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#### **Report of the Kenya/SEATINI Meeting of Trade Ministers, Brussels, August 1-2, 2003**

Chandrakant Patel

##### **Background:**

Following the AU Trade Minister's meeting in Mauritius in June, a number of NGOs met in Nairobi to consider the contribution they can make towards supporting African Governments in advancing their trading interests in the context of the Doha and the ACP/EU negotiations. The meeting decided to undertake a number of activities, including assistance to like-minded African Governments to meet before the Fifth Ministerial meeting in Cancun to coordinate their positions and strategies for

conducting the negotiations in Cancun and beyond. It was agreed that the overall point of reference for the proposed meeting and strategy for the negotiations would be the Declarations of African Trade Ministers in Mauritius, of the LDCs Ministers in Dhaka and of the ACP Ministers in Brussels.

Accordingly, the meeting mandated SEATINI to take the initiative with the Ministers. Discussions between SEATINI and Kenya's Minister of Trade and Industry, Hon. Dr Mukhisa Kituyi, concluded that the meeting should take place immediately upon the conclusion of the meeting of the ACP Ministers in Brussels and a provisional list of invitees was agreed upon. Hon. Dr Mukhisa Kituyi generously agreed to Chair the meeting

and to invite his fellow Ministers to the meeting. Trade Ministers from the following countries were it: Benin, Botswana, Ghana, Kenya, Lesotho, Mauritius, Namibia, Nigeria, Senegal, Tanzania, Zambia and Zimbabwe.

SEATINI undertook the responsibility for the organisation and financing the cost of the meeting. In preparation for the Ministers meeting, a briefing was held at Kenya's Permanent Mission in Geneva on 26 of August under the Chairmanship of Kenya's Ambassador /Permanent Representative to the United Nations in Geneva, Ms Amina J. Mohamed. Ambassadors from the following Missions were present: Botswana, Benin, Ghana, Mauritius, Tanzania, Uganda, Zambia and Zimbabwe. An Official represented Senegal from its Geneva Mission.

The main objective of the meeting was to brief the Geneva based Ambassadors about the origin and purpose of the Ministerial meeting; prepare for the Ministerial meeting in Brussels; discuss a broad agenda that could constitute a basis for the Ministers deliberations and review logistical arrangements for the meeting.

The meeting was informed by the Permanent Representative of Kenya that Kenya's Minister of Trade and Industry had written to his counterparts inviting them to the meeting in Brussels, upon the conclusion of the ACP Ministers meeting. She also informed that Kenya's Embassy in Brussels was prepared to host the meeting and provide related support.

The meeting agreed that the discussions and the briefings provided by the PR of Kenya and SEATINI provided a good basis for the Ambassadors to brief their Ministers on the objectives and arrangements for Brussels meeting.

### **Meeting of the Trade Ministers, ACP House, Brussels, 1 August 2003**

The meeting was jointly chaired by Kenya's Minister of Trade and Industry, Dr Mukhisa Kituyi and Dr Yash Tandon, Director of SEATINI. Dr Kituyi welcomed the Ministers and outlined the objectives of the meeting. He pointed out

that the meeting had the potential to make a historic contribution towards greater coherence and coordination in preparing the position of like-minded countries from Africa for the mid-term review meeting of the WTO in Cancun in September. The Declarations of the AU Trade Ministers in Mauritius in June as well as of the LDCs Trade Ministers in Dhaka and the ACP Ministers in Brussels provided a basis for making concrete proposals to the forthcoming meeting of the General Council in Geneva in August. Stressing the importance of that meeting, he pointed out that it would prepare draft texts to be transmitted to Cancun for the consideration of WTO Ministers. In the absence of clear alternative formulations and proposals by African negotiators in Geneva covering substantive and procedural issues, the Continent risked being further marginalised from the negotiations at Cancun.

The processes that have heretofore characterized WTO's work have a major bearing on the outcome of the negotiations. In particular, the "green room" process marginalises smaller trading nations by effectively excluding them from participation, consultations and decision-making. Consequently, it was incumbent upon African countries to challenge the process, prepare thoroughly for the forthcoming negotiations, maintain the solidarity of the African positions and promote these in a concerted way in Geneva and at Cancun. Accordingly, he stressed that the African Ambassadors in Geneva have major challenges ahead and their efforts and work warranted the fullest support from national capitals. The fact that AU Heads of States had endorsed the decisions of their Trade Ministers must further strengthen their resolve to pursue concerted strategies. The Minister further noted that the strength of their numbers and the moral weight of their positions gives the continent a unique opportunity to lead the negotiations and decisively influence its outcome. The Minister also emphasized the importance building alliances with like-minded countries from other developing regions.

