Africa After Cancun:
Trade Negotiations in Uncertain Times

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Preface

Peter Draper and Steven Gruzd[1]

How has Africa been affected by the collapse of international trade talks at Cancun? Why did those discussions unravel? What is the future of the multilateral trade system? And what should the trade priorities and strategies of African countries be now?

This trade policy report — a collaboration between the Development Through Trade Project and the Nepad and Governance Project at the South African Institute of International Affairs (SAIIA) — sets out to understand and demystify the failed September 2003 World Trade Organisation (WTO) ministerial meeting in Cancun, Mexico. That meeting was intended to jumpstart flagging negotiations in the current round of multilateral trade talks — the Doha Development Agenda — around complex, interrelated global trade matters such as agricultural trade, industrial tariffs and trade in services. But it ended (some would say prematurely) in acrimonious stalemate. Various authors analyse the events at Cancun, take stock of where we are now and what this all means for Africa.

The collection begins with President Yoweri Museveni of Uganda arguing that what Africans really want is more opportunities to trade rather than increased development aid. He admits that African nations were vague about their priorities, and the concessions required for progress. Originally published in the *Wall Street Journal*, this article illustrates a crucial strategy for Africa — appealing eloquently to the conscience and intellect of the Western public, through mainstream, high-profile media.

Faizel Ismail, head of the South African delegation to the WTO, gives an insider's insight into what happened at Cancun and why. Ismail traces both fundamental long-term differences over agricultural liberalisation, and the

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unfolding events in Mexico — an unsatisfactory text by the meeting's chairman, anger about how the plea for redress by West African cotton-growing countries damaged by subsidised rich-country producers was handled, and polarised positions on the controversial 'Singapore issues.' He reflects on the significance of the new G-20+, the powerful bloc of developing countries led by Brazil, China, India and South Africa that coalesced around agricultural issues.[2] Ismail draws lessons from Cancun, including that brinkmanship spells disaster, and that many developing countries could not adapt to changing circumstances.

With the WTO process in limbo, bilateral and regional trade deals are accelerating. Trade experts Peter Draper and Dr Razeen Sally consider how to get the tottering WTO back on course. They paint the background against which African countries must make tough trade choices, by examining the internal dynamics of the world's two economic powerhouses, the United States and the European Union. In 2004, Washington faces elections and ongoing fallout from Iraq, and 10 new states will join the EU. The authors believe that the Doha Round will drag on until at least 2007. They scrutinise the G20+'s staying power, its internal fault lines and the pressures on its members to further liberalise their own economies. They argue that the ball is the developing countries' court to re-energise the talks.

Cancun achieved little. Cambodia and Nepal joined, swelling the WTO to 148 members. Intellectual property consultant Dr Meir Pugatch critically examines the other supposed 'success': the resolution of a two-year standoff to allow poor countries to override pharmaceutical patents to produce or import life-saving medicines, clinched just days before the world's trade ministers descended on Cancun. But Dr Pugatch asks whether this deal on 'TRIPs and Public Health' really put some 'development' back into the Doha Development Agenda. Who were the real winners and losers? He exposes the devil in the details and practical pitfalls in the drugs deal.

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2 We have used 'G20+' in this report. Its member numbers fluctuate - it has been called the G20, the G22 and even the G*x*. By November 2003 it had fewer than 20 members, after several Latin American countries withdrew.

An intriguing option to get the Doha Round moving again emerges with the expiry of the 'peace clause'. This agreement urges countries to refrain from bringing complaints about agricultural subsidies to the WTO's dispute settlement body, but it is due to end in 2004. Its imminent expiry could mean that the rich countries, which extensively subsidise their farmers, could face mountains of expensive, time-consuming litigation. International trade lawyer Olu Fasan looks at how Africa could bring agricultural disputes against Europe should the peace clause lapse, and the risks for developing countries inherent in this strategy.

Warwick University doctoral candidates Mills Soko and Mzukisi Qobo scrutinise the Africa Group at the WTO, a forum where African members of the global trade body regularly meet and exchange ideas, formulate policy and strategise. They examine the role that this group played at Cancun, analyse the awkward position of South Africa within the Africa Group, and outline the prospects and challenges facing African countries in the WTO in the post-Cancun period. Soko and Qobo suggest how confidence can be restored in the WTO and the Doha Round.

If an agricultural deal were achieved and northern markets were thrown wide open to African food exports tomorrow, few African countries would be able to take advantage of these export opportunities. Steven Gruzd explores what African countries have to do to improve export capacity: comply with stringent health and safety standards, modernise outdated farming methods and resuscitate crumbling, inadequate infrastructure.

The prospect of an all-encompassing global trade deal favourable (or at least palatable) to Africa by 2005 looks almost impossible after Cancun. In the absence of an over-arching WTO-wide agreement, countries will scramble for individual free trade agreements. Only a handful of African countries are in line for major trade deals with the US, and most face arduous bilateral negotiations with the EU. Until and unless the Doha Development Agenda is completed, the current inequitable, flawed global trade system will persist. African countries will continue to face restricted access to northern markets, suffer the negative effects of heavy agricultural subsidisation by rich countries and onerous obligations to implement previously agreed trade rules. This collection of articles stresses the urgency of getting the Doha Round back on track.

We Want Trade, Not Aid

Yoweri K Museveni[1]

The rich countries have a choice. Either let Africa have real access to your markets for products, especially agriculture, in which we have a comparative advantage, or acknowledge that you prefer to keep us dependent on your handouts. But aid is a recipe for permanent poverty. The only way we can break out of this vicious cycle is through trade and export-led growth. That is why the collapse of the Cancun WTO meeting ran so counter to Africa's interests.

Africans will live or die depending on whether the world's wealthiest economies — and some of the more advanced developing ones, too — lower import barriers and scale back the agricultural subsidies and overproduction which depress world prices and close rich country markets to Africa's rural majority. In 2001, US agribusiness exported wheat for $3.50 a bushel which cost American farmers $5.31 to produce. Cotton which cost US growers 83 cents a bushel to produce was sold abroad for 40 cents. Soybeans, maize, rice — same story. How can my farmers move beyond subsistence, how can my farm-based economy free itself of aid, when the largest economies — the EU is a worse offender — dump commodities at a fraction of what they cost to grow? And how, at the day's end, can this be good for your farmers or broader economy?

A study by the Centre for Agricultural and Rural Development at Iowa State University — in the heart of your farm belt — points up an absurdity. The agricultural support polices of high-income countries are crushing the output and incomes of poor-world farming households. But here's the irony: Under current policies, rich-country taxpayers 'are paying twice for development assistance: once to reduce the incomes of poor farmers and again to alleviate the same poverty.'

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[1] YOWERI K MUSEVENI is the president of Uganda Originally published on 6 November 2003 and reprinted with permission from *The Wall Street Journal*

Shouting at the dark will fix nothing. But we have candles to light. We have a rules-based trading system and we can change the rules. That is the beauty, the challenge, of the WTO. It is not a debating society. Its decisions are binding and enforceable. It reaches those decisions by consensus. Regardless of size or per capita GDP, each of its member states has an effective veto. That power gives Africa a real say, but only if we use it sensibly, not for theatrical effect.

The breakdown at Cancun was not the exclusive fault of any one country or bloc. I do, however, believe that with a clearer vision of our priorities and the reciprocities needed to achieve them, we Africans could have done more to keep the negotiations on track. On the eve of Cancun, we found a formula to ensure that WTO rules on intellectual property would not be an obstacle to countries such as mine obtaining desperately needed new medicines at affordable prices. Others, purporting to represent our interests, wanted to derail an agreement on this critical issue. We said no. We would not be pawns for the self-interested agendas of other, more advanced, developing countries in Asia and Latin America. Nor would we take our cue from the swelling army of NGOs who often seem to think they are more fit to represent our people than we are.

There is no room for reflexive solidarity. We must be realists. The layers of market-distorting subsidies and tariffs cannot be swept away at the stroke of a pen. But the sooner we can begin their elimination, the better for all. According to the Iowa State study, rich-country reforms could, by 2015, increase the value of farm output in sub-Saharan Africa, excluding South Africa, by $3.4 billion a year. And American farmers will benefit too, to the tune of $5.5 billion a year. The value of agriculture in low- and middle-income countries would be $63 billion greater than today — dwarfing development assistance.

I am convinced US Trade Representative Robert Zoellick is serious about achieving an outcome that will help unlock Africa's stifled economic potential. Last year he unveiled a truly bold proposal on agriculture. Those of us with a common interest in real change should have stood beside him and fought for it, instead of allowing it to be watered down to satisfy the EU. But now it's time to move on. As rich countries right their policies, prices at the farm gate will increase, causing incomes in developing countries to rise and creating new markets and investment opportunities for US business. Isn't that a better way to promote development in Africa? Of course it is, which is why the sooner we get the Doha round back on track the better for everyone. No one can afford further delay.

An Insider's Insight

Faizel Ismail[1]

What happened at Cancun?

The seeds of the unsuccessful outcome at the recent Cancun WTO ministerial — the mid-term review of progress on the Doha round of negotiations — were sown several months before Cancun. From the outset, agriculture was recognised to be at the heart of the Doha Development Agenda; progress in the agricultural negotiations was generally understood to be the catalyst for movement in all other areas of the Doha Agenda.

The EU is the world's largest subsidiser of agriculture and thus causes the greatest harm to the livelihoods of the world's poorest people in developing countries. Through a combination of high subsidies and high tariffs, the EU's policies stimulate agricultural overproduction in Europe, fuel artificially low world prices, and constrain and often prevent the access of developing country products to its markets. At the 2001 Doha ministerial, the EU promised the world and its trading partners that it would reform these trade-distorting policies.

In the lead up to Cancun, however, the EU failed to table any meaningful negotiating proposals. A March 2003 deadline for the establishment of a methodology for agricultural negotiations was thus missed. In June 2002, EU Agriculture Commissioner Franz Fischler and EU Trade Commissioner Pascal Lamy had, to their credit, called on EU member states to accelerate the reform of Europe's Common Agricultural Policy (CAP). By June 2003 at an EU ministers meeting in Luxembourg, however, EU member states had significantly watered down the reform proposals. While signalling a move in the right direction (de-coupling farm payments from production), the

[1] FAIZEL ISMAIL is the head of the South African delegation to the World Trade Organisation in Geneva. South Africa is a member of the G20+ coalition, the Cairns Group of agriculture exporters and the Africa Group in the WTO. This presentation was made at a workshop on *Understanding and Shaping Trade Liberalisation to Benefit Low-Income People in Developing Countries*, 3–4 November 2003, Washington DC.

Luxembourg decisions sank the possibility of meaningful reductions in the EU's wasteful agricultural surpluses and were insufficient to enable the EU to table proposals to meet its international commitments to liberalise its agricultural sector.

The US — the world's second largest agricultural subsidiser — had developed an aggressive liberalisation posture in the months before Cancun. Despite having moved in the opposite direction by increasing its own trade-distorting support to its farmers in the 2002 Farm Bill, the US continued to urge the EU to meet its Doha commitments and worked closely with a large group of agriculture-exporting countries, led by Australia and Brazil. As the Cancun ministerial drew closer, the US realised that the EU was unlikely to meet its commitments and shifted to a strategy of bilateral engagement with the EU. Through intense bilateral discussions, the US sought to harmonise its policies with those of the EU and to secure EU understanding of the US' own trade-distorting farm support policies. In return, the US reduced its ambition of opening EU markets and eliminating the EU's destructive export subsidies. The resulting EU–US joint text on Agriculture was received critically by a wide range of countries, including Australia, Brazil, Argentina, South Africa and many other former US allies in the common objective of securing freer global agriculture markets.

The EU–US alliance signalled by the joint text threatened to delay the promise of fair and freer global agricultural markets for another 10 to 20 years. It also meant that the subsidised EU and US agricultural systems would continue to undermine the rural and economic development efforts of many developing countries.

