

## WTO MEMBERS REMAIN POLARISED ON SINGAPORE ISSUES

TWN Report by Martin Khor, Geneva 17 August 2003

Just three weeks before the Cancun Ministerial Conference, the WTO membership is still as sharply polarized, or even more than before, whether the organization should start negotiations that would expand the WTO's mandate to the so-called Singapore issues of investment, competition policy, transparency in government procurement and trade facilitation.

This was made clear after an entire day of intense debate, that spilled over into night, on what to do about these four issues that was held at an informal meeting of heads of delegation at the WTO on 15 August. The chairman of the General Council, Uruguay's Ambassador, Carlos Perez del Castillo, said he and the Friends of the Chair would conduct more consultations on the issues this coming week.

After a brief general discussion at the start on how to tackle the issues as a whole, the General Council chairman, Uruguay Ambassador, Carlos Perez del Castillo, tried to guide the rest of the day's session into a discussion on the specific modalities of each of the issues.

However there was disagreement both on how to treat the issues generally, as well as on the meaning of the substance of each issue.

"The situation is very polarized," said one senior Asian diplomat near the end of the meeting. Said a trade official: "The discussions on some of the issues are highly and politically charged."

The Singapore Issues are expected to be the most contentious and politically sensitive of all the topics on the agenda in Cancun, as Ministers will decide whether to go ahead with negotiating new treaties. A decision on launching negotiations will have to be made on the basis of "an explicit consensus on the modalities of negotiations," according to the Doha mandate.

The proponents, led by EC and Japan, view that mandate as meaning that negotiations will have to start, and a decision of modalities will have to be taken. The opponents say that it is impossible to achieve a consensus on modalities by or in Cancun because there are so many differences on basic issues, and thus negotiations cannot start, and Ministers should instruct that study or "clarification" of the issues should continue.

At the start of the meeting, Perez del Castillo reportedly said the issues were politically sensitive and the job of the Geneva diplomats was to see what kind of modalities we want. He reiterated that a decision has to be taken in Cancun on modalities and that it needs to be taken by explicit consensus.

He stated that the working groups on Singapore issues have not touched on the question of modalities; as a result this should be taken up at the General Council level. He interpreted the mandate of "our work" to be to develop modalities for consideration by Ministers.

In previous consultations, it was made very clear by some developing countries that before they can consider engaging in negotiations on any of these subjects, they need to know the exact nature and scope of what is going to be negotiated, said Perez del Castillo. As a result, we need to develop substantive modalities and not just look at procedural modalities.

The Chairman said he was fully aware of the differences among Members on negotiations in these areas, and noted there are differing opinions and approaches across the four issues. Some delegations also said we need to consider how explicit consensus on each issue will be ascertained in Cancun.

He suggested that to prepare the ground for the Cancun decisions, the meeting should discuss substantive modalities and at the end we will be able to judge whether explicit consensus can be reached on modalities and if so on what specific basis.

He drew attention to a paper by Kenya and 10 other members, then suggested taking up the four issues one by one, starting with trade facilitation.

But before he could proceed, Kenya asked for the floor to introduce the joint proposal by 11 African countries. The Kenyan Ambassador, Ms. Amina Chawahir Mohamed, proposed on behalf of the countries, that the Cancun Ministerial Declaration state that Ministers note that each of the Singapore issues has its own peculiar aspects and complexities and WTO members have not reached a common understanding on how each of the issues should be dealt with procedurally or substantively in a multilateral context.

The proposed Cancun text continues: "We recognize the concerns of many developing country members about the potential serious implications of these issues on their economies and that the benefits of negotiating a multilateral framework for each of these issues is not evident to them. Moreover, many developing countries have scarce resources and limited capacity to meaningfully negotiate these issues, especially as they grapple with implementation of existing WTO rules and the expanded work programme after the Doha Ministerial Conference.

"This situation does not provide a basis for the commencement of negotiations in these areas. We decide that further clarification of the issues be continued in the respective Working Groups and the Goods Council."

The joint paper states that the proposed text is in line with decisions taken by the ACP Trade Ministers, the African Union Ministers and the LDC Ministers in their respective Ministerial meetings, and as expressed in their Ministerial Declarations.

