

Cancun Ministerial Failure: Derailing WTO

Amit Sen Gupta and Prabir Purkayastha

The final collapse of the Cancun WTO Ministerial meeting in Cancun without any agreement is a defining moment in the current phase of trade negotiations. For the first time, the club of the rich termed the quad -- the US, European Union, Japan, Canada -- did not get their own way. The earlier collapse in Seattle had as much to do with the protests outside as divisions within the quad, particularly the US and EU. This time, the poorest of the developing countries, incensed by the way their concerns were treated and the procedure of selective consultations, walked out. While the rich countries predicted gloom and doom for the poor countries, their argument was quite simple: no deal is better than a bad deal.

The official WTO Ministerial statement after the Cancun meeting, with six paragraphs, had just one operative sentence: *"We therefore instruct officials to continue working on outstanding issues with a renewed sense of urgency and purpose and taking fully into account all the views we have expressed in this Conference."*

Probably never before has the failure of a multilateral negotiation been greeted with such exultation. People from all over the world danced on the streets of Cancun as this news came in, signalling the derailment of the meeting. They celebrated at the spot, which had witnessed the tragic suicide of a Korean protestor just four days back.

For days protestors from around the world had infiltrated the area near the conference venue and caused mayhem, blocking traffic, confronting delegates and being chased around by a bewildered army of private security, conscripts and military policemen. Finally, on Saturday, these protestors had something to really cheer about. The jubilation at the final outcome of the WTO summit -- not just in Cancun but also in cities and towns across the globe -- is a pointer to how hated the current world order of WTO has become.

Why the Failure?

The final collapse in Cancun occurred when developing country governments refused to accept a draft declaration heavily biased in favour of the EU and US positions. After three days of negotiations, the Mexican Chairperson produced a draft that made no concessions to the developing countries. The draft accepted continuation of agriculture subsidies by the EU and US as well as the launching of negotiations on

the controversial new issues known as Singapore issues, both of which had been opposed by the developing countries. The Kenyan delegation, under pressure of other African countries, walked out of the Green Room discussions involving 30 countries, effectively bringing the hopes of an agreement to an end.

Why did the developed countries fail to get their way in Cancun, as they have done so often in the past? There are three major reasons for this. The first and certainly the most important is that after having conceded so much in the Uruguay round of GATT negotiations that led to the formation of the WTO, the developing countries have been pushed to the wall. The benefits of globalisation have so obviously gone to the developed countries that it is increasingly difficult for the ruling elite in the developing countries to give further ground and yet be able to face their people at home. There is no doubt that the rising tide of mass movements and public opinion in these countries have made it difficult for them to yield further without being able to show some reciprocal concessions from the developed countries.

The second reason for the failure was that the Cancun meeting was held in the backdrop of the invasion of Iraq by US forces. In the previous meeting at Doha in 2001, held in the aftermath of the World Trade Tower bombing in New York, the US was able to pose as a victim and coerced the rest of the world to show their sympathy by accepting its demands. In Cancun, they were clearly seen as bullyboys, with disdain for world opinion including the UN. The failure at Cancun had as much to do with US arrogance as with the EU's attempt to manipulate on Singapore issues while conceding little on agriculture.

The third reason for the failure was that given the stagnation of the global and their home economies, the US and the EU had very little room for manoeuvre. In the US, Bush already faces an attack on his handling of the economy, compounded by the unravelling of his Iraq strategy. For the Bush administration to provide any "concession" before his 2004 re-election, it would have needed much larger concessions from others. The EU was in an even worse position. While pushing for the Singapore issues, they were not prepared to make any concessions on agriculture subsidies. In Cancun, both the US and the EU therefore were looking for only one-way concessions. The collapse in Cancun was inevitable once the US and EU realised that the developing countries, for a change, were not going to capitulate.

Finally, however, the abiding image that will remain of Cancun is the united front that the developing countries were able to forge. Led by what came to be known as the G21, (group of 21 countries --- including Brazil, India, China, Malaysia, South Africa) the developing countries remained united till the end. The resolve of the developing countries drew enormous strength from the massive worldwide campaign that had, for over a year, rallied people on the slogan of "Derail the WTO at Cancun"!

India, as a part of the G-21, along with Brazil, China and South Africa played a significant role in these negotiations. They were able to rally the bulk of the developing countries behind them and act as a counter to the US-EU led quad grouping. By all accounts, the quad attempts to split the group through a carrot and stick approach failed. With the WTO Secretariat acting as an instrument of US-EU interests, and a compliant Mexican Chairperson, the US-EU tried to ram through a draft, which not only did not reflect the concerns of the developing countries but also in some respects was even worse than the pre-conference draft. The last straw was the contemptuous dismissal of the demand of five West African countries that had asked for removal of cotton subsidies, which had led to a collapse of the price of cotton in the global market. They were asked by the US to diversify their agriculture and this issue was sought to be clubbed with the textile discussions. The US was not willing to budge on support to its special interest lobbies even if the poorest of African countries such as Mali and Benin were facing bankruptcy. With the African countries on the boil, the conference failed when the EU insisted on discussing the new Singapore issues before discussing agricultural subsidies.

