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**Preparations for the Fifth Session of the Ministerial Conference****Draft Cancun Ministerial Text**

The attached Draft Ministerial Text is being circulated by the Chairman of the General Council on his own responsibility, in close cooperation with the Director-General. It is intended as a first draft of an operational text through which Ministers at Cancun would register decisions and give guidance and instructions as appropriate in the negotiations and other aspects of the work programme agreed at Doha. It does not purport to represent agreement in whole or in part, and is without prejudice to any delegation's position on any issue.

This draft is guided by the mandates given at Doha and the actions required to carry them out. It is based on a reaffirmation of all the commitments taken at Doha, including the overall timetable for the Round.

The somewhat skeletal nature of this first draft is a reflection of the reality of our present situation. It reflects how far we still have to go in a number of key areas to fulfill the Doha mandates. The task ahead of us in the short time remaining before Cancun is to fill in the gaps in this draft so that it becomes a workable framework for action by Ministers. This will be the focus of intensive consultations in the coming weeks, centred on the informal Heads of Delegation process and the General

Council. Our aim is to work with delegations to produce a text for transmission to Ministers by the latter part of August.

In some areas the discussions at next week's General Council on reports from WTO bodies may contribute to the evolution of this draft. In others, further dedicated consultations will clearly be necessary. We will need to continue to call upon the invaluable help of the Chairs of relevant bodies in this work. In carrying it out we will also continue to work in a transparent and inclusive way. We hope that the output of our collective effort will remain a concise and operationally focussed one, on the basis of which Ministers at Cancún can act to provide the added momentum we need for the year ahead.

#### **Draft Cancún Ministerial Text**

*The first draft of the Cancun Ministerial Text was circulated to WTO members on Friday 18 July after a meeting of the Trade Negotiations Committee (TNC) on 14-15 July.*

1) We reaffirm our Declarations made at Doha and the decisions we took there. We take note of the progress that has been made towards carrying out the Work Programme agreed at Doha, and recommit ourselves to completing it fully. We also renew our determination to conclude the negotiations launched at Doha successfully by the agreed date of 1 January 2005.

2) In pursuance of these objectives, we agree as follows:

#### **3) TRIPS & Public Health**

We welcome the decision on implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health set out in document [...].

#### **4) Agriculture negotiations**

We adopt the modalities for further commitments in agriculture set out in document [...] and agree that participants

will submit their comprehensive draft Schedules based on these modalities no later than [...].

#### **5) NAMA negotiations**

We adopt the modalities for the negotiations on Market Access for Non-Agricultural Products contained in document [...] and we [...].

#### **6) Services negotiations**

We recognize the progress made in the services negotiations and urge participants to intensify their efforts to bring this process to a successful conclusion. We call upon those Members who have not yet submitted their initial offers to do so as soon as possible. Members should submit their improved offers by [...] and revised offers, with a view to finalizing the negotiations, should be submitted by [...]. The negotiations shall aim to achieve progressively higher levels of liberalization with no *a priori* exclusion of any service sector or mode of supply and shall give special attention to the sectors and modes of supply of export interest to developing countries. There shall be due respect for the right of Members to regulate in pursuance of national policy objectives. Negotiations on rule-making under the GATS shall be concluded in accordance with their respective mandates and deadlines. The Special Session of the Council for Trade in Services shall review progress in these negotiations by 31 March 2004.

#### **7) Rules negotiations**

We instruct the Negotiating Group on Rules to accelerate its work on anti-dumping and subsidies and countervailing measures, including fisheries subsidies, with a view to shifting its emphasis from identifying issues to seeking solutions. We note the considerable progress that has been made in the negotiations on improving transparency in Regional Trade Agreements and encourage the Group to reach a decision soon on its work on transparency and to accelerate its work on the clarification and improvement of RTA disciplines under existing WTO provisions.

### **8) TRIPS negotiations**

We adopt the multilateral system of notification and registration of geographical indications for wines and spirits set out in document [...].