A number of experts and resource persons invited by SEATINI briefed the Ministers on the on-going negotiations and processes in Geneva. Discussions and interventions by other Ministers endorsed the observations by the Chairman of the meeting and thanked him for the unique and historic initiative. They thanked SEATINI for this initiative and extended their full support for the strategy outlined by Dr Kituyi and agreed to:

1. Continue and encourage the convening of such meetings.
2. Further empower their Ambassadors in Geneva to operationalise the various Ministerial decisions in the forthcoming Geneva negotiations.
3. Work closely with civil society organizations that support their work and to further request them to continue to extend their support to African Governments in the negotiations. In particular, the proposal to provide the Ministers with technical capacity to improve communications with each other and with trade experts was welcomed.

#### **Meeting of Ambassadors and Senior Officials, Brussels, 2 August**

The Director of SEATINI stated that the purpose of this meeting was to follow-up on the decision taken by the Ministers the previous day. In particular, to concretize the AU, LDCs and the ACP Declarations into drafting proposals for the General Council's meeting on 22-23 August. Several issues were identified for the exercise, namely process issues, TRIPs and Public Health, Agriculture, Singapore issues and Non-Agricultural Market Access issues.

On the basis of discussions and briefings provided by resource persons, preliminary drafts were prepared on process and Singapore issues and on Agriculture. The meeting decided to:

1. Adopt the draft texts prepared at the meeting as a basis for consultations with like-minded countries prior to their finalization and formal submission to the General Council.
2. Ensure that the drafts closely followed the Ministerial Declarations, taking into account the need to recast, as necessary, the texts into WTO format and practice.

3. Take closely into account the on-going ACP/EU negotiations and in particular to analyse the implications of EPAs on existing RTAs and of the erosion of preferences in consequence of Doha mandated negotiations on NAMA.

4. Strengthen co-ordination between Geneva and Brussels.

5. Explore all avenues to bring on board other like-minded delegations in Geneva for the negotiations at the General Council and for the joint submission of proposals.

6. Invite civil society organisations such as SEATINI, Global South and Third World Network to continue to support the above work.

*Chandrakant Patel, is the SEATINI Coordinator in Geneva.*

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#### **ACP trade ministers call on WTO to adopt rules for inclusive decision-making in Cancun.**

Tetteh Hormeku, Brussels, 3 August 2003

Trade Ministers of the African, Caribbean and Pacific countries, in an ACP Declaration on the forthcoming WTO Ministerial Conference in Cancun, have stated that there is no basis for the commencement of negotiations on the Singapore Issues.

The Ministers also urged WTO members to ensure the decision-making process at the Cancun Ministerial is "transparent and inclusive" through adopting procedural rules. They put forward four proposals, including that draft texts contain the views of various members, that Chairs of working groups be appointed by all members, and that all meetings be opened to all members.

The Declaration was adopted at the end of the Sixth meeting of ACP Trade Ministers held in Brussels on 31 July-1 August. It was chaired by Botswana Trade and Industry Minister, Mr. Jacob Nkate. It was preceded by an earlier meeting of senior officials.

The meetings brought together the 77 member countries of the ACP group of states which have trade and development relations with the European Union to

deliberate on a common position for Cancun. Both meetings were marked by lively debates on several issues. Coming after similar positions on the Singapore issues taken by Ministerial conferences of the group of least developed countries in Dhaka (June) and of African countries in Mauritius (June), the decision by the ACP ministers means that a majority of members of the WTO have proclaimed their intention not to launch negotiations on the Singapore Issues at the Cancun conference.

In fact the ACP Declaration goes further than that of the previous Ministerial Conferences of the LDCs and the African Union. The African Ministers' Declaration noted that WTO Members do not have a common understanding on how the Singapore issues should be dealt with, and called for the process of clarification to be continued. Similarly the Dhaka Declaration of LDCs called for continuation of technical work and studies to clarify the implications of the Singapore Issues for the development aspirations of LDCs.

The ACP Ministerial Declaration carried the argument one step more explicitly. The Ministers reaffirmed that WTO Members have not reached a common understanding on the Singapore Issues, that the benefits of negotiating a multilateral framework for all the issues are not evident, that they had scarce resources and limited capacity in this area, and this "does not provide a basis for the commencement of negotiations in these areas."

At a meeting with EC Trade Commissioner, Mr Pascal Lamy, on 31 July, many of the ACP Ministers reportedly told Mr Lamy clearly that they were not in a position to accept the launch of negotiations on the Singapore issues. The EC is the prime mover and gives high priority to such a launching of negotiations in Cancun.

