

Comments on Cancun Draft Ministerial Text

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Focus on the Global South – Geneva*

More De-industrialisation and “De-Agriculturalisation” in Store for Developing Countries

Cancun Draft Text Papers Over Differences: Ambiguities Dangerous for Developing Countries!

The Draft Ministerial Text for Cancun, released on 24 August 2003 reflects the wide divergences between developed and developing countries that *will* not be resolved by Cancun. Instead, these differences will be papered over, by Members’ agreeing to ‘frameworks’ rather than detailed modalities. In the areas of Agriculture, and Market Access in Non-Agricultural products (NAMA), the ‘Frameworks’ for establishing modalities are being proposed in the form of a general direction of how tariffs will be cut. Whilst the formulas are very ambitious, there are no numbers attached to any of the reduction formulas outlined.

However, even more ambiguous are the areas protecting developed countries’ interests – eg. the Green Box in Agriculture, or Non-tariff Barriers in industrial tariffs negotiations. These areas pertaining to how developed countries protect their markets escape elaboration.

The ambiguity is extremely dangerous for developing countries, since they are essentially asked to endorse frameworks in tariff reduction, without guarantees that the current imbalances in the rules, allowing the distortions in world trade in the interests of developed countries, will be adequately addressed.

Developed Countries Pursue Double Standards in ‘Trade Liberalisation’: Agriculture

The distortions in agricultural trade, in favour of developed countries, are well-known. OECD countries continue to provide high subsidies to the tune of a billion dollars a day, and dump their products in developing countries’ liberalized markets. The WTO has endorsed such dumping, since many of these subsidies are defined in the WTO as being ‘non-trade distorting’ (i.e. Green Box supports).

Ambitious in Market Access, Vague on ‘Green Box’ Domestic Supports: Production of Staples Will be Wiped Out in the South

The draft Ministerial Declaration is quite detailed in the area of how market access should be tackled. This is because Northern corporate interests are largely behind the

push for more access to developing countries' markets. But in comparison, the text is vague on the issue of whether, and how, the serious Green Box loopholes can be disciplined. In a non-committal manner, the text merely states that 'Green Box criteria remain under negotiations'. Developing countries have repeatedly called for the Green Box supports to be capped and reduced.

This is particularly important, since the EU CAP reforms will essentially be about shifting supports from the Blue Box (which will face some disciplines) to the Green Box. A large proportion of US subsidies have already been shifted to the Green Box. There are currently no limits set on the amounts Members' can provide supports to producers via the Green Box.

As it stands, the framework will easily allow developed countries to continue their current agricultural programmes without need for any reform. Dumping by the US - 40% for wheat, 25% to 30% for corn, 30% for soybeans, 57% for cotton, and 20% for rice (IATP 2002 'US Dumping on World Agricultural Markets') will continue unless the Green Box is disciplined. Also, the EU's dumping in cereals (soft wheat, barley, maize and rice), sugar and dairy will continue. The EC's own assessment of the decoupled proposals is that EU-15 production in cereals will increase till at least 2009 (EC 2003, 'CAP Reform: Impact Analysis of the Mid-term Review Proposals').

The problem is that the dumping and supports by US / EU Members are in staple products. This framework, if agreed on, will exacerbate the trend where developing countries have shifted from being net-food exporters (eg. Philippines and Indonesia), or at least being self-sufficient to a significant degree, to becoming net-food importers. Given the central role of agriculture in the South, unemployment and food insecurity will rise.

Developing country Members, whose markets are being distorted by such dumping must ensure, before agreeing to any tariff reduction formula, that a similar approach to reduction in overall domestic supports is elaborated upon. Overall domestic supports must be brought down to a 'harmonised' negligible level, or no tariffs should be reduced.

Tariff Cuts Are Too Ambitious

Tariffs are the only defense mechanism the developing world has against US / EU dumping. The tariff reduction framework suggested for developing countries is very ambitious. It proposes that even 'import-sensitive tariff lines' should be cut by a certain average to be determined. Within this category, 'developing countries shall have additional flexibility under conditions to be determined' to designate Special Products (SP) which would be subject to a minimum cut.

