

Behind the Collapse of the WTO Cancun Ministerial

by Martin Khor

The 5th WTO Ministerial Conference in Cancun ended on 14 September without reaching agreement on a Ministerial text. While differences among members on the Singapore issues appeared to be the immediate cause of the breakdown in talks, the collapse has deeper roots that extend to the woefully undemocratic decision-making process in the WTO.

The WTO's 5th Ministerial Conference in Cancun ended on 14 September afternoon without an agreement on a Ministerial Text.

The decision to close the meeting was announced suddenly by the Conference chairman, Mexican Foreign Secretary Luis Ernesto Derbez, during informal consultations involving about 30 countries (dubbed the "Green Room" meeting) when agreement could not be reached on the "Singapore issues." The decision to end the meeting without any substantive declaration took participants by surprise as it had been widely expected that the meeting would continue well into the night or the small hours of the morning, or even be extended by a day.

A short closing ceremony was held, from which non-governmental organizations (NGOs) and the media were barred, and to which each delegation could only send a few representatives. It was expected to have been at the grand hall where the opening ceremony was attended by 3,000 people. But the venue was shifted to a much smaller room and many delegates were kept out of this closing ceremony (as well as the last heads-of-delegation (HOD) meeting preceding it) by the security guards.

This ruling on attendance was in contrast to that on official closing sessions in all the previous four Ministerials, where all delegates, observers of international organizations, NGOs and media were allowed to be present.

A trade diplomat from an African country complained angrily that she and other delegates were subjected to pushing and shoving by guards trying to keep them from entering the room where the HOD meeting was being held.

"The collapse of the talks must have been embarrassing for the WTO officials and leaders and they must have decided to keep as many people as possible out of the closing session to hide the embarrassment," said another diplomat.

At the closing session, a brief and simple Ministerial Statement was adopted, in lieu of the substantive draft declaration text that had been under discussion since its first version appeared in Geneva in July.

The Statement expressed appreciation to the host government of Mexico, welcomed Cambodia and Nepal for acceding to the WTO, and said all participants had worked hard to make considerable

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progress under the Doha mandates, but “more work needs to be done in some key areas to enable us to proceed towards the conclusion of the negotiations.”

The Ministers instructed their officials to continue working on outstanding issues taking fully into account all views expressed in the Conference. “We ask the Chairman of the General Council, working in close cooperation with the Director General, to coordinate this work and to convene a meeting of the General Council at Senior Officials level no later than 15 December 2003 to take the action necessary at that stage to enable us to move towards a successful and timely conclusion of the negotiations. 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 on texts, we undertake to maintain this convergence while working for an acceptable overall outcome. Notwithstanding this setback, we reaffirm all our Doha Declarations and Decisions and recommit ourselves to working to implement them fully and faithfully.”

From the Statement, it is unclear whether the 15 December deadline is meant to complete the negotiations on issues (modalities on agriculture and non-agricultural market access (NAMA), and a decision on launching negotiations on the Singapore issues on the basis of explicit consensus) that Cancun could not achieve. Neither is it clear what the status of the Cancun draft texts will be when discussions resume in Geneva.

Divisions

There is indeed a sense of confusion on what actually happened in the last hours of the Cancun conference, whether the talks broke down due to any specific issue or simply due to the running out of time to resolve the serious divisions on the many key issues. There was even more confusion as to how Derbez came to make his decision to close the meeting when he did.

The immediate reason is that there could not be an agreement on the Singapore issues in the exclusive small-group consultation known informally as the Green Room meeting.

In the early hours of 14 September, after a long HOD meeting to discuss the revised Ministerial Text that had been issued on 13 September (see “Ministerial’s fate hangs by a thread” on pp. 11-13), a meeting of nine Ministers (US, EC, Mexico, Brazil, China, India, Malaysia, Kenya, South Africa) was convened by Derbez lasting from 1-3 a.m. to discuss the Singapore issues, at which the countries reportedly kept to their

known positions.