The exact text of the two paragraphs on the Singapore issues in the ACP Declaration is as follows:

"We reaffirm that the discussion in the WTO on these issues thus far confirms that each has its own peculiar aspects and complexities and that WTO members have not reached a common understanding on how any of these issues should be dealt with procedurally and substantively in a multilateral context. We welcome all technical assistance and capacity building measures in these areas, especially those targeted to facilitating the evaluation by ACP States of the implications of adopting multilateral frameworks in these areas on our development policies and objectives.

"We fully recognise that most ACP states do not have the capacity to meaningfully negotiate these issues, as we grapple with the implementation of existing WTO rules, and especially taking into account the expanded work programme after the Doha Ministerial. Furthermore, the benefits of negotiating a multilateral framework for all the Singapore issues are not evident, and this, coupled with the fact of our scarce resources and limited capacity in this area, does not provide a basis for the commencement of negotiations in these areas".

The ACP trade ministers also took the calls for transparency and democracy in the WTO contained in the Dhaka and Mauritius declarations one step further by outlining specific areas in which rules of procedure should be adopted in order to make the decision-making process in Cancun transparent and inclusive.

This reflects the growing concern of many developing countries at the WTO with the way the preparatory process for the Cancun ministerial is being handled at the moment in Geneva, and their fears that at Cancun itself there will be a repeat of the untransparent and exclusive processes that were the rule at Doha and other previous Ministerials.

The Declaration on WTO re-affirmed decisions at earlier gatherings in which members of group participated, including the declaration of the LDCs trade

ministers in Dhaka, the Mauritius declaration of African trade ministers which was endorsed by the African Heads of State in July in Mozambique, as well as the decisions of the Conference of the Heads of Government of the Caribbean Community adopted in Jamaica, also in July.

The Ministers expressed concern about the slow progress in implementation of the Doha work programme, and that important deadlines on issues of particular interest to developing countries (such as TRIPS and public health, special and differential treatment, implementation and agriculture modalities) have been missed.

They warned that "the lack of meaningful progress on these issues has the potential to undermine the confidence of ACP States in the multilateral trading system."

The ministers re-iterated the "importance of reforming the multilateral trading system to remove the existing imbalances which impact negatively on ACP member-states". Furthermore they called for flexibility in the rules and their application, and for greater policy space for developing, least-developed, small and vulnerable countries. "We stress that it is urgent and essential to address the development issues that have been placed at the centre of the Doha Work Programme", they added.

On the **decision-making process**, the ministers "re-iterated the critical importance of creating a transparent, democratic, and all-inclusive and consultative decision-making process in the WTO, as this is vital to the enhancing the credibility of the WTO and the multilateral trading system". They urged members of the WTO to ensure decision-making at the upcoming Ministerial Conference in Cancun is transparent and inclusive through the adoption of procedural rules.

Those rules, they added, should ensure among other things that:

(a) proposals of the various members of groups of members are reflected in the draft texts that form the basis of negotiations,

(b) appointment of the Chairpersons of working groups is made by a decision of all members;

(c) all WTO members are informed of all meetings and are entitled to participate in them, and

(d) issues of importance, including consideration of a proposal to extend the length of the Conference, should be put before all WTO Members for a decision.

The above proposed measures mark the first time a Ministerial Declaration of so many countries belonging to the WTO have put forward concrete steps to reform the unsatisfactory processes surrounding WTO Ministerial meeting.

The Mauritius Declaration of African Ministers had expressed concern about "the lack of transparency and inclusiveness in the WTO negotiations and decision-making processes" and called for measures, without spelling these out, to ensure effective participation of African countries before, at and beyond Cancun.

The list of procedural measures in the ACP Declaration clearly refer to the series of unsatisfactory and improper practices in 2001 in the run-up to and at the 4th WTO Ministerial Conference in Doha. At that time, the then Chairman of the General Council, Ambassador Stuart Harbinson of Hong Kong, submitted a draft ministerial declaration to Doha, which excluded the explicitly stated views of the majority of the developing countries members on many areas (especially on the Singapore Issues) and despite the opposition of those countries, voiced at General Council meetings in Geneva.

Once in Doha, the draft text was adopted as the basis for negotiations at the ceremonial Opening Ceremony, denying members the opportunity to contest the propriety of the text. Then a number of

so-called "friends of the chair", all of whom were in favour of views contrary to those of the majority of the developing country members, were appointed by the Conference chairman, on the basis of unknown criteria, and with no input by the members as whole.