Some countries have been asking for SP products, critical to food security and rural livelihoods, to be protected from tariff cuts, yet this has not been granted. The text also suggests that what countries can designate as SP will be severely limited. This is unlikely for developing countries – given the current distortions in world agricultural trade – to sufficiently defend their domestic producers and ensure their long-term food security and rural development needs.

In addition, remaining tariff lines are to be subjected to higher cuts. Either by a hybrid Swiss-Uruguay Round formula, or by a Swiss formula. Both methods would lead to cutting most tariff lines by large amounts, and bringing high tariffs down to significantly lower levels. If agreed to, these tariff cuts will effectively leave developing countries even more vulnerable to dumping – and permanently so.

***Vague Promises in Export Subsidy Commitments:
Yet More Special and Differential Treatment to Developed Countries***

Whilst developed countries promised in Doha that they would reduce, ‘with a view to phasing out, all forms of export subsidies’, the export competition commitments outlined in the draft text is problematic in that it provides no clear guidelines of how this is going to take place – beyond making vague promises which will not be kept. It should be remembered that export subsidies – outright dumping – has long been banned in the GATT since they clearly constitute unfair trade.

It is clear that both the US and EU want to continue their export dumping regimes, and have these legalized in a new Agriculture Agreement. The text merely states that Members should eliminate, over an undefined number of years export subsidies, for products of interest to developing countries – and these are not elaborated upon. On other export subsidies, Members will then ‘commit to reduce, with a view to phasing out, budgetary and quantity allowances for export subsidies’.

Article 3.6 of the draft text also reinforces the lack of commitment the developed world has in undertaking any reform at all. It states that ‘the question of the end date for phasing out all forms of export subsidies remains under negotiation’.

Like the Green Box loopholes, unless these details are elaborated upon, developing countries should not be agreeing to the more elaborate tariff reduction regime outlined. To do so would be to reinforce and aggravate the already existing imbalances and Special and Differential Treatment the *developed* world enjoys.

Silence on the Peace Clause

The ‘Peace Clause’ is scheduled to expire in December 2003. The ‘Peace Clause’ in the Agreement on Agriculture calls on WTO members to use ‘due restraint’ by not challenging agricultural subsidies of other members that fully conform to WTO rules. The US, EC and other developed countries have continued dumping on the world market (via the skewed rules allowing export subsidies, unlimited Green Box and some Blue box supports), and have effectively been protected by this Clause.

Developing countries have been unanimous that the Peace Clause should expire in December 2003. Again, where it hurts the developed countries, the ‘framework’ text is vague, and merely mentions that the Peace Clause and other details have not been agreed upon.

Developing countries must secure a promise that the Peace Clause will expire, or they should not agree to any tariff reduction framework in Cancun.

**Developed Countries Pursue Double Standards in 'Trade Liberalisation':
Industrial Tariffs**

Overly Ambitious on Tariff Reductions, Vague on Special and Differential Treatment

Similar to agriculture, the industrial tariffs negotiations is ambitious on tariff reductions, but leaves open and vague exactly how the Doha promise that there should be 'less than full reciprocity in reduction commitments' undertaken by developing countries will be implemented.

The text states that there should be a 'non-linear formula applied on a line-by-line basis'. That is, high tariffs will be cut by a larger proportion than low tariffs, and all brought down to a 'harmonised', relatively low band. Also, tariff cuts on a line-by-line basis implies that no one area will be excluded, no matter how sensitive and important for the survival of the sector, or for employment. Since developing countries have generally higher industrial tariffs than developed countries, the burden of reforms will be put on developing countries.

The text is totally vague on how developing countries concerns will be taken into account. The fact is that the framework of tariff reduction, if implemented, will be so disastrous that superficial special and differential treatment – such as longer implementation periods and 2/3 tariff cuts - will still not address the problems developing countries will be faced with.

Tough Handling on Currently Unbound Tariff Lines

Currently unbound tariff lines are generally for products which are very sensitive for a domestic industry, or are strategically important. Some developing countries in the WTO have asked that as part of Special and Differential Treatment, these should be allowed to remain unbound.

