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Comment by TWN on the Draft Cancun Text of 13 Sept 2003

On 13 September 2003 at 1 pm, the second revised draft Cancun Ministerial Text was distributed to the participants of the 5th Ministerial Conference of the World Trade Organisation (WTO). A few hours later, Third World Network (TWN) issued a detailed comment on the Text, which is reproduced in this Briefing Paper.

The Draft Cancun Ministerial Text (Second Revision) of 13 September has ignored the views expressed at Cancun by a large number of developing countries on issues like agriculture, non-agricultural market access (NAMA) and the Singapore issues. The Draft is in fact deeply and seriously anti-development in substance and process. If adopted, it would bury the so-called Doha Development Agenda (DDA) and convert it to the Doha Anti-Development Agenda (DADA).

Singapore Issues

On the Singapore issues, about 70 developing countries (including members of the least developed country group and the Caribbean Community, India, China, Malaysia, Egypt, Indonesia, Nigeria, Philippines, Botswana, Cuba, Venezuela, Zimbabwe, etc) on 12 September formally presented a letter to the facilitator of the Singapore Issues Working Group (Canadian Minister Pierre Pettigrew) and the Chairman of the Conference (Mexican Minister Luis Ernesto Derbez) stating they are "of the firm view that there is no option to pursue other than the continuation of the clarification process." Attached to the letter were annexes with language on each issue stating that with the absence of explicit consensus, there is no basis to commence negotiations on the four Singapore issues and clarification should continue.

Despite these well-known views, the Draft mandates that negotiations clearly begin on two of the issues, i.e., transparency in government procurement (paragraph 16) and trade facilitation (para 17). And negotiations are also launched in a thinly disguised way on the other two issues, i.e., investment and competition.

The annexes on transparency in government procurement and trade facilitation (Annexes D and E respectively) contain so-called "modalities" that have never been discussed, let alone accepted by members. They also deal merely with procedures and very little with substance, and thus on many counts fail the test of being "modalities", let alone the required test of enjoying explicit consensus on modalities. Moreover, the annexes are even worse than the versions in the first revised Ministerial Text (dated 24 August).

In Annex D, it is mentioned that any coverage of the agreement on transparency in government procurement beyond goods and central government entities is not prejudged. The applicability of the WTO's Dispute Settlement Understanding (DSU) is also not prejudged. Transparency of domestic review mechanisms will be included. These go against the views of many developing countries in the working group discussions that any possible framework should be confined to goods and central government, domestic review mechanisms should not be included and the

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DSU should not apply. The Annex certainly does not contain modalities on which there can be any consensus.

On investment (para 14 of the Draft), there is a pretence that the Draft does not launch negotiations when it in fact does. This is by virtue of the following provisions in para 14: (a) the mandate that the Working Group on the Relationship between Trade and Investment be convened in special session (the term "special sessions" in the WTO connotes that negotiations are involved); (b) mention that consideration is given to the relationship of negotiations to the single undertaking; (c) mention that modalities allowing negotiations on a multilateral investment framework shall be adopted by an unspecified date.

Moreover, a significant footnote says this date coincides with the date for agreeing on agriculture and NAMA modalities. This footnote thus directly links the agriculture, NAMA and investment issues. This is outrageous because most developing countries have said the investment issue should be considered on its own merit and should not be linked to other issues. This linkage will dangerously imply that there will not be progress in developed countries' commitments to reduce or eliminate their agriculture protection unless or until they get the modalities for an investment agreement that they want. The text therefore not only mandates negotiations on investment but also establishes a linkage so that progress in agriculture negotiations is held ransom to the establishment of modalities for an investment agreement that the major countries want!

On competition (para 15), the tricky wording also implies a push towards negotiations is mandated through mandating consideration of modalities for negotiations by a certain date which, through another footnote, is also linked to coincide with the date for agreeing on agriculture and NAMA modalities.

Proposal: The approach taken on the Singapore issues is outrageous, ignores the clearly stated views of Ministers of a large number of developing countries, and violates the Doha principle that negotiations can begin only if there is an explicit consensus. Since 70 countries have stated there is no basis for commencing negotiations, this should be respected.