Then in the final stages of the conference, a decision was taken (up to now, it is not known by who) to extend the meeting by a day, without prior information to the members most of whom had already made arrangement to leave on the scheduled final day of the conference. And the two revised drafts produced at Doha to an even greater extent excluded the views of most developing countries.

Many believe that all these practices combined to make the outcome one that was suited to the interests of the developed countries.

Since Doha, there have been many calls by developing countries for the adoption of proper working and decision-making procedures in the WTO. In February 2002, several developing countries submitted a formal proposal detailing an appropriate set of procedures, but most developed countries, citing the need to maintain "flexibility" for Ministers to make decisions, have been unwilling to adopt these proposed procedures.

As the preparations for Cancun have got under way, problems similar to that of the pre-Doha period have surfaced, and many developing countries have voiced their concerns. And in July, a group of non-governmental organisations working on trade issues launched a campaign to expose the undemocratic practices and to improve the process.

Non-governmental organisations and other observers at the ACP Ministerial meeting pointed out that the open and all-inclusive manner in which the meeting was conducted was in great contrast to the procedures at the WTO .

The ACP draft text was prepared in an open manner by the officials in Geneva and then at a two-day meeting before the

Ministerial two days earlier. All countries were able to place their views. At the Ministerial, all the Ministers assisted by their experts were able to discuss and also to re-open the text.

Where there was serious disagreement, the contending parties were invited by the Chair, in the full view and knowledge of all other members, to work on a compromise which was then brought back to the full assembly for further debate and approval.

This contrasted sharply with the way matters proceed in the WTO, where in the name of efficiency, critical decisions are taken at meetings of small groups unknown to the rest of the members, and the result then brought to the others to accept. As many officials and observers noted, the manner the ACP meeting was conducted reflected the norm of many inter-governmental meetings on issues as complex as trade negotiations, and the it was the WTO that was unusual and stuck out like a sore thumb for its undemocratic practices.

In a section on **trade preferences**, the ACP Declaration, called on WTO members to provide for the maintenance and security of the ACP preferences, through flexible rules and modalities that allow for exemptions based on special development needs. In addition, the erosion of preferences must be addressed through compensatory and other mechanisms, including measures to promote exports. It called on WTO Members not to take measures which would further erode preferences.

On **special and differential treatment**, the Ministers said it was a core WTO principle and an important instrument for mainstreaming development in the trade system. It is necessary to strengthen and operationalise existing SDT provisions, introduce new effective provisions, and entrench mandatory and binding SDT provisions during present and future negotiations. They called on developed countries to show political will to address

the S&D proposals and reach concrete results before Cancun.

On **Implementation Issues**, the Ministers noted with concern, that despite the commitment in the Doha Declaration to give the "utmost importance" to implementation-related issues, there has been little progress, and that the majority of the issues remain unresolved long past the end of 2002 deadline. They called for political will to address all outstanding issues before Cancun.

On **agriculture**, the Ministers said the missed deadlines represent a major setback. They were concerned at the little movement on key outstanding issues such as formula for reducing tariffs and special provisions for developing countries. Ministers also noted that "the Harbinson text on draft modalities does not adequately deal with the structural problems of the Agreement on Agriculture".

Specific demands included: improved market access for all agricultural products of ACP states, and measures to enhance the supply capacity of ACP agricultural sectors; the need to address export subsidies and domestic support in line with the Doha Declaration, while preserving existing preferential arrangements; the need for developed countries to eliminate export subsidies and reduce trade-distorting domestic support on certain products of interest to developing countries; a financial compensatory mechanism to cover revenue losses resulting from developed countries' export subsidies.

They also called for the agriculture modalities to take account of the aims of food security, rural development, livelihood security. bound duty free and quota free market access to all LDC products; action to build on the proposals in the Harbinson text to address the issue of erosion of preferences. "We emphasise that the new Special Safeguard Mechanism (SSM), Strategic Products (SP) and the special needs of NFIDCs are of priority interest to developing countries

and reiterate the need for these to be appropriately provided for in the agriculture negotiations," said the Declaration.

The Ministers also urged developed countries to provide bound duty-free and quota free market access to all imports from LDCs, including agricultural products in their primary, semi-processed and processed forms. Further they reiterated that LDCs are exempt from reduction commitments, in accordance with Article 15.2 of the Agreement on Agriculture.

They strongly welcomed proposals on preferences in the Harbinson text and asked WTO Members to address the erosion of preferences, including through an appropriate formula for tariff reduction.