On the contrary, the Draft Ministerial text states that tariff binding shall be '[two]' times the applied rate. That is, if countries have been pressured by the IMF or World Bank to implement low tariff rates, they would have to permanently bind these at only two times these rates. The implications for industrial development, for the majority of countries, are bleak.

Ignoring Developing Countries' Position: Sector-for-Sector Harmonisation Approach

In addition to the above, the text also endorses an approach to negotiations which developing countries have already rejected. The sector-for-sector approach is dangerous, since it essentially calls for reduction or elimination to zero tariff levels in certain sectors. Developing countries in Geneva have repeatedly argued that this form of negotiations was not agreed to in Doha. However, the Draft Cancun Text, in complete contradiction to

this, states that this sector tariff component ‘is a key element in achieving the objectives of paragraph 16 (on market access for non-agricultural products) of the Doha Ministerial Declaration...’. Furthermore, the promise that sectors of export interest to developing countries will be chosen is problematic – clearly a ploy to hood-wink Ministers who are unaware of the details of negotiations in Geneva. Developing countries have not suggested any sectors since they are not in favour of this approach. The draft text, borrowing, from the US-Canadian-EC proposal states that the sectors ‘of export interest to developing countries’ will be chosen!

Weak Language on Non-tariff Barriers

Developed countries have low tariffs in industrial products, but they certainly do protect their industries, often through non-tariff barriers (NTBs). The language in this area, however, is weak. It merely states that members are ‘encourage(d)’ to notify Non-tariff barriers by 31 October 2003. It does not state that members ‘must’ notify all NTBs. It promises that ultimately, there should be negotiations. However, again, there is nothing binding in the paragraph giving clear indications of the extent to which negotiations will remove these barriers. If NTBs are really going to be eliminated, developed countries should ensure that imports from developing countries should not be disrupted and that costs will be borne by developed countries implementing NTBs to provide the technical assistance required to ensure that trade is maintained at the existing levels.

What is more surprising is that it also mandates developing countries to undertake negotiations in NTBs! This could in the course of the negotiations be used against developing countries to make them eventually drop the issue or only agree to weak rules in NTBs.

The South – through structural adjustment and Uruguay Round commitments – has already experienced de-industrialisation, since many countries’ fledgling manufacturing industries cannot compete when pried open. This ‘framework’ will aggravate such a trend, with serious employment and development implications.

The other serious consequence will be a loss of government revenue when tariffs are drastically reduced.

New Issues: Two Options, But Developing Countries’ Positions Not Fleshed Out

The divergence in the area of the ‘New Issues’ has been so wide, that no Chair has been able to gloss over these differences. In the recent weeks, African, LDCs and Caribbean Ministers (clearly making up the majority of WTO Membership) have all met and agreed that there should not be any launch of new negotiations in investment, competition, transparency in government procurement and trade facilitation.

The main text provides two options in brackets. One endorsing the launch of negotiations, and, in each issue, the relevant annex attached on ‘modalities’ is referred to. The other option reflects developing countries’ position, that the situation does not provide a basis for commencement of negotiations and clarification should continue.

The problem, however, is that the text, whilst fleshing out the vague ‘modalities’ of negotiations (EC’s et al position) in separate annexes for each of the new issues, does not elaborate in equal detail, why developing countries are resisting negotiations. If Ministers arriving in Cancun are to be put on an equal footing, it is important that developing countries’ positions should also be elaborated on. Much of this discussion can be found in the minutes of the working group meetings.

‘Modalities’ Are More Procedural, Avoiding the Real Issues

Furthermore, the modalities contained in the Annexes on the New Issues are too vague. Developing countries have already said that any discussion on modalities must be detailed so that it is known from the outset, what the demands will be in the course of the negotiations. To sign on to vague procedural modalities would be equivalent to signing a blank cheque, since exactly how negotiations will proceed are not in the control of the developing countries (eg. The TRIPS agreement started off as an article in the Punta del Este Declaration regarding the need to address trade in counterfeit goods, but in the course of negotiations became a full-fledged agreement on intellectual property).