In response to this threat, and the need to maintain the momentum of the Doha negotiations, developing countries, led by Brazil, India, Mexico, Chile, South Africa and several others, began to create a broad-based alliance — the G20+. The alliance was forged on the basis of a common objective to create fair and freer markets in agricultural trade and to ensure that the outcome of the round enhanced the development of developing countries. Many other countries, including, notably, the developed countries of the Cairns Group (Australia, New Zealand and Canada) shared, in large part, the views and perspectives of the G20+ coalition.

The G20+ subsequently captured the world's attention. Drawing together a powerful team of six ministers — with Brazil as coordinator — the G20+ engaged with the EU and the US separately and then jointly during the first two days of the Cancun ministerial. In each instance, these negotiations were highly constructive with indications of flexibility shown on all sides. There was understanding amongst negotiators that concessions would need to be made by all sides if success were to be achieved at Cancun. Interestingly, both the EU and the US focused their demands on developing countries rather than on each other. Indeed, they took a step further — with each defending the other's protectionist policies. The US called for understanding of the EU's difficulties with tariff reduction and elimination of export subsidies. The EU, on the other hand, supported the US need to maintain and expand support for its farmers through its Farm Bill.

With regard to developing countries, the US maintained a tough stance on the need to expand its access to developing country markets. The EU was only willing to grant poor countries special treatment if European farmers were granted similar exemptions for rural development, animal welfare and environmental programmes. In addition, the EU called for special protection for its geographical indications (like Parma Ham) and the extension of the Peace Clause (due to expire at the end of 2003) which currently protects the EU from legal action against its system of agricultural subsidies.

All G20+ negotiators engaged with the EU and US demands. The G20+ ministers explained that although their economies were largely agriculturally based, with large rural populations, they were willing to liberalise their markets. Even those countries with the most vulnerable rural sectors were willing to open their markets in proportion to that of developed countries and as the threat of the devastating effect of subsidised exports from developed countries were reduced. The G20+ countries were even willing to consider sympathetically the pleas by Japan for special concessions for its astronomically high tariffs for certain products.

In short, the G20+ countries were prepared to demonstrate flexibility and to make concessions in order to secure a successful launch of the agricultural negotiations at Cancun. It is likely that one more trilateral meeting between the G20+, the EU and the US, as well as a meeting with all other players facilitated by the chair would have tested the flexibility of all players. Only then would the world have known whether the EU, the US and Japan were truly willing and able to abide by their Doha commitments.

The events that followed diverted all from the opportunities that such a process would have provided. In the mid afternoon of Day 4 of the five-day meeting, the chair of the ministerial meeting sealed the fate of the meeting with the release of his draft ministerial text.

On agricultural issues, the draft text poorly reflected the progress that had been made in the discussion thus far and the possible areas of agreement that had been clearly indicated by the different players. In other areas, the text was even worse. On the sensitive issue of US and, to a lesser extent, EU cotton subsidies — which are decimating the livelihoods of West African cotton farmers — the chair's draft text called on those farmers to consider other economic options, without any commitment by the US or the EU to remove their destructive subsidies. African countries were shocked and appalled.

The chair's draft ministerial text also misrepresented the debate on the Singapore issues — competition, investment, transparency in government procurement and trade facilitation. The text called for the immediate launch of negotiations on two of the four issues and the launch of negotiations on the most controversial issue — investment — in a few months time. One issue — competition — was postponed for further study. The vast majority of developing countries were unwilling to launch negotiations on these new issues and provided several reasons for this stance. Most countries argued that the Singapore issues had been wrongfully imposed on them in Doha — and were overburdening an already complex negotiating agenda. Some countries felt that insufficient progress had been made in Geneva on the discussions to establish a balanced and consensual basis for negotiations. Moreover, other countries believed that it was premature to discuss the Singapore issues when the EU (and Japan) as principal *demandeurs* had failed thus far to indicate adequate willingness to reform their agricultural policies.

At the formal meeting that followed the release of the text, developing countries criticised, sometimes passionately, the chair's draft ministerial text as an unacceptable basis for negotiations. Alarmed at the reaction to his text and the attendant possibility of the failure of the ministerial, the chair consulted with a small group of ministers on a way forward (between 1 and 3 am).

At that meeting, the EU insisted that the Singapore issues be discussed first. Other members present agreed, in expectation that agricultural negotiations would follow. The chair then began consultation with about 30 ministers, representing a cross-section of the membership on the morning of Day 5. Most Asian and African countries represented at the meeting argued against launching negotiations on the Singapore issues. The US expressed its reluctance to move on two issues — investment and competition. Faced with this resistance, the EU then agreed to withdraw two issues — investment and competition. Some countries also objected to the inclusion of transparency in government procurement. All present were then asked to consult with their groups on the possible launching of negotiations on only one issue — trade facilitation — and to return within one hour.

When the groups returned, the ministers representing the African, Caribbean and Pacific countries (ACP) and the least developed countries stated that they could not support the launch of even one of the Singapore issues. These ministers faced a series of challenges in trying to secure support to launch negotiations on trade facilitation. First, they could not explain how their support for trade facilitation negotiations would be linked to the agricultural negotiations as there was no explicit linkage made. Second, there was no offer made by the US or EU to act on any of the demands made by West African countries regarding cotton subsidies. Third, the bases for trade facilitation negotiations were not made clear generating concern that an agreement would create new burdens and possible sanctions on poor countries.

It was, however, Korea's insistence that *all* four Singapore issues be negotiated that finally broke the negotiations. The EU's willingness to drop two issues had clearly taken Korea by surprise and it was unable to change its mandate quickly enough. The chair then decided to call the entire conference to a halt — to the surprise of all involved.

In a nearby room, G20+ negotiators were gathered — expecting the negotiations to continue all evening and possibly through the night as discussions shifted, as hoped, to focus on agriculture. This was, however, not to be and the disappointment felt by the G20+ negotiators was clear. The only silver lining to this disappointment was that developing country negotiators had come of age — they had galvanised a formidable group of developing countries and skilfully built a common negotiating position. They had captured the attention and sympathy of the world. This was a sound platform to continue to negotiate for a fair and freer global market for the agricultural products of developing countries.

Analysis of the Cancun outcome

Since Cancun, South Africa has been working to put forward a balanced interpretation of the events in Cancun to help avert an incorrect writing of history. As Minister of Trade and Industry Alec Erwin wrote in the *Financial Times* on 30 September, blaming the poor and weak members of the WTO for the Cancun outcome is unjustified and incorrect. The seeds of the unsuccessful outcome were sown many months earlier (as explained above).

The Cancun ministerial meeting must be placed in its proper context. It was a mid-term review of the Doha Development Agenda (DDA), not the culmination of the negotiations. As the Secretary General of the UN Conference on Trade and Development (UNCTAD) stated in his thoughtful reflection on the state of negotiations, the Cancun ministerial meeting was 'part of a journey'. The Doha round of negotiations was envisaged to be concluded by 31 December 2004.

To correctly evaluate the conference we would need to consider the issues of *process* and of *substance.*

Regarding the process, the failure to meet important deadlines in the DDA work programme contributed significantly to the inadequate preparation for Cancun. The DDA *work process* was finely balanced — development issues first (S&D, Implementation, Trips and Public Health) — then agricultural modalities — then non-agricultural market access — and then only a decision to be taken on the Singapore issues. The inadequate and slow pace of agricultural reform in the EU largely contributed to this.

As far as the *substance* is concerned, the EU–US joint text — in reaching a bilateral compromise that accommodated each other's protectionist policies — threatened the continued commitment of the two major subsidisers to the high ambitions set by ministers in Doha. This, in turn, threatened to undermine the fundamental *development promise* of the DDA for developing countries.

The Doha Development Agenda must be in seen in the context of the failure of previous rounds of negotiations to adequately address the issues of equity and balance — and indeed the failure to provide genuine market access for products of interest to developing countries — including textiles and agriculture. It was this unfinished business that the Doha Development Agenda needed to address.

In addition, the perceived imbalances in the process of globalisation raised sharply by civil society groups and developing countries spurred developed country leaders to make commitments in various international spheres — including the UN Millennium Development Goals, the Monterrey Conference on Development Finance, and the Johannesburg World Summit on Sustainable Development. At all these conferences (including the various G8 meetings) world leaders from the developed world promised to address these inequalities through a development round of negotiations in the WTO.

The increasing integration of the world economy and the interdependence of nations makes the option of walking away from the rules-based multilateral trading system no option for either developed or developing countries. Bilateral or regional trading arrangements cannot replace the need for multilateral rules. Indeed genuine market-access and the removal of major distortions in global agricultural and other product markets can only be successfully negotiated in the WTO. Managing the increasing proliferation of trade disputes between trading partners will require the strengthening of rule making and the workings of the WTO dispute settlement system. We therefore caution all those who seek to reduce their interest in the Doha round and the multilateral trading system, and those who seek to delay progress in the round, to carefully consider the implications of their actions.

Lessons from Cancun

First, the old tactics relied on by the EU and others, of delaying progress and holding back on key flexibilities until the last moment will not work in a growing organisation of 148 members.

Second, countries should be cautious about forming strategic alliances that compromise the ambition of agricultural liberalisation. This could strengthen the forces of protection and divert these countries from the strategic objective of creating more open markets — as we witnessed in the US approach in the EU–US joint text.

Third, many developing countries, especially smaller Africa, Caribbean and Pacific (ACP) countries and least developed countries (LDCs) need to develop the capacity to move more quickly, and exercise their flexibilities, as new conditions unfold in the negotiations.

The way forward?

The formation of the G20+ is an event of great significance in the multilateral trading system. It provides the opportunity for more equal negotiating capacities in the WTO. Developing countries should see this as an opportunity — not a threat. The G20+ is not based on a North-South divide. There are several developed countries (e.g. in the Cairns Group) who share South Africa's conviction to create freer and more equitable global markets in agriculture. This is an issue-based alliance.

The US should re-consider its unnatural alliance with protectionist positions in the EU–US joint text, and not miss this historic opportunity to contribute to freer trade in agriculture.
All WTO members need to 'continue the journey' towards the successful conclusion of the Doha round, *within the timeframe* and remaining faithful to its *development focus*.

Questions for further analyses and research

The US–EU alliance allows the US to increase its use of the 'Blue Box' (to continue with its trade-distorting farm subsidy payments as provided in the Farm Bill, with some changes to its programmes), and takes the pressure off the EU to reduce its tariffs and eliminate its export subsidies.

The US has stated that the US-EU alliance is a 'stepping-stone' to advance the negotiations and yet in Cancun the US did not move from their joint agreements. Is the US–EU alliance a tactical or strategic one? Is either country able to withdraw from the agreement in favour of advancing the DDA or are they locked into an agreement that provides comfort to each others' interests and sacrifices the ambition of the DDA?

On the position of the US

The position of the US on Agriculture before and during Cancun left many observers very puzzled. The US had adopted a more liberal approach prior to Cancun, stressing the need for the EU to open its markets and eliminate its export subsidies. In agreeing to the EU–US joint text, the US had appeared to have sacrificed these interests and lowered its ambitions.

- Did the prospect of forthcoming US elections cast such a long shadow over the negotiations that it prompted the United States Trade Representative (USTR) to take a cautious route and abandon its commitment to pursue an ambitious outcome in the WTO agriculture negotiations? Is the US hedging its bets, keeping one foot in the EU camp but remaining open to supporting the cause of creating freer and fairer trade in agriculture (with the Cairns Group and G20+) when the conditions change?
- Are the agricultural lobbies in the US reflecting on what happened in Cancun? Do they recognise the setback in Cancun as a lost opportunity to advance the reform of agricultural protection in the EU and level the playing field in agricultural trade?
- Did the coalitions in US agriculture shift in the direction of increased protectionism prompting the USTR to agree to lower its ambitions in the EU–US joint text before Cancun and withdraw from its Doha commitments? Did the joint text negotiated by the USTR strengthen the position of protectionist forces in US agriculture before Cancun?

On the position of the European Union

The EU has stated that it has moved in agriculture by making the CAP reforms (in Luxembourg). Even the so-called northern liberals in the EU say (officially) that the reforms will create real reductions both in production and distortions in global markets. The CAP reforms can be seen as a step forward but will they contribute to significant liberalisation and reductions of global distortions in agriculture? Will CAP reforms contribute significantly to enabling developing countries to develop their agricultural potential?