Consequences of the Failed Talks

Many have argued that the failure of a multilateral institution such as WTO would weaken the bargaining position of the developing countries: they now would have to face the rich countries in bilateral negotiations. Already, the US has said that they would continue with their agenda in various bilateral negotiations going on with 14 countries. This overlooks that the WTO came into existence to provide teeth to the trade regime through a dispute settlement body and trade sanctions. This, as the US is now discovering in Iraq, is a lot cheaper than gunboats and cruise missiles. The bilateral deals have their limits as they neither lock these countries permanently into an unequal position nor have teeth to impose sanctions. It is this coercive instrument -- among other things -- that distinguishes WTO from the earlier multinational GATT as an institution.

While it is true that WTO allows, in principle, the developing countries to come together and negotiate, in practice the club of the rich have ensured through their control of the Secretariat and their ability to split the developing countries that they dictate the proceedings in WTO. The developing countries therefore had no chance of advancing the development round, which is what the current Doha round of negotiations is supposedly all about. Whether the WTO can be used to advance their cause is a moot point today: what were on the table were further concessions on investments, government procurement and further cuts in their tariffs. In this context, the best that the developing countries could hope for was a derailment of Cancun. Without this, there was no way that their concerns would ever be centre staged in WTO.

In the correlation of forces in Cancun this time, a lot had changed from Doha. In this, the alliance of 21 countries -- the G21 -- should not be underestimated. What has also changed in WTO is the entry of China.

While China did not play a high profile role, the sheer size of its market and its huge trade surplus with US makes it difficult to push China around. The unity of G21, which included China, held and they and other developing countries showed considerable negotiating skills throughout the conference. The ease with which they dominated the news and tabled alternative drafts took the US-EU by surprise. As the South African Minister said that for the first time we were sitting at the table as equals. And it was deeply disconcerting for the US-EU. Not surprisingly, Zoellick, the US Trade Representative and Lamy, the EU representative spoke scornfully of how "can't do's won out over can do's" and "the medieval decision making process of WTO".

Many other groupings also formed during Cancun, the one on Singapore issues being the most important, with Malaysia and India acting as the spokespersons of the group. Though India was willing to concede on two of the four Singapore issues on trade facilitation and government procurement -- they did not publicly break ranks with others in the closing stages.

All this does not mean that the developing countries have won a major victory. The absence of defeat in the current trade regime must itself be recognised as a step forward. However, Cancun was a Ministerial, the Doha round with all these issues still continue. What the quad failed to do in Cancun will now sought to be done by bribery and blackmail. The coercive diplomacy, the threat of bilateral pacts and many other instruments of pressure will be brought to bear to bring the developing countries to heel. The war still continues, only a battle has been "won", or more correctly stalemated.

WTO and the Hollow Claims of "Free Trade"

The seeds of the collapse of the Cancun Ministerial were sown well before. The WTO came into existence in 1995, as a result of a decade of negotiations. It was formed with the stated objective of establishing "free trade". As the diehard votaries of the WTO never tire of telling us, "free trade" is a "win-win" situation for everybody -- everybody is supposed to gain from liberalised trade. The heady euphoria drummed up in favour of globalisation with the coming into force of the WTO in 1995 and its so-called "rule based governance" of global markets has now dissipated. Eight short years after the WTO agreement was signed, people all over the world have realised that the WTO stands, not for free trade, but for free exploitation of the poor countries and the poor wherever they live. "Free Trade" has come to mean protection of developed country markets and the opening of developing country markets.

The WTO, since its inception in 1995, has acted as the battering ram of imperialism. In the current phase of globalisation, characterised by attempts to integrate capital flows, markets and production, the WTO has been the moving force in "liberating" the markets of developing countries for global capital. The first rumblings against the WTO reached a crescendo in Seattle four years ago when the ministerial meeting there

collapsed amidst street protests and rioting. Two years later, the developed countries tried to salvage matters in Doha in the backdrop of the so-called "war on terror". In Doha, a modicum of developing country unity prevented the full scale launching of a new round that would link even more issues that pertain to the domestic economy to trade issues unless there was a consensus on modalities of the negotiations. In Cancun, the developing countries were able to use this clause in the Doha agreement to thwart the US-EU attempts to start negotiations immediately.

To understand why the WTO is such a hated institution today, it would be necessary to go back to the mid eighties when the developed countries, led by the US, hammered together an agreement that linked trade with issues that were not hitherto considered part of trade negotiations. The attempt was clearly to use the carrot in the form of enhanced trade opportunities and the stick in the form of the threat of retaliatory trade sanctions to make developing countries change domestic policies that prevented the complete economic hegemony of the developed countries. The WTO, thus, brought within its ambit issues such as Intellectual Property Rights (Patents, Copyrights, etc.), services including vital social sectors such as health and education, and investments. The rich countries had promised the developing world during the Uruguay round of GATT negotiations that if they opened their market to the rich countries and lowered tariffs, accepted patent regime favourable to the MNC's, they would then be allowed access to the markets of advanced countries for agricultural goods and in areas such as textiles. Instead, the subsidy given by the rich countries to their farmers and agribusiness has grown from about \$180 billion then to more than \$300 billion now. In textiles, even the limited market accesses promised by the rich countries have not been forthcoming. It has become apparent that the WTO is tearing down all barriers in developing country markets, while protecting the developed countries markets.

Even a Jagdish Bhagwati one of the most well-known advocates of free-market globalisation, states "The process of trade liberalization is becoming a sham," Bhagwati wrote recently in the Financial Times, "the ultimate objective being the capture, reshaping and distortion of the WTO in the image of American lobbying interests." Bhagwati continues, " The developing countries are scared out of their wits now because they don't understand what they're being forced to sign. The agreements are going way outside the trade issues and involve a helluva lot of things like your access to oil, your access to intellectual property and capital controls....."

