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“Harmonious” General Council meeting, but differences remain

*Martin Khor

The WTO’s General Council met on 17 May in an atmosphere described by trade officials as “harmonious”, with some members expressing optimism that talks are moving ahead, but with also signals that disagreements on difficult issues remain that may prevent a so-called framework agreement by the end-July deadline.

Trade officials said that the sense of movement has emerged from recent events and meetings held outside WTO, in particular the letter of European Commissioners Pascal Lamy and Franz Fischler to WTO members and the Paris

meeting of OECD ministers, to which some non-OECD countries were invited.

However, it was clear that important differences remain, especially on North-South lines, in key issues such as agriculture, Singapore issues, non-agriculture market access (NAMA) and the so-called development issues.

The WTO director-general Supachai Panitchpakdi reminded the Council that only a “narrow window of opportunity” is available before July (the target date for the General Council to approve “framework agreements” that were missed at the Cancun Ministerial conference last September). “We have a window, but it is small and closing rapidly,” he warned.

Supachai said there was a new level of political will to make progress, and indications of a “growing convergence”. He was encouraged that even on the most difficult areas in agriculture, discussions among Ministers produced a new sense of determination.

The Council chairman, Japanese ambassador Shotaro Oshima, shared Supachai’s “cautious optimism”, saying there are now “unmistakable signs of momentum from the highest political levels”.

He was discussing with delegations the nature and scope of the July outcome, especially on agriculture and NAMA. On Singapore issues, he reported on a heads-of-delegation (HOD) meeting in April which he had opened by stating there is not yet a convergence of any of the possible scenarios; and specifically which of the issues, if any, should be within the single undertaking, and what should be done with those issues to be put outside the single undertaking were yet to be resolved.

He added that since then there were significant initiatives at political level at Ministerial meetings outside Geneva, such as the LDC meeting in Dakar and the Paris OECD meetings, where he said flexibility was demonstrated.

Despite these expressions of optimism by trade officials and some delegations, discussions in and outside of the General Council point to the wide divisions that still exist between members, and the enormity of the challenges to bridge them in any meaningful way in the next two months.

In agriculture, the Group of 20 have rejected the US-EU “blended formula”, and it is becoming clear that this blended approach cannot be the basis for consensus. The G20 have agreed to try to present their own alternative proposal or formula by early June, when the next agriculture meeting is held.

On NAMA, many developing countries are opposed to a non-linear tariff-reduction formula and accelerated tariff elimination in some sectors. However, at the Council meeting, developed countries, such as the US, kept pressing for steep tariff cuts based on a non-linear formula.

On Singapore issues, it is becoming clearer that there is general support for the continuation of work on only one issue (trade facilitation). Developed countries are pressing that the July meeting decide to immediately start negotiations on this subject. But several developing countries state that any decision to begin negotiations must be on the basis of explicit consensus on the modalities.

The fate of the other three Singapore issues is unclear. There is an “emerging sense” (in the words of the General Council chairman) that they should remain “outside of the single undertaking”. But it is unclear at this stage whether discussions on them will cease altogether (at least for the duration of the rest of the Doha work programme) or whether they will re-start and if so what the discussions will be about.

An important new element has been the recent change of government in India. India’s Ambassador Chandrasekhar informed the Council that with the change of government, and given the complexity of the issues in the Doha programme, the new government would need some time to study the issues. He said the Indian delegation would continue to remain deeply engaged, but would need to know the views of the new government before making firm commitments.

The Brazilian Ambassador, Luiz Felipe Seixas Correa, referring to India’s statement, said it is important to realize that a member of the G20 had a new government and WTO members had to take account of this, and show some understanding for India’s situation.

He said there was no change in Brazil’s position. He was encouraged by recent events, and it was important that recent

indications by the EU and US are underscored in the Council. He said the G20 would try to put forward a proposal on a formula for agriculture market access by the 2-4 June meeting on agriculture.

China's Ambassador Sun Zhenyu said that in agriculture, distorting elements should be removed from subsidies whilst negotiations in market access should take into account levels of development, LDCs, newly acceded members and special products. On NAMA and services, whilst more progress is needed, the needs of developing countries must be taken into account. Development issues must also be prominent in any package.

Malaysia said there was a need for more clarity on the Singapore issues, especially on what would happen to the three issues that would not be negotiated. What was the meaning of putting them "on the back burner", as had been mentioned by the EC?, asked Malaysia. On NAMA, what would happen to the 5 percent of tariff lines that can remain unbound? Malaysia also had difficulty with the European Commissioners' proposal (in their letter) to give special exemption to the G90 countries.

Argentina said the climate of optimism must be translated into real progress at the WTO. On agriculture, balance is needed. The cotton issue cannot be sidestepped.

Kenya said it appreciated that members were more committed to the Doha programme, with encouraging signs of progress in agriculture. On NAMA, it was important that an approach is taken that does not undermine African industrial development. Kenya added that any decision on negotiations in trade facilitation must be on the basis of explicit consensus on modalities.

On the IMF's trade integration mechanism, Kenya said there is a need to address the negative effects of trade liberalization but it was not convinced the IMF can do a better job of that than the WTO.

The US said work in recent weeks was very encouraging. The aim should be to have agreement on agriculture, NAMA, services, trade facilitation negotiations, with development issues suffused throughout. The US was happy with the Lamy letter to WTO members. It was ready to eliminate the concession aspect of export credits.

The US said it wanted the G20 and Cairns Group to come up with their formula for market access, and this was the most important task in the next ten days. On NAMA, a non-linear formula is important.

The EC ambassador, Carlo Trojan, said it was not easy to achieve an agreement as there was a conflict between "ambition and sensitivity." The talks were about a framework only and not the "last stop." Market access for agriculture must be integrated with the other issues, and non-trade concerns must be taken into account. The "parallelism" approach in export subsidies must be spelt out.

The EC said that the talks on NAMA and Singapore issues would fall into place once agriculture moves sufficiently. More work is needed on the NAMA formula. Clear assurance should be given to the G90 countries that they are not burdened with excessive demands and that they should know this upfront.

