

The cunning bully

EU bribery and arm-twisting at the WTO

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*"Both the United States and European Communities
trade negotiators take us to the slaughter house at the
end of the day, the latter might be more subtle and
polite about it, however the end result is the same...we
get slaughtered. I do prefer dealing with the US...at
least you know exactly where you stand with them..."*

A Geneva-based Southern delegate, July 2003.

Introduction

This paper¹ outlines crucial issues surrounding the blatant lack of accountability and transparency in the decision making process at the World Trade Organisation (WTO) and how the rich and powerful groups of countries such as the European Communities² use all means available to them to subvert an ostensibly democratic institution to achieve their trade goals, whatever the implications on the poorer nations.

The WTO in theory has a one member one vote system. However, decisions are made on the basis of consensus. Where members cannot reach consensus on key issues, they are mandated to do so by voting, albeit the WTO members have never voted on any issue of contention since its inception.

The Marrakesh Agreement, signed by 124 governments at the time in Morocco, in 1994 gave birth to the WTO in 1995, following the completion of the Uruguay Round of trade negotiations - the first comprehensive trade round which went beyond purely trade in goods matters to cover intellectual property and trade in services, and also extended its remit in the areas of trade in agriculture and textiles. The WTO succeeded the General Agreement of Tariffs and Trade (established in 1947), also known as GATT 1947.

The significant difference between GATT 47 and the eight year old WTO is that the latter has built-in mechanisms to enforce its agreements with sanctions. The dispute settlement body of the institution is therefore charged with settling disputes between countries who have abused the binding rules of the institution. Of course, developing countries are at a huge disadvantage in this respect as the impact of retaliatory measures imposed by them on powerful countries who abuse the rules is virtually negligible.

The WTO is thus one of the world's most powerful supranational institutions, whose rules are binding and have far reaching implications on millions of people around the globe.

It is perhaps significant to allude to the fact that the very first preamble to the WTO Agreements states clearly that the purpose of the organisation is not free trade in itself but *the fostering of sustainable long term economic development and the improvement of living standards in rich and poor countries alike*. This preamble is largely ignored by the majors (i.e. the most economically powerful WTO members) and the Secretariat staff; instead the focus is deeper, faster liberalisation.

Trade ministers make up the highest and most directly authoritative body at the WTO. They meet at least once every two years at Ministerial Conferences such as the one held in Seattle, USA in 1999 and Doha, Qatar in 2001. Ministers are charged with taking decisions through negotiations on all matters under any of the WTO's multilateral agreements.

The General Council based in Geneva is the second highest authoritative body which is chaired by a new representative from a member country every year. This council carries out the day-to-day business of the organisation and reports to ministers on the progress and status of negotiations.

146 countries currently constitute the WTO membership, 80% of which are from developing countries. Most representatives have missions in Geneva, Switzerland though some twenty least developed countries are not represented in Geneva. About

¹ This paper is based on a number of interviews with WTO negotiators and other high-level decision-makers as well as on the book "Behind the Scenes at the WTO: the real world of international trade negotiations" Jawara & Kwa, Zed Books 2003.

² "European Communities" is how the EU is known inside the WTO.

1000 meetings take place annually at the WTO headquarters - nearly half of which are in informal mode between members where no records are kept.

The WTO Secretariat - headed by a Director General plus four deputy director generals - purports to be a neutral body, with no decision making powers and whose duty is purely administrative, assisting representatives in their day to day activities. The reality however, is quite different; the so-called neutral, faceless bureaucrats of the Secretariat play a key role in reinforcing the unquestionably flawed decision-making process at the WTO. Although 80% of the WTO membership is from developing countries, 80% of the Secretariat is Northern, some of whom have been around since the old GATT days - according to developing country delegates the Secretariat is an added layer on the negotiating structure taking biased positions in favour of the powerful countries but in a very subtle manner.

The paper will focus on the process of negotiations and *behind the scenes* activities leading up to and at the Doha Ministerial Conference in Doha and will highlight the key role the EC played in the process to achieve its trade objectives. The process leading up to the fifth Ministerial meeting in Cancun, Mexico in September 2003 will also be outlined, again with a focus on the EC's role.

The EC trade bloc at the WTO

The European Union (EU) countries are formally known as the European Communities (EC) at the World Trade Organisation and constitute one of the most powerful trading blocs within the institution. With a share of world trade of about 50% they contribute about 50% of the \$95 million annual WTO Secretariat budget (contributions are linked to countries' share of world trade). The 15 member countries are represented by European Trade Commissioner Pascal Lamy, who is based in Brussels and is charged with negotiating at the Ministerial level. In Geneva, EC trade envoy Carlos Trojan and his 18-strong professional support staff oversee day-to-day negotiations at the WTO.

