotiations, and further clarification of the issues should be undertaken. However, the second option does not come with its own annexes. Thus there is an imbalance in the draft text's structure on the Singapore issues. The following examines some of the key issues in the draft text.

4. TRIPS and Public Health

The draft refers, in paragraph 3, to a decision on implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. The General Council on 30 August adopted the "Motta text" of 16 December 2002 as the solution to this paragraph 6 problem (i.e., providing access to medicines for countries with insufficient or no manufacturing capacity). This now comes with a Chairman's statement of understanding. The Motta text itself is a compromise document, as it puts certain restrictions on the use of the "solution", i.e., a waiver of Article 31(f) of the TRIPS Agreement that a compulsory licensee should produce predominantly for the domestic market (which thus limits what it can export).

The Chairman's statement accompanying the Motta text places yet another layer of restrictions:

- (a) The solution is to be used to protect public health and not as "an instrument to pursue industrial or commercial policy objectives". (This introduces ambiguity as to whether or to what extent economically viable enterprises or projects are allowed, and could discourage would-be enterprises.)
- (b) Members "understand" that the requirement for special packaging and/or special colouring or shaping (to prevent diversion) will not have a significant impact on the price of pharmaceuticals and shall also be applicable to active ingredients.
- (c) Members wishing to use the system have to notify and provide information to the TRIPS Council on how they establish their lack or absence of manufacturing capacity.
- (d) Members may bring "any matter related to the interpretation or implementation of the decision, including issues related to diversion, to the TRIPS Council for expeditious review, with a view to taking appropriate action". Members may also "utilize the good offices of the [WTO] Director-General or the Chair of the TRIPS Council" to find a mutually acceptable solution when there are "concerns that the terms of the Decision have not been fully complied with". (The

apprehension that use of the system may evoke a review and action by others may be a factor discouraging use of the solution.)

By placing this extra layer of “understandings” onto the decision, it may be that developing countries will find it more cumbersome, administratively and practically, to use the solution. Moreover, the restrictions, conditions and uncertainties may discourage potential generic producers and potential importers from finding it to be an economically worthwhile or even viable project. There are already too few cases of compulsory licensing by developing countries, and it thus remains to be seen whether this para 6 system will actually facilitate the production, export and importation of more affordable medicines. The Motta text should thus be seen as a compromise which developing countries accepted, even though it had restrictions, and the 30 August statement of the Chair should be seen as another concession they have made, in order to contribute to an agreement to be reached before Cancun. It should thus not be seen as a concession by the developed countries for which something in exchange should be expected from the developing countries.

5. Agriculture

Para 4 of the draft Ministerial text deals with agriculture. However, the real “meat” is in the framework in Annex A of the draft, which is very complex technically. This annex commits members to taking certain decisions on parameters for dealing with domestic support, export subsidies and market access in the agricultural sector. Although the figures of commitment are not included, this framework is a structure to which countries will later have to commit their agriculture policies.

It is not possible for many delegations to comprehend fully its meaning and implications in so short a time. It is unfair that so little time is given to consider this annex. It would be even more difficult in Cancun, where there are only a few days for the Ministers to be able to grapple with the technical complexities when for three years the experts have not managed to agree in Geneva. It is unlikely that an agreement can be found before Cancun, and it would be unfair to subject the Ministers, who may not be familiar with the technical methodologies and details, to making momentous decisions in this crucial area in a pressure-cooker situation.

If Annex A cannot be agreed to in Geneva before Cancun, then a simple decision should be taken in Cancun that Ministers take note of the ongoing negotiations and direct that the negotiations continue in Geneva.

The present draft is very imbalanced in that it enables the developed countries to continue their high

protection whilst creating a framework that pressures developing countries to reduce their tariffs and thus allow cheap imports to flood their markets further. The Annex A framework is similar to the US-EC joint approach announced in mid-August. Thus, the draft basically asks Ministers in Cancun to endorse the US-EC approach. This approach was drawn up by the two giants in their own interest - to devise a scheme to continue their export subsidies and credits, to be allowed to maintain or increase their very high domestic support, to still keep very high tariffs on selected products, whilst forcing developing countries to open their markets wider so their agri-companies can sell more. The US-EC paper did not even have S&D elements. The draft text does have, but these are so weak and watered down that they give no assurance at all to Third World farmers that they can survive a new onslaught of cheap imports.