It is in this context of deep scepticism of the developing countries and the people around the world regarding WTO that we have to see the Doha round and the Cancun negotiations.

The "Development Agenda" of WTO Negotiations

The Doha Ministerial in 2001 concluded with the promise of pursuing a "development agenda" within the WTO. It was ostensibly designed to

address the “imbalances” of the original Uruguay round that favoured developed countries. It may be recalled that the Doha meeting had ended with the virtual initiation of negotiations on the “Singapore issues” – essentially non-trade issues that the US and EU wanted introduced into the WTO for the benefit of global capital subject to explicit consensus on modalities to be decided in Cancun. However, it was also conceded that issues of vital interest to the developed countries, such as Agriculture, Textiles, Public Health, etc. would be addressed expeditiously. Unfortunately, it is precisely on these issues that the least progress has taken place since Doha. It is now clear that this was a hypocritical assertion by the rich countries. Further, there has been no discernible progress in the area of Special and Differential Treatment (SDT) -- meant to treat developing countries differently to cushion the shock of trade liberalisation. Let us take a closer look at how some of the important issues have unravelled in the run up to the Cancun Ministerial.

Agriculture

The agriculture sector is a stark example of how the WTO rigged its rules to favour the rich and the powerful. Traditionally, the way the agriculture sector was protected differed among developed and developing countries. The former protected their agriculture by providing subsidies -- both in cash and through other incentives -- to their farmers. Further subsidies were made available if the produce was exported. Developing countries, not being able to provide such subsidies as they were cash strapped, protected their agricultural market by imposing high duties on imports (tariff barriers) and through quantitative restrictions -- that is by specifying a ceiling on the amount of each product that could be allowed to be imported. The WTO agreement was so designed that it targeted the protections of developing countries (by removing quantitative restrictions and reducing import duties) while allowing the developed countries to maintain their subsidies. Even the modest reductions that the developed countries were to make in their subsidies were not adhered to in the last eight years. Instead, the subsidy given by the rich countries to their farmers and agribusiness has grown from about \$180 billion then to more than \$300 billion now. As a result we have a situation today where each farmer in the US receives a subsidy that is seventy times the income of an average Indian farmer!

The case of cotton, sugar and cattle bring this out most sharply. Under IMF and World Bank pressures, West African farmers had to shift from food cultivation to a commercial crop, cotton, so that this could be exported to pay for their loans. The problem they face today is that cotton prices have collapsed in the global market, as the US pays \$3.9 billion in subsidy for its 25,000 cotton farmers, more than the total worth of this cotton crop. With this scale of subsidies -- an average of \$160,000 per farmer -- they can afford to dump their products in the world market. This has dealt a body blow to the West African cotton farmers, who cannot even survive on the prices they get from the market. Similarly in sugar, the amount of subsidy that EU gives its farmers to grow beet is higher than the price of the entire surplus sugar of the developing countries. The rich countries pay \$2 per head of cattle to its cattle growers, more than

the per capita income of the farmers in most of the developing countries keeping life stock.

Such subsidies not only keep a local political constituency happy but also help agribusiness: they are able to buy cheap and capture the global markets, as others cannot compete at these prices. Their ability to capture the global market has nothing to do with efficiency of production or costs: it is simply a reflection of the level of subsidy. Not only is the US and EU not willing to lower subsidies except cosmetically, they also have argued that a large part of their subsidies are non-trade distorting. The Agreement on Agriculture (AoA) divides domestic subsidies into "amber", "blue" and "green" boxes, in which blue and green box subsidies are held to be non-trade distorting. The "Amber Box", consists of subsidies that are seen as trade distorting, and have to be reduced. The "Green Box" subsidies are for production restructuring and direct payments not linked to production, and "Blue Box" subsidies, are not linked to current production but to past production or areas. The unscrupulous and manipulative nature of the GATT negotiations is clear from the fact that the so called trade distorting subsidies were the kind that the developing countries were providing (and hence were phased out) while those that the developed countries provided were supposed to be non-trade distorting (and hence could be retained)! The developing countries were conned into this division of subsidies into so-called trade distorting and non-trade distorting subsidies in the Uruguay round and are only now arguing for bringing all subsidies in agriculture on the negotiating table. Unfortunately, having given up quantitative restrictions then, they have weakened their own bargaining position considerably. Without getting back QRs, they are unlikely to win major concessions or be able to protect their agriculture.

In the run up to Cancun, the US and EU held their own negotiations in mid August to try and unify their positions. The Harbinson draft (Harbinson was chairing the Agriculture section of the Doha negotiations) had attempted to address the issues of export subsidies and credits and the Blue Box subsidies, even if they were inadequate and did not touch Green Box subsidies. The US-EU draft did not even recognise these issues. The entire thrust of their draft proposals was to allow for shifting of the subsidies from one box to another. On other issues, they wanted steep cuts in the tariff protection of the developing countries while making very few concessions on their side. Their thrust was to provide high tariffs to prevail for a few items that will be designate as trade sensitive, allow for steep cuts in tariffs for most other items (non-linear tariff cuts, i.e., the higher the tariff, the steeper the cut) and have zero to five per cent tariffs on certain items. As northern agriculture has a less number of varieties, protection of a small number of items would still maintain their high tariffs for their products. Southern agriculture spans across a very large number of varieties; they would have to undertake sharp reductions. In general, the developing countries have a higher level of tariff protection if we take all products into consideration. Obviously, they would then have to open their markets significantly while still being unable to access the markets of the rich countries, which would be protected by high tariffs.