### **9) Environment negotiations**

We take note of the progress made by the Committee on Trade and Environment Special Session (CTESS) in developing a common understanding of the concepts contained in its mandate in paragraph 31 of the Doha Declaration. We reaffirm our commitment to these negotiations and encourage the CTESS to accelerate its work.

### **10) DSU negotiations**

We take note of the progress that has been made in the negotiations on dispute settlement. We renew our determination to pursue these negotiations with the aim of completing them not later than [May 2004]. Further negotiations shall be carried out on the basis of work done thus far, including the Chairman's text of 28 May 2003 and other proposals by participants.

### **11) S & D treatment**

We take note of the progress that has been made in addressing issues of special and differential treatment in pursuance of the mandate given at Doha, and adopt the decisions set out in document [...]. We instruct the General Council to continue to monitor closely work on the proposals referred to negotiating groups and other WTO bodies. We further instruct the Committee on Trade and Development in Special Session to pursue, within the parameters of the Doha mandate, outstanding work, including *inter alia* on the cross-cutting issues, the monitoring mechanism, and the incorporation of special and differential treatment into the architecture of WTO rules, as referred to in TN/CTD/7, and report to the General Council. The General Council shall report on progress on all these issues to our next Session.

### **12) Implementation**

We note that, while progress has been made under the mandates we gave at Doha concerning Implementation-Related

Issues and Concerns, a number of the issues and concerns raised in this context remain outstanding. We instruct the WTO bodies concerned to redouble their efforts to resolve these issues, and instruct the General Council to report on progress to our next Session.

### **13) Investment**

Taking note of the work done by the Working Group on the Relationship between Trade and Investment under the mandate we gave at Doha, and the work on the issue of modalities carried out at the level of the General Council, we [adopt by explicit consensus the decision on modalities of negotiations set out in document ...] [decide that ...].

### **14) Competition**

Taking note of the work done by the Working Group on the Interaction between Trade and Competition Policy under the mandate we gave at Doha, and the work on the issue of modalities carried out at the level of the General Council, we [adopt by explicit consensus the decision on modalities of negotiations set out in document ...] [decide that ...].

### **15) Government procurement**

Taking note of the work done by the Working Group on Transparency in Government Procurement under the mandate we gave at Doha, and the work on the issue of modalities carried out at the level of the General Council, we [adopt by explicit consensus the decision on modalities of negotiations set out in document ...] [decide that ...].

### **16) Trade facilitation**

Taking note of the work done on trade facilitation by the Council for Trade in Goods under the mandate we gave at Doha, and the work on the issue of modalities carried out at the level of the General Council, we [adopt by explicit consensus the decision on modalities of negotiations set out in document ...][decide that ...].

### **17) Small economies**

We reaffirm our commitment to the Work Programme on Small Economies and urge

Members to adopt measures that would facilitate the fuller integration of small, vulnerable economies into the multilateral trading system. We take note of the report of the Committee on Trade and Development in Dedicated Session on the Work Programme on Small Economies to the General Council and the recommendations made therein. We instruct the General Council to report on progress and action taken, together with any further recommendations as appropriate, to our next Session.

#### **18) Trade debt & finance**

We take note of the report transmitted by the General Council on progress in the examination of the relationship between trade, debt and finance and agree that this work shall continue on the basis of the mandate contained in paragraph 36 of the Doha Declaration and the progress made in the Working Group to date.

#### **19) Trade & Transfer of Technology**

We take note of the report transmitted by the General Council on progress in the examination of the relationship between trade and transfer of technology and agree that this work shall continue on the basis of the mandate contained in paragraph 37 of the Doha Declaration and the progress made in the Working Group to date.

#### **20) CTE report**

We take note of the report transmitted by the General Council on the work undertaken by the Committee on Trade and Environment pursuant to paragraphs 32 and 33 of the Doha Declaration. We agree that this work shall continue on the basis of the progress made thus far and instruct the Committee to report to our next Session.

#### **21) TRIPS non-violation**

Taking note of the report from the Council for Trade-Related Aspects of Intellectual Property Rights on the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994, we [...].