Does the reluctance of the EU to provide leadership reduce the potential of the EU to cash in on the reforms it is making on the CAP? These reforms could be traded for concessions in other areas of interest to the EU. Does this loss of momentum in the WTO negotiations not reduce the external pressure the EU requires to stimulate and maintain further reform of the CAP?

The agricultural negotiations are the centrepiece of the DDA. Failure to produce movement on this issue will slow down the entire process, bring the negotiations to a halt, and threaten the future of the WTO itself. EU member states are confronted with a choice between maintaining their protectionist position on agricultural reform and their commitment to the multilateral trading system and development. How will the EU member states (now 25) confront this reality?

Picking up the Pieces after Cancun

Peter Draper & Razeen Sally[1]

Introduction

The Doha Round, after listing heavily, finally keeled over in Cancun. The WTO is crippled, seemingly incapable of making firm decisions. Even free-trade multilateralists are now thinking the unthinkable: is it time to leave a shipwrecked WTO? Or can the Doha Round be salvaged before it sinks to the bottom? Now is an appropriate time to pause and reflect on national trade strategies in light of what the future might hold for the global trading system.

The failure to reach agreement at Cancun leaves trade negotiators at the *status quo ante*. In the short term, developing countries will continue to suffer the adverse economic effects of an unbalanced multilateral trading regime. Yet fundamental reform of that regime is an objective worth waiting for. And Cancun's failure obscures some progress in areas of particular concern to developing countries. However, these worthy objectives are hostage to a great deal of uncertainty as to whether the Doha round will conclude successfully, and on what terms.

These issues are addressed as follows: First, the underlying causes of the Cancun ministerial's collapse are examined in light of the major economic powers' shifting negotiating strategies. Then medium-term constraints on the majors' ability and willingness to restart the Doha round are examined. Next, the role of the G20+ group of developing countries is scrutinised. Then the role of the bulk of poor countries making up the WTO's membership is assessed. Finally, some conclusions are drawn regarding the requirements for resurrecting the Doha round.

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Strategic shifts

After Doha the US administration put bold liberalisation proposals on the table. However, as *The Economist* notes, the US has talked a good game but has yet to be tested on its public commitments. And it still maintains lavish agricultural subsidies and high tariffs on some products, e.g. cotton, groundnuts, textiles and clothing. Nonetheless, whilst these policies remain egregious, there is at least the prospect of reforming them provided the EU and its allies demonstrate serious commitment to further reforming theirs.

It is well known that the EU 'reformed' the Common Agricultural Policy (CAP) prior to Cancun. Whilst substantial decoupling of subsidies from production was achieved, it was partial and messy. Crucially, the EU did not translate its internal reforms into an improved offer on domestic subsidies in the WTO. Nor did it improve its timid offers on export subsidies and tariff cuts.

Furthermore, on the eve of Cancun the US and EU put forward a 'framework' document on agricultural trade. This vague framework represented a strategic shift on the part of the US, moving them away from high ambition and closer to the defensive EU position. Hence it was widely condemned as insufficient to address the needs of developing countries.

This prompted the emergence of the G20+ group. This intriguing coalition of key developing countries, coordinated most visibly by Brazil, included China, India, and South Africa. It burst onto the WTO scene with great fanfare. Its key demand was more ambition in eliminating agricultural subsidies, in all forms, than was contained in the draft ministerial text. The latter essentially reflected the EU-US position.

The G20+ position on agriculture — the centrepiece of the Doha Round — was one of extreme offence and extreme defence. It pressed for significantly greater developed country liberalisation, but rejected meaningful liberalisation of own markets. G20+ members argue that their pressure elicited major EU and US concessions on agriculture. Detractors counter that the G20+ contributed to failure in Cancun: first by making unrealistic demands and not negotiating seriously; and then by needlessly polarising argument along North-South lines.

Yet the group's emphasis on the primacy of agricultural subsidy reform over all other aspects of the market access agenda is surely correct. And substantial progress was achieved at Cancun: on domestic subsidies in the 'Amber Box'; on a broad tariff reduction framework involving 'blending' the Cairn's groups ambitious formula with that proposed by the EU; and the EU coming close to a commitment to eventually abolish export subsidies.

Ultimately agreement on a new agricultural text was thwarted by the refusal of the African-Caribbean-Pacific (ACP) and least developed country (LDC) groupings to negotiate on any of the 'Singapore issues' (investment, competition, government procurement, and trade facilitation) despite last-minute EU concessions to drop three items, leaving just trade facilitation on the table.

In the context of glacial pre-Cancun discussions, movement on agriculture and the Singapore issues at Cancun represented substantial overall progress. Furthermore, Cancun was not intended to elicit overall agreement, but rather a framework for subsequent negotiations. And there does seem to be some convergence towards an agreed negotiating framework. Yet it is highly regrettable that the EU in particular did not signal movement on agriculture and the Singapore issues well ahead of Cancun. That could have saved the Ministerial from collapse.

What's the lie of the land after Cancun?

Viewed optimistically, a tantalising strategic prospect could gradually unfold. The US is a major agricultural exporting nation, and as such has traditionally cooperated with the Cairns group. It has a strong interest in further reform of EU and G10 (including Switzerland, Norway, Japan and South Korea) subsidies and tariffs, notwithstanding the fact that this will pressure it to reform its own policies. To the extent that the G20+ has driven a wedge between the EU and US on agricultural trade, this is a good thing. It will pressure the US to work with the G20+ and Cairns groups, further isolating the EU/G10.

On the other hand, the inherent risk in the G20+ strategy was that it could provoke a backlash in the US. The G20+'s inability to offer own concessions, and its polarisation of the Ministerial along North-South lines, elicited just such a backlash. The danger ahead is that petulant finger pointing and strong-arm tactics, rather than pragmatic, far-sighted engagement, will determine US attitudes towards G20+ majors. Ominously, in the context of the Free Trade Area of the Americas negotiations, heavy pressure has been brought to bear on Latin American G20+ members to peel away from the Brazil-led group. And Thailand, whilst agreeing to negotiate an FTA with the US, has simultaneously distanced itself from the G20+. Furthermore, these developments form part of a broader US strategy to prioritise bilateral negotiations over the multilateral process.

Meanwhile the EU finds itself isolated. Its Doha Round strategy has blown up in its face. Internally, it does not seem to know what to do next. Perhaps alarmingly, there are incipient signs of EU backtracking on its Cancun concessions on agriculture and the Singapore issues. In the meantime, it attributes Cancun failure to 'medieval' decision-making procedures and wants WTO members to grasp the nettle of institutional reform. Critics argue that, at this stage, this would further distract attention from negotiating issues. Cynics would add that this is just what the EU has in mind.

So it is scarcely surprising that the US and EU seem unwilling to take the lead in restarting negotiations. And the medium-term picture is not encouraging.

Strategic constraints

The US presidential and congressional elections roadshow has begun, and will likely prevent any further movement on agricultural subsidies before 2005. Behind this lurks the powerful agricultural lobby, particularly in swing states of strategic importance to the Bush administration. Furthermore, it is likely that a new US Trade Representative will take the helm of the USTR in 2005, with a new set of priorities. It will take at least six to nine months for a new USTR team to be put in place and get up to speed on the issues.

More importantly, what kind of administration will replace 'Bush 1'? If 'Bush 2', then by what margin? Will the Republicans maintain control of Congress? Will this presidential-congressional alignment make the next administration more or less beholden to the agricultural lobby? Is there a prospect that 'Bush 2' would realign its trade strategy towards the G20+ and Cairns Group positions in order to further isolate the EU?

What if the Democrats win the White House, and perhaps one or both houses of Congress? Unfortunately, old-style protectionism from the unions and new-style NGOs has gained ground over freer-trading centrists within the Democrat tent. This makes serious agricultural reform less likely than under a Republican administration and a Republican-controlled Congress. Furthermore, a Democratic administration would push harder on environmental and labour standards issues. Those are as controversial as the Singapore issues for most developing countries and would make for further gridlock. Hence, on balance, Democratic majorities in the White House and Congress could push US trade policy in a more protectionist, less development-friendly direction.

The year 2007 is the generally accepted cut-off date for the Doha round to conclude. In that year Trade Promotion Authority (TPA), granted by Congress and giving the President wide-ranging powers to negotiate trade deals, expires. Based on current trends it is highly unlikely that Congress will agree to extend TPA, especially post-Cancun.

Turning to the EU, 10 new states will formally join it midway through 2004, and this, combined with the Constitutional Convention, will occupy the Commission's attention. But in the EU the newly-acceded countries, having tasted subsidies and progressively receiving more over time until they equally share in them by 2013, might well oppose further CAP reform. Led by Poland, they might find common cause in this with France, Ireland, and the Mediterranean countries.

Offsetting this, the EU's desire to be seen as a key supporter of multilateralism could be a swing factor, given that further CAP reform would be well-received by developing countries. But is it politically possible? That remains to be seen. It will depend on a more concerted and determined push by the freer-trading Northern European countries within the EU, perhaps in alliance with the small, open Eastern European members about to accede to it.

And the EU will probably have a new trade commissioner in a year's time. There is no guarantee that she or he will be less protectionist on agriculture.

On top of all these difficulties in the two key trading powers, transatlantic relations are under serious strain. Stemming largely from security considerations, these widening fissures will increasingly penetrate the broader multilateral trade agenda. This is increasingly manifested in an expanding array of high-stakes trade disputes. The longer-term issue is how this will be managed. One scenario, gaining currency in the US congress, could see a push to consolidate the North Atlantic economic space through a free trade agreement. Another could see an increasingly dangerous escalation in trade disputes. Thus the WTO could either be increasingly marginalised or bogged down in litigation, potentially both.

And let's not forget that Japan has shown no flexibility at all on agricultural subsidies and tariffs, and precious little on the Singapore issues where it is a key *demandeur*. Meanwhile, in East Asia the rush towards bilateralism and the possible formation of a broader 'East Asian economic caucus' is gathering pace.

Enter the 'peace clause', Article XIII of the Agreement on Agriculture. This essentially prevents countries from lodging WTO dispute settlement mechanism cases against the major agricultural subsidisers.

There is some debate as to whether it expires at the end of 2003 (the G20+ position), or in July 2004 (the US and EU position). Either way, the US and the EU are concerned that a string of cases against their subsidies could be lodged by the bigger developing countries. Hence their desire to extend it and the G20+ desire to withhold such extension until further concessions are made. However, neither the EU nor the US would stand by meekly whilst their subsidy regimes are challenged through litigation. Both are preparing cases against countries that might bring such challenges. So if the expiration of the peace clause is used to pressure the majors, it could well backfire and further bog the WTO down in litigation (see article by Olu Fasan in this report for further examination of the peace clause).

Who will blink first?

In the longer term, the US and the EU face rising budgetary pressures: in the US from tax cuts and war expenditures; in the EU from eastward expansion and rising pension fund deficits in key member states. So perhaps reduced expenditures on agricultural subsidies are required at some point in the future? In the interests of the multilateral trading system, this should take place in the 2005–7 window. But this is too optimistic. For decades it has been argued that crazy levels of support to a shrinking agricultural sector will prove unsustainable in developed countries. We continue to wait.

More generally, developments in the global economy are not encouraging. In the US, spiralling fiscal and current account deficits are promoting downward pressure on the dollar. This is ratcheting up protectionist pressures in their import-competing manufacturing industries. So China is the current whipping boy of protectionist forces in the US. Furthermore, the falling dollar is already leading to appreciation of the euro, and might lead to substantial yen appreciation, throwing the euro-area and Japanese economic recoveries into doubt. Therefore, protectionist pressures in all three economic poles are likely to remain strong, and perhaps increase.

So as far as the majors are concerned, the medium-term picture is not good. Much will depend on enlightened political leadership there — a commodity in short supply. These developments put the ball squarely in the developing countries' court. So how can the G20+ contribute to putting the Doha Round back on track?

Getting Doha back on track

It is vital to get priorities right. The real 'development' gains from the Doha Development Agenda are to be had from the core market access negotiations on agriculture, non-agricultural goods and services. Reducing tariff and non-tariff barriers to goods and services — including the barriers that throttle South-South trade — would deliver bigger gains by far for developing countries than all the other items in the round put together.

