

# Decision Making Processes at the WTO with Special Reference to the Fifth Ministerial Meeting in Cancun

A discussion paper

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## **Background**

The World Trade Organisation's fifth meeting of government ministers in Cancun failed to end with a ministerial text, at least partly because of the flawed decision-making processes of the WTO, particularly in the way the meeting was prepared, organised, managed and run.

Established in 1995 as the successor to the General Agreement on Tariffs and Trade (GATT), the Geneva-based WTO lays down the rules for international trade. It is, in theory, a democratic body in which decisions are taken by consensus of the organisation's 146 member countries, (148 from October, of which 55 are ACP countries). But the decision-making processes appear to give developed countries more say in the WTO than developing countries.

The WTO holds a ministerial meeting at least once every two years, but discussions on trade issues take place throughout the year in Geneva, with procedures often putting smaller countries at a disadvantage. Procedures for ministerial meetings are basically an extension of those that apply in Geneva. There the organisation holds a wide variety of meetings - daily meetings, 'Green Rooms', 'informals', 'super informals', 'bilaterals', closed meetings etc. etc. The WTO 'has a thousand meetings a year in total, many of them running parallel to each other', say trade analysts Fatoumata Jawara & Aileen Kwa<sup>1</sup>. As there is some overlapping, many smaller delegations cannot be represented at all the meetings.

There are no written procedures or accounts of all the meetings. An unspoken rule in the WTO appears to be that if anyone is not present at a meeting, does not raise opposition or speak up, then the absentee is deemed to be in consensus with the outcome of the meeting. A process has emerged whereby the Chair of the General Council or a Deputy Director General of the WTO submits a briefing of their 'understanding' of the decisions reached at the meeting, or their 'sense' of where members stand. This understanding is then reflected in draft texts, but it may not be a fair and accurate consensus.

The most controversial type of meeting is probably the so-called 'Green Room'. Invitations to these are given to members who are vocal about an issue being discussed, or to those whom the Chair and Secretariat think will have an interest. These meetings are small and not open to every member. They often promoted as a consensus building exercise, and as an important function of the WTO process. But decisions taken in Green Rooms may again not reflect the views of member countries as a whole.

'Consensus' can have a double-standard meaning in the WTO. When the major developed countries agree among themselves, an emerging consensus is said to exist, and all others are asked to 'join the consensus.' Those countries that do not agree are often cast in an unfavourable light, and there is pressure to conform to the position of the developed

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<sup>1</sup> Fatoumata Jawara & Aileen Kwa, *Behind the Scenes at the WTO - The Real World of International Trade Negotiations*, Zed Books, 2003. p. 22.

countries. On the other hand, when a majority of countries agree, but one or a few of the major developed countries do not, a consensus is said not to exist.

The WTO's first two ministerial meetings, at Singapore in December 1996 and at Geneva in May 1998, were relatively uneventful. It was at the third ministerial in the US seaport of Seattle, in November 1999, where the WTO's decision-making processes first came under scrutiny. The Seattle meeting was called to launch a new round of negotiations to further liberalise international trade. It failed to do this and one of the chief reasons was that many developing countries felt excluded from decisions at the meeting. Ministers of African countries then felt so outraged at being shut out that they issued a statement that they would not join a consensus on any declaration.

The fourth ministerial, in Doha in 2001, attempted initially to involve all the member countries and to avoid a repeat of the Seattle debacle. But the Green Rooms of selected delegates again appeared, with many feeling excluded from the decision-making process. Considerable pressure was put on developing country ministers to accept the text which became the 'Doha Development Agenda'. Objections and reservations were often swept aside. A declaration was adopted after 36 hours of non-stop negotiations, the meeting having been extended for 24 hours after its official close. Crucial final negotiations happened behind closed doors, and some developing countries were physically barred from negotiating rooms. The result was a flawed agenda with too little 'development' content.

After the Doha meeting, developing countries put forward a set of proposals (in February 2002) for establishing procedures for ministerials and their preparatory process. The EU and other developed countries blocked a decision on the proposals.

## **Pre-Cancun**

On August 24<sup>th</sup> 2003, two and a half weeks before the Cancun meeting, a draft ministerial declaration was issued by the Chairman of the WTO General Council 'on his own responsibility'. This was the first document with substance for the negotiations in Cancun.

The processes surrounding the text give rise to concern. Very little time was given for trade ambassadors in Geneva to read it, send it to their ministers, to get feedback and to give their views. It was first discussed by the WTO membership on August 25, at an informal General Council meeting, and then at a formal General Council meeting on August 26<sup>th</sup>-27<sup>th</sup>.