For each Singapore issue, the spirit and wording put forward by the 70 countries should be incorporated in another Draft. This alternative text is in an annex to the 12 September letter of the Malaysian and Indian Ministers to Pettigrew. In summary: "We take note of the discussions since the Fourth Ministerial Conference. Given the absence of explicit consensus, there is no basis for commencement of negotiations in this area. Accordingly we decide that further clarification of issues be undertaken in the working group .... Recognizing the needs for enhanced support of technical assistance and capacity building, we shall continue to work (with other agencies and appropriate channels) to provide strengthened and adequately resourced assistance to respond to these needs."

Agriculture

The agriculture text (para 4 and Annex A of the Draft) maintains the same imbalances and problems contained in the previous Draft. There are thus no basic changes. The views of large numbers of developing countries that criticized the 24 August draft and put forward their own proposals have been ignored. The developed countries would be allowed 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 special-and-differential-treatment aspects to them.

On domestic support, there is hardly any change. Developed countries will be able to retain their high subsidies and, indeed, raise them, as the Blue Box category continues to be maintained, and there is no assurance that the Green Box will be adequately disciplined. There is no cap on the Green Box, only a reference to reviewing its criteria. It is likely the developed countries can continue to maintain or even increase their overall domestic support by switching from one kind of subsidy to other kinds.

On market access, the blended formula for developed countries (originally proposed by the EC-US) remains. This enables the major countries to place their high-tariff items in a category (i.e., category i) for lower tariff cuts and thus avoid removing tariff peaks which block developing-country products. Para 2.2 of Annex A seems to address tariff peaks by placing a cap on tariffs, but there are two escape clauses: (a) a choice of capping at that maximum rate or instead providing extra market access in other areas, and (b) additional flexibility given to items designated as involving non-trade concerns.

Poor treatment of developing countries, with serious consequences: A major problem is how badly developing countries are treated in market access. They are subjected to even more disciplines and tariff reductions than in the previous draft, even though many of them made demands to expand special and differential (S&D) treatment. The major developed countries insisted that developing countries commit to opening their markets further, and the revised Draft has bowed to their influence. This is most unfair because many developing countries are already suffering from increases in 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. In this regard, the following are some of the negative aspects of the Draft:

* Para 2.7 of Annex A imposes a blended formula on developing countries which is even more severe than

in the previous draft. They now have to reduce some tariffs by an average formula (which is not so steep), but another portion (probably much larger) of tariffs will be subjected to a Swiss formula. Under this formula, the higher the tariff, the steeper will be the cut; and since many developing countries have rather high agriculture tariffs, they will be subjected to steeper cuts. Under a third category, some tariffs have to be brought down to 0-5 percent. Thus, for a majority of tariff lines, developing countries will have to very significantly reduce their tariffs. 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 previous draft, 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.

* There is very inadequate treatment of special products (SPs) and special safeguard mechanisms (SSMs) in the Draft. More than 30 developing countries had formed an Alliance for SPs and SSMs 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). This is required to protect farmers' livelihoods and food security. The Draft mentions these two concepts in a very inadequate way. SPs are only mentioned in para 2.7(i) of Annex A where the following restrictions apply: (a) they can only be selected from one category of products which are a minority; (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 paves the way for so many conditions and so few products to qualify that in the end the mechanism will have limited use.

On export competition, the text remains and so too 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"). Thus there is no date placed for elimination of subsidies or 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."

Proposal: (i) The text should be revised to reflect the proposals of the developing countries that have demanded strong SP and SSM mechanisms. This is especially crucial, given that there is no comfort for these countries that the text will adequately discipline the developed countries' domestic and export subsidies.

(ii) There should be higher ambition in reducing and eliminating the domestic support (in boxes of all colours) and export subsidies of developed countries, along the lines of the G21 proposal.

NAMA

The section on NAMA in the Draft (para 5 and Annex B) is extremely dangerous for developing countries. There is hardly any change for the better from the previous draft, despite the demands by many of them in the Cancun negotiations.

These are the most serious problems in Annex B:
* Para 3 retains the directive that the NAMA 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 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 the industries.

Proposal: Delete the words "should continue its work on a non-linear formula applied on a line-by-line basis which".