Though US-EU came to an agreement on how they would face the developing countries, they had some significant differences with each other. The most important difference is with respect to genetically modified (GM) crops. EU has been opposing the introduction of GM crops, though more on health and environmental grounds. To the developing countries, GM crops and TRIPS lead to agribusiness monopoly of seeds and through this, the control of their agriculture. The US would perhaps be willing to reduce subsidies more than EU provided all restrictions on GM crops are removed.

The response to the agricultural agreement reached by the US and EU was 17 developing countries (which later expanded to the G21) quickly getting together and producing a counter proposal to the US-EU draft. They showed how the US-EU draft only addressed their internal differences and allowed each other loopholes for escaping commitments that would address the concern of the developing countries. Their major concern was that by allowing green box subsidies to continue without capping or reduction, the entire exercise of reducing subsidies would become a meaningless game of shifting boxes. They were also sharply critical that the US-EU did not even consider the needs of the poorest of developing countries and provide mechanism for some Special and Differential treatment to them. The 17-member draft was also careful to make proposals that would align the Cairns group of agriculture exporting countries (Australia, New Zealand, Argentina, etc.), which wanted ending subsidies and lower tariffs, with it rather against it. The Cairns group later responded that their positions were complementary and not antagonistic to the G21 countries.

The reaction from EU to the 17-nation proposal was a violent one. The EU representative accused the co-sponsors of "confrontation, South-North conflict, "all take and no give" and "aiming at the stars in order to get the moon." While the US was publicly more restrained, quite willing to have the EU spearhead the fight against G21, the stage for a fundamental North South divide on agriculture had already been set for Cancun.

Textiles

On issues such as textiles that are particularly important for India, Cancun had nothing to offer. The Multi Fibre Agreement had fixed export quotas for countries such as India for the US and EU markets. The US and the EU admitted that their domestic industries were not competitive and wanted this protection to continue for 10 years. In this period, they were supposed to slowly scale down this protection to zero. Unfortunately, the rich countries have refused to honour this commitment and are using various measures to continue to protect their textile industry. While this is still a part of the on-going Doha round, it was not on the Cancun agenda.

Special and Differential Treatment

Special and Differential Treatment implies that developing countries be exempted from obligations, or be able to choose their own rate of implementing the obligations, or having a lower level of obligations vis-à-vis the different provisions of the WTO. There has been no movement in this area. The rich countries claim that this has happened because developing countries have been unable to define areas where they wish to avail of such treatment. In practice, they have subverted every attempt to do so. What should have been central to the Doha round has instead become its forgotten agenda.

Singapore Issues

It may be recalled that the Doha meeting of the WTO had ended with the virtual setting up of a new round of negotiations, with the rider that the modalities will need an explicit consensus. While developing countries had opposed this, the agenda was finally pushed through on the last day of the meeting. The new issues (also called Singapore issues as they were first introduced at the Singapore Ministerial meeting of the WTO in 1997) are: (i) trade and investment, (ii) trade and competition policy; (iii) trade and government procurement, and (iv) trade facilitation. These issues are designed to deepen and intensify the predation of global capital and deny the domestic economy of those instruments that the developed countries themselves have applied in their earlier phase of development.

The common theme of three of the issues (investment, competition, government procurement) is maximisation of the rights of foreign enterprises to secure access to markets in developing countries; to reduce rights of sovereign governments to regulate foreign investors; and to prohibit governments from measures that support or encourage local enterprises. If these agreements form part of the WTO, developing countries will find it increasingly difficult to devise their own policies for self-reliant development. The developed countries will press for the principle of “national treatment” to be applied to these new areas, which would mean that developing countries would no longer be allowed to support their local industries. These issues do not belong in the WTO as they are not issues that are directly related to trade. The developed countries want to place them in the WTO so that they can use the mechanisms of trade sanctions to enforce rules that suit their interests.

On the investment issue, the rich countries want to introduce rules that make it legal to give foreign investors the right to enter and establish themselves with 100 per cent ownership. Governments then will lose the right to regulate investments in the national interest or to protect for example, the environment, education and health sectors — both in the long term and in the short term.

Under the proposed ‘Agreement on Government Procurement Policy’ the developed countries wants to introduce a process in the WTO whereby

their companies are able to obtain a large share of the lucrative business of providing supplies to and winning contracts for projects of the public sector in the developing countries. The aim is to bring government spending policies, decisions and procedures of all member countries under the umbrella of the WTO such that the governments would no longer be able to give preferences or advantages to citizens or local firms.

Privatisation in different sectors will also be facilitated under the proposed 'Agreement on Competition Policy'. Member states 'will have to consider making reforms to their regulatory regimes' such that national regulations should have four central attributes: adequacy, impartiality, least intrusiveness and transparency towards corporate interests. Distinctions that favour local firms and investors would not be allowed. *If smaller country enterprises are treated on par with the large foreign conglomerates, they would not be able to survive. The North will insist that their giant firms be provided a 'level playing field' to compete equally with smaller domestic companies. Competition of this type will invariably lead to foreign monopolisation of Southern markets.*

Even the area of trade facilitation, while seemingly innocuous, is fraught with problems for developing countries. The establishment of multilateral rules in this area will make it difficult for developing countries to adhere to the standards or procedures envisaged. The main objective of an agreement in this area is to have uniform rules and procedures. Such an approach totally ignores the wide difference in the administrative, financial and human resources between the developed countries and developing countries.