No agreement was reached on the contents of the draft during the meeting. Many developing country delegations expressed concern, dissatisfaction and disagreement with the text. The North-South divide in the General Council was especially evident on agriculture, non-agriculture market access (NAMA) and on the new, so called 'Singapore' issues - investment, transparency in government procurement, trade facilitation and competition policy. These are known as the 'Singapore issues' as they were first mooted at the WTO's 1996 ministerial in Singapore.

Many developing countries felt that the proposals on agriculture asked too little from developed countries and did not adequately protect them from 'dumped' produce - artificially-cheap, subsidised imports from richer countries. On the new issues, many complained of an imbalance in favour of starting negotiations.

At the General Council meetings on August 26<sup>th</sup>-27<sup>th</sup>, several developing countries called either for the draft text to be revised, or for their own positions to be presented as alternative options, in separate annexes, and/or in a covering letter containing an adequate description of the divergent views. At the very least, they pressed for the views of different delegations to be placed in a compilation document.

This did not happen. The General Council Chairman, Carlos Perez del Castillo, said that he would not alter his draft text. This was sent to Cancun as his personal responsibility.

A number of aspects of the draft text seemed to be damaging to the interests of developing countries. The sections on agriculture and non-agriculture market access offered little. On market access, the developed countries were unwilling to give up their protectionist privileges in agriculture. There was little to advance the development aspects of the Doha agenda.

However, developing countries were asked to take on new obligations to open up their markets in agricultural and industrial products, and exhorted to participate in the liberalisation of services.

On agriculture the real 'meat' of the draft was in a technically complex annex. This commits WTO members to take certain decisions on the parameters for dealing with domestic support, export subsidies and tariffs. Although the figures of commitment are not included, this framework is a structure to which countries will eventually have to commit their agriculture policies. It was difficult for many delegations to understand fully its meaning and implications in a short period of time.

One of the WTO Agreement on Agriculture's main weakness is that it categorises domestic subsidies into two categories, those which are 'trade-distorting' (the Amber Box) - and have to be reduced - and those that are supposed to be less or non trade distorting (the Blue and Green Boxes) and therefore do not need to be reduced.

Since the Uruguay Round ended in 1994, OECD countries have increased their overall support to agriculture by shifting subsidies from one box to another, that is by increasing the Green Box subsidies whilst reducing the Amber Box subsidies. Developing countries have called for the Blue Box subsidies to be eliminated and the Green Box subsidies to be redefined and subjected to reduction commitments as well. But the annex ignored this. Blue Box subsidies are extended and there is no discipline of any kind placed on Green Box subsidies. The views of developing countries were again not reflected.

Under the Doha agenda, export subsidies are to be eliminated. But the annex allowed them to continue, with very doubtful commitments to any reductions in the near future.

Two weeks before the start of the Cancun meeting, NGOs in Britain wrote to UK Secretary of State for Trade and Industry, Patricia Hewitt expressing concern at 'the lack of democracy and accountability in WTO negotiating and decision-making procedures....There is serious cause to consider any substantive outcome of the WTO as illegitimate and unjust on the grounds that negotiations fail to be conducted in a democratic, transparent, and accountable way.'

The Cancun meeting therefore got underway with a flawed text as a basis for negotiations, one which had not been agreed by WTO member countries, but which had aroused their antagonism. When ministers arrived in Cancun the seeds of failure had already been planted. They lay not just in disagreements over the issues, but in the WTO's decision-making processes.

### **The ministerial opens**

Amid tight security precautions, the five-day Cancun meeting opened on September 10<sup>th</sup> 2003 with a speech by WTO director-general, Panitchpakdi Supachai of Thailand. Mr Supachai thanked ambassadors in Geneva 'who have worked very hard and engaged constructively. While we recognise that on some issues, differences persist, the draft text is a positive indication that there has been progress in our negotiations'.

Many delegates of developing countries had a rather different perspective. The African Union group of countries in the WTO expressed its concern 'over the lack of progress on most core issues of interest to Africa. The African Union is equally concerned that the current draft ministerial text is not a consensual outcome of the Geneva preparatory process. This has both substantive and systematic implications on the decision-making process in the WTO'.

Also on the opening day of the meeting, several NGOs and civil society groups issued a memorandum 'to highlight the serious problems of the lack of internal transparency and the lack of participation of developing countries in decision-making processes in the World Trade Organisation'. Among the organisations were Third World Network, Oxfam International, Public Services International, WWF International, the Center for International Environmental Law, Focus on the Global South, the Institute for Agriculture and Trade Policy, the Africa Trade Network, the International Gender and Trade Network, and the Philippines-based Tebtebba International Centre for Indigenous Peoples' Rights. These organisations have long been involved in WTO issues and activities, observing at close range its operations, methods of work and decision-making procedures.