The following are further comments on Annex A:

(a) On domestic support (para 1 of Annex A): It is highly regrettable that distortions are permitted to continue, since there are no commitments for developed countries to reduce the overall support.

One of the WTO Agriculture Agreement's main weaknesses is that it divides domestic subsidies into two categories: those which are “trade-distorting” (the Amber Box) and have to be reduced; and those that are supposed to be less or non-trade-distorting (the Blue and Green Boxes) and do not need to be reduced. Since the Uruguay Round, the OECD countries have actually increased their overall support through the “trick” of shifting subsidies from one box to another, i.e., increasing the Green Box subsidies whilst reducing the Amber Box subsidies.

Developing countries have called for the Blue Box subsidies to be eliminated and the Green Box subsidies to be redefined and subjected to reduction commitments as well. But Annex A has ignored this. In fact, the Blue Box subsidies are extended. There is no discipline of any kind to be placed on Green Box subsidies. The road is thus opened for continuation or even increases in overall domestic support in developed countries. In any case, developed countries have already planned to shift their subsidies from the actionable Amber Box to Blue Box and especially to the Green Box subsidies. Annex A simply creates the framework to allow the fraud of the “magic trick” of shifting boxes to continue. With massive subsidies continuing, US and EC agri-companies will be even better able to sell agriculture goods artificially cheaply (at prices below production cost) throughout the world, especially if the developing countries are unable to protect their farmers through tariffs and other means.

(b) On market access (para 2): In this crucial area, the Annex A text enables developed countries to avoid committing meaningful tariff reductions on products

in which they have high tariffs, thus enabling high protection to be maintained. On the other hand, many developing countries are in danger of being subjected to tariff reductions that are likely to be steep in several products, under either of two schemes. This is a most unfair proposal.

In principle, since there is no genuine commitment by developed countries to eliminate or significantly reduce their domestic support and export subsidies (and moreover, in market access, the developed countries would not have to commit to meaningful cuts in their high-tariff items), the developing countries should not be pressurized to reduce their tariffs further. There are already numerous cases of import surges experienced by many developing countries arising from inflow of cheap imports. They require tariff protection all the more to defend against artificially cheap and highly subsidized imports. The draft, however, further erodes this ability of developing countries to defend themselves through tariffs.

In para 2.1, developed countries are asked to commit to a “blended formula” of three kinds of tariff cuts. This is basically the US-EC proposal. Part of the tariff lines (called import-sensitive) will be cut by an average rate (presumably a lower rate), with a minimum cut per tariff line, and also tariff rate quotas (TRQs); another part of tariff lines are subject to a Swiss formula cut; and still another part will be duty-free. This open-ended blended approach for reducing the tariffs of developed countries will allow these countries to avoid granting meaningful market access, given their existing tariff profiles. On the whole, the EC and US have rather low agriculture tariffs, but a minority of their tariffs are very high. Through this blended approach, they can place this minority of high tariffs in the first “import-sensitive” category that will be subjected to minor reductions.

Para 2.2 states that for tariff lines exceeding a maximum of a certain (not specified) percentage, developed countries will reduce them to that maximum, or ensure additional market access in these or other areas, including through TRQs. The first part of this provision seems to indicate a mechanism to cap the high tariffs, but the second part seems to provide an escape clause from the commitment to a maximum tariff by “transferring” the concession to another area.

Para 2.4 states the special safeguard (SSG) for developed countries remains under negotiation. Many developing countries have called for this special treatment for countries that tariffed (i.e., converted into tariffs) their quantitative import restrictions in the Uruguay Round (most of the countries enjoying this are developed countries) to be ended for developed countries. But this point is still to be negotiated.