Japan said it was important that the political will shown in the Paris OECD meeting is reflected in the Geneva process. On Singapore issues, Tokyo is taking a pragmatic approach and looking for a solution that can be agreed to by all.

Canada said there should be high ambition in agriculture market access, with high tariffs cut more than low tariffs. On trade facilitation, negotiations can be launched in July.

New Zealand Ambassador Tim Grosser, speaking in his role as chair of agriculture negotiations, said that in achieving agreement on the framework, there would not be numbers (eg for tariff reduction). On the balance between the pillars, there

were differences of views. On subsidy, the outline of the outcome is there but the devil is in the details.

On process, he said a balance between efficiency and transparency is needed. All members must be kept up to speed, and ownership is as important as substance. Negotiators must know what they are committing themselves to.

At the end of the meeting, Supachai said the programmes of capitals and Geneva delegations were converging. The devil is in the details, but not all the details can be ready by the end of July. This is the time for compromises, and if we wait too long, failure will emerge.

General Council Chair, Shotaro Oshima, said there was an emerging consensus on the shape of the overall package. On Singapore issues, he said there was an emerging sense that there can be negotiations in trade facilitation, and that the other three issues are not part of the single undertaking or the work programme, but what to do with them would have to be decided in July

**Martin Khor is the Director of Third World Network*

**The US and EU Con Job:
Letter to the G90 and the Paris Mini-Ministerial**

Aileen Kwa

United States Trade Representative (USTR) Robert Zoellick and EU Trade Commissioner Pascal Lamy should be awarded accolades for their “conmanship”. Both serious in engineering an agreement on a framework in agriculture and other negotiations by July, they have come up with the contours of a package. This is contained both in Lamy’s letter to all WTO Members on 9 May, as well as in talks between 29 Members at the Mini-Ministerial in Paris on 14 May.

Lamy’s “Hearts and Minds” Strategy

Lamy’s “offer” was timed just before the Paris meeting to soften the Africans and LDCs and to break the coalition of developing countries, in this case, the G90 from the G20. The EU is also known amongst trade negotiators to be adept at the “hearts and minds” game. They lead you to your grave whilst duping you into feeling utterly grateful. This encapsulates the essence of their “offer”.

Lamy has proposed the following for the G90:

No tariff reductions in agriculture

This is misleading. G90 countries may not be asked to take on tariff reductions in agriculture in the WTO, but these will be part of their regional Economic Partnership Agreements (EPAs) with the EU. Developing countries instead should take the legitimate high ground, point out that the EU and US are distorting world trade and should be the ones to adjust these distortions, with developing countries not having to make tariff reductions. In fact, they should use the argument of “parallelism”, used by Lamy, and put up their tariffs according to the subsidy levels of the US/EU.

By receiving the EU’s offer as a “concession”, they would have missed out on the opportunity to insist on real domestic supports reduction.

Hence, whilst it looks like an “offer”, it is in fact an attempt by the EU to get the G90 to continue to endorse the distorted AoA paradigm, knowing that they will have their market access through other means. In addition, they will get the developing countries to give in on the other parts of the Round which until now has been stalemated - NAMA, GATS, and Singapore Issues.

No tariff reductions required for the G90 in the NAMA negotiations, but developing countries have been asked to increase “their tariff bindings to a reasonable level”

Whilst this sounds like an irresistible “offer”, in fact, taking on tariff bindings is a major concession on the part of developing countries. Most G90 members have not bound or locked in their tariffs on industrial goods. Kenya has 1.6% of their industrial tariff lines currently bound, Nigeria, 1.4%. Other G90 members may not even have any tariffs bound. In the draft Cancun declaration (13 September Derbez text), countries which have less than 35% of their tariffs unbound are not asked to implement a tariff reduction formula. However, they are asked to bind their tariffs up to 95% (Annex B, para 4 and 7b). Going from 1.4% to 95% tariff bindings is very drastic.

And the crunch: they should bind their tariffs not at a level they freely decide, but at an average level that does not exceed the overall average of bound tariffs for all developing countries after full implementation of the current Round. This developing country “average” bound tariff level would not be very high since (if the Derbez text is anything to go by) it will be guided by an earlier article in that text (Annex B, para 4), where all countries (presumably developing countries with more than 35% of their tariffs bound), will have to bind the rest of their tariffs at levels which are twice the applied rates of the base year (2001 was suggested). Most developing countries already have very low applied rates due to structural adjustment conditionalities. African delegates have said that these articles in the draft declaration (inserted by Chairpersons which did not reflect the sentiments of the majority) would create “industrial graveyards” in their countries.

Lamy’s “offer” calls on the G90 to lock in these low rates, whilst parading this as an “offer”.

And in exchange for his “generosity”, Lamy is backtracking on his promises made in Cancun, where he offered to drop 3 of the Singapore issues entirely – investment, competition and transparency in government procurement.

Now he is asking for:

An Agreement on Trade Facilitation as part of the single-undertaking (ie the Round) and the possibility of an Agreement on Transparency in Government Procurement – also as part of the single-undertaking.

In the 9 May letter, Lamy says Investment and competition are outside the Round. However, he did not specify that these should be dropped completely from the WTO. Another document which Lamy circulated to several African Ministers in late April entitled “Possible G90 Platform for DDA Modalities” in fact suggested the revival of the investment and competition working groups, and that these plurilateral negotiations should take place concurrently as the Round. It says:

“Investment and Competition: The G90 could put forward a “declaration on investment and competition” to the effect that it is understood that they are out of the Doha Round and out of the single undertaking as a result, at the same time WTO Members should not stop WTO negotiations / work on these issues on a plurilateral basis. The EC would be willing to accept this. Even if the discussions on these two issues are plurilateral and there is no requirement for Members to join them, we do still hope that G90 members would participate as member or observers to these negotiations, so as to bring to them a stronger development dimension. It will however be a matter of choice”.

Developing country Members therefore should not be blinded into believing that the European Commission has given up on pursuing investment and competition in the WTO. The time to insist that these two issues are dropped completely from the WTO agenda, not only the Round, is now.

There already exists a plurilateral Transparency in Government Procurement agreement. All efforts should be made to keep this out of the Round / single undertaking.