#### **22) E-commerce**

We take note of the reports from the General Council and subsidiary bodies on the Work Programme on Electronic Commerce, and agree to continue the examination of issues under that ongoing Work Programme, with the current institutional arrangements. We instruct the General Council to report on further progress to our next Session. We declare that Members will maintain their current practice of not imposing customs duties on electronic transmissions until that Session.

#### **23) Technical cooperation**

We welcome the report by the Director-General on the implementation and adequacy of the commitments on technical cooperation and capacity building we made in our Doha Declaration and request him to report further to our next Session. We recommit ourselves to provide all necessary support for this vital activity. We commend the work undertaken in regard to technical assistance and capacity building by the Director-General in the context of promoting coherence in global economic policy-making, and encourage him and the heads of the other relevant agencies to continue their efforts in this regard.

#### **24) LDCs**

We welcome the reports by the Director-General on issues affecting Least-Developed Countries (LDCs) and on the implementation of the commitment by Ministers to facilitate and accelerate the accession of the LDCs. We recognize the importance of improved market access for LDCs and trade-related technical assistance and capacity building and commit ourselves to intensify our efforts to facilitate their full integration into the multilateral trading system. We reiterate our endorsement of the Integrated Framework (IF) as a viable model for LDCs trade development. In this regard, we welcome the joint communiqué adopted by the six IF core agencies at their Third Heads of Agency meeting and the substantial progress made in the implementation of the IF. We request the

Director-General to report to our next Session on further developments.

## 25) Accessions

We note with particular satisfaction that this Conference has completed the WTO accession procedures for [...]. We also welcome Armenia and the Former Yugoslav Republic of Macedonia as new Members since our last Session. We continue to attach great importance to concluding accession proceedings as quickly as possible and, in particular, to accelerating the accession of least-developed countries. In this regard, we reaffirm the guidelines to facilitate the accession of LDCs adopted by the General Council on 10 December 2002.

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### **Draft text leaves wide open virtually every area that WTO members are negotiating**

Shefali Sharma

After months of suspense as to what documents Trade Ministers would receive from the WTO at the 5<sup>th</sup> WTO Ministerial in Cancun, the Draft Cancun Ministerial Text has been leaked in Geneva today, 18<sup>th</sup> July. The name of the text itself has been a mystery since the WTO had been suggesting that it would not be a declaration as past Ministerial texts, but rather a simple “communiqué” from Ministers.

In unprecedented fashion, the text leaves wide open virtually every area that WTO members are negotiating. Members only have four short weeks (WTO is on vacation for two weeks in August) to narrow down extremely wide and contentious differences in areas such as Agriculture, the four heavily contested Singapore Issues (Investment, Competition, Government Procurement and Trade Facilitation), Industrial tariff negotiations and core areas of concern to developing countries such as Trade Related Intellectual Property Rights (TRIPS) and Health, and Special and Differential Treatment. In fact, the draft sidelines Implementation issues—issues that developing countries have been

fighting for since prior to Seattle—by suggesting that the General Council merely “redouble its efforts” to resolve these issues.

Failure to fill in the details of this “skeletal” text by the trade experts in Geneva will jeopardize developing countries’ negotiating power since any unfinished business in Geneva will have to be dealt with by Trade Ministers themselves at the pressure-cooker type environment of WTO Ministerials. The scenario of the Cancun Ministerial is heading toward a repeat of Seattle where most developing countries were shut out of the real decision making process. This closed and exclusive process continued in Doha where over night reversal of positions by major country groupings such as the African group were witnessed in a final text that did not represent the interest of their countries.

‘It is intended as a first draft of an operational text through which Ministers at Cancun would register decision and give guidance and instructions’ says the cover note attached to the Draft Declaration. The draft is ‘skeletal,’ only four pages long, with 23 sub-headings according to the numerous substantive issues that Ministers must decide.