Silence on TRIPs and Public Health

What is very surprising is that the Draft Ministerial text is silent on the TRIPS and Health negotiations. A promise was made in Doha that a solution would be found for countries with inadequate or no manufacturing capacity to produce generic drugs.

The deadline of end 2002 for this solution has long passed. The Draft text anticipates a decision on this issue, but there is no attached annex elaborating upon this solution.

Since Doha, the negotiations here have in fact been rolled-back. In the latest efforts by the US to renege on the TRIPS and Public Health Declaration, Washington has suggested that the solution should only be used for ‘humanitarian’, not-for-profit purposes. This could effectively block many countries’ access to cheap drugs.

The 16 December 2001 ‘Motta’ text, the only text on the table, which has been agreed to by all countries except the US, is also highly problematic. It puts in place complicated and highly legalistic procedures for importers and exporters. It also mandates that countries must undergo some kind of self-assessment of whether or not they have sufficient manufacturing capacity. Only those that clearly do not can avail of this solution. These criteria remain vague, and, if adopted, could lead to countries being challenged by the North, for availing of a solution when they are deemed to have already attained some kind of manufacturing capacity. The entire thrust of the ‘Motta’ text is to ensure that generic producers will be unable to access any significant export markets, hence making it expensive, if not impossible for generic drug producers to supply to cheap medicines to those in need.

Broken Promises: Special and Differential Treatment and Implementation

The Doha Declaration promised that outstanding implementation issues (ie, the majority of issues raised since before the Seattle Ministerial) would be addressed ‘as a matter of priority’, and a report to the TNC would be made by end 2002 ‘for appropriate action’.

Developing countries were promised that their implementation issues (righting the imbalances of the Uruguay Round) would be addressed if they enter into a new Round. It is clear that the developed countries have not had any political will to give in these areas. The Cancun draft text reiterates these promises and suggests that another deadline be given!

In Special and Differential Treatment, developing countries were promised in Doha that ‘all special and differential Treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational’. There are about 85 Special and Differential Treatment (S&D) provisions which the African Group has proposed for redress.

Since Doha, however, S&D has been split into 3 categories. Those that the Chair of the General Council will undertake consultations – these are the least ambitious provisions, and provide the least results to developing countries. The second category are those that have been referred back to the various negotiating bodies, and the third category are the most ‘difficult’, also the most important S&D provisions for developing countries. Nothing has come out of the latter two categories. The Cancun Draft package outlines 24 S&D provisions – from the first category. In the course of the negotiations here in Geneva, developing countries, such as those in the African Group have complained to the Chair that many of these provisions are no better than the original texts in the agreements!

Many of them are again more ‘best endeavour’ language, or stipulate Members to find solutions in the future. For example, ‘The General Council mandates the Committee on Balance of Payments Restrictions to examine ways and means of simplifying the administrative requirements...’. Or in GATS Article IV, again, just vague promises are made to LDCs – ‘modalities shall be developed in order to allow the priorities of LDC Members to be presented and duly taken into account’.

There are no concrete commitments taken by the developed country Members, and it is difficult to find any economic value in this predominantly window-dressing exercise.

Services Negotiations Paragraph Fails to Capture Developing Countries’ Concerns

The Services Negotiations are of little value to developing countries. Apart from Mode 4, which is wrought with non-transparent barriers in the developed world, developing countries have no meaningful export capacity.

Their difficulties in the services negotiations have been repeatedly aired in Geneva Services Council discussions. Developing countries have also asked for an Assessment –

promised to them in the GATS – to be undertaken before a new round of negotiations is embarked upon.

A thorough assessment has not taken place. Instead, developing countries, in the negotiations so far, have been requested to open up in every sector imaginable, including water distribution, and essential public services. They have been asked to remove regulation that impedes access to their markets by developed countries' corporations.

Whilst the services negotiations are often portrayed by the WTO Secretariat and developed countries as being development-friendly, the text in the draft Cancun Declaration illustrates the pressures countries will come under. The Services texts calls on those countries that have not submitted initial offers to do so, and for improved offers to be made, by a certain date to be determined in Cancun.