Speaking to the media outside the meeting room, Ambassador Amina said a large number of developing countries wanted a decision in Cancun that we should go back to do work on further clarification of the issues. More than 50 ACP countries and the LDCs as well support our position, she said. Many aspects of all the Singapore issues have not been resolved. In particular, there is no clear definition or scope.

The EC's Ambassador Carlo Trojan objected to this African approach. In his view, Ministers at Doha had already agreed to launch negotiations at Cancun and the Geneva ambassadors could not decide for them otherwise.

However, Kenya received widespread support from other developing countries, including Bangladesh, South Africa, Cuba, India, Venezuela, Jamaica, Barbados, Malaysia, and Philippines. Many countries emphasized the sensitivity of the Singapore issues and echoed or supported the Kenyan proposal.

Jamaica and Barbados said the Caribbean Trade Ministers had met recently and had adopted a position on Singapore issues similar to that of the African joint paper, which they therefore supported.

According to the Indian Ambassador, K.M. Chandrasekhar: We have been talking for more than one and a half years about these issues since Doha, and we have not reached results or agreement. How could anyone expect that a decision can be taken on these issues now? In the same vein, the Philippines Ambassador asked, how can we talk about modalities when we do not even know what modalities are?

Even after the EC insisted that the discussion turn to modalities on specific issues, and the Chair directed that the meeting should proceed to discuss specific points on trade facilitation, some countries insisted on making general statements first. Cuba for example said it supported the African countries that instead at Cancun a decision is taken to continue. South Africa's head of delegation, Faizel Ismail, said the EC was a demandeur as it felt it needed a trade off to allow it to obtain an ambitious agriculture mandate. At Doha, Ministers deliberately sequenced the negotiations to ensure developing countries' issues were addressed first, in the order of implementation, S and D, TRIPS-public health, agriculture, NAMA and only then Singapore issues.

The reason for this sequence was to ensure movement by the EC and other developed countries on issues of great interest to developing countries, and this would encourage members to engage on Singapore issues.

But, said South Africa, we have failed to meet any of the deadlines and developing countries have not been given incentive to believe the US-EC agriculture bilateral framework would translate into meaningful modalities. Faizel added that any potential agreements on Singapore issues would need to be balanced and developmental. But the demandeurs have failed to convince developing countries they are prepared to adhere to these objectives.

Introducing trade facilitation, the General Council chairman said consultations showed Members have different views, ranging from fervent supporters of rule making to opponents of any trade facilitation work in this house. There is also a range of positions within that spectrum. More guidance, he said, is needed on issues such as scope, outcome, implementation and the concerns of developing countries about their limited resources and their exposure to dispute settlement.

In the discussions, several developing countries said while they supported international assistance to developing countries to improve their trade facilitation facilities, they could not agree to have binding rules and the use of the DSU to enforce these rules on trade facilitation. Some countries said trade facilitation should be a matter of domestic concern and should not be subjected to multilateral disciplines.

Proponents argued there would be large benefits, with the US citing a World Bank study that one third of benefits from the Doha Round would come from trade facilitation.

Introducing transparency in government procurement, the General Council chairman said consultations showed a range of approaches towards the Cancun decision. At one end, there is a preference by some Members for a decision to launch negotiations that would be brief and procedural, and on the other end some said further study in the Working Group is required.

However, it was his impression there is growing support for a middle way, involving a decision in Cancun that specifies some points on nature and scope of the agreement to provide "reassurances" to delegations. Among points of concern have been coverage of non-central government entities, concessions and services, the question of thresholds, the domestic review mechanisms and application of DSU. The Chair asked if an acceptable way forward could be found on this basis?

The discussions however showed the countries were "very polarized", according to a senior developing country diplomat. Several developing countries reiterated their position that there should be a guarantee the framework sticks strictly to "transparency" and not stray into market access, review mechanisms and decision-making procedures.

They insisted the DSU would not apply, and that only goods procured by the central government and only above a certain threshold value be applicable, excluding services and government concessions.