The draft, however, has four major problems 1) The Chair of the General Council; Perez des Castillo is issuing the draft ‘on his own responsibility.’ This means that this is not a negotiated draft, but rather a proposal from the Chair himself in conjunction with the Director General of the WTO. This sets the stage for an unapproved text being transmitted to ministers on the Chair’s ‘own responsibility’ while many countries may object to its content. The WTO is supposed to be a consensus-based organization. 2) The reference to the Director General as opposed to his role as the Chair of the Trade Negotiating Committee directly puts the Secretariat in the hot seat and jeopardizes the neutral role that the secretariat is supposed to play. 3) The process of negotiations on the text will be conducted solely in

undocumented meetings and mainly outside of any formal processes of the WTO. 'This will be the focus of intensive consultations in the coming weeks, centered on the informal Head of Delegation process and the General Council.' According to Geneva based delegations, only one General Council is previewed for around August 25<sup>th</sup>. 4) The role of the Chairs of the various bodies is stressed and this further solidifies the trend of the WTO becoming Chair driven rather than member driven.

Last, but not least, the paragraphs on the Singapore issues remain highly problematic since only two options have been provided 1) to start negotiations or 2) a decision that is left wide open for negotiators to decide in 4 weeks. These two choices do not reflect the current impasse in the WTO where many countries believe that a decision is not yet ripe regarding negotiations in these areas. This will put the burden on the majority of the developing country members who oppose negotiations in these issues until the clarification process regarding each of these areas is complete.

Clearly, the WTO has set itself a tall order, which may in turn, jeopardize the Cancun Ministerial outcome.

This draft leaves in brackets texts that are highly contentious in virtually every area of WTO negotiations. Either the WTO expects miracles from the membership to narrow differences in such critical areas in four short weeks, or it expects to sideline technical experts of the WTO and leave substantive and complicated issues to be decided by politics between Trade Ministers in the Cancun Ministerial. This process will leave understaffed developing countries in a very vulnerable position against the might of the major trading powers.”

*Shefali Sharma is the Director of the Trade Information Project, Institute for Agriculture and Trade Policy, Geneva office.*

## **A skeleton inside an untransparent process: Analysis of the Draft Cancun Ministerial Text**

Tetteh Hormeku

### **1. Introduction**

The first draft of the so-called "operational text" which will form the basis of decisions to be taken by trade ministers when they meet at the 5th WTO Ministerial in Cancun was released on Friday 18 July, in line with the announcement by Dr. Supachai Pantichpakdi, the WTO Director-General and Chair of the Trade Negotiations Committee (TNC) at a two day meeting of the TNC on 14 -15 July. Just as Supachai described it at that meeting, the Draft Ministerial Text which is now circulating is "skeletal" in nature, with critical gaps yet to be filled in all the key areas of contention.

However, not only does the structure of the text seem to weigh the filling of the gaps against the interest of developing countries. More importantly, judging from the developments at last week's TNC meeting, these gaps are set to be filled through an untransparent, imbalanced, and non-participatory process, which will make it possible to secure an outcome in Cancun suited to the major powers of the WTO.

### **2. How will the text be revised and approved?**

From statements made during the TNC meeting by Dr Supachai and from positions expressed by some of the major powers, the text may not be formally approved or even properly discussed by WTO the representatives at Geneva.

WTO members will have the opportunity to comment on the text, in its current skeletal form, at the meeting of the General Council for scheduled the 24 and 25 July. However, according to the present WTO schedule, that will be the last meeting of the General Council before Cancun. Thereafter any further work to formulate and refine the text will take place through the informal meetings of head of delegations and other informal

meetings and consultations where no records are kept of the proceedings nor the participants known.

Demands at the TNC meeting by many developing countries for effective participation in deciding the final shape of the text did not seem to have cut much ice. At that meeting, a demand by Nigeria, supported by Botswana and others for a special joint-session of the TNC and the General Council later in August to consider further revisions to the draft was reportedly dismissed by the United States as impractical.

Some developing countries are expected to press the demand for another session of the General Council when the council meets on 24 July. Nigeria has already submitted a letter to this effect. There may thus be another General Council meeting after all, reported to be on 25-26 August. Nevertheless, it is not known how or if the divergent views of members will be reflected in the draft, whether this draft will be revised after comments by members. But it is now likely that the draft will not be subject to approval by the members but will be sent to Cancun under the "personal responsibility" of the chairs of the General Council and the TNC.