Later that morning, a larger Green Room meeting of about 30 Ministers was convened. It was meant to discuss all the outstanding issues of the conference with a view to resolving the differences. Derbez decided to start with the Singapore issues. He later explained at a press briefing that he chose this as the first item because it had become the main issue of contention, judging by the reactions to the revised Ministerial Text at the previous night’s HOD meeting.

At the meeting, the developing countries opposed to starting negotiations on the Singapore issues reiterated their position that further clarification of all the Singapore issues should be undertaken. Derbez reportedly proposed that for two of the issues (trade facilitation and transparency in government procurement) negotiations could begin, but that the other two issues (investment and competition) would be dropped from the agenda.

EC Trade Commissioner Pascal Lamy reportedly agreed that the two issues of investment and competition could be dropped, giving the impression that these would be removed from the WTO altogether (and not just from the Doha mandate of starting negotiations on the basis of consensus). The other two issues would then proceed to negotiations.

Many countries said they had difficulty accepting negotiations on trade facilitation and government procurement. Derbez then adjourned the meeting for more than an hour to enable Ministers to consult with their constituencies on whether they could accept this formula of dropping two issues and negotiating the other two.

During the break, a combined meeting of the African, Caribbean and Pacific (ACP), least developed country (LDC) and African Union (AU) members decided that they would not change their mandate that negotiations should not start on any of the four issues, nor should there be an unpacking of the four Singapore items.

When the Green Room reconvened, some developing-country Ministers (including those representing the ACP-LDC-AU groupings) reported that they were unable to accept negotiations on any of the issues. Korea, on the other hand, reportedly said it could not accept the dropping of any issue. Derbez then said a consensus could not be reached on the Singapore issues, and thus there was no consensus possible for the whole package of issues. He then made the decision to close the conference,

without having an agreement on any issue, and ended the Green Room meeting.

When news of the breakdown reached the canteen, the lobby and the media room, there were scenes of excitement as everyone tried to find out the actual situation. Many NGO representatives broke into cheers and song as they celebrated the non-adoption of what they considered a text which would have led to adverse consequences.

An HOD meeting was convened, shortly followed by the official closing session.

Manipulative process

The lack of consensus on the Singapore issues may have been the immediate cause, but the meeting's collapse had broader and deeper roots.

For the first three days, the conference focused mainly on the controversial agriculture issue, with the main protagonists being the EC and US on one side, and the Group of 21 (G21) developing countries led by Brazil and India on the other side, and a grouping of 32 other developing countries emerging as an Alliance for Special Products and Special Safeguard Mechanism championing stronger special-and-differential-treatment elements.

The revised Text, issued at lunchtime on 13 September, had the effect of intensifying rather than reducing the polarization in the conference. The developing countries were unhappy that the section on agriculture did not answer their concerns. They were outraged with the sections on the Singapore issues, as the views and formal proposals of 70 of them (to continue the clarification process and not launch negotiations) had been swept aside.

And developing countries were also outraged at the poor treatment given to the cotton initiative (which had attracted widespread support) in the Text, which one Minister proclaimed to be an insult to Africans and unworthy of the WTO.

The atmosphere was already on the boil when one by one the developing countries took the floor at the HOD meeting to criticize the Text, and at their own regional and national meetings, expressions of their dissatisfaction were even more pronounced.

The issue of the manipulative decision-making process, particularly in the drafting of texts, was then coming to the fore.

"Here we are with 70 or more developing countries speaking up clearly in the consultations, having a consensus document with language on the

Singapore issues, clearly expressed, and the revised Text just ignores their position and takes the opposite position," said a Caribbean country's Minister on the night of 13 September, while having a coffee break.

The Minister asked: "What kind of organization is this? Who does it belong to? Who does the drafting? Who appointed them? Why waste our time engaging seriously in consultations only to find our views not there at all in the draft?"

In the end, it was the WTO's non-transparent and non-participatory decision-making process that caused the "unmanageable situation" that led to the collapse of the Cancun Ministerial.