Most developing countries are also very concerned about the costs involved in a new agreement on Trade Facilitation. Accelerated customs procedures works for the developed world, but not for developing countries since there is higher likelihood of leakage. Developing countries should still: 1) try to drop Trade Facilitation from the Doha Round. 2) If not possible, it should be excluded from DSU rules. 3) Since other more pressing development needs would be put in jeopardy, countries should argue that implementation would only be in accordance to the level of grants (not aid) provided by the developed countries. Developing countries should make it clear that they cannot take on the financial responsibility of implementing this agreement 4) use it to leverage the best quid pro quo possible.

Paris Mini-Ministerial – G20 Endorses the Transatlantic Alliance for Perpetual Agricultural Distortion!

The countries invited at the 14 May Paris Mini Ministerial included: Argentina, Australia, Bangladesh, Botswana, Brazil, Canada, Chile, China, Costa Rica, the EU, Egypt, Guyana, Hong Kong, Iceland, India, Indonesia, Japan, Kenya, Malaysia, Mauritius, Mexico, New Zealand, Norway, Pakistan, Singapore, South Africa, South Korea, Switzerland, and the United States.

From various press reports on the direction of negotiations, it is now clearer than ever that a July framework would not correct the current trade distortions endorsed by the unfair AoA rules, but would in fact accentuate these distortions by the US and EU.

Domestic Supports Pillar:

What seems to have been agreed in Paris includes:

- The expansion of the Blue Box to include US' counter cyclical payments approved in the May 2002 US Farm Bill. These payments are mainly provided in

8 sectors (all sensitive crops in developing countries) – cotton, wheat, corn, soybeans, rice, barley, oats and sorghum.

- Payments to be provided in the Blue Box could have product-specific caps.
- No overall cap on the Green Box.

Shockingly, this enlarged Blue Box seems to have been endorsed by the G20 in Paris! The idea of expanding the Blue Box to include the US' subsidies first emerged in the 13 August pre-Cancun US-EU text. It was one key element that contributed to the furore before Cancun, and the coming together of the G20, which vehemently opposed this since it allows the US to reduce subsidies in the “trade-distorting” Amber Box, and shift these into the new Blue Box.

The US currently does not provide supports under the Blue Box. This Box was created in the Uruguay Round to especially pander to the needs of the European Union. It was a category of supports that was supposed to be “production-limiting” in effect – i.e. would decrease supply. In this Round, it seems that the Blue Box is again being reinvented, to pander to US needs. The US is doing away with the “production limiting” criteria. They want to include in the Blue Box direct payments to producers based on fixed areas and yields in reference to past production, as provided in their new counter-cyclical programmes. It will allow the US to house about 9-10 billion a year of their Farm Bill supports.

The US is justifying this box shifting by arguing that the counter-cyclical payments are non-trade distorting, since they are direct payments given to producers de-linked from production. They are also trying to soothe the G20 by arguing that the supports will have product-specific caps on them (ie supports on specific products will have a ceiling level). This is cold comfort since even these ceiling amounts are likely to be calculated based on a recent year where prices were low

and subsidies high. Furthermore, counter-cyclical payments are price related. Direct payments kick in when market price falls below a certain level. This is no less distorting than price-support Amber box payments!

To add insult to injury, the G20 seems to have forgotten one of the most important components of their original (20 August) proposal – capping or setting a ceiling level for the Green Box, without which there will be no effective way to ensure that US / EU subsidies in fact decrease!

Export Subsidy Pillar – No Elimination in Sight!

- The EU has promised to eliminate all export subsidies, on condition that this is paralleled by similar elimination of other forms of export subsidization by principally the US.

That is, the US needs to address their export subsidisation programmes such as export credits and credit guarantees, food aid, and the so-called “monopoly activities of state trading enterprises”. The conditions in particular target the \$3.2 billion the EU says the United States spends on credit programs to support export sales of U.S. farm goods.

The important missing detail: the EC has provided no end date to the elimination of export subsidies.

Developing country negotiators are aware that this is yet another EU strategy of not doing much. After the framework is agreed upon, they will then avoid elimination by putting the blame on the US for failing to move satisfactorily in reforming its export subsidization programmes. Developing countries in need would also have a difficult time insisting on an end to subsidized food aid. There is also no agreement in the WTO about what to do with state trading enterprises. For many developing countries, the STEs play a role controlling domestic supply, prices, as well the level

of imports entering the country – all very critical for food security.

Implementing AoA II – Same or Even Higher Levels of US / EU Subsidies

The EU has no intentions of reducing supports. They may reform the CAP many times over, but the overall level of supports EU will pay to producers was already agreed in a deal struck between Chirac and Schroder in October 2002 freezing overall EU supports for 2007-2013 at the 2006 level. From now till 2006, the EU in dealing with incorporating 10 new Members will increase supports from Euro 43 billion to 50 billion a year. Whatever the AoA rules negotiated, at least 50 billion will therefore go to EU producers until 2013.

The US too increased support spending by 63% or \$73.5 billion with the Farm Bill. The new AoA rules – drafted to dupe the rest of the world – will be a box shifting exercise for the Americans. It will look something like this:

Domestic Support (excluding the Green Box) in US\$ billion

	US – current supports	US – AoA II
Blue Box	0	10
Amber Box (assuming that AMS is reduced by 30/40 – 60%)	20	12-14
De-minimis (assuming it is reduced by 50%)	10	5
Total	30	27-29 (Additional subsidies are provided in the Green Box)

Market Access

The G20 continued to reject the US / EU blended formula in Paris. However, blaming the G20 for dragging their feet, the majors have asked them to come up with an acceptable formula by early June, before the next agriculture negotiating session in Geneva.

GATS:

As if allowing the US and EU to get away with murder in agriculture is not enough of a concession, Pascal Lamy's letter suggests that the G90 and all WTO members would have to provide a "significant level of new and substantial commitments" on services!

There is nothing in the GATS agreement that obliges countries, which do not want to table offers, to do so. It is entirely voluntary.

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WTO: Are NAMA negotiations killing our local industries?