The draft Ministerial Text was released by Ambassador Carlos Perez de Castillo of Uruguay, the Chairman of the General Council, "on his own responsibility, in close cooperation with the Director-General".

The gaps in the text are explained as reflecting the reality of how far WTO members "still have to go in a number of key areas to fulfill the Doha mandates. The task ahead of us in the short time remaining before Cancun is to fill in the gaps in this draft so that it becomes a workable framework for action by Ministers." Filing these gaps will be the focus of intense consultations "centred on the informal Heads of Delegation process and the General Council."

The text expects that in "some areas the discussions at next week's General

Council on reports from WTO bodies may contribute to the evolution of this draft. In others, further dedicated consultations will clearly be necessary". The aim is "to produce a text for transmission to Ministers by the latter half of August.

### **3. Deceptively open text**

On the face of it the Draft Ministerial Text of 25 relatively short paragraphs appears straightforward. In the opening paragraph, Ministers would re-affirm the declarations made and the decisions taken at Doha, take note of the "progress that has been made towards carrying out the Work Programme agreed at Doha, and recommit ourselves to completing it fully, and renew their "determination to conclude the negotiations launched at Doha successfully by the agreed date of 1 January 2005."

To this end, the Ministers would in the second paragraph, agree to adopt a number of decisions in the various areas of the Doha work programme, listed in the subsequent paragraphs. Each area of work is listed and next to it, a formulation to the effect that Ministers agree to proceed in the manner outlined some other document. Those documents are not attached, but represented by a space in a square bracket. Thus in the area of TRIPS and Public Health it says: "We welcome the decision on implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health set out in document [...] " In relation to Agriculture: "We adopt the modalities for further commitments in agriculture set out in document [...] and agree that participants will submit their comprehensive draft Schedules based on these modalities no later than[...]".

However, the formula is different on the Singapore issues. Here, on each of the issues, the corresponding statement refers to the work done in the respective working group, as well the work on the issue of modalities at the General Council, and offers two options both placed in square brackets. These are: either an adoption ".....by explicit consensus the decision on modalities of negotiations set out in

document..." or another decision denoted by the words "decide by." For example in relation to investment, it says: "Taking note of the work done by the Working Group on the Relationship between Trade and Investment under the mandate we gave at Doha, and the work on the issue of modalities carried out at the level of the General Council, we [adopt by explicit consensus the decision on modalities of negotiations set out in document...] [decide that ...]"

The formula of the main Declaration transferring the substantive text to an Annexed Document appears in varied forms in relation particularly to all the areas under contention. In some areas, like trade and transfer of technology, trade and finance, where there is apparently not much contention, the indication of the text is that Ministers would recommend further work to continue.

#### **4. The "flesh" will be in the annexes**

Thus, on the face of it, the draft Ministerial Text appears open, with nothing decided, and with the crucial issues still subject to further discussions and negotiations. This is deceptive, on a number of grounds. It also dangerously weighs against the developing countries' issues and their ability to influence the text.

One of these grounds for worry relates to some of documents that will be used to fill in the gaps. At the meeting of the TNC on 14 July, Supachai stated that the reports produced by the Chairs of the various negotiating groups "will support and complement this brief operational text with analyses of key issues and priorities".

Officials of the WTO who briefed journalists during the TNC meeting cited the respective chairmen's draft modalities for agriculture (of March) and for market access in non-agricultural products (of May) as texts to be "annexed" to the intended operational text. As is known, however, controversy still continues in the cases of both the agriculture and non-agriculture market access negotiations.

Here developing countries have registered grave objections to the proposed modalities. In non-agriculture market access, African countries have objected to the modalities proposed by the chair, and have suggested alternatives which have yet to find their way into the text.

At the TNC, many developing countries objected to the suggestion that reports produced by the chairmen of the negotiating groups would be annexed to the operational text to be submitted to Ministers. Kenya said that the agriculture text has not been agreed to, and therefore should not be annexed.