Less familiar than developed country barriers to developing country exports are the even higher barriers developing countries erect against trade with each other. For example, Malaysian exports to India face average tariffs of over 30% compared with tariffs of 5% or less in the OECD. Significant developing country liberalisation would not only improve own productivity; it would also allow low-income and least-developed countries to better exploit their comparative advantages by exporting to the fast-growing markets of middle-income countries.

It is clear what needs to be done to salvage the Doha Round. First, the revised Cancun text on agriculture must, with some tweaking, form the basis for future negotiations. Second, the EU must stick to its last-minute concessions on the Singapore issues. Third, the G20+ must signal its willingness to liberalise its own markets.

The G20+ must know that if these conditions are not met, the WTO will be moribund and real business will shift decisively to regional and bilateral negotiations. Future liberalisation through preferential trade agreements will be distorted, lop-sided and insubstantial — especially in agriculture. G20+ agricultural exporters would have far less access to US, EU and Japanese markets than they would through substantial, non-discriminatory multilateral liberalisation. Worse, WTO members may unpick existing agreements and flout legal obligations. This would result in more politically sensitive and controversial cases going to dispute settlement. The world economy would be fractured into discriminatory and overlapping trade arrangements, probably revolving around US, EU and China hubs. These would be shaped by power relationships, not by fair and balanced rules.

Even if these conditions are met and the Doha Round is put back on track, negotiations will spill over into 2005/6, perhaps only getting serious in mid-to-late 2005. That would leave just over a year to wrap up a deal before the expiry of TPA in the US — the sword of Damocles hovering over the WTO.

Can the G20+ deliver?

We think this is unlikely. Differences within the G20+ are too large. Brazil, other Latin American members, South Africa, China and Thailand are generally pragmatic and constructive in the WTO. They have a mix of offensive and defensive positions, and are willing to compromise and negotiate trade-offs. India, along with Indonesia, the Philippines, Pakistan, Egypt and Nigeria, are defensive and inflexible. The price of G20+ unity in Cancun was for the pragmatists to move towards the Indian position. Whilst India also had to move closer to the pragmatists' positions, the G20+'s uneasy compromise cannot hold unless India becomes much more flexible. With Indian national elections due in 2004 in the context of a brittle consensus in favour of limited further liberalisation, that seems unlikely within the 2005-7 window.

It is simply not in the interests of the pragmatists to be held hostage to Indian obstructionism. They should indicate a willingness to further open their own markets, not only in agriculture but also in industrial goods and services, not least in the interests of opening up South-South trade. Furthermore, assuming a breakthrough on agriculture is achieved the key agricultural exporters should fold back into the Cairns Group (of major agricultural exporters outside the EU and the US) in preparation for the hard negotiations ahead, and mend fences with Australia (the Cairns Group co-ordinator). Besides marshalling the necessary technical capacity for these negotiations this would have the added bonuses of defusing north-south tensions and encouraging the US to work more closely with agricultural trade liberalisers.

What about the rest?

It has to be said that only a minority of the WTO membership have the bargaining power and capacity to advance negotiations, particularly on the core market access agenda. These are the OECD countries and about 20-25 advanced developing countries (many of them in the G20+). Hence the key liberalising deals in the WTO must be done by the 30-plus countries, counting the EU as one, that account for over 80% of international trade and an even bigger share of foreign direct investment.

The remaining 100-plus developing countries should be accorded generous terms of Special and Differential Treatment provided they do not block negotiations. This should include inter alia: liberalisation of other markets through Most Favoured Nation status, and preferably duty and quota-free access; no pressure to sign up to new obligations if they feel unready to do so; and an understanding that they will not be taken to dispute settlement if in breach of existing obligations.

Finally, the rising influence of anti-market NGOs in trade negotiations must be limited and reversed. Indulgence of 'civil society' has its limits, especially if it only serves to block overall progress.

Concluding remarks

Getting the WTO out of its rut depends, in the first instance, on intergovernmental political will, not so much on reform of formal decision-making procedures. The headlong descent into UN-style decision-making may make for therapeutic multilateralism, but it is not a recipe for making serious policy choices. It is no substitute for practical, businesslike diplomacy and negotiation among the capable and willing. This is crucial if the WTO is to refocus on market access, where the real development gains lie, and avoid further drift into multiple and conflicting objectives that are overloading its agenda.

Hence EU-US co-operation, and the active participation of about 25-30 others, is essential. However, with an internally divided and externally pusillanimous EU, co-equality is not the right recipe for the WTO's future: the US must move out in front. Only US leadership can push the WTO in a clearer market access direction. But it needs like-minded coalitions. They are to be found in Latin America and the Asia-Pacific: agricultural exporters in the Cairns Group; industrial exporters in East Asia; and the services-oriented global cities of Hong Kong and Singapore. Crucially, these coalitions potentially include China.

Where does this leave the G20+? If it remains united around a defensive position, expect the US in particular to disengage. The G20+'s current negotiating position does not wash with the US, which has no interest in the Doha Round without meaningful liberalisation by the leading developing countries. Furthermore, the G20+'s polarisation of debate along North-South lines, with political grandstanding and adversarial point-scoring (admittedly from both sides) in its wake, makes it all the more likely that the US will walk away and do serious business elsewhere.

The G20+, along with other developing country formations, might be able to galvanise themselves for a WTO ministerial conference, but not much beyond that. This reflects the wider reality of an increasingly differentiated developing world. The 'South' is a myth, useful for polemical exercises but not for nitty-gritty trade negotiations.

The bottom line is this: a WTO worth the effort must have a clear market access agenda, including South-South liberalisation, and a credible negotiating mechanism. If Humpty is not put back together soon, the US will walk away. And others will follow.

What Does the WTO Deal on Drug Patents Achieve?

Meir Pugatch[1]

Introduction

The inclusion of an agreement on trade-related aspects of intellectual property rights (TRIPs) under the auspices of the World Trade Organisation was one of the most innovative and controversial elements of the multilateral trading system. Signed in Marrakesh on 15 April 1994 as annex 1C to the final act establishing the WTO, the TRIPs agreement represents a significant increase in the global level of intellectual property protection and is considered to be a 'revolution in international intellectual property law'.[2]

The debate over intellectual property rights (IPRs) and access to medicines in developing and least developed countries (LDCs) was portrayed as one of the most sensitive and complicated issues to be discussed at the WTO 2003 ministerial meeting at Cancun, as well as being identified as a 'deal-breaker'. Fortunately, the issue was resolved ahead of the meeting in Cancun, thereby allowing for a huge sigh of relief from all parties involved. Unfortunately, the deal as it now stands, looks as complicated and impractical as the WTO system itself following the fiasco in Cancun.

The process of implementing the TRIPs agreement by developing countries and least developed countries is a painful one, particularly in the area of pharmaceutical patents. Much controversy surrounds the linkage between patent monopolies and drug prices. The debate over the extent to which the internationalisation of IPRs affects the ability of poor countries to gain access to affordable medicines has extended beyond the domain of trade policy. This debate has become as emotional as it is rational and

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2 Reichman HJ, 'Securing compliance with the TRIPs Agreement after US v India', *Journal of International Economic Law*, 1, 4, 1998, p.583.

encompasses legal and health issues and even questions of business ethics and morality.

Yet it is interesting to observe how the most politically contested subjects can evaporate overnight, leaving all those affected to pick up the pieces and to try to make sense of what has just happened. The latest WTO deal on drugs' patents (officially the 'Implementation of Paragraph 6 of the Doha Declaration on the TRIPs Agreement and Public Health', dated 2 September 2003) is such a case.

This article has two goals: to describe the complex and paradoxical nature of pharmaceutical IPRs; and in light of this to analyse the WTO deal on drugs' patents, to explain its implications, and identify the potential winners and the likely losers from this deal.

Patents and pharmaceuticals

Economically speaking, both the patent system in general and pharmaceutical patents in particular, are very problematic. On the one hand, in the absence of institutional provisions for inventions, society would probably face a state of under-production in inventive activities due to the problem of free-riding.[3] Establishing property rights in inventions, i.e. patents, will allow inventors — both firms and individuals — to secure commercial returns for their work, thereby increasing their incentive to invest in future inventive activities. On the other hand, a patent system inhibits the free and rapid dissemination of existing knowledge. Once it has been granted a patent, an inventing firm essentially becomes a monopolist since it has the exclusive right to control both the quantity and the price of its invention. The term 'paradox of patents', which was coined by Robinson as early as 1956, seems to capture the true nature of the patent system as a whole: 'by slowing down the diffusion of technical progress, patents insure that there will be more progress to diffuse'.[4]

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[3] Arrow K, 'Economic welfare and the allocation of resources for invention', in National Bureau of Economic Research (ed.),*The Rate and Direction of Inventive Activity: Economic and Social Factors*. Princeton, New Jersey: Princeton University Press, 1962.

[4] Robinson J, *The Accumulation of Capital*. London: Macmillan, 1956, p.87.

In terms of the incentive to develop new and innovative drugs, patents are crucially important to the research-based pharmaceutical industry. Between 60–65% of pharmaceutical products would not have been introduced or developed in the absence of patent protection.[5] Patents allow research-based pharmaceutical companies to secure a market monopoly, albeit for a limited period, on innovative products and technologies. Their role is crucial both during the marketing and pre-marketing stages of such products and processes. It takes more than 10 years on average to develop a new pharmaceutical drug and the average development costs for successful drugs, that is drugs that have been approved for market use, are estimated at about $500 to $800 million.[6] This in turn means that for most of its life a patent is used as insurance, aimed at preventing competitors from developing identical pharmaceutical products, rather than as a direct tool for profit-making. However, once a patent monopoly is secured, and provided that the drug is commercially successful, a pharmaceutical company can generate considerable profits. Indeed, in 2002 the sales of the 10 leading patentable pharmaceutical drugs exceeded $40 billion, and enjoyed an average growth rate of more than 10%.[7]

Regarding the linkage between patents and drug prices, it is quite clear that under a patent monopoly the price of a given drug would be substantially higher than that of the same generic drug. Estimates suggest that the price of generic drugs is expected to fall by more than 40% below the price of the original product.[8]

In light of this it is quite understandable why the behaviour of research-based companies is perceived as 'monopolistic' while the practices of the generic company are perceived as 'benign'. Yet regardless of their origin (developed or developing) and their orientation (research-based or generic), pharmaceutical companies are motivated by profit. And dominant generic companies, such as Indian-based Ranbaxi, use the most

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[5] Mansfield E, 'Patents and innovation: An empirical study', *Management Science,* February, 1986, pp.173–181.

[6] Pharmaceutical Researchers and Manufacturers Association of America. *Industry Profile 2003*. Washington DC: PhRMA, 2003, Chapter 1.

[7] IMS Health, *World Review 2003*.

[8] Congressional Budget Office — United States Congress, *How Increased Competition from Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry*. CBO, July 1998.

sophisticated intellectual property tools in their quest to secure a dominant share in the leading markets.[9]

Competition between research-based and generic companies is becoming increasingly important in the global market. This is the case in key developed country markets: it is estimated that 20% of the world's population consumes more than 75% of pharmaceutical products worldwide. So developing country markets are relatively marginal to research-based company profits. However, the campaign to relax patent rights cuts to the heart of these companies' profitability, relative to generic-based producers. This explains the intensity of the former's desire not to concede any ground, notwithstanding compelling moral arguments in favour of promoting public health in developing countries.

In light of these issues we now turn to the specific deals that have been cut in the WTO over TRIPs and Public Health.

TRIPs and developing countries

The Doha ministerial declaration on the TRIPs agreement and Public Health was widely perceived as a victory for developing countries and NGOs over the powerful and influential pharmaceutical multinational companies (MNCs). The headlines were quite melodramatic, for example: 'How activists outmanoeuvred drug makers in WTO deal',[10] and 'Declaration on patent rules cheers developing nations'.[11]

On a more practical and realistic level, the ministerial declaration on the TRIPs agreement and Public Health has two major elements:

- The second part of the declaration (paragraphs 5–7) aimed to provide some operational clarification to the provisions in the TRIPs agreement that relate to pharmaceutical IPRs. Inevitably, these clarifications led to a temporary reduction in the protection of patented medicines. Specifically, paragraph 5(b,[12] c) allows WTO members to use compulsory licences,

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9 µA little lab work and a lot of lawyers', *BusinessWeek*, 14 July 2003, p.26.