Karin Gregow

Kenya and many other African countries have suffered from collapse of domestic industries resulting in closure of local factories and massive job losses, due to too rapid trade liberalization enforced by the IMF and the World Bank under the Structural Adjustment Programmes. Many African countries have a weak industrial base and their infant industries need to build competitiveness before they can compete with companies from the industrialized countries. Maintaining higher tariffs is necessary to allow the industrial sector to grow, which will in turn create employment and promote economic growth and development. Tariff revenues are also a significant source of government revenue for many developing countries. Import duties represent 30-40% of government revenue for most African countries, compared to around 1% for OECD countries.

Rich countries pushing for liberalization

Further liberalization of trade in industrial goods is being negotiated in WTO as part of the Doha work program. The objectives of these negotiations on non-agricultural market access (NAMA) must be to facilitate the development and the industrialisation processes in developing countries. The European Trade Commissioner Pascal Lamy in a recent letter to all WTO members stresses that the gains in the Doha Round will be greatest in the NAMA negotiations. However, the EU and US are pushing developing countries to further open up their industrial markets, for the benefits of their own transnational corporations. Both of them are pushing for an ambitious formula for cutting tariffs on manufactured goods. But the developed countries themselves used high tariffs and import restrictions during their own industrialisation – policy tools that they are now denying developing countries. During the GATT era countries had considerable flexibility to choose their rate of liberalization. Hence developed countries were able to gradually reduce their tariffs according to their economic growth.

Cancun text opposed

Both at Cancun and in the informal consultations following the collapsed Ministerial, developing countries have strongly criticized the Derbez' text (the draft Ministerial text) on NAMA and raised serious concerns with it being used as the basis for the negotiations. The draft elements for modalities on non-agricultural products proposed in the Derbez' text do not take into account the specific vulnerabilities of the industries of African and other developing countries. The Derbez' text should not be used as the basis for the negotiations. All proposals submitted by different WTO members should be considered in the current negotiations.

Tariff reduction formula

The Non-linear formula for tariff reductions suggested in the Derbez' text was proposed by the developed countries. It is specifically designed to result in deeper tariff cuts for higher tariffs, which would mean more drastic cuts for developing countries than for developed. This is in violation of the Doha declaration, which states that the negotiations should "take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments".

The Non-linear formula would be disastrous for developing countries and should be rejected. Developing countries must be allowed to choose their own rate of tariff reduction, preferably using the Uruguay Round approach. LDCs and developing countries with a weak and vulnerable industrial base or which have experienced adverse effects of previous liberalization and which are significantly dependant on tariff revenues should be exempted from tariff reduction commitments. In addition to this, certain sensitive products should not be subjected to tariff reductions.

Developed countries should adopt a harmonization formula which should be designed to eliminate tariff peaks, high tariffs and tariff escalation. No tariff line should be of a level more than three times the average industrial tariff of the country.

Binding coverage

The developed countries have also kept pushing developing countries to increase their binding coverage of the tariffs. The aim is to have virtually all developing country tariffs bound by the end of this round of trade talks. Many African countries have only bound a limited percentage of their tariffs. Kenya, for example, has bound 1.6% of its tariff lines. This provides the countries with the much needed flexibility to pursue national economic and development objectives.

Some African countries, including Kenya, would be exempted from the application of the tariff reduction formula, but only on condition that they increase their tariff bindings substantially. Pascal Lamy, in a recent move towards G90 countries, has stressed that G90 would be exempted from any reduction commitments, but that they are expected to substantially increase their level of tariff bindings. This would seriously curtail the flexibility that African countries need to modify their tariff levels in order to promote industrial development. African and other developing countries must have the right to determine the scope and coverage of their tariff bindings themselves. The bound rates – and not the applied rates - should form the basis for any tariff reduction approach.

Death nail to local industries

The rich countries have suggested a sectoral elimination of tariffs. The Chairman of the NAMA Group in Geneva suggested the following sectors: textiles, leather, footwear, fish products, electronics, motor vehicle parts as well as gems and precious metals. These sectors are of particular interest to many developing countries. They have high tariffs in these sensitive sectors to protect their local enterprises, since they would not have the capacity to withstand competition from cheaper imports. In fact, sectoral elimination of tariffs would mean the death nail for many of those industries. African and other developing countries have hence strongly opposed the proposal for sectoral elimination. But the Derbez' text still states that "participation by all participants will be important". Developing countries should be clearly exempted from sectoral elimination of tariffs, so that there is no undue pressure on them to comply.

Non-Tariff Barriers

Developing country exports are not only faced by tariffs as barriers to the access into developed country markets, but also by numerous other so called Non-Tariff Barriers (NTBs). These include technical

barriers to trade, rules of origin etc. The NTBs have often been referred to other WTO subsidiary bodies, but they should be addressed in the Negotiating Group on NAMA and be given the same attention as tariffs since they can nullify the market access.

We urge African governments to:

- demand that African and other developing countries have the right to determine their own rate of tariff reductions
- reject the Non-linear formula for tariff reductions
- reject the demand that developing countries increase their tariff bindings
- demand that developing countries are exempted from sectoral elimination of tariffs

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African ministers call for three Singapore issues to drop from work programme

*Tetteh Hormeku

Report on the African Union Trade Ministers' meeting in Kigali 27-28 May 2004

African Trade Ministers meeting on 27-28 May in Kigali, Rwanda, have issued a "Kigali Consensus" on the World Trade Organisation welcoming the emerging consensus to drop from the work programme the three Singapore issues of investment, competition and transparency in government procurement.

They stressed that they "have been consistently concerned with the potential serious implications of the Singapore issues on African economies," but that they had remained engaged in the discussions.

They also affirmed that on trade facilitation (the fourth Singapore issue),

"before any agreement on negotiating modalities by explicit consensus, a number of issues should be clarified first." These include the need to address developing countries' resource and capacity constraints, the costs of implementing the new rules and how and by whom the costs will be met, and the need for clarity on the applicability to the dispute settlement mechanism and whether the new rules will be binding or not.

The Kigali Consensus also criticised the Derbez text relating to Non-Agricultural Market Access (NAMA), which contradicted the principle of less than full reciprocity and would further deepen the crisis of de-industrialisation and accentuate the unemployment and poverty crisis in African economies. The Ministers criticised the proposed "non-linear approach" in tariff-cutting formula and the sectoral approach (of eliminating tariffs in selected sectors).