Some WTO officials suggested that while it may be true that the agriculture text has not been agreed upon, it was the only text available and as such would form part of the operational text as the basis for Ministers to frame their discussions. If this logic is followed, then texts with which developing countries are in disagreement will find their way as an integral part of the text for Cancun. And yet the fact that there is not agreement on the Chairman's proposals was reinforced again at a two day informal and formal meeting on Agriculture held on 17 -18 July. Here countries remained as far apart as they were before the meeting.

#### **5. Imbalances against developing countries**

Apart from leaving the way for texts on which developing countries disagree to be sent to Cancun as the negotiating text, in areas where no such texts exist, the draft Ministerial Text formulates an orientation of the particular issues in a manner that would prejudice the view points of developing countries. This is the case in relation to Singapore issues. In each of these areas, the text not only refers to work which has been done in the working group, but also on some work in the General Council on the issue of modalities for the negotiations. So far however, there have been little or no discussion on the question of modalities in relation to the Singapore issues in the General Council.

As far as many developing countries are concerned, the focus of the work so far

carried out in the respective Working Groups on the Singapore issues has been on the clarification of issues, and the question of modalities for negotiation has not been discussed. Even on the clarification of issues, there has been no common understanding of the issues among the members, but rather a wide divergence in almost all the topics. Similarly, there is conflict among the WTO members, mainly on North-South lines, on the very definition of modalities.

It may be that the Ministerial text foresees further work in the General Council on modalities on these issues. Indeed, some documents have been circulated privately purporting to lay out the basis for discussion of modalities. Japan has formulated its own view of the elements of modalities, around which it is apparently carrying out consultations. The chairman of the working group on competition has also circulated a note representing the results of his consultations with members on modalities in the area of trade and competition policy.

But with only one or two more meetings of the General Council remaining, it is most unlikely it can achieve common understanding on the modalities. Thus, before Cancun, the major powers in the WTO are planning for most discussions to be taken in the informal process and in bilateral discussions, where the preferences of developing countries are likely to be side-lined. In this connection, it may be indicative of the way the drafters of the Ministerial text wants to go that, although the text puts forward two options, it does not actually state, as the counter to the possible decision adopting explicit consensus on the modalities, the opposite option declared by most developing countries to the effect that the process of clarification in relation to the Singapore Issues must continue.

Since the Geneva process is so unlikely to resolve the stark differences on the Singapore Issues, it is certain that this set of issues will be decided at Cancun. And the very pressurised and untransparent

process of Ministerials will again act against the developing countries that are opposing these issues.

Finally, there is a double standard in the treatment of issues. On issues like agriculture and non-market access where existing texts are biased against the developing countries, as well on the Singapore issues, the draft Ministerial Text envisages that concrete decisions will be taken at Cancun. On the other issues of interest to developing countries, it envisages only continuation of further work and for report at a subsequent, sixth WTO Ministerial. Thus, on the issue of implementation, the text would commit Ministers to note that while progress has been made under the Doha mandate, a number of outstanding issues and concerns remain. "We instruct the WTO bodies concerned to redouble their efforts to resolve these issues, and instruct the General Council to report on progress at our next [i.e. the 6th Ministerial] Session".

On S&D the formula is split. On some S&D issues, that are relatively minor, some decisions are to be taken as set out in a document to be attached. Even on this set of issues an informal meeting on 21 July of Head of Delegations on the S&D shows dissatisfaction by developing countries. Indeed, the LDCs and the African group expressed concern that they have been given little time even to study the proposals being put to them. Apart from these issues on the table, the major, contentious cases related to S&D will be decided before or at Cancun. Instead, they are to be referred back for further work and be reported at the next WTO ministerial conference.

#### **6. Who decides and how?**

The key question now is this: What processes will be adopted on further work on the draft Ministerial Text in preparation Cancun? One aspect of this is the pressure to "consult" on so many documents simultaneously, in order for them to fill in the skeleton of the Ministerial Text, and in so little time. The developing countries and their small, sometimes one-member delegations are

once again being put at a disadvantage. For example, the LDCs and African countries have already found themselves short of time to consider the Chairman's suggestions on how to treat their own original proposals on S&D.