Regarding para 2.6, there is a set of formulae committing developing countries to reduce their tariffs

in three categories. The first category will have an unspecified percentage of tariff lines being reduced by an unspecified average rate, with each line being cut by a minimum percentage. This first category will contain import-sensitive items and presumably will be subjected to lower tariff cuts. Only within this category will there be designated a category of Special Products (SP) which will enjoy the very limited privilege of having lower cuts and no new TRQ commitments. The second category of products (percentage of tariff lines to be determined) will be subjected to higher tariff cuts of an unspecified average rate and a minimum unspecified rate for each tariff line. And presumably the third category of products will have even higher rates of reduction on average and for each line. It is likely that developing countries will be pressed into having only a small minority of their tariff lines in the first category, and the bulk of products may well fall under categories 2 and 3 and thus be subjected to steeper tariff cuts. The result is that for many countries, many of their products would have to experience tariff cuts and, of these, the rates would be steep.

The option is given in Annex A that in place of tariff cuts in categories 2 and 3 above, developing countries can choose a Swiss formula approach. This is no comfort at all, as this is a “harmonization” formula in which products with higher duties will have to undergo steeper percentage cuts.

Many developing countries have rather high bound tariffs for a wide range of categories of agricultural products. Historically, this has been used as a means to protect their farmers from cheaper imports. Tariff protection has become even more important after the removal of quantitative restrictions (such as import bans or quotas) in the Uruguay Round. Its use is critical as a large part of their populations depend on farming for a livelihood. Many developing countries were pressurized to reduce their applied tariff rates under structural adjustment programmes. But if their bound rates are higher, they are allowed by WTO rules to raise their applied tariffs up to the bound rates, unless of course conditionalities of the IMF or World Bank forbid this. However, the proposals in the annex, if adopted, will press down the bound tariffs of developing countries, which of course will also have an effect on their applied rates.

The irony is that these formulae for developing countries are placed under a subtitle “special and differential treatment”. It is really a misnomer as the formulae will in fact punish the developing countries, many of whose farmers are already overwhelmed by cheap imports.

This pressure for further intense liberalization in Third World agriculture should not be accepted. Developing countries should not be subjected to further tariff reduction in food products. They should also not be subjected to reductions for all agriculture products in

which developed countries are providing domestic or export subsidies. For other products that are not exempt, there should only be a simple formula of one overall average reduction. This should be accompanied by a strong Special Products category. Developing countries shall be entitled to select the SPs with the flexibility they require. The SP category should not be restricted to a category of products, as stipulated in the annex. These SPs should be exempt from commitments in tariffs or domestic support reductions.

Para 2.7 says the applicability of para 2.2 for developing countries will be negotiated. This is dangerous as para 2.2 states that tariff lines exceeding a maximum percentage (unspecified) for developed countries shall be reduced to that maximum, or other ways of ensuring additional market access will be found. Such a commitment should apply to developed countries, but not developing countries.

The proposed special safeguard mechanism (SSM) for developing countries under para 2.8 is welcome. But this is still to be negotiated, and to be “subject to conditions and for products to be determined”. There is no guarantee whatever that a meaningful SSM will be acceptable to developed countries and to the big export-oriented developing countries. Many developing countries have proposed that they have access to an SSM to respond to import surges and import price declines, which can disrupt the local producers. For the SSM to work, it must be simple to use, and developing countries should be able to choose the products and under what conditions. However, many exporting countries want to impose restrictions, cumbersome conditions and limitation of products. The words “subject to conditions and for products to be determined” should be replaced by language that ensures that developing countries can use the mechanism in a manner that is simple, flexible and effective in meeting their needs.

Annex A does not provide comfort to developing countries that their special products will not be subjected to further tariff reduction commitments, and that an effective SSM can be used by them. Without such assurances, developing countries should not accept any framework for future reform.

(c) On export competition (para 3): The Doha mandate is for export subsidies to be eliminated. However, Annex A allows the EC to continue export subsidies and concessional export credits with very doubtful commitments to any reductions in the near future. This section basically adopts the US-EC paper’s approach. It reproduces that paper’s lack of commitment for developed countries to eliminate their export subsidies and export credits. Indeed, it is evident that a cynical deal has been struck here, that the US allows the EC to continue its export subsidies, whilst the EC allows the US to continue its concessional export credits, in the same products. They have even termed this agreement

among themselves as “parallel” action. The developing countries will suffer from this amiable solution between the giants, which can then continue to push their subsidized exports. This is not acceptable. We should revert to the Doha mandate and ensure that all export subsidies are eliminated within a very few years and that likewise, concessional export credits be similarly disciplined.