On agriculture, the African Ministers expressed concern with the "blended formula" for tariff-cutting proposed in the Derbez text, and also called for developing countries to be provided with the flexibility to self-select tariff lines as special products, and with the use of a special agricultural safeguard mechanism.

The Kigali Consensus on the Post-Cancun Doha Work programme is an annex to the (political) Kigali Declaration on the Doha Work Programme which was adopted at the end of the second ordinary session of the African Union Ministers of Trade, Customs and Immigration, which took place on May 27-28.

The Kigali Ministerial meeting saw the African delegations engaged in making important strategic choices in the exact wording on the "dropping" of the three Singapore issues.

In adopting their final position on the issues of investment, competition policy and government procurement, the Ministers revised an earlier formulation which had stated that the ministers "welcome the emerging consensus to drop

from the Doha Work Programme" the issues relating to investment, competition policy and government procurement. This was the formulation proposed to the Ministers by the meeting of experts which took place from the 24 - 26 of May.

In a delicate balancing act aimed at providing their representatives in Geneva maximum negotiating room, African Union trade ministers meeting in Kigali, Rwanda, decided that their demands on the three most contentious Singapore issues should not be limited to these issues being dropped only from the Doha agenda. Instead, they allowed themselves the option of the issues being dropped from the WTO work programme as a whole. In relation to trade facilitation, they decided not only that any agreement on negotiating this issue must be on the basis of explicit consensus, but also that it must be preceded by the clarification of a number of key issues.

In the 'Kigali Consensus,' the Ministers stated that: "We have been consistently concerned with the potential serious implications of the Singapore issues on African economies. However, we have remained engaged in the discussions".

The paragraph continued: "We note that there is increasing convergence of views, amongst the WTO Membership, regarding the development of a more precise and focussed work programme on the issue of trade facilitation. Before any agreement on negotiating modalities by explicit consensus, a number of issues should be clarified first. These include, inter alia, the need to address the resource and capacity constraints of developing countries, the costs of implementing the new rules and how and by whom the costs will be met. It is also necessary to have clarity on its applicability to the dispute settlement mechanism and whether the new rules will be binding or not."

It concluded: " We welcome the emerging consensus to drop from the work programme the issues relating to trade and investment, trade and competition policy

and transparency in government procurement".

In adopting this position on the issues of investment, competition policy and government procurement, the Ministers revised an earlier formulation which had stated that the ministers "welcome the emerging consensus to drop from the Doha Work Programme" the issues relating to investment, competition policy and government procurement. This was the formulation proposed to the Ministers by the meeting of experts which took place from the 24 - 26 of May.

The decision to delete the word 'Doha' from the original statement relating to the three Singapore issues was taken just before the Kigali consensus document was finally adopted. The proponents of the decision explained that this was in line with the general attitude expressed throughout the meeting on the need to give flexibility to the negotiators in Geneva. Delegates who supported the view stressed that Ministers needed to give themselves and their negotiators a wide enough latitude, so as to be able to determine on the basis of the ensuing discussions the option to dropping the Singapore issues which best suited their purposes.

Indeed, some delegations argued for the replacement of word 'Doha' by 'WTO'. In support of this, it was argued that, strictly speaking, the Singapore issues are no longer part of the Doha programme. This was because in the Doha declaration, decision on further work on the Singapore issues was to be taken by explicit consensus at the fifth WTO Ministerial Conference in Cancun. The failure to reach consensus in Cancun meant that, those issues could now be discussed only within the broad WTO programme, and a convergence to drop them could only be by reference to the WTO programme.

However, other delegates were of the view this would complicate the developments that seemed to have emerged on the Singapore issues. Others were concerned that the change being suggested would lead to opening up, at that late stage in the

meeting, the entire document which had been the result of compromises in different areas.

The final decision not to limit the demand on dropping the issues to the Doha agenda but include the option of dropping them from WTO work programme as whole contrasted sharply with the views urged on the Ministers by the WTO Director-General, Dr Supachai Panitchpakdi, as well as by Jeremy Lester, Head of Delegation of the European Union, Rwanda.

In his speech at the opening of the meeting, the Director-General of the WTO Dr. Supachai Panitchpakdi, told the Ministers that the European Union, which was one of the main proponents on the Singapore issues, had substantially modified its position. He stated that "it is now clear in Geneva that the emerging consensus combines a decision to negotiate ... on trade facilitation, and an agreement keep the other three issues in the WTO's work programme but clearly outside the DDA negotiations." He added that this was a compromise that would involve a major move by the proponents towards the developing countries, and was surely deserving of constructive response from Africa.

In reference to the declaration adopted by the LDC ministers in Dakar in May, Dr Supachai added further: "Flexibility was shown by the LDC Ministers in taking this into consideration during their meeting in Senegal. I hope similar flexibility will also emerge from this meeting."

The WTO Director-General had hoped to follow his opening remarks with a further statement during the actual business session of the meeting, when the ministers were to begin discussing their positions. However, his request to address the meeting at that stage was not received kindly by some delegates, who saw this as interference in their deliberations. It was pointed out that Mr Supachai had already stated his views in his earlier presentation, and that whatever further information Ministers needed could be provided by

their ambassadors from Geneva who were present at the meeting. Others, however, were prepared to give him a brief hearing, after which he had to leave ministers alone to deliberate. By the time the debate had settled, Supachai himself was not available, and it was left to his representative to make a general statement repeating Supachai's earlier call for flexibility on the part of the African ministers.

On his part, Jeremy Lester sought to convince the African ministers on two points: the need to negotiate binding rules on trade facilitation, and to keep the 3 other issues within the WTO programme. He stated that there was now consensus among WTO members to treat each of the Singapore issues on its own merit. He continued: "our view is clear: trade facilitation is clearly a win-win area for developing countries and we are ready to take on boards your concerns over costs, capacity and aid. But at the same time these new rules to be effective will need to be binding". Regarding the other 3 issues, he added, "we can go along with dropping them from the Single Undertaking but in our view they should remain somewhere part of the WTO Work Programme."