10 *Wall Street Journal Europe*, 15 November 2001.

11 *Financial Times*, 15 November 2001.

12 Paragraph 5b is the legal tool allowing patents to be overridden in national emergencies.

without pre-conditions, in times of national emergency (to be determined by each and every member). Paragraph 5d in the declaration re-affirms the right of WTO members (via TRIPs Article 6) to adopt the principle of international exhaustion, i.e. to be able to adopt freely and independently a regime of parallel importation of patented medicines. The declaration also grants LDCs an additional period of ten years to implement the agreement (until January 2016).

- Paragraph 6 acknowledges that countries with insufficient manufacturing capabilities would not be able to use the tool of compulsory licenses (that would allow local companies to manufacture original patented drugs). Therefore, it instructed the TRIPs Council to find an expeditious solution to this problem by the end of 2002.

Very early in the negotiations it became clear that the proposed solutions to paragraph 6 of the Doha Declaration did not focus on humanitarian interests but on commercial ones. Instead of looking for pragmatic solutions for providing cheap medicines to less developed countries, mainly via international alliances and global partnerships, such as the Global Fund to Fight AIDS, Tuberculosis & Malaria, negotiations became a 'behind-the-scenes' battle ground between research-based and generic-based pharmaceutical companies.

Generic companies, both from developed and developing countries, saw the negotiations as an opportunity to improve their market position vis-à-vis research-based companies. The latter were particularly worried that generic companies would exploit the opportunity to override patents in order to obtain an advantage in the major developed country markets through such means as re-exportation, stockpiling, early testing (particularly in the EU where such tests are forbidden), and so on.

The US, returning to its conservative-hawkish IP position, refused to accept any deal that implied any of the above, while developing countries, such as the African Group, advocated the establishment of an 'IP-free' mechanism to paragraph 6.[13] Not surprisingly, the EU attempted to juggle its

[13] *WTO Second Communication from the United States*, 9 July 2002, Document No: IP/C/W/358; *Joint Communication from the African Group in the WTO*, 24 June 2002, Document No: IP/C/W/351.

commitment to the IP interests of pharmaceutical companies with its desire to be perceived as LDC-friendly.[14]

With no apparent consensus at the negotiating table (the deadline for concluding the deal was 31 December 2002), and with the US being blamed for obstructing the deal, the issue of access to medicines once again caught the attention of both the media and politicians. For example, one typical article by the *Wall Street Journal* argued that 'pharmaceutical companies shelled out some $63 million to help Republicans win control of the US Congress last November', and that 'days after the election, when international trade talks threatened their profitable drug patents, the companies quickly sought help from Republicans and they got it'.[15]

Nevertheless, it also became clear that, this time (as opposed to Doha), pharmaceutical multinationals did not intend to sit quietly and see their commercial interests being sacrificed, again, for the sake of world trade solidarity. For example, The International Federation of Pharmaceutical Manufacturers Associations, one of the most effective and vocal representatives of the research-based pharmaceutical industry, fiercely attacked the motives of India and Brazil, arguing that these countries are merely using the Doha Agenda and Paragraph 6 for the purpose of strengthening their own local generic industries.[16]

Thus, it became politically necessary to conclude the negotiations on Paragraph 6 of the Doha deceleration on TRIPs and Public Health in a manner that would be beneficial to LDCs, but that would nevertheless address the legitimate worries of research-based companies against commercial abuse. For their part the companies were keen to conclude the deal before Cancun, as they were well aware of the implications of being blamed again for denying medicines to poor populations should the negotiations end in failure (which in retrospect was a wise strategy). Accordingly, prior to Cancun (30 August 2003), the negotiating parties finally adopted a mechanism for the exportation of generic substitutes of patented drugs to countries that lack domestic manufacturing capabilities.

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14 *Communication from the European Communities and Their Member States*, 20 June 2002, Document No: IP/C/W/352.

15 Hamburger T, 'How US backs drug patents', *Wall Street Journal Europe*, 6 February 2003.

16 Bale H, 'Playing the WTO over drugs patenting rules', *Financial Times*, 13 January 2003.

Politically, the new deal provides a solution to the problem of access to medicines and patents. [17] Practically, the declaration does nothing of the sort. First, the problem of monopolistic drug pricing in less developed countries is less important than other issues related to access to medicines and public health such as: inadequate or non-existent infrastructure for delivery systems and distribution channels, lack of preventative education, insufficient hygiene, pollution and corruption.[18] To quote the World Health Organisation: [19]

> One-third of the world's population continues to lack regular access to essential drugs. In the poorest parts of Africa and Asia, this figure rises to over 50%. The reasons are well known and include inadequate financing and poor health care delivery. For countries mired in foreign debt or struggling with an ailing economy, the prospects for improving access to essential drugs are bleak. This is especially so given that total pharmaceutical expenditure, as well as other health expenditure, is linked to the economic development level of a country, and tends to increase only when GDP increases.

Secondly, even if the problem of access to medicines was related only to patents, the current deal is very difficult to work with. For starters, the criteria attached to compulsory licences are very complex. For example, a compulsory license issued by an exporting WTO member should specify the exact quantities necessary to meet the needs of the eligible importing WTO member (i.e. the country that does not have domestic manufacturing capabilities). The products manufactured under the license should be clearly identified as being produced under the new system through specific labelling or marking. Generic suppliers should also distinguish such products through special packaging, colouring and shape of the products themselves. Paragraph 2b(ii) indicates that actions aimed at distinguishing the products should be carried out 'provided that such distinction is feasible and does not have a significant impact on price'. This is a

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[17] *Council for TRIPs, Implementation of Paragraph 6 of the Doha Declaration on the TRIPs Agreement and Public Health*, 30 August 2003, Document No: WT/L540 and Williams F, 'WTO deal on cheap drugs ends months of wrangling', *Financial Times*, 30 August 2003.

[18.] See *Third World NGO Statement on TRIPs and Public Health*, 21 September 2003, *http://freedomtotrade.org/page.php?instructions=page&page_id=17&nav_id=71*.

[19] WHO — Essentials drugs and medicines policy, *Access Strategy*. 15 May 2002.

contradiction in terms, and is probably going to open a new legal front as to what 'significant impact on price' actually means.

According to paragraph 3, exporting countries also have to pay adequate remuneration to the patent holder, 'taking into account the economic value (of the product) to the importing member of the use that has been authorised in the exporting member'. Such remuneration would prove very difficult if not impossible to calculate, and is likely to lead to lengthy and expensive litigation.

As for importing countries, paragraph 4 states that 'eligible importing members shall take reasonable measures within their means, proportionate to their administrative capacities and to the risk of trade diversion to prevent re-exportation of the products that have actually been imported into their territories under the system'. Again, the practical interpretation of 'reasonable measures within their means' is completely unclear.

According to paragraph 5, WTO members are also required 'to ensure the availability of effective legal means to prevent the importation into, and sale in, their territories of products produced under the system set out in this decision and diverted to their markets inconsistently with its provisions'. In other words, paragraph 5 requires the establishment of an international enforcement mechanism against the risks of corruption that may arise under the new system.

That the council for TRIPs wishes to amend the TRIPs agreement by the end of 2003 'with a view to its adoption within six months, on the understanding that the amendment will be based, where appropriate, on this Decision', opens all sorts of possibilities for further negotiations that can only complicate the deal further.

One also has to bear in mind that the agreement on drug patents is one of the few WTO deals, and possibly the only deal, that required further and separate clarifications, by way of a declaration by the General Council's Chairman: 'the purpose of the Decision would be defeated if products supplied under this Decision are diverted from the markets for which they are intended (and that) therefore, all reasonable measures should be taken to prevent such diversion in accordance with the relevant paragraphs of the Decision'.[20]

Thus, not only is the deal highly complex in terms of its execution and management, but it is also subject to a complementary 'understanding' with no binding seal of approval, such as that of a ministerial declaration. This raises a host of issues pertaining to the agreement's legal efficacy and enforceability, and to the mandates of the WTO's relevant institutions: the TRIPs Council, the General Council and the Dispute Settlement Body.

Winners and losers

First and foremost the latest deal on drugs' patents benefits the research-based pharmaceutical companies. By signing the deal, developing countries and LDCs essentially declare that the TRIPs agreement no longer obstructs efforts to promote public health and access to medicines. In other words, they essentially terminated the damaging equation according to which pharmaceutical IPRs equal the inability to provide medicines to the poor and weak citizens of developing and least-developed countries. By doing so, the developing countries put the research-based pharmaceutical industry in a much more comfortable negotiating position on pharmaceutical IPRs in the future. That would be particularly true if the widespread epidemics that now hit entire populations, such as in the sub-Saharan region, are not contained or worsen. Ironically, in such a case the industry could ask for the *upgrading* of the TRIPs agreement using the argument that a weak international system of pharmaceutical IPRs does not help to cure widespread epidemics.

Politicians from every country can also claim success. The deal can be presented and interpreted both as allowing the overriding of patents and the exportation of drugs to less developed countries, hence increasing access to medicines; and as safeguarding the IP interests of pharmaceutical companies, particularly in the major markets.

It is doubtful, however, whether the new system can actually contribute to the rapid distribution of life-saving low-cost medicines, be they patented or

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[20] WTO, *TRIPs and Public Health — The General Council Chairperson's Statement*, 30 August 2003.

not. In fact, of the 300 drugs listed by the WHO on its Model List of Essential Drugs (2001), less than 5% or fewer than 20 are under patent protection anywhere in the world.[21] In this light a study by Attaran and Gillespie-White focusing on the state of patented AIDS medicines in Africa (excluding South Africa) found that:

- in 25% of the 53 African countries surveyed, no antiretroviral drugs (ARVs) are covered by patents;
- in the rest, an average of only four of the 15 ARVs are under patent;
- in 26 African nations, patents cover four or fewer;
- there was not a single country where all ARVs were under patent; and
- other than South Africa, no country has more than 8 ARVs under patent.[22]

The authors conclude that: 'The extreme dearth of international aid finance, rather than patents, is most to blame for the lack of antiretroviral treatment in Africa'.[23] In light of this, perhaps African countries should more actively explore the Bush administration's AIDS initiative for Africa — notwithstanding its origins in US national security considerations and dubious connections to research-based pharmaceutical interests.

No doubt patents are problematic and may generate substantial inefficiencies, including in the supply of medicines. The patent system requires constant balancing between the supply of knowledge in the future and the use of existing knowledge in the present. However, patents are arguably the least problematic aspect of the issue of access of poor populations in less developed countries to essential medicines.

The losers, as always, are the poor people in less developed countries, who instead of getting the medicines they need, get another really complicated, politically-balanced and unworkable deal.

[21] Watal J, 'Background note for the workshop on differential pricing and financing of essential drugs', *WHO–WTO Secretariat Workshop*, 8–11 April 2001, p.6.

[22] Attaran A & L Gillespie-White, 'Do patents prevent access to drugs for HIV in developing countries?', *JAMA*, 286, 2001, pp.1886–1892.

[23] *Ibid.*

Can Africa Take on Europe Through the Peace Clause?

Olu Fasan[1]

At the end of 2003, the 'peace clause' — Article 13 of the World Trade Organisation (WTO) Agreement on Agriculture — will expire. The failure of the ministers to extend the peace clause following the breakdown of their Cancun talks means that the clause will automatically lapse in December as originally intended. The argument of both the US and the EU that the clause doesn't expire until the middle of 2004 surely flies in the face of a textual reading of the relevant provisions of the agreement.

Article 13 of the Agreement on Agriculture (AoA) states that 'during the implementation period', that is. while the peace clause is in force, WTO members must not challenge countries using agricultural subsidies under other WTO agreements, such as Article XVI of the General Agreement on Tariffs and Trade (GATT) and Part III of the Subsidies and Countervailing Measures Agreement.