Individual EC member countries have missions in Geneva but delegate responsibilities to the EC negotiators to draw up final negotiating positions. Each member however, is in charge of its contributions to the WTO Secretariat budget and funding provisions for trade related technical assistance programmes for developing countries, especially the least developed.

EU member countries and the EC negotiators...any tensions?

Behind the scenes EC members do have nuanced views on how they ought to be represented within the WTO both in terms of substantive and procedural issues.

Geneva based trade officials from countries like the Netherlands for instance were quite supportive of the public health and intellectual property positions developing countries pushed before Doha.

Also, a Geneva-based British envoy candidly questioned the wisdom of expecting developing countries, especially the least developed, to agree to begin negotiations for a multilateral agreement on the four Singapore Issues or the New Issues (which covers Trade Facilitation, Transparency in Government Procurement, Competition, and Investment Policy), asserting that:

On competition, for example, if your economy is on its knees [as in many developing countries], then as a government you would need to regulate it. If, however, you have multinational corporations on the scene, you are unable to do so because the competition rules will not allow it.

These views led to phone calls by other developed country proponents of the New Issues to the envoy's trade ministry before Doha, suggesting that such comments were not in line with the official EC position on the New Issues and were therefore not helpful.

At Doha itself the Netherlands, Sweden, the United Kingdom and to a certain extent Germany, were seemingly willing to compromise on the wording on the agriculture negotiating text which stated that all subsidies in agriculture shall be phased out. France and Ireland vehemently opposed such an agreement because general elections were just around the corner in both countries and the last thing either government wanted was to anger the powerful farming lobbies in their respective countries. Lamy therefore took these views into account and insisted that a get-out clause for the EC on subsidies be included in the draft - he got what he wanted. The final text at Doha on agricultural subsidies switched from the assertion that all agricultural subsidies shall be phased out to a commitment to phasing out subsidies *but without pre-judging the outcome of on-going negotiations*.

Complaints are sometimes made by certain EC member delegates that the EC trade negotiators (who are European Commission officials) have a tendency to develop their own agendas during negotiations. However these views appear to be only minor tensions; the EC member governments have similar ideologies and stages of development and, subsequently, when the chips are down in multilateral negotiations they stick together and put their trust in their EC negotiators. These negotiators are expected to walk the political tightrope of pleasing all the 15 member states, and often deliver. The formula works and it is unlikely that there will be a dissension in the ranks emanating from member states when the inevitable pressure cooker atmosphere at Ministerial meetings starts to intensify.

Pascal Lamy

Pascal Lamy was appointed EC Trade Commissioner in 1999, just before the Seattle Ministerial. Between 1994 and 1999 he had had a taste of the corporate world when he was appointed Director General responsible for the restructuring of the French Bank Crédit Lyonnais. Prior to this, he had a high profile post at the European Commission, following some years as a civil servant in his native France.

Lamy might be described as a French 'socialist' who happens to be a promoter of free trade in a *sustainable* manner, and has praised the American sense of enterprise. One of Lamy's most controversial moments as Trade Commissioner was during the Seattle preparations when he suggested that the EC members should consider lifting their ban on genetically modified (GM) seed exports from the United States. The backlash that ensued from some core EC member countries on this sensitive issue forced Lamy to recoil and has kept the matter in the back-burner for the time being.

Lamy supposedly believes that developing countries need to be on board if negotiations in the WTO are to be successful, and travels extensively to developing countries, especially before Ministerial Meetings, to establish dialogue. He has a

fierce intellect, works non-stop and is known to detest parties. The United States Trade Representative (USTR) Robert Zoellick, a fellow marathon runner and personal friend of Lamy's, has described him as someone who has 'an astute sense of how to operationalise a vision.'

Their friendship began when Zoellick was a negotiator for Presidents Reagan and George Bush Senior, and Lamy the Chief of Staff of EC President Jacques Delors, between the mid-eighties and the mid-nineties. Lamy spent a weekend at Zoellick's home on the Potomac River near Washington before Doha, no doubt exchanging marathon running tips between the discussions of trade issues.

A developing country WTO delegate described Lamy as someone who 'quietly does his homework surprisingly thoroughly..', adding that 'the American negotiators are more overtly arrogant and use the stick more than the carrot compared to those of the EC.'

Lamy is not always as contained as his reputation suggests however. When attacked by the press (during a trip to Africa in 2002) regarding the outrageous EC farm subsidies, which severely undermine poor farmers in developing countries - Lamy arrogantly retorted back that 'what the European Union did with its money was its business'!

The EC's agricultural subsidies is one of the highest in the world, a very hypocritical position given the constant demands by the majors that developing countries completely prise open up their markets to the developed world.