As their final decision made clear, however, the African ministers were not convinced that rules on trade facilitation, if at all negotiated, should be binding and subject to the trade-sanctioned based dispute settlement mechanism of the WTO. Nor were they prepared to accept Mr Lester's view that the other three issues should necessarily remain within the WTO work programme.

In his statement to the Ministers, Mr Lester said that in order for the declaration they were about to adopt to contribute constructively to reaching an agreement in Geneva in July, it was "important that it is flexible enough to provide the right latitude to the negotiators in Geneva to actually pursue their work". In this regard, he complained that draft document prepared for the consideration of the ministers by their officials was too detailed and left "too little room of

manoeuvre to those engaged in the negotiations in Geneva". He added: "that is why my *main message and advice* (italics in the original) is to ensure that the adoption of a Ministerial statement does not constrain your negotiators in Geneva..."

At least Mr Lester could be pleased that the Ministers took his message and decided to give more room to their negotiators. Whether his was equally pleased with the direction of that decision that is, including the option of taking the three controversial Singapore issues out of the WTO work programme, is another matter. Many African officials, however, were satisfied that the Minister's decision had given them just the "right latitude" they needed in Geneva.

The 'Kigali Consensus' document also contained the positions of the African Ministers on other questions, including Agriculture, the Sectoral initiative on cotton, Non-agricultural Market Access (NAMA), TRIPS, Services and WTO Rules. Other subjects included were Special and Differential Treatment, Implementation Issues, the Working Groups on Trade and Transfer of Technology, and on Trade, Debt and Finance, Dispute Settlement Understanding, Commodities. There were also positions on Small Economies, Coherence, Accession, Observer Status for the African Union in the WTO, and Technical Cooperation.

Agriculture was the other main issue on which discussions were protracted. The Ministers adopted the following as guiding principles and position of AU Member states on the three pillars of the Agreement on Agriculture. They include:

-- "that further reform of agriculture should aim to attain the objectives set out in the Doha mandate. Each Round of agriculture negotiations should take into account the need for appropriate policy space that would allow African countries to pursue agricultural policies that are supportive of their development goals,

poverty reduction strategies, food security and livelihood concerns";

-- "that the "Framework", and associated Modalities to be agreed upon, should address themselves fully on all three pillars, in a balanced and equitable manner";

-- "that, in accordance with the Doha mandate, binding, precise and effective S&D is an integral part of all elements of the negotiations on agriculture."

On market access, the Ministers stressed "the need for participants to undertake to take into account of the importance of preferential access for developing countries" . Ministers also stated that "African countries remained concerned with the use of the blended formula as is currently set out in the Derbez text. Any tariff reduction formula to be agreed upon should fully take into account African needs and development concerns; that "developed countries shall provide bound duty- free and quota-free market access for all products originating from LDCs with realistic, flexible and simplified rules of origin.

Furthermore, Ministers stated that "developing countries shall be provided with the flexibility to self-select tariff lines as special products"; that "a special agricultural safeguard mechanism (SSM) shall be established for use by developing countries"; and that "the use and duration of the special safeguard for developed countries remains to be negotiated"

Ministers also stressed the importance of enhancing market access by addressing tariff peaks and tariff escalation, particularly in the markets of developed WTO Members for products of export interest to Africa. In addressing this issue, the interests of preference receiving countries shall be fully taken into consideration. Finally, the ministers stressed "the imperative to develop more simplified and transparent quota regimes that provide improved and measurable market access benefits to African countries."

On domestic support, the Ministers stated, among others, that "all forms of trade-distorting domestic support measures by developed countries to be substantially reduced"; that "developed countries should eliminate the 5% de minimis domestic support"; and that "S&D provisions should allow additional flexibilities for African countries".

On the amber box, Ministers called for the "substantial reduction in the Amber Box measures with a view of their phasing out". They also called for the "substantial reduction in the current Blue Box measures with a view of their phasing out". The ministers called for "the review of trade-distorting elements of Green Box support measures provided by developed countries and the development of tighter disciplines for the elements of the Green Box through inter alia notification, surveillance and monitoring". At the same time, "domestic support measures consistent with Annex 2 of the Agriculture agreement shall be enhanced for developing countries." Finally, "members agree to establish a permanent mechanism/modalities as part of the overall framework/modalities to prevent Members from transferring subsidies between and within boxes".

On export competition, the African ministers stated that "a commitment to phase out all forms of export subsidization by a certain date should be an integral part of the Proposed Framework on Agriculture; the specific date will be negotiated".

Apart from the above, Ministers, among others, urged expeditious action on the Marrakech Decision on Measures in favour of least-developed and net-food importing developing countries; stressed the need to ensure that State Trading Enterprises from developing countries are exempted from additional disciplines taking into account the role they play in promoting national development goals and objectives; and the importance for developing countries to continue benefit from the special and differential

provisions of article 9.4 of the agriculture agreement.

The Kigali meeting also addressed the Sectoral Initiative on Cotton. In this regard, Ministers endorsed the proposals submitted by the sponsors of the cotton initiative, and called upon WTO members to urgently adopt the elements of those proposals, in particular, the total elimination of the export subsidies over a three year period starting from 1st January, 2005, as well as the establishment of a support fund to support the cotton sector. Ministers furthermore called on their development partners "to provide, in the framework to be achieved by July 2004, a clear commitment to speedily and substantially address both the trade-related aspects of the initiative, and their development-related counterparts, in a 'fast track' process. Only in such a process can the dire situation of African farmers be faithfully and fairly addressed".

With regards to Non-Agricultural Market Access (NAMA). Ministers stated that they "are concerned that the proposals contained in the Derbez Text and its annex on NAMA are contradiction with the principle of less than full reciprocity as enshrined in the Doha mandate and as such would further deepen the crisis of de-industrialisation and accentuate the unemployment and poverty crisis in our economies. In this regard, we welcome the recent initiative in favour of weak and vulnerable economies. It is therefore imperative that the agreed Framework provides policy space and flexibility to allow African countries to undertake industrial policy and national development objectives."