Some in the EU and US maintain that they only implemented the initial agreement in June 1995, so therefore clause should only expire midway through 2004. They also hold that the clause would expire gradually and on specific products, and not in one instantaneous, all-encompassing process.

Article 1(f) of the Agreement, however, defines the implementation period thus: 'the six-year period commencing in the year 1995, except that, for the purposes of Article 13, it means the nine-year period commencing in 1995'. Clearly, by a simple textual interpretation, that nine-year period comes to an end in December 2003. So far, neither a decision of the General Council of the WTO, nor a ministerial declaration has changed the provision of Article 13.

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Prior to the Cancun ministerial conference, the EU had pushed hard for the extension of the peace clause, and often predicated its support for other issues on the Doha Development Agenda (DDA) upon having its way on the agriculture front. This came as no surprise to WTO-watchers, given that the EU was (and remains) the main beneficiary of the peace clause. For instance, it has an annual share of no less than 85% of all notified agricultural subsidies among WTO members. For decades, powerful farm lobbies and agro-businesses in the EU and other developed countries successfully ensured that their governments kept agriculture out of multilateral trade negotiations until the Uruguay Round (1986–1994), and the peace clause was one of the political costs of agriculture's inclusion.

Africa is clearly the biggest loser from EU (and US) agricultural subsidies. Yet, the continent was not always united in vigorously opposing any extension of the peace clause. Cleavages between African agricultural exporters (including those benefiting from agricultural trade preferences) and African net food importers (who fear higher food prices) always weakened any semblance of unity. The emergence of the G20+ group of developing countries in Cancun appears, however, to have succeeded in forging a new sense of unity among developing countries, including African states.

The G20+ comprises half the world's population and two thirds of its farmers. Inevitably, since the collapse of the Cancun talks, the recurring questions have been: Should African countries rush to challenge EU agricultural subsidies? and what are the possible consequences of doing so?

If, as this article argues, the peace clause does lapse in December, the legal position is clear. WTO law then allows any member whose rights have been nullified or impaired by another to seek redress through the dispute settlement mechanism. The 'due restraint' that has tied the hands of WTO members to date would have gone, and US and EU subsidies would no longer be sheltered from legal challenges.

Yet it is questionable whether African countries would or even could initiate dispute settlement actions against the EU on its farm subsidies. Most African countries are beholden to the EU for aid and special trade concessions. To openly challenge EU subsidies, Africa must be willing to bear the risk that a legal battle will spark retaliatory cuts in aid or special bilateral trade access.

However, apart from the affinity argument that the existence of a 'special relationship' would make it impolitic for Africa to mount a legal challenge against the EU, there is also the post-Cancun element. The EU has warned developing countries in general that they will 'poison the atmosphere' in the WTO and jeopardise chances of reviving the Doha round if they launched a barrage of WTO cases after the expiry of the peace clause this year. Franz Fischer, the EU agriculture commissioner, put it rather ominously: developing countries, he said, would 'punish themselves' if they started challenging EU subsidies next year. Earlier, in the aftermath of the breakdown of the Cancun talks, the US also threatened a witch-hunt against the developing countries whose actions precipitated the collapse of the talks.

Surely, if these veiled threats signify anything, it is that the legalisation of international trade relations has not, contrary to expectations, put to an end the law of the jungle, where might is right. Power-based trade relations are gradually replacing the existing rules-based framework. Yet, in the seeming clash between politics and law, my view is that politics is likely to prevail. This is because, as Fischer himself has pointed out, 'we cannot ignore certain realities'.

One of these realities is that the issue of farm subsidies is a political hot potato in most European countries, particularly France, and it is unlikely to go away until the politicians can successfully manage a settlement without provoking a backlash at home. Another reality is that African countries lack the political or economic clout to force a change in EU policy or even to retaliate effectively in the event of a WTO victory.

Yet, this is not to suggest that African countries that feel sufficiently harmed by the agricultural policies of the EU or US are completely without any recourse. WTO law allows counter measures, by which a member can withdraw concessions (under certain conditions and after due process) in an agreement other than the one from which the complaint arose. This should enable a weak state to hit the powerful.

In the bananas case, a WTO arbitration panel affirmed that Ecuador could retaliate against EU banana quotas by refusing to protect the exclusive copyrights of EU music producers and artists. Ecuador successfully argued that, given its relative economic weakness, this was the only way it could hurt the EU. Other developing countries could similarly threaten to end protection of intellectual property as a 'retaliatory weapon'. However, Africa must be prepared in the event that developed countries react disproportionately, using all sorts of economic pressure. Consequently such an aggressive strategy would be best supported by a broad coalition of developing countries, such as the G20+, which includes heavyweights like Brazil and India.

However, retaliation may not always be necessary. The mere fact of an African country winning a WTO case against a developed country may suffice. The US acceptance of a WTO panel decision in favour of Costa Rica came about because the US did not want to be accused of trampling on a small and poor country. So the court of international public opinion may be more powerful than self-help in terms of retaliation. All that an African country may require is the confidence to take on any major trading nation or bloc.

Another obstacle to this strategy is the high cost of litigation. The formation of the Advisory Centre for WTO Law (ACWL) in Geneva in 2001 partly addresses concerns about enormous legal costs. The ACWL provides advice in WTO dispute settlement proceedings. It charges modest fees for legal services, varying with the size and standard of living of the user. NGOs like the UK Consumers Association take on cases on behalf of developing countries and, if successful, ensure that the developed country concerned changes its laws or policy accordingly. Developing countries have proposed that should a developed country lose a WTO dispute settlement case against a developing country, the former should pay the legal fees and costs of the latter, as one way of addressing inequities in the WTO legal system.

The peace clause will, as a matter of fact, expire this year. However, while this is a weapon in the developing world's armoury, it is important to realise that we are entering uncharted territory in WTO litigation, not least because of the political dimensions and sensitivity of the agriculture issue.

For African countries, this calls for nothing but a sense of unity and concerted efforts. In particular, the African Union (AU) should be more proactive. On agricultural subsidies, as on other WTO issues, the AU should pool legal, technical and financial resources to challenge the developed countries on policies that stifle or undermine the continent's development. The AU should also work within the G20+ for maximum impact.

A united front would clearly accomplish more than any single African country. During the Uruguay Round, France could not make headway on a provision protecting its cultural industry against perceived 'American invasion' until the European Commission made the issue part of its negotiating position. If the AU is modelled on the EU, it is time to start speaking with one voice, and forging strategic alliances, on major global trading and economic issues that affect the continent. None is more pressing than the agricultural subsidies.

Championing African Trade Interests: The Africa Group Within the WTO

Mills Soko and Mzukisi Qobo[1]

Introduction

The collapse of the World Trade Organisation (WTO) negotiations in Cancun in September 2003 marked a turning point in the history of trade relations between industrialised and developing nations. Thanks to their steadfast unity, for the first time in almost two decades the developing countries successfully thwarted attempts by the developed nations to ride roughshod over their interests and concerns. The emergence of the influential Group of 20+ (G20+) developing countries — marshalled by Brazil and including China, India and South Africa — provided a counterweight to the enormous bargaining power of the United States (US) and the European Union (EU) and made it difficult for these economic powers to resort to their long-standing divide and rule tactics of buying off small nations with bilateral deals or threats. Moreover, the Cancun meeting was notable for the assertive manner in which African countries articulated their concerns: African countries actively participated in the negotiations and succeeded in placing their trade interests at the heart of the negotiating agenda.

In this chapter we assess the position and prospects of the Africa Group within the WTO (AGW) against a backdrop of the failed Cancun ministerial meeting. The chapter is broken into four parts. First, it outlines the history, purpose and structure of the AGW. Second, it discusses the role that was played by the Africa Group in the abortive Cancun ministerial summit. Third, the position of South Africa within the Africa Group is analysed. The chapter concludes by evaluating the prospects and challenges facing African countries in the WTO in the post-Cancun period.

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The Africa Group within the WTO

The AGW is an informal caucus group of Geneva-based African trade representatives set up at the end of the Uruguay Round (UR).[2] Its establishment was inspired generally by a recognition among African countries that if they were to become a force to be reckoned with within the WTO they had to pool their intellectual and technical resources and work together as a unified force in pursuit of common goals. Specifically, the AGW was formed with the aim of developing the capacity of African countries to engage meaningfully with Implementation Issues arising from the UR.

The AGW, it is worth emphasising from the outset, is not a monolithic entity but a hybrid formation encompassing African countries that belong to overlapping groupings such as the least developed countries (LDCs), the African Union (AU), as well as the African, Caribbean and Pacific (ACP) group of nations. As we intimate later in this paper, it is this heterogeneous character of AGW membership that poses the most serious challenge to the group's future viability.

The AGW meets regularly to synchronise African countries' trade negotiating positions on sectoral and product specific provisions. Its meetings are convened and chaired by participating states on a rotational basis, with the incumbent state acting as a general spokesperson of all countries for the duration of its one-year tenure. Its activities are predominantly interest-driven or issue-based, and countries participate voluntarily depending on the issues under consideration. Although the AGW does not have a special representational status in the formal WTO processes, it nonetheless provides an important platform for intra-Africa dialogue and for formulating common positions on issues arising from the WTO system in Geneva. Furthermore, it has sought to strengthen African coalition building efforts, especially in respect of forging South-South alliances.

Notwithstanding its informal status, the AGW's views carry some weight within the WTO mainly because they are spelled out in consultation with

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2 This section is based largely on personal interviews with a number of Geneva-based African trade officials.

trade officials and political principals in the national capitals. Yet linkages between members of the AGW and their capital-based counterparts remain very weak. Mindful of this problem, the United Nations Economic Commission for Africa has organised high-level summits in various national capitals aimed not only at providing opportunities for greater interaction between the AGW and capital-based trade officials and ministers but also at facilitating capacity building. Moreover, the AU has recently shown a keen interest in multilateral trade negotiations. At its Ministerial Summit in Mauritius, the AU deliberated extensively over substantive issues of interest to African countries and mandated Mauritius to act as a spokesperson for Africa in Cancun.

The AGW has played a pivotal role in shaping the Doha Development Agenda (DDA) and has pushed very hard for a positive negotiating outcome on three issues of major interest to African countries: agriculture; trade-related intellectual property rights (TRIPs) and Public Health; and special and differential treatment (SDT). And its negotiating efforts on TRIPs and SDT have borne relative success. The conclusion of an agreement in August 2003 allowing developing countries confronted with public health emergencies (particularly those induced by epidemics such as HIV/AIDS, malaria and tuberculosis) to override patents and import copies of life-saving drugs represented a huge victory for the AGW. This came despite the active opposition of the US administration, acting on behalf of the country's powerful pharmaceutical industry — which had wanted the patent override to be extended only to the LDCs and for a limited number of diseases.

At Doha developing countries also extracted a commitment from industrialised countries to provide technical assistance to poor countries, although it was not specified what the scale of assistance offered would be and how the needs of individual countries would be determined and fulfilled.[3] Significantly, vital progress has been made in recent months on the agreement on 28 proposals designed to extend special and differential treatment to developing countries. However, as the Cancun standoff starkly underlined, agricultural trade reform in the developed world

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3 World Trade Organisation, *Doha Declarations*. Geneva: WTO, 2002, pp.33–35.

remains the most pressing issue for African countries on which considerable progress still has to be made.

The Africa Group and Cancun

Three groups of predominantly African states played a central role in the collapse of the Cancun meeting. The LDCs, the AU, and the ACP states refused to negotiate until the EU and its negotiating allies — including South Korea and Japan — had backed down on their insistence on discussing the 'Singapore issues,' namely transparency in government procurement, investment, trade facilitation, and competition policy. The unwavering manner in which they pursued the negotiations on agriculture underscored their determination to force the industrialised countries to do away with their agricultural export subsidies and other farm support measures and open up their markets to agricultural products from the developing world.