They also supported the initiative by West and Central African countries to address urgently the negative impact on them and other cotton producing ACP Group Members of export and production subsidies on cotton. The Cancun conference should take a decision to rapidly eliminate cotton subsidies on cotton and compensate adversely affected countries.

The Ministers also recognised the urgent need to pay priority attention to the serious problem of commodity dependence, continuous declines and sharp fluctuations in the prices of commodities of export interest to ACP States. They supported initiatives taken within the WTO to resolve these problems.

They stressed the importance to the ACP of sugar preferential arrangements and regretted the recourse to the WTO dispute settlement procedures by Australia, Brazil and Thailand against the EU Sugar regime which, if upheld, would adversely affect the ACP countries.

In the area of **services**, the declaration noted that the gains derived from services liberalisation have accrued primarily to developed countries, and underscored the need for measure to redress the imbalances

and inequities that currently exist. To this end, Ministers reiterated the "need to respect the principle of progress liberalisation, in particular, the flexibility provided to ACP states to open few sectors, in line with their national development objectives, and the liberalisation by developed countries in sectors and modes of export interest to ACP countries, particularly through the movement of natural persons".

They also stressed that ACP states have not been able to actively take part in the current request and offer negotiations as there are few sectors in the other countries in which local enterprises from ACP states can meaningfully participate. In the light of this, ministers urged other WTO members "to refrain from making excessive demands on members of the ACP group in this regard". "We further urge that due respect must be given to the right of members ... to regulate trade in services and liberalise according to their national policy objectives."

**On Market Access for Non-Agricultural Products,** the Ministers said the negotiations should facilitate industrialization in their countries and thus give attention to: (i) providing market access for products of export interest to ACP States; (ii) ensuring that ACP States are allowed to choose their own rate and extent of future import liberalization, so as not to cause further adverse effects on local industries; (iii) addressing the problems that ACP States will face from erosion of preferences; and (iv) addressing the need for ACP States to build their supply capacity so that they can take advantage of any increased market access opportunities.

The Ministers welcomed the Chairman's proposal to exempt LDCs from making reduction commitments but are deeply disappointed that the draft elements of modalities proposed by the Chairman of the Negotiating Group "do not take these issues into account and in fact contain other provisions, including the complete elimination of tariffs in specific sectors that are likely to have serious negative

consequences for ACP States. We therefore urge that the revised text on modalities take fully on board the elements proposed by the ACP States.

They also called for a tariff reduction formula that provides sufficient flexibility and scope to enable ACP States to continue to have adequate and effective levels of preferences to maintain their competitiveness. Only such an approach would guarantee balance, equity and benefits for all WTO members in the outcome of the Doha Round. Moreover, any tariff reduction adversely impacting on revenues of ACP States should be adequately compensated.

"We call for the operationalisation of the concept of "less than full reciprocity in reduction commitments. . ." for developing countries as expressed in the Doha Declaration. In that regard, the modalities should enable ACP States and other developing countries to decide their own rate, pace and scope of liberalisation, undertaking commitments only to the extent consistent with their individual development, financial and trade needs."

**On TRIPs and Public Health,** the Ministers underscored the commitment in Doha that the TRIPs agreement "can and should be interpreted in a manner supportive of WTO's members right to protect public health, and in particular to promote access to medicines for all". They re-affirmed that the Declaration on TRIPs and health "clarifies the relationship between the TRIPs agreement and Public Health policies and are deeply concerned by the impasse in finding a solution to the issues identified in paragraph 6 in that declaration." They urged WTO members to forge a "sustainable, simple, predictable and legally binding multilateral solution, without restrictions and according to the manner outlined in the Declaration, before the Ministerial Conference."

**On TRIPs,** the Ministers continued to urge that the review of Article 27.3(b) of the TRIPs Agreement "should conclusively clarify that all living

organisms including plants, animals and parts of plants and animals, including gene sequencing and biological and other natural processes for the production of plants animals and their parts should not be patented. "

They supported the LDC Dhaka Declaration that WTO members "shall select their own sui generis system for plant variety protection, including recognising traditional knowledge and the rights of farmers to use, save, re-sow, exchange or sell seeds", and the position of the Africa Group, that Members have the right and the freedom to determine and adopt appropriate regimes in satisfying the requirement to protect plant varieties by effective sui generis systems and any sui generis system adopted should enable Members to retain their right to adopt and develop measures that encourage and promote the traditions of their farming communities and indigenous peoples in innovating and developing new plant varieties and enhancing biological diversity.