To this end, Ministers stated, among others, that the formula to be agreed should allow the operationalisation of meaningful and binding S&D provisions, including the principle of less than full reciprocity. "In this respect, it should be emphasised that the non-linear approach does not provide the basis for equitable results. African countries need flexibility for the development and industrial objectives". A further call that solutions

to the questions of preferences should be obtained within the WTO negotiations. "In this respect, a sectoral approach would be detrimental to African preferences in major export markets. A suitable carve-out should be made in favour of African economies/exports", stressing that the work on preference erosion should not be outsourced to other multilateral institutions.

On the issue of tariff bindings, Ministers stated that this issue "should be approached in a way that creates incentives to those countries that have not bound their tariffs to do so. In this regard, the binding of tariffs should be acknowledged as the main contribution to this round by those countries that decide to do so".

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Singapore Issues: The way forward

The following joint communication, dated 12 December 2003, is being circulated at the request of the Delegations of Bangladesh (on behalf of the LDC Group), Botswana, China, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Uganda, Venezuela, Zambia and Zimbabwe.

1. In the Doha Ministerial Declaration (paragraphs 20, 23, 26 and 27), relating to the Singapore issues, Ministers stated that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on the modalities of negotiations. It is thus clear that a decision on modalities, by explicit consensus, is required before negotiations can commence. Certain elements were identified for clarification, besides which Members were free to raise other issues of relevance. A work programme on each of these issues was adopted, which was to be completed in the period until the Fifth Session.

2. However, during this period, various elements relating to each of the four issues remained unclear. More importantly, there was significant divergence of views among Members on each of the Singapore issues. A group of countries, in response to the Chairman's Draft Ministerial Text (Job(03)/150/Rev.1), indicated, in their Ministerial Conference document (WT/MIN(03)/W/4 dated 4 September 2003), the various elements that need to be clarified in respect of each of these issues.

3. At the Cancún Ministerial Conference, discussions on the Singapore issues were held under a Facilitator. A large number of developing country Members expressed concern, *inter alia*, about the impact that multilateral rules on the four Singapore issues would have on their domestic policies and the fact that they have neither the negotiating resources nor the capacity to implement obligations, which such multilateral rules will entail. A revised text was produced by the Chairman of the Cancún Ministerial Conference (Job (03)/150/Rev.2 dated 13 September 2003). The revised text on Singapore issues, however, did not address the concerns of the majority of Members, who expressed their strong opposition to it. As a consequence, no decision was taken at the Cancún Ministerial Conference by explicit consensus on the modalities of negotiations on any of the four Singapore issues. The Ministers, in their Statement (WT/MIN(03)/20) adopted on 14 September 2003, instructed officials to continue work on outstanding issues and asked the Chairman of the General Council, working in close co-operation with the Director General, to co-ordinate this work. The Ministers also stated,

"We will bring with us into this new phase all the valuable work that has been done at this Conference. In those areas where we have reached a high level of convergence of texts, we undertake to maintain this convergence while working for an acceptable overall outcome."

4. Subsequent to the Cancún Ministerial Conference, the Chairman of

the General Council has held informal discussions with Delegations on these issues. However, the fact remains that on all these issues, there continues to be significant divergence of views among Members, and in the absence of explicit consensus, there is no basis for the commencement of negotiations.

5. Article III:2 of the Marrakesh Agreement Establishing the WTO makes it clear that “the WTO shall provide the forum for negotiation among its Members concerning their multilateral trade relations.....”. The core competence of the WTO lies in trade in goods and services. The co-sponsors of this paper believe that binding disciplines on Singapore issues would certainly not only curtail the policy space for developing countries but would also entail high costs, which many developing countries cannot afford at their present level of development. Moreover, due to continued division over such a long period among Members on the status and substance of the Singapore issues and in the interest of early completion of this round of negotiations, we should concentrate our efforts first and foremost on issues of core competence of the WTO namely, agriculture, non-agricultural market access, services and development issues.

6. It is also important to note that in the Green Room process at Cancún, one major proponent of the Singapore issues was willing to drop further work on two issues, namely, Trade and Investment and Trade and Competition Policy. During further discussions in the Green Room meeting, it became clear that there was no consensus on the need for any multilateral disciplines on Transparency in Government Procurement and hence, there was a suggestion that further work on this issue may also be dropped. The co-sponsors of this paper, therefore, are of the view that all further work on Trade and Investment, Trade and Competition Policy and Transparency in Government Procurement should be dropped.

7. With regard to Trade Facilitation, work on clarification of various aspects of

this issue may continue in the light of the interest expressed by several Delegations. However, this work should be carried out in parallel with the other segments of the Doha Work Programme and there should be no attempt to seek an early harvest on Trade Facilitation in advance of progress on core issues in Doha Work Programme. This work must also address the points raised by a group of developing and least developed countries, which are contained in Ministerial Conference document (WT/MIN(03)/W/4 dated 4 September 2003) such as cost of compliance, justification of any binding rules subject to the DSU, commitment for provision of technical and financial assistance to meet the cost of compliance and implementation of any possible multilateral framework. Furthermore, after completion of the clarification process, a decision would need to be taken on the modalities, by explicit consensus, before negotiations can commence.

8. The co-sponsors would also like to make it clear that they are against the efforts for the adoption of a plurilateral approach in respect of any multilateral issues because such an approach is systemically unsuitable for a consensus-based multilateral organisation like the WTO. A plurilateral approach could lead to a two-tier system of membership, which would be contrary to the basic character of the WTO.

Editorial: Trade negotiations at cross roads

*Rangarirai Machedze and Riaz Tayob

When the bilateral juggernaut (EU EPAs and US FTAs) was set in motion hardly a year ago we did not anticipate its wings and tentacles to be extended to other developing nations under the WTO Doha work programme. But this is exactly what is happening at the WTO, with the EU leading the pack in misleading other nations that the “concessions” they were offering were for real and should be accepted *without question*. This is so when looking at what the EU is offering to the G90 in terms of Agriculture and NAMA.

The EU is trying to divert attention from the real issues. By adding more and more unreasonable demands to the negotiating agenda, they can then present themselves as being reasonable when they make concessions on their additional and ridiculous demands.