'Over the years we have become increasingly concerned about the lack of proper rules of procedures and the lack of transparency, as well as the lack of participation or exclusion of a majority of members in decision making processes. Although these shortcomings have been

pointed out and highlighted by WTO members, NGOs and the media, and even admitted by previous high officials such as a former Director General and former trade ministers, and although reforms have been talked about and promised many times through the years, the situation has not improved. It has in fact worsened', said the groups.

This lack of internal transparency, participation and democracy, they went on 'is appalling in such an important international organisation whose decisions and actions have such far reaching effects on the lives of billions of people and the environment upon which they depend. It is even more ironic and inexcusable in an agency that prides itself for being a 'rules-based organisation' and for championing the principles of transparency, non-discrimination and procedural fairness.'

### **Working groups**

Towards the end of the first day of the Cancun meeting, five working groups were announced in order to hold negotiations on the key issues facing the meeting:

- Agriculture, chaired by George Yeo Yong-Bon of Singapore;
- Non-Agricultural Market Access, chaired by Henry Tang Ying-yen of Hong Kong;
- Development, chaired by Mukhisa Kituyi of Kenya;
- New Issues, chaired by Pierre Pettigrew of Canada;
- Other Issues, chaired by Clement Rohee of Guyana.

Although these Chairs had considerable power to direct the negotiations in their area of responsibility, 'they were chosen through an entirely untransparent process, without approval by WTO members. They were not elected, and there are no mechanisms to hold them accountable', said Barry Coates, director of the London-based NGO, the World Development Movement. Thus the working groups were also flawed from the start.

The five groups were due to start work on the morning of the second day, (September 11<sup>th</sup>). They were not limited in numbers, but open to all WTO members who wished to participate. This was an attempt to overcome a problem at the Seattle ministerial when members were selected for the negotiating groups.

The groups met for two days, with the agriculture group having consultations prior to starting negotiations. Two papers on agriculture had been submitted to the meeting - one by a group of 20 developing countries, including Brazil, India, China, Mexico, Thailand and South Africa - who later become the G23. This called for an end to export subsidies that encourage dumping and for a cap on direct payments to producers. It urged that 'all developed countries shall achieve reductions in trade-distorting support significantly larger than in the Uruguay Round', and for special exemptions from WTO rules for low-income, resource-poor farmers in developing countries. It proposed a formula for tariff cuts that would force developed countries to do more than developing countries.

A US-EU paper had also been submitted which suggested reductions in the most trade-distorting domestic support measures, but without figures or dates given. This paper failed to impress the developing countries.

The Chair of the agriculture working group called for 'an open-ended consultation' to explore whether progress was possible. But little flexibility emerged and no real negotiation appeared to take place. Procedures did not seem to foster such negotiation, The US trade ambassador Robert Zoellick said the US would substantially reduce its domestic agricultural support in return for more access to the markets of other countries.

A proposal on cotton by West African producers, Benin, Burkina Faso, Chad and Mali was considered separately, under the leadership of Mr Supachai. The proposal urged the ministerial to adopt a solution to the considerable hardship that a halving in the world price of cotton had caused for producers. They pressed for the phasing-out of subsidies paid by rich countries to their cotton farmers, and also for compensation. The USA is a major cotton-producing country.

In the group on new issues, the majority of developing countries made clear their strong opposition to starting negotiations on these issues, with some insisting that no compromise was possible, because they were not ready. The development group considered a range of development-related issues, including special and differential treatment, commodities, debt, finance and transfer of technology. Little progress was made.

In the group on Non-Agricultural Market Access, some developing countries pushed hard for the group to focus on the issue of erosion of trade preferences. The Chair of the Other Issues group identified two sets of issues that he thought reflected major concerns of members - environment, including eco-labelling, and intellectual property rights, notably geographical indications. Little progress was reported.

With two days remaining, the groups' 'facilitators' (people appointed by Chairs of the groups) reported back to the chairman of the meeting, Mexican Foreign Minister, Luis Ernesto Derbez. The following day - the early afternoon of the penultimate day - Mr Derbez released a revised draft ministerial declaration. But it differed little from the pre-Cancun text and came in for widespread criticism from member countries. It even had the effect of intensifying rather than reducing polarisation.

Developing countries were unhappy that the agriculture text did not answer their concerns. They were outraged that their opposition to negotiations on new issues was not reflected, and at the poor treatment of the cotton initiative - an initiative which had attracted widespread support. On special exemptions, one minister said that the text fell 'far short of adequately addressing developing countries food and livelihood security and rural development problems...and would perpetuate poverty, hunger and social problems'. Another proclaimed that the text was an insult to Africans and unworthy of the WTO. The meeting was staring collapse in the face.