6. Non-Agricultural Market Access

The parts of the draft Cancun text on Non-Agricultural Market Access (NAMA) (i.e., para 5 and Annex B) may entail some of the most serious damage to developing countries. Annex B contains commitments for developing countries to increase the coverage of their tariff bindings almost to 100% and to reduce their tariffs on industrial products at steep rates for most products. This should not be accepted, as its implementation may be very damaging for industrial development prospects in developing countries.

The issues covered in Annex B have been discussed at length in Geneva and many of the points in it are unacceptable to many developing countries. However, the Chair responsible for this draft annex has marginalized the views of the developing-country members and instead reproduced even more faithfully the recent joint paper of the EC, US and Canada in this area.

If there can be no agreement on Annex B in the next few days in Geneva, it should not be included in the draft. Therefore the sentence in para 5 of the draft: “To this end, we adopt the framework for modalities for negotiations on non-agricultural products set out in Annex B to this document”, should be removed. Instead, Ministers should simply take note of the progress in the NAMA negotiating group and direct that it conclude its work, as in the last line of para 5.

The major problems in Annex B include:

Annex B, para 3: “... a formula approach is key to reducing tariffs ...”: This depends on the kind of formula approach that is employed. Most of the formulae proposed so far (especially those by the US and EC) in the negotiations in Geneva have damaging effects on developing countries. The sentence in para 3 should be changed to: “The use of a formula approach is one of the approaches to reducing ...”

Para 3: “Non-linear formula approach”: The commitment to a non-linear formula for developing countries would be very damaging to their local industries. This term should be rejected. The non-linear formula is aimed at mandating very steep cuts to tariffs at the higher end, and steep cuts to tariff lines in the middle. The steep cuts can cause damage to local industries, jobs and government revenue. Indeed, the use of this will run contrary to the principle of “less than full reciprocity” for developing countries or

special and differential treatment. The term “non-linear” should be rejected.

Para 4: The points in this paragraph on the non-linear formula should not apply as the non-linear formula itself is not acceptable. In any case, the following points should be noted:

- 2nd tiret: It is most unfair to set the basis for commencing reductions for unbound tariffs at two times the applied rate, as proposed here. Commencing calculations of tariff cuts at this rate of two times the applied rate means that the new bound tariffs will be very near to the present applied rates and in some cases even below the present applied rates. Instead of this, developing countries must be given full flexibility to set their own bound rates when increasing their coverage of binding. (Also see comment on para 7 below.)

- 4th tiret: The starting date for credit for autonomous liberalization should not be the end of the Uruguay Round but earlier, as many developing countries had started their autonomous liberalization through the Bretton Woods institutions’ structural adjustment programmes in the 1980s.

- 5th tiret: The proposal to convert all non-*ad valorem* duties to *ad valorem* equivalents may be misplaced. Some industrial products behave like commodities and are thus prone to price fluctuations and steep declines. An *ad valorem* duty system would thus have implications for tariff revenue and import surges if the price of the imported product falls considerably. In such cases, it would not be desirable to convert non-*ad valorem* tariffs to *ad valorem* tariffs.

Para 5: The option is given that countries with a binding coverage of less than (35)% should bind (100)% of their tariff lines at an average that does not exceed the overall average bound tariff for all developing countries, and thus be exempt from the formula. Few LDCs might be eligible. The eligible countries face a dilemma: in order to use the average rate cut, they have to bind 100% (or close to this) of their tariff lines. Those choosing this would lose the flexibility of having unbound tariff lines.

Para 6: Annex B also proposes that all members take part in a “sectoral tariff component” in which (through another document) it is proposed that tariffs in seven sectors be completely eliminated within a specified time-frame. This could spell the death of some of these industries in developing countries. These countries have demanded that they should not be included in any compulsory sectoral tariff-elimination scheme. However, Annex B insists that “participation by all participants will be important”, thus ignoring the demands by developing countries that this should be kept voluntary and setting the stage for their compulsory commitment. This is unacceptable.