EC trade positions pre-Doha

The EC's agenda, according to a pre-Seattle (1999) press release is to 'sharpen' and refocus' its trade policy, 'making it more effective at opening foreign markets which European companies consider most vital to their exports'. This strategy involved the identification of 'the most stubborn obstacles in specific countries that are hindering trade and investment', and employing 'the most effective trade instrument' to ensure 'swifter, more coherent and more coordinated action to remove those barriers' (European Commission 1996). While the EC continued to assert this agenda aggressively it tried to make it as palatable as possible for developing countries, even making it seem beneficial to them.

The EC has always been keen on the launch of a comprehensive new round of trade talks that includes negotiations on all the New Issues. The scrapping of all export subsidies in agriculture was never a favourite subject; but due to a strong environmental lobby in Europe, they wanted greater ambition on the links between trade and the environment in a multilateral rules-based system. (It must be pointed out, however, that a large number of European environmental NGOs – including major groups such as Friends of the Earth – are hostile to the EC's "trade and environment" push inside the WTO. They fear that the WTO can only damage and undermine Multilateral Environmental Agreements (MEAs) and want the "trade and environment" issue to be taken away from the WTO and dealt with solely in the United Nations.)

The EC supports lowering of high industrial tariffs by developing countries, strengthening labour standards within the global trading arena, and stresses that the WTO should work closely on this matter with the International Labour Organisation (ILO), the UN body responsible for labour issues.

Developing country trade positions pre-Doha

Most developing countries rejected the idea of launching a new round of trade talks, particularly the possible negotiations on the New Issues, fearing that it would further par down their autonomy as sovereign nations in areas that would indubitably lead to strengthening the rights of multinational corporations at the expense of their national industrial and developmental goals. Instead developing countries demanded talks that were geared towards resolving the implementation problems they face as a consequence of the first comprehensive WTO Round, the Uruguay Round.

Countries like Morocco, Mexico, Singapore, Korea and South Africa, however were supporters of a new round including the New Issues. Latin American countries like Brazil, Paraguay, Uruguay, Bolivia, Argentina, and Chile, while not active promoters of the New Issues and / or a comprehensive trade round, were willing to accept it provided the agenda included an end to all farm subsidies.

Many developing countries reject negotiations for binding rules on environment and labour standards in the WTO, seeing this as a form of back-door protectionism, and requesting that relevant UN bodies be solely responsible for dealing with these issues.

There was also an emphasis on the need for greater market access for agricultural products in the North, and in particular phasing out by developed countries of tariff peaks, tariff escalation (or 'high' tariff regimes) and export subsidies, particularly on agricultural produce.

They wanted to limit the major developed countries' abuse of anti-dumping procedures (that is tariffs imposed on imports which the recipient country considers to be 'dumped' at prices below the cost of production, permissible under WTO rules) to keep out developing country exports, and they complained that the gradual replacement of textile quotas with tariffs, agreed in the Uruguay Round, had generally excluded products they supplied, rendering the agreement useless, and wanted this reversed. Greater commitment to Special and Differential Treatment (SDT), and measures to address their supply-side constraints was also a key developing country position. A major concern of developing countries is that the 'benefits' of trade liberalization – market access – have not been reaped in real terms. Even when markets are opened to them, developing countries, particularly the least developed, are hampered by supply-side constraints. Technical and food standards have also been used opportunistically by developed countries to block exports from poorer countries thus affecting export possibilities significantly in some key areas.

On the high profile issue of Trade Related Intellectual Property Rights (TRIPS) and Public Health they saw wider application of the options in the existing TRIPS agreement to allow them to override patent rights of large pharmaceutical companies and produce or import generic versions of essential drugs.

In the General Agreement on Trade in Services (GATS) negotiations developing countries are most interested in the 'movement of natural persons' section otherwise known as Mode 4, so that skilled workers can be allowed to move freely to offer their services in the North.

Circles of Power – pre-Doha preparation strategies by the EC and US

The major players – primarily the US and the EC – face a major challenge in WTO negotiations. They are a small minority in a one-member-one vote organisation where most other Members have very different agendas and objectives. Their strategy to deal with this situation revolves around winning over successive groups of countries, starting with the most powerful and those with whom they have the most common ground.

The private meetings between the US and EC are followed by meetings with Canada and Japan, with the full involvement of the WTO Secretariat, to establish common positions. Together, the US, the EC, Canada and Japan make up the 'Quad' (Quadrilateral) group – a formidable block, which often shares similar positions publicly, and dominates the WTO process.

An added advantage for the EC is that those countries seeking accession to the European Union follow the EC's line in the negotiations almost entirely, knowing that, if their accession is successful, they will have the same trade policies as the EC – and, perhaps more importantly, fearing that failing to toe the EC line might jeopardise their prospects of joining the European Union at all.