Then there is the problem of informality of the process and how the conclusions, carried out in the informal consultations are arrived at. What is the state, say, of the text on Agriculture, and how should it be treated in the declaration? How about non-agriculture market access? And implementation? Whose word counts in deciding how much progress has been made in all these areas: the entirety of the membership of the relevant group, or the Chairman of the group who can then proceed on his own responsibility? And after all these individual questions have been decided, who decides on their ultimate shape in the draft declaration -- the membership, meeting formally to examine and approve the draft, or the Chairman of the Trade Negotiating Committee, closely co-operating with the Chair of the General Council, supported by the army of friends of the Chair(s), all supposedly acting on their own responsibility?

At the TNC meeting, Supachai appeared determined not to give ground on his approach that after the upcoming general council, further work will only take place in informal meetings, consultations, and bilateral exchanges. Indeed, his insistence on this approach, in the case of the particular issue of implementation, led to one of the most awkward moments (diplomatically put) in the TNC meeting, and provides an indication of the extent to which he would go.

As reported in the SUNS No. 5386, near the end of the meeting, Supachai in summing up discussions on the issue of implementation, indicated that he would hold further consultations, including with negotiating bodies which had been dealing with these issues. When India, following similar statements earlier made by Kenya and China, objected to this approach and asked for the issue to be sent to a special

session of the TNC to be convened later, Supachai tried to isolate India suggesting it was only the latter who had difficulties. India then noted that their concerns were shared by China and Kenya among other, whereupon Supachai turned to the Kenya seat. But the Kenya delegate, who had made the statement, was not in his seat, having gone to attend another meeting being held simultaneously. When the India delegate insisted that it had instructions from its capital on the importance that the implementation issues must be dealt with at the level of the TNC, Supachai asked the India delegation to consider going back to the capital, presumably to get a fresh mandate more in tune with Supachai's views.

All these came at the end of two days of meeting of the TNC in which many developing countries returned again and again to the question of "process". It is clear that for the developing countries, the process of decision-making is most unsatisfactory. They are still seeking a process in which they can effectively participate in drafting, revising and approving the draft texts that form the key decisions before and at Cancun. Thus resolving the issue of process will be the key aspect to the outcomes in Cancun.

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**Editorial: Draft Ministerial Text A  
Blank Cheque for Developed Countries**  
Percy F. Makombe

"I am invisible, understand, simply because people refuse to see me. Like the bodiless heads you see sometimes in circus sideshows, it is as though I have been surrounded by mirrors of hard, distorting glass. When they approach me they see only my surroundings, themselves, or figments of their imagination -- indeed, everything and

anything expect me,” writes Ralph Ellison in his world acclaimed novel *Invisible Man*. The novel is about the disappearance of self and collapse of being. The man is invisible not because he is not there, but simply because people refuse to see him.

The above description is very much like the position that the developing countries find themselves in with less than five weeks to go before the 5th Ministerial World Trade Organisation (WTO) meeting in Cancun, Mexico. The Fifth Ministerial comes at a time when concerns have been raised about the undemocratic nature of WTO negotiations. The WTO has been accused of conducting negotiations in an exclusionary way thus rendering obsolete the principle of consensus to which it ostensibly subscribes to.

Nowhere is this evident than in the current debate surrounding the infamous draft Ministerial Text released on 18 July by the Chairman of the WTO General Council, Uruguay Ambassador Perez-del-Castillo together with the WTO Director-General Supachai Panitchpakdi.

According to the brief letter attached to the Draft Ministerial Text, the Chairman has drafted the text “in close cooperation with the Director General”. It is this text that will be used to conduct business in Cancun even though the Chair says he is submitting this text “on his own responsibility”. The brief letter goes on to say that the submitted text “does not purport to represent agreement in whole or in part and is without prejudice to any delegation’s position on any issue”. What is evident from the brief letter is that the chair has subverted the process of consensus and issued an individual text when what should go to Cancun is really a Members’ Text – a document that has the consensus of the membership. Such a process as the Chair has engaged in gives birth to a document whose content does not reflect the various viewpoints of member countries. Of particular concern is that the views of the developing countries are decimated. In other words, developing countries become “invisible”. They are

invisible because the Chair and “Friends of the Chair” refuse to see them.