* Para 4 tiret 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.

Proposal: Para 4 refers to the non-linear formula. Since that formula should be removed, the whole para 4 should also be deleted. In any case, the second part of the second tiret should be removed.

* 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 more than the seven sectors mentioned in the proposal of the Chairman of the NAMA negotiating group in Geneva.)

Proposal: The text should be changed so that developing countries are exempted. Or else the scheme shall be voluntary.

Sectoral Initiative On Cotton (Para 27)

The paragraph on the "sectoral initiative on cotton" (para 27) is a travesty of the proposals put forward by the West African cotton-producing countries. It completely ignores the two demands of the West African countries: (a) elimination of cotton subsidies by the developed countries, and (b) financial compensation for loss due to the subsidies.

Instead, in line with the attitude adopted by the US, the paragraph disperses the issue of cotton to be addressed by various negotiating bodies - agriculture, NAMA and rules. Even here, the Chairman of the WTO's Trade Negotiations Committee (TNC) is instructed simply to consult with the chairs of these bodies to address the impact of distortions in the cotton sector - including textiles, fibres, clothing, etc.

There is reference in Annex A on agriculture to product-specific AMS which may be interpreted as being relevant to the cotton issue. However, the proposed measure here is to cap existing subsidies at their current average levels, rather than their elimination as demanded by the West African countries.

Furthermore, under the paragraph on cotton, members simply pledge to refrain from using their discretion under Annex A to avoid making reductions in domestic support for cotton. This is another example of the use of a best-endeavour clause which has not served developing countries in addressing their problems.

The paragraph also instructs the Director-General of the WTO to consult with bodies like the World Bank and the Food and Agriculture Organization (FAO) to direct existing programmes and resources towards diversification of the economies from cotton dependency. This sidesteps the issue of financial compensation. No new funds or resources are to be made available, but existing resources are to be diverted. Moreover, the existing resources are to be diverted not into addressing the financial and other losses arising from cotton subsidies, but towards structural adjustment.

The West African countries are shortchanged. Their issues are inserted into other areas where proposed frameworks for negotiation are totally antithetical to their needs.

In effect, the paragraph on cotton does not address the concerns of the West African countries. It uses those concerns to commit these countries to negotiations in other areas and on the parameters of the US and EU.

S&D Treatment (Para 12)

The previous draft's paragraph on S&D treatment was found to be deficient by many developing countries. They proposed changes to that draft, including: (a) clarifying that the WTO Committee on Trade and Development in Special Session established by the TNC is the appropriate body to deal with S&D issues; (b) setting a deadline of March 2004 by which specific proposals are to be reported to the General Council; (c) outstanding issues should also be pursued.

The new Draft, which addresses the S&D issue in para 12, does not take into account these proposals. By not being clear on the appropriate bodies to deal with S&D issues and by not setting deadlines, the Draft leaves the S&D issue in a diffused state, without a deadline and a clear reaffirmation that it is part of the Doha negotiating mandate covered by the single undertaking.

Proposal: The formal proposal submitted to the Ministerial by the African Union, Cuba, India, Indonesia, Malaysia, Pakistan and Venezuela should be accepted in place of the present para 12. This proposal (in document WT/MIN(03)/W/13 dated 11 September 2003) is that the text below be adopted:

Proposed language: We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements. We note that some progress has been achieved but are concerned that it has not been adequate. We recall the decision at Doha to review S&D provisions with a view to strengthening them and making them more precise, effective and operational and to identify those that Members consider should be made mandatory and to report to the General Council with clear recommendations for a decision by July 2002. We also reaffirm that the Committee on Trade and Development in Special Session, as established by the TNC, is the appropriate body, under the overall authority of General Council, to deal with S&D issues. In carrying out this work, priority shall be given to agreement specific proposals and the Committee on Trade and Development in Special Session shall report to the General Council with clear recommendations for a decision by March 2004. We further instruct the Committee on Trade and Development in Special Session to pursue, in line with the parameters of the Doha mandate, and after the completion of work on agreement specific proposals, outstanding work, including inter alia on how to incorporate special and differential treatment into the architecture of WTO rules, as referred to in TN/CTD/7 and report, as appropriate, to the General Council.

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