These issues became the major bone of contention in Cancun, especially as the EU and US insisted on them being negotiated while refusing to give in to developing country demands in agriculture. The inclusion of these issues in any future negotiations in the WTO should be resisted, as they constitute a further assault on sovereign rights of countries to regulate their economies. They should never, in the first place, have been brought on to the agenda of the WTO.

Non-Agricultural Market Access" (NAMA)

The NAMA issues are of vital concern to countries such as India that have an industrial base. Without addressing the central concern of the developing countries that there has been de-industrialisation in the developing countries as a result of lowering tariff protection in the Uruguay round, the rich countries have pushed for wider and steeper cuts in the Doha round. The Cancun draft text reflected largely the quad interest of opening the developing countries even further. Not only was the number of items on which tariff should be lowered sought to be widened, the principle of non-linear cuts where higher the tariff, steeper the cut was also proposed. Further, the draft text sought to bind (fix ceilings) for currently unbound lines and also proposed that these also should be subjected to the non-linear formulae. And the draft rejected the

developing countries demand that which sectors should be opened should be left to a voluntary approach, insisting instead that seven or more sectors should aim for accelerated reduction of tariff to zero and this would be mandatory.

GATS: Targeting The Services Sector

While not a major negotiating issue in Cancun, the General Agreement on Trade in Services (GATS) continues to be another area that the developed countries are preparing to use to prise open the economies of developing countries. The full contours of the GATS agreement are yet to be filled out, but negotiations are now fairly advanced.

Historically trade agreements involved reducing tariffs, eliminating trade barriers like quotas on imports on goods produced in a country and sold elsewhere. Trade related issues are therefore related to what happens at the boundaries of nations. The Singapore issues discussed earlier and GATS are however related to the sovereign economic space of the country where the laws of that country operate. By opening them to multilateral negotiations, the rich countries are denying of the developing countries to use specific levers such as capital restrictions, favour domestic industry, encourage industrialization, protect its labour force and so on. The other thrust behind inclusion of Singapore issues and GATS is the decline in developed countries of manufacture and the growth of their service sector. Presently, the services sectors are growing at the fastest rates in these countries. The service sectors account for two thirds of economy and jobs in the European Union (EU), almost a quarter of the EU's total exports and a half of all foreign investment flowing from the Union to other parts of the world. In the US, more than a third of economic growth over the past five years has been because of service exports.

As the service sectors of the economies of developed countries grew, exports of various types of services increased. Multinational Corporations started lobbying for new trading rules that will expand their share of the global market in services as governments everywhere spend a considerable amount of their budget on social services. This is what the General Agreement on Trade in Services (GATS) under the WTO is targeting today. GATS covers some 160 separate sectors, including areas such as services in the professions, health and education.

The GATS as in all the other agreements contains provisions which allow further deregulation of any national legislation which is seen to be hostile to free trade. GATS identify the specific commitments of member states that indicate on a sector-by-sector basis the extent foreigners' may supply services in the country. The negotiating process in GATS allows for countries to decide, through 'request offer' negotiations, which service sectors they will agree to cover under GATS rules. This refers to the extent to which member states want their services like health and education to be open up to free trade.

In the Third World, much of private services in areas like health and education were provided by non-governmental organisations like charities, religious societies and community oriented associations, which were not entirely profit driven. This will change when with the new dispensation and the corporate sector is poised to play a prominent role especially in countries where there is an affluent elite willing to pay or where there exists a private base in these areas: like in India. *This move to open up the social sectors to allow for privatisation and competition from the private sector will mean private corporations taking over the social services of countries for profit, undermining their equitable distribution.*

If developing countries commit to fully cover social sectors like education and health under the existing GATS rules, this will lead to irreversible changes in the financing and delivery of these services. Governments will have to open up these sectors to foreign service providers. Foreign providers will be guaranteed access to the services market, which includes the right to invest, to provide these services from abroad and to send professionals to practice. Any preferential treatment for local institutions will have to be eliminated or given to foreign service providers. Requirements that first preference be given to locals will be eliminated. Conditions must be created for the private sector to provide or supply any service; the private sector will effectively tap funds that the government spends on social sectors.

The Indian Government has shown itself to be amenable to commit many areas in the service sector for negotiations under GATS. The argument put forward is that this will help the fast growing service sector in the country. Even areas like health are being seen as lucrative areas that could be opened up to take advantage of the cost advantage that high-end health services in India have as compared to that in developed countries. Such an argument entirely negates the fact that areas such as health and education are “public goods” and submitting these to trade negotiations compromises the ability of the state to intervene in these areas. Unfortunately this view of the Indian state is in line with its policy of withdrawing from providing social security. Moreover it legitimises the privatisation and liberalisation that is already taking place in areas such as insurance, telecommunications, transport, education and health. The argument is that if anyway we are committed to liberalising in these areas, what is the harm in committing these areas under GATS. Other than the fact that this “autonomous liberalisation” is already consigning millions of people to the mercy of the market in vital areas, it should also be understood that there is a basic difference between autonomous liberalisation and committing these areas to the discipline of GATS. While liberalisation that is done by governments can be “rolled back” this facility will not be available once specific areas are committed under GATS as part of a multilateral agreement. We will, thus, end up by binding vital areas of our social and industrial infrastructure to rules that will be dictated by the developed countries.