The issue of tariff reductions should not be used as part of real issues to be tabled as an offer to developing countries. It is a foregone conclusion at this point that developing countries should, as their priority, defend and protect their agriculture and infant industries. So the tariff issue should not be negotiable. You can not negotiate on your fundamentals. It is like people negotiating whether they should have food or not or whether they are entitled to health or not? These are non-negotiable issues; they are sovereign rights and states have a duty to ensure an enabling environment to support the realization of fundamental human rights. Tariff protection to industries was the cornerstone policy of the EU and the US's path to their current level of development.

The issue that the EU should have addressed previously, and which they have still failed to do, is the issue of subsidies that they are giving to their farmers. The EU's offer to eliminate export subsidies on a list of products of interest to developing countries has been presented as a major concession. This is nothing but mere rhetoric as they have been saying the same since the Doha Ministerial. The EU is now stating that they are ready to move on export subsidies, provided that the subsidy elements of export credits used by the US are also phased out and provided there is agreement on market access and domestic support. This is the same language that the EU has been saying prior to and at Cancun: posturing. EU has so far refused to discuss an end date for the elimination of the export subsidies.

Aileen Kwa rightly points out that portraying the "offer" as a concession, the EU and US have also set the other negotiations moving – especially NAMA, Singapore Issues and GATS. This is not new, since the second Derbez text at the

Cancun Ministerial adopted a similar position (through unrepresentative and biased chairpersons) and was rejected unceremoniously.

In NAMA, there are no concessions. Tariff bindings at twice the applied rate, as suggested in the Derbez text, would already lock countries into very low tariff levels. Pascal Lamy, in his letter to WTO members, has stressed that the G90 countries would be exempted from any reduction commitments, but that they are expected to substantially increase their level of tariff bindings. This would seriously hurt the opportunities that African countries need to modify their tariff levels in order to promote industrial development. The free trade ideology touted by the EU, US and the WTO Secretariat is in direct contra-distinction to the policies used by the Now Developed Countries to achieve their development and tariff protection was a fundamental pillar of their strategy. The policy of the then colonial powers was to retain manufacturing in the mother country while pillaging raw materials from the colonies – with an explicit policy of not allowing manufacturing in the colonies. NAMA is merely an extension of that policy under the guise of the WTO and our governments are forced to negotiate on this because they believe they have no alternative.

African and other developing countries must have the right to determine the scope and coverage of their tariff bindings themselves. As Karin Gregow correctly puts it, many developing countries have suffered enough under the jockeying Structural Adjustment Programmes. They have been forced to open up their industries to foreign competition under the pretext that this would improve their competitiveness (and efficiency in areas where they have comparative advantage) and the overall benefits would trickle down to the ordinary people. If understood in the historical context, the only comparative advantage Africa has been able to specialize in is that of being poor. All this chicanery presented in the SAPs destroyed local industries and the same

tricks are now being proposed by the major powers in the WTO. The EU is quite deceiving in their “offer” to the G90 saying they would not reduce their tariffs. If they are genuine enough, could they extend the same to the current Economic Partnership Agreements negotiations with the ACP countries? The EU knows fully well that they would be getting the same things in the free trade agreements where African countries are less able to resist the wiles of the EU. The perversity of the EPA’s is the EU implicit position that because non-reciprocal concessions did not promote development then reciprocal trade terms will, reflects not just blind national interest of the EU but a proactive attitude to ensuring poverty in Africa. NAMA should be understood as a de-industrialization strategy for Africa.

Kwa’s analysis points to the fact that essentially, the US and EC would have obtained what they wanted in this round, whilst duping the developing country majority- the G90 - into thinking that they too received what they wanted! The economies the US and EU are targeting in the WTO are the major developing country markets – China, India, Brazil, Indonesia. And in their latest moves, they have succeeded in isolating India, China and Indonesia – those most concerned about defending their domestic markets. Here, their natural allies – the G90 – may now be bought over and neutralized by Lamy’s new strategy. (Most of the Indonesian-led G33 group on Strategic Products (SPs) comprising 43 Members are also part of the G90).

Another disturbing development coming from the EU is that they are proposing an agreement on Trade Facilitation as part of the single-undertaking (ie the Round) and the possibility of an agreement on Transparency in Government Procurement – also as part of the single-undertaking. Martin Khor points out that there are many ways to “drop” an issue (which the EU did at Cancun) and there are even more disingenuous methods of “un-dropping” an issue (what they are currently doing).

In the 9 May letter, Lamy says Investment and competition are outside the Round. However, he did not specify that these should be dropped completely from the WTO. Another document which Lamy circulated to several African Ministers in late April entitled “Possible G90 Platform for DDA Modalities” in fact suggested the revival of the investment and competition working groups, and that these plurilateral negotiations should take place concurrently as the Round.

Developing country Members therefore should not be blinded into believing that the European Commission has given up on pursuing investment and competition in the WTO. The time to insist that these two issues are dropped completely from the WTO agenda, not only the Round, is now. However developing countries should be cautious because the GATS agreement contains elements of both Investment and Competition. Instead of the “new issues”, Developing countries have a greater interest in seeking to resolve the implementation issues, which relate to the outstanding issues on the current agreements. But with biased WTO Secretariat complicity, have been unable to get this meaningfully on the agenda.

In fact African countries should not be asked to make any concessions in major areas, such as agriculture or market access in non-agricultural products, in order for the Singapore issues to be dropped from the WTO agenda. The Doha mandate clearly states that negotiations will only take place after the 5th Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. This consensus was not there in Cancun and is not there today.

The reason why the joint communication on Singapore issues from a number of developing countries is being circulated among WTO members is mostly to remind them that the position still stands. That no negotiations on any of the four issues in whole or in part should start until there is explicit consensus. There is wisdom in this joint communication as it touches on both

political and technical issues that are of paramount significance to developing countries.

We are now at cross-roads in the negotiations. If a July framework comes together under these conditions, all developing countries would lose out. The G90 and G20 collectively would not have insisted on an end to dumping. But the G90 economies would still be pried open through bilaterals. India, China and Indonesia (close to half the world's population) would also lose out, by perhaps not being able to stop a very ambitious tariff reduction formula from being implemented. In addition, all

developing countries would lose in the industrial sector, and in services.

Developing countries should take this opportunity to call the bluff of the US and EU and exert their rights for a fairer trading system.

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