In the Singapore Ministerial (1996), most Ministers had been shut out of the negotiations as only 30 countries were invited to the Green Room that operated throughout the meeting. The uninvited Ministers were angry when they were told at a last informal plenary that they should agree to a declaration they had no hand in drafting. They reluctantly agreed only after the then WTO Director-General promised that exclusionary meetings would not happen again.

In Seattle (1999), the Green Rooms operated again from the start to the end of the meeting. Ministers of the ACP and Africa groups were so outraged at being shut out that they issued a statement they would not join the consensus on any declaration. The talks collapsed.

At Doha (2001), informal consultations were held, and the Ministers and officials were kept busy. But the drafting of the various versions of the declaration was undertaken in a non-transparent and exclusionary manner, starting with the then General Council chair Stuart Harbinson submitting an unpopular draft "under his own responsibility" and at a ceremonial session when delegates were standing up to take leave of the Emir of Qatar, and ending with a last draft on the last extended day of the conference which everyone was urged to adopt as there was no alternative at that late hour.

The practice of chairs writing and submitting texts "under their own responsibility" became widespread after Doha, even though many developing countries voiced their unhappiness with it, as the major countries found it convenient to get their positions adopted through this undemocratic practice. The drafts for agriculture and NAMA modalities, and later for the Cancun Text itself, were all drawn up by chairs and not by the members.

All that these drafts needed were: a chair coming

from the circles of the major countries or compliant to their views; a compliant and willing WTO Secretariat; and a membership that was willing to take the process.

The drafting by chairs shifted the WTO from being a member-driven to a chair-driven organization. Instead of negotiating with one another, members were negotiating with the chair.

But the drafts, because they usually reflected the views of the powerful minority, lacked the support of most of the developing-country members - who were often outraged that the texts were one-sided in favour of the Quad (i.e., the US, EC, Canada and Japan) and did not reflect their positions - nor had any public legitimacy.

In Cancun, this chair-driven process continued and became the norm. The appointed (and thus unelected) facilitators became all-powerful as they not only conducted consultations but were solely responsible for the drafting of reports and texts. The Conference chair became responsible for the revised Ministerial Text.

No one among the participants is sure how the drafting is done or who does it. It is known that the WTO Secretariat played a major role. And when the revised Text came out on 13 September at 1 p.m., it again revealed biases (some of them blatant) towards the developed countries.

By now, it was only 27 hours to the scheduled end of the Conference. It was evident from the HOD meeting and later at the Green Rooms that the developing countries were this time much better organized (through their own regional and national processes) and better prepared to face the processes and substantive debates.

An attempt to reproduce a Doha-style ending (i.e., ram through an unpopular text on the ground that there is no alternative and that a "collapse" of a Ministerial would lead to the breakdown of the trading system and the global economy, an assertion with little basis in trade or global political economics) would have led to an open revolt by developing countries.

Thus, the Mexican Minister made a rational decision that the best option was to close the Conference with a simple statement instead of risking a real catastrophe.

Decision-making

With the Cancun Ministerial collapse, the issue of the WTO's decision-making and text-drafting

process has again emerged to the fore. That the Ministerials are run without rules and proper procedures can no longer be ignored if the system is to survive. Having a failure rate of two out of three of the most recent Ministerials is not a record any organization can be proud of.

And each Ministerial, held at intervals of less than two years at different venues around the world, costs the countries several millions of dollars - for the host country (which may recoup it in jacking prices at resort towns during off-season periods), Ministers and representatives and support staff, and media and civil society and others traveling from place to place. And this in an organization that preaches efficiency of economic resource allocation by the market!

Lamy himself, at a closing press conference, termed the WTO a "medieval organization". But it is one which he himself had used in Doha to great effect, by helping to ram through the unpopular decision on the Singapore issues.

Lamy called for reforms to the decision-making system of the WTO. He forgot to mention, however, that after Doha many developing countries had put forward a set of proposals (in February 2002) on procedures for Ministerials and their preparatory process, and that the EC with other developed countries had blocked a decision based on these proposals.