Para 7 implies that all developing countries have to extend their present binding coverage to at least 95

percent. This kind of pressure should not be applied. Up to now, each member has the right to choose the level of its coverage. This flexibility should be retained. Moreover, countries should be free to choose at what rates to bind their tariff lines. Countries have deliberately left certain lines unbound for developmental reasons. This flexibility is also envisaged in the WTO since all negotiations on tariff cuts have previously applied only to bound rates. Further flexibility has also been accorded by the WTO through the allowed difference between bound and applied rates. The proposal of binding 95% of tariff lines and by using the system of determining the new bound rates by multiplying the present applied rates by two is unprecedented in the history of multilateral tariff negotiations.

The question of erosion of trade preferences is not properly dealt with in Annex B. This question should be dealt with within the WTO rather than in the international financial institutions (IFIs). The WTO should set up a mechanism to address the effects of preference erosion generally suffered by the affected countries. The IFIs could contribute through funding but should not impose further conditionalities.

With all these important issues unresolved, it is unfair to have this version of Annex B. The above concerns should be fully recognized in the text itself. Otherwise, Annex B should be removed from the document as proposed above.

It should also be noted that in all previous rounds of industrial-tariff cuts, developing countries have never been subjected to any formula approach. Even developed countries have never come under any non-linear formula approach. Developing countries have also been free up to now to determine the coverage of their tariff bindings. It is ironic that under the rubric of a so-called Doha Development Agenda, the flexibility that had been available to developing countries is now proposed to be removed and these countries are being set up for large tariff cuts. And this despite all the rhetoric on fully taking into account the special needs and interests of developing countries, S&D and “less than full reciprocity.”

The developing-country members should not agree to the Annex B scheme to curb their policy space and flexibility. If Annex B is accepted, its framework (especially of non-linear formula and compulsory sectoral tariff elimination) would set an unhealthy and unfortunate precedent on which future rounds of tariff reduction would be based. Pressure to do so by the developed-country members is natural and to be expected, given their relatively low tariff levels in this area. It is worth noting, however, that developed-country members have taken eight rounds to bring their tariffs down gradually.

7. S&D and Implementation Issues

These two issues, which are dealt with in paragraphs 11 and 12 respectively of the draft Ministerial text, are key for developing countries in their efforts to rectify at least some of the imbalances of the WTO rules. The Doha Declaration recognizes the importance of these issues. But we are very concerned about the implication that these two issues will be downgraded in importance, given their treatment in the draft text.

The Doha Declaration made it clear that these two issues are negotiating issues and are part of the single undertaking. Indeed, implementation issues were deliberately placed as the first item in the Work Programme in the Doha Declaration, before even agriculture. The Doha text also states in para 12 that “negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing, and that agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of para 47 below.” As we know, para 47 is on the single undertaking. S&D issues are part of the Doha Decision on Implementation Issues and are thus also part of negotiations and the single undertaking.

It is imperative that the important status of these development issues be maintained and reaffirmed. But the authors of the Cancun draft have dangerously downgraded these issues. Firstly, they are placed very low on the draft, after all the negotiating issues, whereas in the Doha Declaration, implementation was given the first priority listing. These two issues should be restored to their previous order and placed higher up in the document, before agriculture. Secondly, the subtitles for “S&D treatment” and “Implementation” in the left-hand margin of paras 11 and 12 do not have the word “negotiations” in them, unlike all the other negotiating issues in paras 4 to 10. This surely cannot be a mere slip. It must then be a tricky attempt to remove these issues from the negotiating agenda and the single undertaking, thus depriving developing countries of their main leverage to get something out of these development issues. This attempt should be countered by putting the word “negotiations” in the subheadings for these issues. Thirdly, the two paragraphs must be revised to make it clear, as in the Doha Declaration, that they are an integral part of negotiations in the Doha Work Programme and part of the single undertaking.

8. The Singapore Issues

The text provides two options for each of the Singapore issues. This is to be welcomed. The first option is for negotiations to begin immediately after Cancun. The second option is that further clarification of issues be continued, implying that negotiations will not start.

Whether to begin negotiations on the Singapore issues

will be the most important decision in Cancun. Starting negotiations will imply a decision to expand the WTO's mandate through new agreements, and moreover that this be done at a very rapid pace as the negotiations would be part of the single undertaking and would have to be completed by 1 January 2005.