They reaffirmed that WTO Members should develop mechanisms that require, as a condition for the grant of a patent, patent applications to disclose the country or area of origin of any biological resources and traditional knowledge used or involved in the invention, and to provide confirmation of compliance with all regulations in the country of origin, including prior informed consent, and access and benefit sharing arrangements. The TRIPS Agreement should be supportive of and not run counter to the objectives of the Convention on Biological Diversity, which is essential for fair and equitable benefit sharing.

They noted, however, that such disclosure requirements, cannot address the basic concern that patents on plants, animals, micro-organisms and their parts, as per Article 27.3(b) give patent holders exclusive rights over the use of the resources and thus, denies communities the ability to determine the conditions for their use.

On **regional trade agreements**, they urged that the clarification of existing rules and disciplines should allow sufficient flexibility to developing country parties to RTAs. In this regard, the ACP group requires the preservation of the Enabling Clause and the revision of Article XXIV to include S and D treatment for developing countries.

On **Trade, Debt and Finance**, the Declaration said problems arising in the trade area (such as decline in commodity prices, lack of market access opportunities, and over-rapid import liberalization) can lead to increased trade deficits which contribute to debt and financial problems. On the other hand, continued indebtedness or financial crises can hinder the ability of developing countries to trade.

The Working Group should continue its work beyond the Ministerial Conference. The Highly Indebted Poor Countries (HIPC) be treated as if they were LDC States and be given S and D treatment afforded to LDC States in all trading agreements and arrangements.

On **Trade and Transfer of Technology**, the Ministers were disappointed that the WTO has yet to significantly contribute to technology transfer to developing countries and that some WTO rules may hinder the technology transfer process, whereas technology transfer is a necessary requirement for development.

They insisted the various WTO provisions pertaining to transfer of technology be operationalised to make technology easily accessible. The Working Group should continue its work beyond Cancun.

On **Technical Cooperation and Capacity Building**, Ministers stated the programmes could improve through better collaboration between ACP states and the programme organisers "in determining the course content and in the selection of resource persons, who should have a sound understanding of development, and, as far as possible, come from developing countries". Technical training and

capacity building should also support not only effective negotiation especially on view of the heavy work load of the Doha programme, but must include the include building supply capacity of members of the ACP group, and increase the productivity of local producers so that they can better face the challenges of globalisation.

On **coherence in global economic governance**, the declaration called for strengthening cooperation and coherence among the WTO, UNCTAD, other UN agencies, the IMF and the World Bank.

However, the Ministers warned that attempts to achieve greater coherence should be aimed at expanding, not narrowing, the policy space for development in developing countries. "They should further promote, without cross-conditionalities or additional conditions, consistent and mutually supportive policies that will contribute to improved co-ordination of technical and financial assistance, reduction of cancellation of the debt burden, recognition of autonomous liberalisation, and eradication of poverty."

In another document, **Conclusions of the ACP Trade Ministers' meeting**, the Ministers appointed the Botswana Trade and Industry Minister, Mr Jacob Nkate, as the ACP Group's overall spokesperson for the Cancun Ministerial. He was mandated to consult with the Chair of the Ministerial to clarify the modalities for the conduct of the Conference.

The ACP Group in Geneva was mandated to prepare a vademecum containing detailed ACP positions on all issues on the Cancun agenda. The Declaration and vademecum will serve as a reference for the overall spokesperson and spokespersons on various subject areas.

The Ministers also agreed to build alliances and hold joint meetings with the African Union and the LDCs during the Cancun Conference and joint positions and alliances could also be developed with other groupings.

*Tetteh Hormeku coordinates trade and development activities in the TWN Africa Secretariat in Accra, and also the Africa Trade Network.*

### **African Countries submit proposals for Cancun Ministerial Conference**

Below is a copy of an official WTO document WT/GC/W/510 dated 14 August 2003 that contains two papers submitted by eleven African countries

#### **Proposals for inclusion in the draft text for Cancun**

*Communication from Benin, Botswana, Kenya, Mauritius, Nigeria, Senegal, Sierra Leone, Tanzania, Uganda, Zambia and Zimbabwe*

The following communication, dated 13 August 2003, has been received from the Permanent Mission of Kenya.

I am pleased to submit two proposals, one on Singapore Issues and the second on Internal Transparency, for inclusion in the Draft text for Cancun.

This submission is made on behalf of the following delegations: Benin, Botswana, Kenya, Mauritius, Nigeria, Senegal, Sierra Leone, Tanzania, Uganda, Zambia and Zimbabwe.

We are therefore requesting you to circulate the submission as an official WTO document and also provide to us an opportunity to introduce the paper during the next meeting.