As Shefali Sharma points out elsewhere in this *Bulletin*, “the process of negotiations on the text will be conducted solely in undocumented meetings and mainly outside of any formal processes of the WTO”. This is worrisome especially given the fact that mini-ministerial meetings to which only selected few countries are invited have become fashionable. These meetings which really should take place in the General Council have a tendency of normalizing the abnormal as they discuss and decide on WTO issues.

The question has been asked on whether the WTO is a Chairman-driven or Member-driven institution. This question becomes even more pertinent in looking at the cover letter of the Draft Ministerial Text where the Chair feeds us with a text concocted “on his own responsibility”. These texts are matters of life and death and should therefore not be in the opinion of the Chair because we are not sure of the processes that nurture those opinions. Representatives of the African Group that attended the first Trade Negotiating Committee meeting after Doha made the comment that: “any Chairperson should not submit on his own authority a negotiating text to a higher body. In the event that there was no consensus regarding the text, then any divergent positions should be clearly reflected”. This comment still stands and must be respected.

If the process giving rise to the Draft Ministerial Text reduces developing countries into nothing, the content of the Text makes them “invisible”. The text does not capture developing countries’ concerns. In the Singapore Issues (investment, competition, trade facilitation and transparency in government procurement) for example, the majority of developing countries want these issues dropped from the WTO agenda because they run counter to their own developmental agendas. For instance investment as an issue would give maximum benefits and rights to a foreign

investor and ensure that the host country would not be able to regulate this foreign investor. In this instance the impact on local firms would be very serious as this would have implications on development and sovereignty.

When the issue of competition was introduced to the WTO by the developing countries, they were under the impression that it had to do with restraining big business. The idea was that foreign companies could not be granted endless rights if local companies were to survive. It however became evident that the European Union and the United States of America wanted something different. They wanted foreign firms to be treated the same way as local ones and were arguing that any law that contravened this had to be changed. Most developing countries were resistant to this as the Lowest Developing Countries Ministerial Conference, in Zanzibar and the African Trade Ministers Meeting in Abuja testify. Yet this position is not captured in the Draft Ministerial Text. What seems evident is that the Singapore Issues will be decided at Cancun. This is most unfortunate as a decision was taken in Doha that negotiations would begin on the four Singapore issues after the Fifth Ministerial, and only on the basis of an explicit consensus on modalities. There is no consensus among WTO members on the modalities of the issues, therefore the process of the clarification of the issues should continue.

Another area crying out for attention is that of Services. The first part of the paragraph on Services in the draft text reads:

*"We recognize the progress made in the services negotiations and urge participants to intensify their efforts to bring this process to a successful conclusion. We call upon those Members who have not yet submitted their initial offers to do so as soon as possible. Members should submit their improved offers by (...) and revised offers, with a view to finalizing the negotiations, should be submitted by (...)."*

Developing countries particularly in Africa have continued to call for a moratorium on Services negotiations. Paragraph 15 of the Doha Work Programme makes a provision for negotiations to start based on the outcome of impact assessment studies. These studies have not yet been carried out. It is therefore shocking that at a time when developing countries ought to be encouraged to reserve their right to respond or accept requests or to make further commitments, they are being called upon to improve existing offers and conclude negotiations.

The Chair's text is a biased text that seeks to give developed countries a blank cheque. It results from a flawed process that does not respect the necessity of a consensus. It blatantly ignores the views of the developing countries who constitute the majority in the WTO. It makes developing countries "invisible". As Ralph Ellison says: "I say all this to assure you that it is incorrect to assume that, because I'm invisible and live in a hole, I am dead". Developing countries need justice and desire justice. They desire to utilize the public nature of services, as a means for serving human rights of all especially the poor. They desire to have the right to protect public health and promote access to medicines for all. This is not too much to ask. And the way to go is to see that the Chair does not submit a draft text that does not reflect consensus.

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