Just a few weeks before Cancun, developing countries again tried to raise the issue of the need to have proper procedures for Ministerials, including for drafting texts. Several international NGOs also launched a campaign for internal transparency and participation in the WTO.

But these attempts for more democracy in the WTO house were swept aside by the major developed countries. Their argument had been that Ministers must be given the "flexibility" to run Ministerials the way they want without being hampered by procedures. In reality, they would like to retain their grip over the drafting of texts and the operation of Green Room meetings, and repeat the Doha experience of pushing developing countries into adopting last-minute texts.

If this is to continue, then each Ministerial would be a poker game whose fate depends on last-minute brinkmanship, with powerful countries trying their luck and using various methods to push their way through, and developing countries organizing themselves to resist the pressures. In Doha it worked for the majors. In Cancun it didn't. If things do not

change, it will be yet another gamble in Hong Kong or wherever the next Ministerial is held (since the proposal to hold the next Ministerial in Hong Kong was never adopted in Cancun).

Holding the trade system hostage to this poker-like game of brinkmanship is, however, full of risks, as the record of two failures out of three meetings shows.

The ultimate lesson of Cancun is that the organization must change or perish.

ANNEX:

Statement by the Third World Network on the events of the final day of the Cancun Conference, 14 Sept 2003

The Cancun meeting will end without an agreement on the Ministerial Text.

The immediate reason is that there could not be an agreement on the Singapore issues in the exclusive small group consultation known as the Green Room meeting.

Many developing countries, including the African Caribbean and Pacific (ACP) Group, the African Union, the LDC Group and Asian countries such as India and Malaysia made it clear at the Green Room meeting that they would like the Ministerial to decide not to launch negotiations on the Singapore issues (investment, competition, government procurement, transparency trade facilitation). Although they were under pressure (by the EC in particular) to agree to launch negotiations on at least some of the issues, the developing countries stuck to their position.

The reasons they gave was that: negotiating these issues would divert scarce human and negotiating resources from directly trade issues such as agriculture and industrial products; agreements on these issues will have serious implications for their economy and development prospects; and there is no consensus on the modalities of the negotiations.

They requested that discussions continue on the issues instead of starting negotiations for new treaties.

Unfortunately, the major developed countries and in particular the EU kept on pressing the developing countries to accept negotiations. This was the main reason for the deadlock situation that developed.

The deeper reason for the situation is the untransparent and undemocratic system of drafting of texts in the WTO. Although about 80 developing countries formally submitted their position that they would not want negotiations to start, the Facilitator and the conference Chairman came out with a draft that decided to launch negotiations in three areas (procurement, trade facilitation, investment).

This led to frustration and unhappiness, even outrage, at the bias shown against the developing countries, which they expressed at the HOD meeting on Saturday night and at the Green Room meeting.

This situation has brought the WTO to the brink of a crisis of confidence. The following now needs to be done if confidence is to be regained, and if the trade system is to be put back on the right track.

1. It is time to reconsider whether the Singapore Issues belong to the WTO, since they are non-trade issues and the attempts to bring them into the system has caused so much acrimony and division for the past many years.

2. The developing countries have organized themselves better this time and have shown that they are not ready to be bullied into accepting decisions which they are against. The developed countries should respect this emergence of the developing countries in the system and re-think the way they operate in what was once a rich man's exclusive club.

3. The decision-making system in the WTO should be reformed so that there is more transparency and democracy, so that developing country members can participate more effectively, especially in the drafting of texts. A special committee should immediately be set up in the WTO to carry out these democratic reforms, which were promised after Seattle but never carried out.

The way the Cancun meeting has ended without an agreement and with such strong divisions is another wake up call for the system. It is now urgent that measures be taken to turn the WTO into an organization that truly respects the developing countries and their development objectives (both in the rules and in the decision-making system). This is perhaps the last chance to embark on the reforms. If these reforms do not take place, there can only be more crises and loss of legitimacy and confidence in the system. And the developed countries, which have been so resistant to change, would have to carry the blame.

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