Yet in spite of these vociferous claims of African countries in Cancun, the intricacies of agriculture exposed the precariousness of African unity forged in Doha and raised questions about it long-term feasibility. At issue were the trade preferences historically enjoyed by the LDCs and the ACP group of states. The ACP countries, in particular, have gained from the EU-ACP banana, sugar, beef and rum trade protocols. Given that these states have benefited from the artificially high prices created by the EU's Common Agricultural Policy (CAP), they have been concerned about the potentially adverse consequences a disintegration of this protectionist trade regime would have on their monocrop economies.[4] This vulnerability played into the hands of the US, EU and Japan, which exploited it by diligently courting the LDCs and ACP countries. Complicating matters was the fact that AGW was chaired by Mauritius, a trade preference-reliant country that calculated that its national economic interest resided with joining forces with assorted agricultural protectionists such as Switzerland, Japan and Norway. Furthermore, the unity of African countries was undermined by the fact that the G20+ developing country coalition had expended the bulk

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[4] See Tangermann S, *The Future of Preferential Trade Arrangements for Developing Countries and the Current Round of WTO Negotiations on Agriculture*. Rome: Food and Agriculture Organisation, 2002.

of its diplomatic muscle on negotiating with the EU and the US at the expense of harnessing the cohesion of the Africa Group.[5]

It is our view that the stalemate on the issue of trade preferences constitutes a threat to the AGW's ability to champion African trade interests in a unified and coherent way. While trade preferences have undoubtedly benefited the deprived nations in the past, they have serious drawbacks. Their key shortcoming is that they are unilateral and can be withdrawn arbitrarily by the countries that provide them. They have also been criticised by trade economists, notably Jagdish Bhagwati, for diverting trade away from non-preferred countries, thereby playing off poor nations against each other.[6] Additionally, preferences can foster a debilitating dependency culture in their recipients. Even so, there is a need for the industrialised nations to ensure that the poorest developing countries do not shoulder a disproportionate share of the costs of adjustment in the former's agricultural sector and to assist these low-income nations to diversify their economies away from agriculture. Without bold and innovative solutions to the conundrum of preferences there will remain difficulties and tensions between the preference-dependent African nations and those African countries that stand to benefit from a radically reformed CAP regime.

It is important, therefore, that both developed and developing countries tackle this problem proactively and constructively. The EU must desist from exploiting the legitimate concerns of the ACP states about the possible whittling down of their preferences to stall movement on agricultural liberalisation. The LDCs and ACP countries, for their part, need to come to terms with the likelihood that their long-term economic security does not lie with reliance on preferences.

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5 For an insider's view of what transpired at Cancun see 'Statement on the 5th Ministerial Meeting of the World Trade Organisation held in Cancun, Mexico, in September 2003,' a statement made by the South African Minister of Trade and Industry, Alec Erwin, to the South African National Parliament, Cape Town, 26–September 2003.

6 Bhagwati J, 'The poor's best hope,' *The Economist*, 20 June 2002.

South Africa's position in the Africa Group

South Africa's position in the Africa Group could be described as ambiguous and awkward. To understand why this is the case it is important to first briefly reflect on the differences that arose between South Africa and the African members of the Like-Minded Group prior to the 2001 Doha ministerial meeting.[7] At the heart of these differences were disagreements over how African countries ought to have approached the negotiations in the Doha Round (DR). The original position of most African countries was to block a new round of WTO negotiations on the grounds that they had given away more than they had got in the UR and were reluctant to support a new round of trade liberalisation unless their grievances had been addressed.

Although South Africa agreed that Africa's concerns — especially the implementation of UR agreements by developed countries — must be prioritised, it argued nevertheless for broad-based negotiations covering the 'new issues.' In other words, although South Africa did not support the ambitious EU agenda it was prepared to consider a modified, less ambitious and carefully defined agenda. In adopting this position South Africa was influenced not only by a recognition of rapid changes in the global economy that needed to be accommodated within the WTO but also by a conviction that a wider negotiating agenda would make it possible for developing nations to extract key concessions from industrialised countries in respect of agriculture and industrial tariffs.

South Africa's Doha negotiating posture is illustrative of a dilemma faced by intermediate economic powers in the global economy. This explains why even though the country has identified with the trade problems faced by its less developed African counterparts — and has actively pushed for their resolution — it has also sought to advance its trade policy objectives in respect of the new WTO issues in which it has a keen material interest.[8]

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7 A vocal coalition of developing countries in Doha, the Like-Minded Group consisted of Cuba, Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe.

8 Pursuing these policy objectives has necessitated that South Africa forge alliances with negotiating partners as diverse as the Cairns Group, the India, Brazil and South Africa (IBSA) Group, and the Africa Group.

South Africa's Doha negotiating stance provides a compelling reason why the country has been viewed with scepticism within the AGW. It is worth noting, however, that South Africa's position tilted closer to that of the AGW in the build-up to the Cancun ministerial. This came soon after a crucial role played by the country in brokering the deal on TRIPs and Public Health. These actions attested to South Africa's commitment to African solidarity and coalition building. Yet South Africa's role within the AGW is likely to remain marginal, confined to spearheading coalition building efforts and making the odd interventions in issues of strategic concern. For South Africa's global ambitions imply that it is likely to find higher common ground with other emerging industrial economies. Indeed, South Africa has recently been investing a great deal of diplomatic energy in strengthening the IBSA Group that includes India and Brazil. While positive, these developments may drive a wedge between South Africa and the AGW within the WTO system.

We believe that such differences, if they arise, must not be viewed negatively and do not mean that African countries cannot forge coordinated positions on common concerns. What they do underline though is that it is not unusual for countries, even close allies, to hold different positions on trade negotiations. Nevertheless, post-apartheid South Africa has made the pursuit of African economic revitalisation the keystone of its foreign economic policy. The extent to which this policy ideal can be realised, nonetheless, will depend ultimately on how skilfully South Africa can negotiate the delicate balance between, on the one hand, its global ambitions and, on the other, its domestic and regional commitments.

Post-Cancun positioning: Prospects and challenges for Africa

The formation of the G20+ was undoubtedly a significant development in the history of the international trade system. Not only did the coalition emerge as a credible negotiating force, its steadfastness in the face of repeated attempts by the US and the EU to break its unity represented a crucial political victory for the developing world. But what does the future hold for the G20+? Can the resoluteness and unity forged by developing nations in Cancun endure?

The experience of the Group of 77 (G77) developing countries provides a good case study of the difficulties of sustaining coalition diplomacy. An array of factors — including national economic self-interest, intra-group political dynamics, and developed country pressure and arm-twisting — undermined the long-term unity and cohesion of the G77.[9] And it seems that the G20+ will not be spared. Already countries such as Costa Rica, Guatemala, Peru and Colombia, which had rattled the US by joining forces with the G20+, have pulled out from the coalition, citing the politicisation of this group as the reason for their withdrawal. These countries see their long-term economic interests as tied to those of the US. How will the AGW be affected by a realignment of forces once trade negotiations resume in Geneva in mid-December 2003? It is startling that the G20+ has only three African members — South Africa, Nigeria and Egypt. This will deprive a significant majority of African countries of an influential forum through which they can articulate their concerns in the WTO. Nor will they be able to influence in any consequential way the direction and processes of the G20+.

So in light of these realities what strategic choices is the AGW faced with in the post-Cancun period? And, more importantly, given its current weak negotiating strength in the WTO what issues must the AGW accord priority and how can it exploit the nascent diplomatic sway of the G20+ to maximise its negotiating leverage? We posit six issues around which the AGW's strategic posture could coalesce.

First, the matter of SDT. It is now widely accepted within the WTO milieu that this is one issue on which there is a glaring absence of substantive dialogue between developed and developing countries. The lack of noticeable progress on SDT is attributable to several reasons, including disagreements and confusion concerning what constitutes SDT, a tendency by developing nations to use it as a stalling mechanism in negotiations as well as a sheer lack of political will in the developed world to do something about the problem.

These problems attest to the complexity of the SDT issue within the WTO. Yet it would be churlish to deny that some progress, even if very limited,

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9 For a detailed discussion of these factors see Williams M, *Third World Cooperation — The Group of 77 in UNCTAD*. London: Pinter, 1991, pp.77–106.

has been made in the Doha process to deal with this concern. The overarching challenge for WTO members is to build on this progress and, as a start, give concrete meaning to the 28 proposals referred to above. African countries have outlined some guiding principles they consider essential to steering such an undertaking. These include:

- Ensuring that the focus of SDT is on upgrading the quality and substance of technical assistance rather than on producing endless training programmes;
- Developing mechanisms to assist countries to undertake a needs assessment of their capacity building requirements;
- Exhorting the WTO to deliver its training and capacity building programmes in collaboration with other multilateral institutions, especially those which are equipped to build capacity in specialised areas of expertise, so as to ensure that trade liberalisation and trade policy are aligned with the wider economic and development strategies of developing countries; and
- Creating an advisory structure, nominated by the WTO membership, that will guide the WTO's SDT plans and programmes.[10]

It is crucial that both developed and developing nations find a satisfactory and workable solution to the SDT problem sooner rather than later.

Second, whilst understandable, it is not in the long-term interests of the LDCs and ACP countries to continue citing lack of progress on SDT as a pretext for blocking progress on other issue areas in the WTO. This excessively defensive posture is unhelpful and needs to be discarded. Equally, developed countries need to demonstrate greater political urgency and commitment to addressing the long-simmering SDT concerns of the weak countries. It is encouraging that several developed countries have signalled their seriousness about the SDT issue in their Doha mandates. This makes them potential allies of the poorest nations and it is advisable, therefore, for the latter to study these industrialised countries' positions and proposals on SDT in order to identify convergent perspectives, specific

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[10] Cited in the South African Statement to the WTO's Trade Negotiations Committee, 4 October 2002.

modalities, and concrete negotiation language that could be advance ACP interests.[11]

Third, careful thought needs to be given to the Cotonou agenda vis-à-vis the Doha agenda. Our position is that the post-Doha and post-Cotonou trade negotiation processes are not mutually exclusive. Nonetheless, the ACP countries have to take strategic decisions regarding the interface between these parallel processes so they can make effective use of their limited negotiation resources. Overall, while the WTO and the Cotonou negotiating agendas are mutually reinforcing the WTO, in our view, remains the developing countries' best tool for fully integrating their economies into the multilateral trading system and mitigating the unequal power dynamics between industrialised and developing countries. Some questions are worth posing in this regard:

- To what degree do ACP objectives cohere in both the WTO and the Cotonou negotiating tracks?
- What kind of multilateral and ACP-EU trade regime would ACP states like to create in light of their development requirements?
- What more technical work needs to be done, both at WTO and Cotonou levels, in the area of SDT to give expression to the flexible provisions for ACP states concerning the duration of a sufficient transitional product, final product coverage (bearing in mind sensitive sectors), and asymmetry regarding timetables for tariff reduction?

Fourth, the issues of trade, debt and finance, and transfer of technology. At Doha developing nations managed to persuade WTO members to establish working groups to examine the relationship between trade, debt and finance, as well as between trade and technology transfer — critical issues of huge interest to poor countries. The LDCs and ACP countries need to ensure that these issues are considered from the perspective of their development needs.

Fifth, TRIPs and Public Health. Important progress has been made on the issue of access to essential medicines for the poorest nations. The challenge now is to maintain the momentum and ensure that the deal concluded in

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[11] See Tortora M, *The Critical Path and the Work to be Done*. Geneva: UNCTAD, March 2002.

August 2003 delivers for those developing countries faced with public health emergencies.

Sixth, the cotton debacle. The US ought to respond credibly to the demands of four competitive West African countries — Benin, Burkina Faso, Chad and Mali — for the removal of export subsidies on cotton. The unwillingness of the US to address these countries' concerns in Cancun alienated numerous smaller developing nations and hardened their resolve to oppose the discussion of the 'Singapore issues.' Not only has the problem of cotton subsidies exposed the egregious inequities inherent in the WTO agricultural regime, it has become a litmus test for the Doha Round: Several African countries consider its resolution as central to restarting the Doha negotiating process. This is perhaps one area where South Africa can use its growing diplomatic influence within the WTO to help to secure a fair and just dispensation for these African cotton producers.