Public Health Charade in Geneva

As the Cancun Ministerial meeting of the World Trade Organisation drew near, a charade was played out in the name of public health. In end August, the TRIPS Council of WTO endorsed an agreement in Geneva that theoretically allowed the poor countries to import cheap drugs that were still under Patents but bound them in red tape in away that the provision would virtually be useless.

In 2001 the Doha declaration on Trade Related Intellectual Property Rights (TRIPS) and Public Health had required that a solution be found that would enable countries with no manufacturing capabilities to import drugs at low prices that may be produced in countries like India. In the last two years, the global pharmaceutical majors, with the support of the US government, had systematically scuttled all proposals designed to ensure this.

The Doha declaration had said: *“We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002”*. Most developing countries, unlike India, have no manufacturing capability. So the TRIPS agreement (and the clarification in the Doha declaration) did not enable them to access cheaper drugs because they cannot get these drugs produced cheaply in their country even if a compulsory license can be granted.

Subsequently, for almost two years now, the TRIPS Council has been supposedly grappling with this issue. Some international NGOs (like *Medecins Sans Frontieres* and Oxfam) had proposed that a way to get around the above problem would be for the TRIPS council to give an “authoritative interpretation” that exports to countries with no manufacturing capability would be deemed as “exception to patentability” (under Article 30 of TRIPS) and could be done automatically without authorisation from the original patentee. This would have meant that a company in India could be granted a licence to produce a patented drug that is required for a country in Africa, which has no manufacturing capability. The import of this drug from the Indian manufacturer would not then constitute a violation of the TRIPS accord.

The developed countries, led by the US, and including the European Union, Japan, Canada and Switzerland, however, refused to consider this and other suggestions designed to address this issue for the last two years. The argument put forward by the US and its allies was that this would allow companies in India and other developing countries with manufacturing ability to circumvent the TRIPS accord and manufacture patented drugs. The developed countries have also expressed the fear that once these patented drugs are manufactured under a licence and enter the market, there is no guarantee that they would not find there

way to other countries, for whom the exports were not intended. Therefore, the US has been arguing that the number of diseases that is covered by this facility should be restricted to a handful: only a few infectious diseases like HIV/AIDS, Malaria, T.B., etc., and should not cover diseases such as heart disease, diabetes, etc. Further the US wanted that the TRIPS council should have the powers to decide which disease(s) constitutes an emergency in a particular country. It further wanted strict procedures and special labelling that would monitor the export of each consignment that is imported, to ensure that the drug is used only for the purpose for which it was licensed.

The US proposal clearly prompted by its pharmaceutical lobby (there are more lobbyists for the pharmaceutical industry in Washington than there are Congressmen!), was an obvious attempt to make this part of the Doha Declaration entirely useless. The Doha Declaration had clearly stated that individual countries have the right to decide what constitutes a national public health emergency or a matter of urgency. The US proposal wanted to take this right away from sovereign countries. Moreover the Doha declaration had not set a limit on the number or the kind of diseases that would be covered by the facility. Further, the US proposal that each consignment would be monitored, seeks to put in place regulatory mechanisms that would be overseen not by the sovereign countries, but by a supranational body that derives authority from the TRIPS Council. In other words, if the US proposal were to be agreed upon, the TRIPS council would have powers to “police” local legislations -- a power that even the TRIPS accord does not provide for. So the Doha Declaration, far from increasing the scope of flexibilities available for developing countries, would be turned into an instrument for greater control of national legislations by the WTO.

The intransigent attitude of the US delayed the formulation of any discussion text that would be acceptable to all countries. Finally on December 16, 2002, a draft was circulated in the TRIPS Council meeting. This draft, known as the Motta text (called so after the Mexican Ambassador to the WTO Eduardo Perez Motta, who was instrumental in drafting the document) was supposed to be a compromise document. Not surprisingly, given the WTO record for such drafts, this so-called compromise document, actually was designed to accommodate virtually, all the demands made by the developed countries. While the EU and other developed countries supported this draft, the US contributed to the drama by rejecting even this compromise document. *The Motta Text constituted a total dilution of the spirit of the Doha Declaration on Public Health.* The question that could then be asked is, if the text was so restrictive and biased in favour of developed countries, why did the US not agree to it?

Possibly, the answer is to be found in the manner in which the discussion on the Motta Text proceeded after the US decided to oppose it. The emphasis shifted from finding a better solution than the Motta text to attempts to “save” the Motta Text. The focus shifted from how bad the Motta text actually was to start with, to the apparent success of getting

the US to agree and tom-toming this as a great victory for the poor countries. The US would have got something in return for doing nothing!

And this is exactly what finally happened. The text agreed upon in Geneva in August is not very different from the original Motta Text. The only concession that the developing countries were able to win was that there was no explicit limit on the number of diseases for which the provisions of the agreement could be used. But the whole agreement is so restrictive, that it makes use of its provisions virtually unworkable. In some ways it goes far beyond the TRIPS agreement by allowing a supervisory role to the TRIPS Council in deciding which drugs can be imported and which countries are qualified to use the facility. For a country like India, whose interest would lie in its ability to export cheaper versions of Patented drugs to other developing countries, the agreement is actually a step back from the TRIPS Agreement. The TRIPS Agreement (under Art. 31(f)) allows Patented drugs to be produced under a compulsory license by other manufacturers, which should be sold "predominantly in the domestic market". In other words the TRIPS Agreement allowed drugs produced under a compulsory license to be exported. The new agreement makes this more difficult by introducing another layer of supervision by the TRIPS Council.