India said that in the discussions up to now, there were many divergences of view over many issues such as the level of government (national or sub-national) to be covered, the question of notification, the application of DSU, and the scope of goods and services. It did not see how this divergence could be resolved.

Introducing the competition issue, the General Council chair summarized the three options put forward by the Chair of the Competition working

groups, Frederic Jenny: (i) start negotiations on core principles, hard core cartels and voluntary cooperation; (ii) a non-binding cooperation framework with peer review and cooperation between competition agencies and establishing a WTO competition policy committee; or (iii) continuing the existing Working Group.

Several countries reportedly raised concerns about the suitability of the WTO as a venue for a multilateral competition framework, pointing to the lack of appropriateness of applying the "core principles" of national treatment and non-discrimination to competition. They pointed out that there was no agreement during the discussions so far on issues like the meaning of hard core cartels and whether export cartels would be excluded, and if so, why.

Many countries said binding rules and the DSU should not be applied to a competition framework. Many developing countries said they were already overloaded and could not deal with such a complex issue and to deal with issue and moreover that many countries do not have a domestic competition law and would thus have to take on more burdens if they were obliged to introduce one whose implications they did not understand.

Many countries, including India, Malaysia and African countries spoke in favour of having the issues further clarified, and not starting negotiations and also not for the second option.

Uganda said it had a problem with core WTO principles being applied to competition as this would harmonise internal rules and that would have serious implications in limiting development space, so Uganda could not go along with that. It did not see the value of having "peer review" in option 2, and thus it was in favour of option 3.

South Africa said there is no clarity on how the concept of non-discrimination will or will not prevent developing countries from implementing their development policies, such as South Africa's Black Empowerment policy. He added that some developed countries still remain opposed to including export cartels from the definition of hard-core cartels.

Perez del Castillo, who introduced the investment issue, said, that he had been informed by the Friend of the Chair for investment (Brazilian Ambassador de Seixas Correa), that members are still divided on what the modalities should be. He understood that some members are prepared to start negotiations through an agreement simply on procedural modalities, but others stated they need clarity and agreement on substantive modalities before they are prepared to start negotiations.

By substantive modalities, he understood these members are referring to issues such as scope and coverage, core provisions and how the commitments would be scheduled. He asked, what procedural and substantive modalities do you need to have clarified and agreed on before you are would be willing to start investment negotiations?

It was clear from the discussions that investment was the most politically charged of the Singapore issues and faced the most strenuous opposition, trade officials said.

In the discussion, the EC, Japan and Switzerland were reportedly the main proponents.

Many countries spoke up about the concerns they had that an investment agreement would have serious adverse implications for their ability to implement development policies and for their national interests

Opposing the commencement of negotiations, India said that there was a wide divergence of views, with even the developed countries not having a convergence of views between themselves on some issues such as scope and definition, with the EC and Japan wanting the coverage to be restricted to FDI whilst the US wanted portfolio investment covered as well.

The Philippines spoke at length against an investment agreement. Bangladesh, speaking for LDCs, said that the issues were still not clear for them. Many LDCs had liberalized their investment regimes but still do not see investments coming in.

The benefits of a framework were not clear and the issue should be further clarified.

Colombia said investment agreements are only attractive to those with the capital. For developing countries, they can be attractive only if they bring more investments to developing countries but that it would do so was not clear. Colombia added there was so far no agreement on investment or transparency. We are already running out of time to resolve the core issues like agriculture, so we should not waste so much time on issues like investment.

Some Cairns Group members made the link between investment and agriculture. Thailand was open to investment negotiations starting but under the condition that there is movement on agriculture. Chile also said that its support for investment depended on movement on agriculture.

Diplomats and trade officials said that the Quad countries were very strong and united in their advocacy for trade facilitation and transparency in government procurement. However it appeared that on investment and competition, the US appeared ambivalent. For example, the US made the point that many countries do not understand the competition issue. On the other hand, the EC and Japan were adamant that negotiations had to be launched on all the issues in Cancun.

The meeting, which started at 10 a.m., ended at 8.30 p.m. At the end, Perez del Castillo said he himself would hold consultations on the Singapore issues and would also ask the Friends of the Chair to conduct more consultations this week.

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