#### **Proposal for decision on Singapore issues**

Communication from the following Members: Benin, Botswana, Kenya, Mauritius, Nigeria, Senegal, Sierra Leone, Tanzania, Uganda, Zambia and Zimbabwe

1. At the Fifth Ministerial Conference, Ministers will have to make a decision, based on explicit consensus, on the Singapore issues.

2. We propose that the following text be placed in the Draft Ministerial Text in the section on the Singapore Issues.

**The Singapore issues**  
Ministers take note of the discussions conducted since the Fourth Ministerial Conference on the issues of the relationship between trade and investment, the interaction between trade and competition policy, transparency in government procurement, and trade facilitation.

We further note that each of the issues has its own peculiar aspects and complexities and that WTO members have not reached a common multilateral context. We recognize the concerns of many developing country members about the potential serious implications of these issues on their economies and that the benefits of negotiating a multilateral framework for each of these issues is not evident to them.

Moreover, many developing countries have scarce resources and limited capacity to meaningfully negotiate these issues, especially as they grapple with implementation of existing WTO rules and the expanded work programme after the Doha Ministerial Conference.

This situation does not provide a basis for the commencement of negotiations in these areas. We decide that further clarification of the issues be continued in the respective Working Groups (on the relationship between trade and investment, interaction between trade and competition policy, and transparency in government procurement) and in the Council for Goods (for trade facilitation).

3. The above proposed text is in line with the decisions taken on these issues in the ACP Declaration on the Fifth Ministerial Conference of the WTO, adopted at the Sixth Meeting of ACP Trade Ministers (Brussels 31 July-1 August 2003); in the Mauritius Ministerial Declaration on the Fifth Ministerial Conference of the WTO, adopted at the African Union meeting of Ministers' Meeting of Trade (Grand Baie, Mauritius, 19-20 June 2003), and in the

Dhaka Declaration, adopted at the Second LDC Trade Ministers' Meeting (Dhaka, Bangladesh, 31 May-2 June 2003).

**Proposals for improving the decision-making process in the WTO before and at the Fifth Ministerial Conference**  
Communication from the following Members: Benin, Botswana, Kenya, Mauritius, Nigeria, Senegal, Sierra Leone, Tanzania, Uganda, Zambia and Zimbabwe

1. We are now at a crucial phase of the preparatory process towards the Fifth Ministerial Conference. It is thus vital that Members address the issue of the decision-making process and the procedures for the remainder of the preparatory process in Geneva and for the Ministerial Conference.

2. In this context, we reiterate the crucial importance of creating a transparent, democratic, all-inclusive and consultative decision-making process in the WTO, as this is vital to enhancing the credibility of the WTO and the multilateral trading system.

3. We reiterate the importance of taking decisions by consensus, in accordance with paragraph 1 of Article 9 of the WTO Agreement, especially in the context of the Ministerial Conference and its preparatory phase.

4. We urge all WTO members, with the assistance of the WTO Secretariat, to ensure the decision-making process at the Fifth Ministerial Conference and the remainder of the preparatory process is transparent and inclusive, through the adoption of procedural rules.

5. These rules should ensure, among other things, that:

(a) Proposals of the various members or groups of members are reflected adequately in draft texts that form the basis of negotiations.

(b) Transparent and inclusive mechanisms and procedures must be established so that all Members effectively participate in the drafting, revision and adoption of draft

Ministerial texts during the preparatory process. In particular, adequate opportunity and time should be given to all Members, to review and revise the draft Ministerial texts, which must be approved by all Members through the General Council and not transmitted by any official on his or her own responsibility.

(c) At the Ministerial Conference, an official Committee of the Whole or plenary should be established and should operate throughout the Conference as the main decision-making body. This Committee should decide on items, including: the agenda, the appointment of officials, the establishment of any working groups or consultation groups, the Chairs of such groups, and the transparent and inclusive procedures for drafting, revising and adoption of Ministerial texts.

(d) Any consultations and discussions at the Ministerial Conference should be open ended and inclusive and such meetings should be announced and publicized in proper time including through plenary sessions, bulletins and electronic screens, etc.

(e) If small meetings or consultations on particular issues are considered useful, they should be governed by proper rules. All such proposed meetings should be approved by the plenary or the Committee of the Whole, and be open to all interested Members, and reports on these meetings should be made to the plenary or Committee of the Whole for the information and decision by all Members.

(f) Ministers are entitled to choose whichever officials, and in sufficient numbers required by them, to accompany them at all substantive meetings at the Ministerial Conference. The number of officials should not be restricted, given that the Ministers may require expert advice from various officials involved in the subjects.