The Public Health Agreement just before Cancun was hailed by the US and EU as a major concession for developing countries. They had hoped that this would allow them to extract concessions from developing countries in other areas in Cancun. Fortunately, developing countries realised that the Public Health Agreement did not give them anything, and thus refused to allow it to be used as a bargaining chip at Cancun. Unfortunately this realisation came too late to salvage the agreement on public health.

One intriguing question is why did the Indian Government not fight harder on this issue? It must be understood that the Indian pharmaceutical companies do not think of the poor African countries as a major market: they are not willing to buck the US and EU on this issue as they are far more interested in the lucrative generic markets of the developed countries. That is why the Indian Government was lukewarm at best in opposing the scuttling of the public health provisions of Doha.

WTO Decision Making and Role of the Secretariat

The WTO structure and decision making has come up for sharp criticism from all sides. The US Trade Representative, Robert Zoellick, at his post-Cancun press conference declared: "if countries want to behave like in the UN and only make demands instead of negotiations, making inflammatory rhetoric, then trade negotiations are not possible." This is a position that has been echoed by other developed countries. On the other hand, developing countries continue to point at the complete dominance of the viewpoints of rich countries in the drafts and decisions in the WTO. The major change that has taken place in WTO from that of its predecessor GATT is that it has increasingly become Secretariat and

Chairperson driven instead of member driven. General Council or group Chairs, with the help of the Secretariat, produce drafts what in their view should be the "consensus" and not what the countries say during the consultations. These drafts predominantly reflect the viewpoint of the US and EU, the block of the rich. This is coupled with developed countries arm-twisting countries and their ministers/ ambassadors to agree to the so-called consensus draft.

If this were not enough, WTO routinely uses Green Rooms where selected delegations are herded in and asked to submit to the dictates of the rich countries. This "agreement" in such smaller gatherings is used to ask the general council to submit to a "consensus". Any country that stands up is threatened with bilateral action or courted secretly with carrots.

The run-up to Cancun continued with all the ingredients that have made WTO so unpopular for the developing countries. The text for Cancun was produced on Sunday, 24th August by Ambassador. Castillo of Uruguay, who then asked for responses from the country delegations by Monday 25th. The draft refused to recognise the development issues that were projected in Doha. In agriculture, Green Box subsidies were not touched and Blue Box subsidies were actually increased for countries such as the US Export credits and subsidies committed to be brought down to zero within a time bound period in Doha were allowed to continue indefinitely. All "concessions" for the developing countries in terms of special and differential treatment was left to the "best endeavours" of countries and not as binding commitments. Deep across the board cuts were proposed in agriculture and for industry, with higher Swiss formulae of non-linear cuts (the higher tariff, the deeper the cut) being proposed. Finally, on Singapore issues, through the draft recognised two alternate positions -- one for an immediate start to negotiations and the other for continuing further studies on these issues -- but the Castillo draft only included the Annexures from the US-EU position and not that of the developing countries. This despite about 90 countries stating that Singapore issues needed to be studied further and no negotiations should start.

On addressing the special problems of countries hit by the Uruguay round, the draft had not only nothing to offer, it virtually reduced this concern, supposedly the major focus in Doha to a footnote in the negotiating draft.

From the beginning, the EU has been playing a game in WTO. It was prepared to discuss agriculture provided the developing countries were willing to start negotiation on Singapore issues. The Castillo text also linked the Singapore issues to the negotiations on agriculture.

The Castillo draft drew a sharp reaction from the delegations. Country after country criticized the draft and asked Castillo to incorporate their views in the draft. All such suggestions, including that of the G-17 (by that time G19) were rejected, Castillo claiming he preferred a clear text and changes should be a part of the Cancun negotiations.

The question is how are drafts and such texts to be made? Why do the developed countries persist with a secretariat or a chairperson driven agenda? The answer to this is that the rich countries wield disproportionate influence over the WTO Secretariat though the Secretariat is headed by a Director General from Thailand, one of the developing countries. In practice the Secretariat is very much under the US-EU influence and plays a key role incorporating the US-EU texts as the "draft texts" for discussions. No amount of criticism from the developing countries has managed to change the stranglehold that the rich countries exert over the process. Similarly, a chairperson driven draft discussion text allows the rich countries to either bully or win over by other means the chairpersons. Individual countries are far more vulnerable to such bullying, while individuals are open not only to pressure but to blandishments and indirect bribery as well. Once such a text is put forward, the rich countries get into the act of isolating the opposition and bringing to heel the rest. Delegate after delegates have given first hand accounts of such tactics. Finally, those that hold out are termed as "spoilers" and singled out for economic and political blackmail.

The rich countries therefore want that the process of creating such drafts be opaque and narrowly located. It is always easier to coerce the few and then browbeat the rest. That is why the WTO process remains the only one in such international bodies that is without procedures and modalities for preparing documents.

Coupled with this completely non-transparent and behind the scenes procedure, is the brinkmanship that these countries are playing in WTO. The drafts are released at the last minute, translations are quite often not available and a number of consultations held simultaneously. The result is that smaller countries are at a disadvantage: they neither have the expertise nor the numbers to look at complex drafts within the few hours given to them. Neither are they consulted during the process of creating the drafts, which is generally a closed exercise between the Secretariat, the Chairpersons and a privileged set of countries. Cancun was no different; in fact the partisan nature of the Secretariat and the brinkmanship practised by the rich countries was even greater here.