## **The collapse**

By now there were only 28 hours to the scheduled end of the meeting. It was evident at a heads of delegations meeting, (and later in the Green Rooms), that developing countries were better organised, more united and confident than ever before, (see below). The atmosphere was at boiling point when, one by one, the heads of delegations of developing countries took the floor to voice their dissatisfaction.

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..with language on the Singapore issues clearly expressed. And the revised text just ignores their position and takes the opposite position,' said a minister of a Caribbean country; 'what kind of organisation 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 early hours of the final day, a Green Room of nine ministers (USA, EU, Mexico, Brazil, China, India, Malaysia, Kenya and South Africa) was convened by Mr. Derbez. But there was no movement. 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 with a view to resolving the differences. At this meeting, the developing countries again voiced their opposition to starting negotiations on the new issues, insisting that further clarification was needed. Mr Derbez reportedly proposed that negotiations could begin for two issues (trade facilitation and government procurement), but that the other two issues (investment and competition) be dropped from the agenda.

The EU Trade Commissioner, Pascal Lamy, reportedly agreed that investment and competition could be dropped, giving the impression that these would be removed from the WTO altogether. The other two issues would then proceed to negotiations.

Many countries said that they had difficulty accepting negotiations on trade facilitation and procurement. Mr 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. A combined meeting of ACP, African Union and least developed country members decided that they would not change their mandate that negotiations should not start on all four issues.

When the Green Room reconvened, some developing country ministers (including those representing the ACP-AU-LLDC grouping) reported they were unable to accept negotiations on any of the issues. Korea reportedly said it could not accept the dropping of any issue. Mr Derbez then said a consensus could not be reached on the new issues, and thus there was no consensus possible for the whole package of issues. He made the decision to bring the meeting to an end. His decision was not without controversy, catching

some heads of delegations unawares. Again, the WTO does not even have a laid-down procedure for bringing a ministerial to an end.

The immediate reason for the collapse was that there had been no agreement on the new issues. But, according to Third World Network: 'The lack of consensus on new issues may have been the immediate cause, but the meeting's collapse had broader and deeper roots. In the end it was the WTO's untransparent and non-participatory decision-making process that caused the unmanageable situation that led to the collapse of the Cancun ministerial'.

The drafting by Chairs effectively shifted the WTO from a member-driven to a Chair-driven organisation. 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 annoyed that the texts were one-sided in favour of the larger countries and did not reflect their positions. The decision-making process had led to texts that lacked legitimacy.

In Cancun, the facilitators appointed by the Chairs of the five working groups became all powerful as they not only conducted consultations but were responsible for drafting of the group reports. The Chairs and facilitators thus seem largely responsible for the doomed ministerial declaration, although no one is quite sure exactly how the drafting is done or who does it. It is known that the WTO Secretariat plays a major role.

With the Cancun collapse, the issue of the WTO's decision-making and text-drafting process is now under the spotlight. The way that ministerial meetings 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 organisation can be proud of. Arguably the Doha meeting would have failed had it not been held only two months after 9/11. In Doha, developing countries came under intense pressure to agree to an outcome that would not rock the global economy. In Cancun, they wanted something to help their own economies.

## **The alliances**

The alliances formed by developing countries were a key factor shaping the outcome of the Cancun meeting. The most powerful is the G23 which includes all the big developing countries, notably Brazil, China and India. At the start of the Cancun meeting, as the G20, it submitted a key paper on agriculture (as mentioned above) which shook the complacency of the USA and the EU. By the end of the meeting, Egypt, Indonesia and Nigeria had joined the group. The G23 countries are home to over half the world's population.

33 developing countries, including six G23 members, formed an alliance which called on the meeting to agree to a 'Special Products and Special Safeguard Mechanism' in the WTO. This would allow developing countries to designate products of special interest - to poorer farmers, for example - that would be exempt from WTO rules. This could safeguard the livelihoods of millions of people, believes the G33.

The African Union formed an alliance with the African, Caribbean and Pacific Group and with the least developed countries - 61 WTO member countries in all. The G61 said they had come together to promote and secure their interests.

'We have done something historic', Ivonne Juez de Baki, the trade and industry minister of Ecuador, a member of the G23, said of the alliances at the end of the meeting. 'this is the beginning of a better future for everyone'.

The alliances should enable developing countries to increase their bargaining power in ongoing talks at the WTO in Geneva. But the question is where the WTO goes from here. Dare it even risk another ministerial meeting?