Since Doha, more developing countries have become even more concerned that new agreements on these issues may threaten their development policy space and damage development prospects. They are thus against starting negotiations in Cancun, as is evident from Ministerial Declarations at the ministerial meetings of the LDCs, the African Union, the Caribbean Ministers and the African, Caribbean and Pacific (ACP) Group (all in June to August). Many developing countries have also spoken up and placed proposals in the WTO consultations and formal meetings in July and August, that the clarification of issues continue. But the developed countries, especially the EC and Japan, have relentlessly continued to push for negotiations to start, on the basis of “procedural” modalities that contain very little or no substance (and whatever substance there is in their proposals is alarmingly anti-development, thus justifying the fears of the developing countries).

The draft text recognizes the polarization among WTO members through its two options on each Singapore issue. But the existence and contents of Annexes D, E, F and G are cause for great concern. These annexes are supporting documents for Option 1 (to launch negotiations) for each Singapore issue. None of these annexes contains substantive modalities to any satisfactory degree. Moreover, the views expressed in these are taken only from one extreme end of the wide spectrum of views expressed in the working-group processes. Indeed, a look at these annexes would confirm that the fears of many members are justified, that launching negotiations on these issues can lead to agreements and obligations that have very serious implications on developing countries that would constrain their development policy space.

If he were to be fair, the Chairman — if he had wanted to include annexes to accompany the decision to launch negotiations — should have captured the different views of members on what would constitute modalities of negotiations. The different views on the issues were clearly spelt out in the respective working groups on the Singapore issues and can be seen in the reports of their meetings. The different views were also voiced at the informal consultations of the last two months on the Singapore issues. However, the Chairman has failed to do so and instead has placed only the views of the EC and Japan, the proponents of negotiations, especially for the investment and competition issues.

The EC-Japan text on investment (Annex D) was only tabled at informal heads-of-delegation (HOD) meetings on 22 August, and was heavily criticized by many

countries. It was not agreed that it should be included in the draft Cancun text.

The text on competition (Annex E) is based on one of the three options that had been put out by Frederic Jenny, chair of the competition working group, to a small group of delegations and not even discussed at nor adopted by the HOD meetings. In fact, Mr Jenny in an earlier paper even suggests that this option has only minority support, and he therefore put forward two other options. It is therefore strange and unacceptable that this "minority view" has now become a full annex.

The text on transparency in government procurement (Annex F) is based on an EC paper that had been floated to a small group during informal consultations the week before the revised Cancun draft was issued. This EC text was rejected by some developing countries present. In fact, the chair of the consultations on this issue did produce his own draft which contained positions that included more of the developing countries' views than the EC paper, but it was not accepted either by the small-group consultations. Neither the EC nor the chairman's drafts were tabled at the HOD meetings. And yet the EC's extreme draft has now surfaced as Annex F.

On trade facilitation, there is no known draft of the proponents that was tabled at the consultations or at the HOD meetings. Yet a text with the proponents' position has suddenly surfaced as Annex G.

There is thus an imbalance in the structure of the draft text on the Singapore issues. The proponents of negotiations have their Option 1 in the text plus four full annexes, which they can use to full effect in Cancun. On the other hand, the large number of countries that do not want to start negotiations have only Option 2, without having their own annexes on what they would like to see in the further clarification of issues. Nor are their views represented in Annexes D to G where the Chairman has only put down the views of the proponents, especially the EC and Japan.

On 27 August, 13 developing countries that are in favour of Option 2 submitted a document to the WTO General Council (with a cover letter by the Indian Ambassador) outlining issues for further clarification for each of the Singapore issues. The countries have requested the General Council Chairman to add these lists of issues as annexes to the draft text to be transmitted to the Ministers. The aim is that countries that do not want to begin negotiations can have their views reflected on what issues should be the subject of further clarification and thus be an alternative to the extreme existing annexes. However, the Chairman has not appended these alternative annexes to his draft. On 4 September, the same proposal of the original 13 countries was published as an official WTO Ministerial document, this time sponsored by the LDC Group and

15 non-LDC developing countries, thus making it a document formally sponsored by 40 members. This document should be given prominence during the Cancun discussions even though it is not part of the draft text.

(This paper first appeared as a Briefing Paper of the Third World Network for the 5th Ministerial Conference of the World Trade Organisation (WTO) held in Cancun in September 2003.)

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