Observers have called the brinkmanship practiced in which the actual negotiating position is exposed at the last minute as "political blackjack". Undoubtedly, amongst other things this political black jack also backfired in Cancun as concessions given were too little and too late.

Conclusions

Where do we go from Cancun? There have been two kinds of responses to WTO, both of which to our mind are problematic. One set of experts have argued that WTO represents the best bet for the developing countries. Any weakening of this multilateral sector, according to these experts, would expose the developing countries to only bilateral fora and a far greater degree of pressure there. Much of these arguments could have had merit if these experts did not also preach submission in WTO to the

dictates of the rich. If the developing countries in order not to submit bilaterally, have to submit to deals in such multilateral forum that are going to ruin them anyway, it seems to be an argument for accepting the death sentence and only choosing the mode of execution. This approach fundamentally refuses to look at the way the WTO is functioning. The WTO, unless it becomes a more democratic institution, open to the views of the developing countries, will continue to be another platform where the rich countries attempt to impose unequal obligations on the developing world.

If countries such as India are not to submit to the dictates of the rich, is their only option to walk out of WTO? Here again, two sets of arguments (not mutually exclusive) are advanced on quitting WTO. One is based on localism: the self-reliant village economy (the tribal or forest) is the ideal. Here the enemy is perceived to be globalisation itself, with imperialism as only another name for globalisation. The other view supporting the quitting of WTO is that Indian economy (and other developing countries economies) is perceived to be neo-colonial: quitting WTO is in some sense seen to be freedom from imperialism. In this view, the rulers of the developing countries are seen to be lackeys of imperialism and therefore incapable of fighting imperialism even in a limited sense.

In reality, such views – whether the one advocating submission in WTO or the one demanding leaving WTO – disregard the possibility of resistance within WTO against the onslaught of global capital. The Cancun Ministerial shows that the local and global resistance to global capital and imperialism is possible. The pressure of the people on their governments is mounting and the manoeuvrability of these governments is getting more and more circumscribed. As one African Government is supposed to have told its minister that if you come back after signing this draft, you need not bother coming back, people will throw you out. Jaitley also conceded in private that while economically India, he felt, could concede on lowering of agricultural tariffs, politically it was difficult.

The issue here is not whether WTO can be reformed but using the WTO also as a terrain of struggle. If WTO continues as an instrument of global capital, it will de-legitimise itself. Therefore, the fight is for either de-legitimising WTO or dismantling it. Leaving it intact while we walk out of it is to put oneself at an even greater disadvantage of negotiating bilateral agreements with all the countries separately.

The US has already made its intentions clear. The US Trade representative Robert Zoellick said at the post conference press conference: *“The U.S. trade strategy, however, includes advances on multiple fronts. We have free trade agreements with six countries right now. And we’re negotiating free trade agreements with 14 more. All our free trade agreement partners, some quietly, some more actively, tried to help over the course of the past couple of days. The results are very revealing to me, that over the past few days, a number of other developing countries, that are committed to opening markets and*

economic reforms, expressed their interest in negotiating free trade agreements with the United States”.

What Zoellick basically said is that if the WTO does not allow the US to ride roughshod over other countries it will do so by negotiating with individual countries or smaller groups of countries. Through agreements such as the NAFTA (North American Free Trade Agreement) and the FTAA (Free Trade Agreement of the Americas) the US is already seeking to impose conditions on its neighbouring countries that are far more onerous than what is demanded of by the WTO. The opposition to such arm-twisting, in order to be effective, would require a strengthening of the developing country unity that was seen in Cancun.

The Cancun derailment, thus, by no means implies a victory of the developing countries or the people. It is at best a temporary reprieve as the rich and powerful band together to try and win through behind the scenes manoeuvre what they could not win in Cancun. The three months cooling off period before the negotiations start again will be used to blackmail or arm-twist the ringleaders. Jaitley's position was that we were close to an agreement: India was willing to concede on two of the Singapore issues and negotiate on the rest. The people will need to mount pressure on the Indian Government that they stand firm and not yield in Geneva what the rich countries could not secure in Cancun.

References:

It would be difficult to identify all the references we have used for this article. Most of the background material has been taken from three websites that have extensive coverage of WTO issues. These three and the Delhi Science Forum website where our earlier articles on this issue are archived are given below:

1. Third World Network: <http://www.twinside.org.sg/>

Martin Khor's and Chakravarti Raghvan's backgrounders and articles have written extensively on the run-up to Cancun and the course of the negotiations. The briefing documents have been extremely useful.

2. Focus on the Global South: <http://www.focusweb.org/>

Walden Bello, Nicola Bullard, Aileen Kwa, Raghav Narsalay and Shalmali Guttal have written a number of articles on Cancun and the Doha round of discussions.

3. Macroscan, an Alternate Economic Webcentre: <http://www.macroscan.com/>

The articles by C.P.Chandrasekhar, Jayati Ghosh, Prabhat Patnaik and Utsa Patnaik provide not only information but also an analytical framework to understand the WTO issues.

4. Delhi Science Forum: <http://www.delhiscienceforum.org/>

We are also grateful for the help we have received from S.P.Shukla, the Convenor of the WTO Virodhi Jan Abhiyan, whose writings and discussions have helped clarify a number of issues for us.