(g) There should be fair procedures especially in the final day and hours of the Ministerial Conference. These include:  
(1) Any proposal for extension of the Conference should be a decision to be made by all Members and they should be

given proper notice. (2) There should not be a last-night or last-day exclusive Green Room meeting. (3) The revised draft texts should be made available in all official languages 24 hours before the conclusion of the Conference so that Members have adequate time to reflect on them and to propose changes as deemed necessary.

(h) All issues of importance, including consideration of a proposal to extend the length of the Conference, should be put before all WTO members for a decision.

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### **Editorial: Keep up the good fight**

Percy F. Makombe

Eleven African countries have submitted two papers for Cancun, on Singapore Issues and on the WTO decision-making process. This development was a direct outcome of the initiative taken by the Ministers of Trade of Kenya, Hon. Dr M. Kituyi and SEATINI following the ACP meeting in Brussels (see Report on this in Bulletin). The submission on the Singapore Issues contains the countries' proposed text on these issues, which they want included in the draft Cancun Ministerial Declaration. The text being proposed by these African countries can be traced back to the decisions taken by Ministers at three major meetings held by the Lowest Developing Countries, the African Union and the African Caribbean and Pacific Group. The second paper laments the unfairness of the WTO decision-making process and suggests a way forward to overcoming the problems of lack of transparency in the WTO.

In their proposals, African countries make the point that "At the Fifth Ministerial Conference, Ministers will have to make a decision, based on explicit consensus, on the Singapore Issues." They also go on to suggest that clarification of issues should be continued in the Working Groups as the situation "does not provide a basis for the commencement of negotiations in these areas". This is as it should be, for it must be remembered that before Doha, developing countries had argued that WTO resolves all outstanding implementation issues before taking on

board new issues. Instead what happened is that developed countries vigorously campaigned for the expansion of WTO to include the so-called Singapore issues and environmental and trade, whilst making no concession on matters of concern to the developing countries, except on the hard-fought provision on TRIPS and public health. Even though developing countries resisted this approach, they were ignored in the WTO General Council before Doha and in the successive Doha Declaration texts. The developing countries are therefore quite right in refusing to enter into negotiations until their interests are catered for and they are allowed policy space for development. What is even noteworthy is that the developing countries are identifying those areas that are of interest to them and bringing them up rather than have the agenda drawn up for them.

In calling for an open process in the WTO, developing countries reiterate “the crucial importance of creating a transparent, democratic, all-inclusive and consultative decision-making process in the WTO...” This also means that draft agreements should reflect the divergent views of the WTO membership. The different views should be presented as bracketed text. Above all, the draft agreements need to be drafted by the member states rather than by Chairpersons, or the Secretariat.

The need for transparency cannot be overemphasized. The developing countries need to be vigilant as we approach Cancun. This is moreso given the flurry of activity in the WTO with only three weeks to go before Cancun. The European Community and Japan have been selectively circulating draft Cancun texts on Singapore Issues in which all the four issues are treated as part of the Doha single undertaking with negotiations to end by 1 January 2005. The US and the EC have also presented a joint paper on agriculture which they describe as a framework for “modalities” that narrows the difference between them. This must be rejected as it is an incorrect interpretation of “modalities”. As the Sixth SEATINI workshop observed: “Modalities should be

treated not as ‘procedural modalities’ (i.e the procedures to be adopted for negotiations), but ‘substantive modalities’ (i.e modalities of the contents of the issues and obligations).” The approach of African countries should be that “modalities” consist of a listing of issues to be included in a framework, the meaning of each issue, and the nature and main details of obligations to be contained in the framework. Therefore before negotiations should start, explicit consensus is required on substantive modalities and not on procedural modalities. The US-EC paper also proposes that “as far as S and D treatment is concerned, the rules and disciplines will need to be adjusted for significant net food exporting countries. Where is this new classification coming from? It is disappointing that developed countries continue to trash clear mandates provided for in the Doha Ministerial Declaration instead of fulfilling their promises.

African countries should continue to make formal and written submissions in the remaining discussions before and at Cancun. We therefore recognise the efforts of the eleven African countries who have submitted proposals for the Cancun Ministerial Conference. All these efforts are not in vain. The struggle to better the lives of the poor can never be in vain. By taking strong and united positions at Cancun, the developing countries may yet succeed in stopping the juggernaut of globalisation and trade liberalisation from marching over the vulnerable communities in the South. Let history record that they were part of the movement that said no to human misery and deprivation. As Mahatma Gandhi said: “*Recall the face of the poorest and weakest man whom you have seen, and ask yourself, if the steps you contemplate are going to be of any use to him.*”

*Percy Makombe is the Assistant Editor of this Bulletin.*

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