It is around these issues that the AGW could mobilise the political and diplomatic clout of the G20+ in pursuit of its strategic objectives. Adeptly managed, the G20+ could act as an important bridge between the developed countries and the AGW. Indeed, its potential to perform this role was clearly demonstrated at Cancun on the issue of agriculture. Key members of the G20+ — mainly Brazil, South Africa and Thailand — also played a central role in placing the issue of TRIPs and Public Health on the Doha agenda and in brokering the subsequent deal. But the LDCs and ACP states need to recognise that there are some issues on which their interests will diverge from those of the G20+. This is to be accepted, given the heterogeneity of developing countries and their different levels of development. It is necessary, however, that the African members of the G20+ (South Africa, Nigeria and Egypt) ensure that that any differences and misunderstandings arising between the G20+ and the AGW are resolved sensitively.

More Than Just Market Access

Steven Gruzd[1]

The bedrock of Africa demands in the WTO is for more market access, particularly in agriculture, for which developed countries will in return likely seek greater access to African markets. The current Doha round stalemate makes greater overall market access unlikely. But Africa must consider carefully why it has so far failed to utilise the duty-free access that it already has under the Lomé/Cotonou trade agreement with the European Union (EU).

Consider Botswana, which is widely acclaimed as Africa's most well-run government with $6 billion in reserves and far greater resources for trade and agricultural support than other African countries, thanks to its diamond mines. Although Botswana has a long tradition of raising cattle, it has never filled its quota of 18,916 tonnes of beef exports to the EU.

In this, Botswana is not alone in Africa. The continent already enjoys a wide range of trade agreements granting duty-free access to Europe and other markets. Although some of these limit the volume of trade that qualifies, Africa has often failed to take advantage of these concessions.

Understanding why is one of the most important challenges for African governments today.

One basic problem is that what is grown or manufactured in Africa is often not acceptable to consumers abroad. Not only must Africa meet standards to prevent the spread of diseases like foot-and-mouth or insects that infest on agricultural products, it must also produce bruise-free fruit, deliver products in the right packaging, and a quality competitive with that from other low-cost producers in the world.

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A recent World Bank publication, *Standards and Global Trade: A Voice from Africa*, puts it well:

> To expand trade, Africa[n countries] will have to meet the significant challenges in their capacity to meet international production and quality standards … without addressing standards compliance issues, Africa will be unable to take advantage of market access opportunities.

As tariffs tumble in WTO and bilateral trade agreements, the limitations within African countries that hold them back and prevent them from maximising their scant market openings.

This is not to imply that global trade is fair. Rich countries continue to distort trade by providing heavy subsidies and support to their farmers, firms and factories. While preaching free trade, they use WTO-approved weapons to protect their domestic markets from foreign competition. Their arsenal includes 'tariff peaks' (higher than average duties on competitive African imports like agricultural goods, textiles and clothing) and 'tariff escalation' (tariffs that rise progressively as more value is added through product processing). When producers in developed countries are threatened, their governments retaliate with anti-dumping actions and slap on extra taxes (called countervailing measures). They can employ standards and technical regulations unfairly to ban imports. Yet when most African countries are granted precious market access they trip over the hurdles of supply-side constraints and standards to get their products onto shelves and tables.

Botswana provides a pertinent case. From extreme underdevelopment at the time of its independence in 1966, its economy is now one of Africa's strongest. Per capita GDP doubled between 1982–83 and 1997–98, and the World Economic Forum rates Botswana the best-governed country on the continent. Its cattle industry accounts for about 70% of agricultural exports and 4% of total exports. Under the Beef Protocol of the previous Lomé Convention (1975–2000) and its successor the Cotonou Agreement (2000–07), Botswana, Kenya, Madagascar, Namibia, Swaziland and Zimbabwe are offered greatly reduced tariffs, known as tariff quotas (TQs), on fixed quantities of boneless beef exports to the EU. But as the table below illustrates, from 1992–2001 these countries collectively failed to fill their

52,100-tonne quota. Only Zimbabwe exceeded its individual quota from 1993–95.

African countries don't use their beef quotas						
	Imports to EU under Lomé/Cotonou beef protocol (metric tons)					
Supplier	***Quota***	***1992***	***1993***	***1994***	***1995***	***1996***
Botswana	18,916	15,274	13,806	12,145	11,966	10,373
Madagascar	7,579	n/a	n/a	n/a	3,533	1,759
Namibia	13,000	8,667	9,379	11,729	10,177	8,546
Swaziland	3,363	128	372	650	379	520
Zimbabwe	9,100	6,331	9,333	16,844	10,766	6,266
Total	51,958	30,401	32,891	41,369	36,822	27,465
Filled		58%	63%	70%	71%	53%
Supplier	***Quota***	***1997***	***1998***	***1999***	***2000***	***2001***
Botswana	18,916	11,851	13,012	11,518	11,140	15,251
Madagascar	7,579	696	13	0	0	0
Namibia	13,000	7,143	8,898	10,365	8,641	9,618
Swaziland	3,363	326	303	417	728	59
Zimbabwe	9,100	7,120	6,787	6,762	7,047	6,167
Total	51,958	27,137	19,014	29,063	27,557	31,985
Filled		52%	56%	56%	53%	60%
Source: Eurostat n/a not available * Table excludes Kenya, which never filled its 142-tonne quota.						

The EU has rigorous sanitary and phytosanitary (SPS) standards — WTO jargon for rules pertaining to human, animal and plant health — for bovine imports. This is understandable considering the devastation caused by 'mad-cow disease' (bovine spongiform encephalopathy or BSE) and foot-and-mouth disease (FMD). There are strict regulations as to the traceability of animals, disclosure of exact feed content, minimal drug residues in meat, hygienic slaughter and transport procedures.

These obviously impose costs on suppliers. In many cases, African countries cannot ensure that a sufficient quantity of their domestic beef production is of export quality. Madagascar, Kenya and Zimbabwe cannot certify their beef as FMD-free, and have, consequently, lost access to this market. In Zimbabwe government mismanagement has undermined economic performance. Panic-driven stock selling in the wake of the government's controversial land reform policies has decimated breeding herds. There is no foreign exchange available for vaccines or tagging equipment and FMD is rampant as cattle intermingle with buffalo (natural FMD carriers). The disease is also spreading to neighbouring states. The EU banned Zimbabwe's fresh beef imports in August 2001 and this market is probably lost for decades.

Why has Botswana averaged just 65% of its 18,916-tonne quota over the past decade? Botswana has efficiently fought FMD, but it has other problems arising from traditional farming methods, which equally limit the export capacity of many African countries.

The large commercial cattle farmers in Botswana do exploit export opportunities. They use a paddock system, grazing cows in one area while letting grass grow in another. They carefully track available forage, provide veterinary services and fatten up their cattle before slaughter. By contrast, the traditional subsistence farmers, who rear most of Botswana's cattle, over-graze communal grassland. They do not regard cattle as a commercial commodity, but consider them a reservoir of wealth, and a way of saving rather than a potential export.

Cattle are often only sold to cover family emergencies or to meet financial need. In this semi-arid, drought-prone region, by the time these tough old cows are sold to abattoirs, they are well past their prime (over three years old), and yield low-grade 'industrial' beef that is fit only for soup meat, canned meat or sausages. While these practices may be important culturally, economically they are imprudent because they hamper competitiveness.

The Beef Protocol permits only high-grade cuts of chilled, deboned beef, so only some of the meat from each carcass is eligible. Botswana has banned beef imports, thus utilising beef for domestic consumption rather than exporting it. The EU is also not the most profitable market every year, so beef is sometimes sold to South Africa instead. There are simply not enough high-quality cattle available annually to service all potential markets.

Infrastructure is another crucial supply-side constraint. 'It's hard for people living 200km or 500km away to get their animals to the abattoir. The government must come in and improve the roads. Some areas have no roads at all,' said Sonny Molapisi, the Marketing General Manager at the Botswana Meat Commission (BMC).

Landlocked Botswana relies on neighbours to ship its beef to market. Better-integrated regional documentation, transport and customs procedures would also enhance Botswana's competitiveness.

If its EU beef quota was doubled, or the market liberalised, could Botswana benefit? It is unlikely.

One chronic problem limiting Africa's ability to export is the lack of credit and high interest rates. Expanding production of many agricultural goods, particularly high-value fruit, vegetables, spices and flowers, requires significant upfront investment in seed, fertiliser, irrigation and wages for workers. When faced with a market opportunity, big Australasian or South American producers, who have access to cheaper, readily available bank loans, can quickly respond and snap up market share.

Has Africa thought through the consequences of negotiating so hard for market access that it might not fully utilise? Government and business should redouble their efforts to change both attitude and aptitude. They need to invest as much in roads, water supplies, cold storage and farmer education as they have done in abattoirs and equipment, and there must be greater prioritisation of trade and agriculture extension services. One attempt to fill the gap in Botswana is the BMC's 'feedlotters advance scheme', which gives the equivalent 600 pula ($123) per animal supplied by small farmers to the BMC.

East Africa's fish exporting industry has learned about standards the hard way. The combined exports of Nile perch from Lake Victoria for Kenya, Tanzania and Uganda earn about $200 million annually, and the industry provides about half a million jobs. Fish products comprise 17% of Uganda's exports, and 75% of its Nile perch catch goes to the EU. In 1997 and 1999, the EU barred imports on SPS grounds, alleging that fishermen were using poison to catch fish, and questioning the hygiene standards of fishermen, transporters and processors. Factories closed or scaled down, a third of those employed in the industry lost their jobs, and Tanzanian and Ugandan fish exports fell by half. A $4.6 million programme involving a partnership between UN agencies, national bureaux of standards, employer federations, bilateral donors and international organisations rescued the situation. The fish industry's organisational and regulatory framework was vastly improved, and the capacity for fish inspections significantly strengthened. Local standardisation institutions, testing houses, inspection and certification bodies were upgraded. The EU ban was lifted in 2000, and a new market opened up in the US. Now technical regulations are taken much more seriously throughout the industry.

The EU demands that Ugandan fish processing companies test for skin parasites in the Nile perch. The processors believe that this test — costing $4,400 per month — is unnecessary, as the thick hide of the perch is used to make leather, and parasite infestation is physiologically impossible. But they lack the estimated $31,000 needed to prove this scientifically. Considering the long-term savings scientific proof would make possible, surely the Ugandan government should provide this relatively paltry amount? Alternatively, the costs could be split between the three countries. The East African region should raise the money and have the courage to challenge this compulsory EU test aggressively in appropriate international standard-setting forums.

African countries too often are passive 'standard takers' rather than proactive 'standard makers'. They must increase their understanding and awareness of standards. By actively taking part in the rule-making and review process in the WTO, they too can wield the WTO weapons like SPS. That way they can make sure standards are not arbitrarily applied by trading partners who are losing their protective tariffs and subsidies, or frequently and drastically altered to become unfair barriers to trade.

Meeting market requirements hinges on capacity. Africa's national standards bodies are generally poorly-staffed and underfunded. Testing laboratories lack modern computers and telephones, as well as measuring and calibrating equipment. Institutions conducting risk analyses and marketing and scientific research need to be supported and possibly consolidated. Neighbouring countries wastefully duplicate efforts, where regional institutions could service several states simultaneously and harmonise regional standards. In Africa, standards and quality requirements are frequently seen as burdens rather than carrying inherent health and safety benefits. If standards were given higher priority on national agendas, rich rewards would likely follow.

From beef and beans to fish and fresh flowers, every link in the African agricultural supply chain has considerable room for improvement. Adequate cold storage facilities in trucks, ports and airports are vital, as are appropriate support services, reliable electricity, informative and functional packaging, cheap, reliable communications, well-maintained roads, and efficient, non-corrupt customs procedures. Post-harvest losses (up to 30% in Ghana) account for enormous costs and lost opportunities. The problem is not poor production, but poor management.

Would-be exporters should follow the three Cs: compete, conform, and connect. In other words: develop the capability to produce saleable products that meet client and market requirements, and get them to those markets through harmonised trade and customs rules. When these precepts work, the results can be spectacular. In 2002, Ghana exported about 60,000 tonnes of fresh pineapples to the EU at $133 per tonne, earning $8 million. Its Blue Skies Company exported 4,000 tonnes of sliced, packed pineapples straight to UK supermarkets and earned $12 million at $3,000 per tonne.

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