The LDCs have also long been promised modalities for Special and Differential Treatment. But this has been with-held. The draft text promises it to them 'depending on the outcome of the ongoing consultations'. Are developed countries looking for LDCs to provide ambitious market access offers before any crumbs of Special and Differential Treatment are offered?

Cambodia / Nepal Accession: Foreclosing Development Options

The Draft Ministerial Text also acknowledges the accession of Cambodia and Nepal. Since the formation of the WTO, no LDC has acceded to the WTO. A promise was made in Doha that LDC accession would be accelerated.

However, judging from the package that is now emerging on what Cambodia has signed on to, it seems that no consideration was given of Cambodia's status as an LDC or its level of development.

Some commitments undertaken by Cambodia include:

Implementation of TRIPS agreement by 2007, when LDC Members in the WTO have negotiated a transition period to implement TRIPS by 2016. This will have serious implications on the ability of Cambodians to access technology and develop their industries etc. Cambodia also currently imports generic drugs from Thailand, such as for AIDS. Implementing the TRIPS Agreement will immediately increase the costs of medicines for Cambodians.

80 per cent of the population in Cambodia depend on agriculture for their livelihoods. Yet the average binding Cambodia agreed to in the agricultural sector was just 30%. Tariff on rice agreed to was only 40%. This is very low considering the fact that rice is a commodity that is highly subsidized, and dumped, by the US. US and EC also have much higher tariff bindings for sensitive crops – over 200% for the EU and over 100 per cent for US. Cambodia is therefore likely to face import surges in rice and other food crops – with food security and livelihood implications for her people. Cambodia also agreed never to provide export subsidies, binding their export subsidies at zero – despite the fact that the developed countries – US and EU – refuse to eliminate their export dumping!

(Oxfam analysis by Celine Charveriat and Mary Kirkbride, 'Cambodia's Access to the WTO: How the Law of the Jungle Is Applied to one of the World's Poorest Countries', Geneva 2003).

The package, therefore seems to be more severe than the commitments even developed countries have undertaken for themselves in the WTO and Cambodians will have a very rough ride ahead.

Developed countries in the WTO do not take into consideration a country's level of development in the accession process. Each accession package instead is seen as a blueprint for the next accession, and no matter how poor a country is, and no matter the negative consequences, the highest possible price is extracted.

Irregular Procedures in a "Rules-based" Institution

'Member-driven' Institution, but Chairman Submits Text 'On His Own Responsibility'

It must also be noted that the Cancun Draft Text was released by the Chair of the General Council 'on his own responsibility'. This is an irregular procedure for international negotiations. The WTO is, supposedly, a 'consensus-based', 'Member-driven', and 'rules-based' institution. Any text forwarded to a Ministerial conference must therefore have the endorsement and consensus of the Membership. In submitting his own text, the Chair has abused his position and contravened the rules of consensus decision-making!

This is a serious anomaly. This, as well as other procedural irregularities, should be brought to the attention of Ministers in Cancun. Until the institution is run in a democratic fashion, it is unlikely that developing countries' positions will be adequately reflected.

Conclusion

The 'Development' promises made in Doha are in a serious state of stalemate. To add insult to injury, developed countries are setting their sights on ambitiously mercantilist market access opening formulas, in industrial tariffs, agriculture and services.

Given the current state of negotiations; the overwhelming evidence that the Uruguay Round has impacted negatively on developing countries (Africa's share of world trade at 8 per cent during the Uruguay Round has shrunk to 2 per cent); pronouncements by UNCTAD for instance, that unemployment and poverty are again on the rise in developing countries; and that the hundreds of billions of dollars in gains projected at the time of the Uruguay Round were exaggerated – any supposed 'forward' move in Cancun could mean creating more structural inequities for developing countries' economies.

If development were centerpiece, there should instead be a thorough assessment of the development implications of current WTO agreements, removal of those agreements such as TRIPS that clearly has no place in a trade institution, and the rolling back of existing

agreements that have already caused harm to developing countries' industries and agricultural sectors.

WTO Members would do well to reflect on the preamble in the text establishing the WTO: where improving living standards and employment are the objectives, not one-size-fits-all liberalisation at the cost of development and other social objectives.

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