Mr Lamy described the WTO as a 'medieval organisation' and as a 'not so rules-based organisation'. He called for reforms to its decision-making system. Yet, as noted above, it was the EU, together with other developed countries, that last year blocked a decision on proposals for reform. A few weeks before Cancun, developing countries again tried to raise the issue of the need for proper procedures for ministerial meetings, 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 were swept aside by the major developed countries. Their argument was that ministers must be given the 'flexibility' to run ministerials the way they want without being hampered by procedures. In reality, they seemed to want to retain their grip over the drafting of texts and the operation of Green Room meetings, and to repeat the Doha experience of pushing developing countries into adopting last-minute texts.

'If this system continues, 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 organising themselves to resist the pressures', said Martin Khor of Third World Network; '[this] is however fraught with risks, as the record of two failures out of three meetings shows'.

A major cause of the collapse at Cancun was therefore the WTO's flawed decision-making processes. The lesson is that the organisation must change. A WTO with decision-making processes which allow for a true reflection of members' interests would be a very different organisation from what it is today.

## **Proposals for improvement**

Ground rules for WTO ministerials need to be established. The NGOs and civil society groups which issued the memorandum, (as above), have made a number of proposals for improving the organisation's decision-making processes. Some of the main proposals are:

1. The consensus system should respect the views of developing country members. It should not be made use of by major developed countries as a 'veto' against

proposals, which have the support of a majority of the developing country members. Also, when proposals are put forward by the major developed countries and these are not agreed to by some developing countries, the major countries should accept that these other countries are exercising their right under the consensus system, and not seek to portray them as some kind of 'enemies' of the multilateral system which are 'blocking consensus.'

2. The views of every member must be respected in a decision involving consensus. In the case of important issues, especially where it has been specified by members that a consensus is required for a decision to be adopted, the views of each member must be recognised and respected, including the right not to agree to a proposed decision.
3. Developing countries should not be subjected to economic and political pressure. Developed countries should not use pressure on developing countries to 'pull them into line' with their positions. Nor should they use trade preferences, bilateral aid, military aid, the dependence of developing countries on loans from the international financial institutions, as points of leverage to get the developing countries to agree.
4. Decisions should not be made until all members are technically ready. Decisions and agreements should not be made until and unless all members, especially the developing countries, are able to understand the technicalities of the issues and the implications for their economies and societies.
5. Developed countries should be ready to resolve development issues without exacting a new price. Developed countries should stop taking the attitude that existing rules and agreements cannot or should not be changed unless other parties are willing to pay a new price. They should be sympathetic to the requests for amending and clarifying the agreements in ways that are in line with the interests and needs of developing countries. They should therefore be more forthcoming in accepting effective solutions to implementation issues and special and differential treatment proposals.
6. Meetings and schedules for meetings should be open. All members should know all the meetings, and members should participate in and have knowledge of the entire schedule of meetings, including agenda, participants and outcomes. Meetings should all be official, with minutes taken down and circulated to members for amendments or confirmation. Green room meetings should cease.
7. The role of Chairs should be to facilitate discussions among the members. The increasing trend of negotiations being held between delegations and the Chair should stop, especially since there are no records of what transpires at these meetings, and all the information resides with the Chair, who is then given too much power to interpret the situation. The negotiations should mainly be among members themselves.

8. It should not be assumed that the Chairs would draft the texts that then form the basis of negotiations or discussions. Texts should be drawn up in a transparent and fair manner by members. Members must agree on the latest text, which can contain different positions. The practice of a Chair producing a draft text 'under my personal responsibility' should stop.
9. The views and positions of different members should be adequately reflected in the draft declaration and in draft elements and decisions. The different views should be listed out in the same document so each member's view has the chance to be part of the negotiated texts. The new custom of producing 'clean texts' by the Chairman makes the process non-transparent because the differing views are not listed as the starting point of negotiation.
10. Members should be given sufficient time to discuss the drafts and to narrow their differences. Whatever drafts are submitted to the ministerial conference should be the result of adoption by consensus in the General Council.
11. Drafts must fairly reflect different views. If members are unable to agree on some parts of a draft ministerial declaration or other draft texts, the contending views can be put in square brackets. The ministerial conference can then decide on the final formulation of these parts of the texts. This is a common practice in international conferences, including in the United Nations system.
12. Drafting of texts and decisions should be transparent and inclusive, and texts distributed to all. The process by which decisions and texts are drafted should be transparent and participatory, and it should be decided by all members, which should be allowed to be present at meetings where decisions are drafted. The latest drafts of texts on all issues being discussed should be made available to all members who should be kept informed on all issues at all times.