An Eastern European delegate awaiting EC accession for instance recalled that because they are all expected to align their positions with those of the EC they are often excluded from crucial meetings, and that this was particularly the case during the Doha process in 2001. Some of his colleagues said to be frustrated by the situation had no choice but to accept this state of affairs.

As the Quad enlarge the support base for their agenda, so it becomes more difficult for others, especially the less influential, to resist their advance, even if they have strength in numbers.

Mini-Ministerial meetings which take place before Ministerial conferences, are a perfect starting point for such a strategy. These mini meetings are unofficial, are by invitation only and who issues the invitation is never clear. Before Doha developing countries such as Mexico and Singapore, who align most closely with EC and or US positions and are dubbed the 'friendlies', hosted mini-ministerial meetings. Yet the majority of delegates wanting to attend were unclear about who was issuing the invitations. The "hosts" denied that they were in charge and so too did the WTO Secretariat. Essentially all the Quad members attend these meetings, plus a few handpicked 'friendlies', plus key countries such as Brazil and India that are too large to be safely ignored.

The meetings, usually held as far away from Geneva as possible, have a huge impact on the outcome of negotiations, as the broad parameters for discussion at the actual ministerial are largely hatched out in these gatherings. Issues of most importance to developed countries are suddenly put high on the agenda and remain thus at the ministerial itself. Therefore one can plausibly suggest that 15 to 20 trade ministers, mostly from developed and high income countries effectively imposed a *fait accompli* on the remaining 100 or so ministers during Doha.

Draft texts for Ministerial Conferences

The manner in which a Ministerial draft text is produced at the WTO, especially in the run up to the Doha Conference was in many instances flawed. The deliberations coming out of the informal mini meetings which excluded over a hundred members were largely reflected in the document. Furthermore the text prepared by the Chair of the General Council and Hong Kong Ambassador at the time, Stuart Harbinson, was transmitted to Ministers days before Doha on 'his own responsibility' with the full backing of Mike Moore, the then WTO Director General. The text failed to adequately highlight the differences in members' positions on the issues as any negotiating text should, especially where there are areas of contention. This method of doing things was not only a violation of WTO rules and procedure, the text was sent despite formal protestations from Ambassador after Ambassador - mostly from developing countries - regarding the way it was produced.

Delegates recalled how Harbinson held endless consultations with delegates before the draft text was released, yet there was a strong feeling that, although he listened quite attentively to their concerns, he proceeded to present already prepared conclusions.

The EC on the whole emphasised the differences between the draft and their objectives, expressing disappointment at the lack of ambition on the New Issues and on trade and the environment in the draft text. The EC Ambassador in Geneva, Carlo Trojan, felt that the needs of developing countries were comprehensively addressed in the text, but voiced disappointment that the environment approach fell short of what the EC was expecting; that investment and competition did not go far enough; and that agriculture went too far on subsidy reduction. Neil McMillan, Minister and Deputy Permanent Representative of the UK mission in Geneva, reinforced this view: 'we went to Doha with not one of the four issues we wanted on the environment mentioned'

However, the text that was in the end transmitted to ministers was already skewed against developing countries and the majors were looking forward to a pressure cooker atmosphere at the Conference itself to get exactly what they wanted. Thus strong-arm politics, offers of "inducements" and all-night exclusive marathon meetings in the end played a significant role in the outcome.

An added reason some Ambassadors from developing countries remained silent on whether the new issues should have been included in the draft text at all was because the United States Trade Representative had put non-compliant countries on a blacklist weeks before Doha, as detailed in a leaked letter between the USTR Robert Zoellick and a Washington based Southern envoy. It was made very clear to them that any opposition to their agenda would result in a complete cessation of bilateral negotiations in other areas of mutual interest. Demands were made that some Ambassadors be removed from their positions which some capitals duly did. About six Ambassadors were removed from Geneva during and after the Doha conference.

The EC's role in Doha

The size of the delegations varied enormously. The EC had a presence of 508 (including 50 delegates of the European Commission), Japan had 159 delegates, Canada had 62, Indonesia 60, the United States 51, and India 48. At the other end of the scale, some smaller developing countries such as Haiti had only one representative. Strength in numbers during negotiations at Conferences is vital as the process is arranged such that a multitude of meetings running parallel to each other are a normal occurrence. In addition, most delegates are not aware when or where meetings are taking place. The WTO Secretariat has no system of informing delegates.

After months of talks, the two trade supremos, Zoellick and Lamy, had forged a unified front to promote the launching of a new round, including the New Issues, at Doha. As Guy de Jonquieres of *The Financial Times* put it, a 'carefully pre-scripted co-operation' was evident between the two. A breakdown of communication between the two big players – one of the main reasons Seattle failed – was being avoided at all costs.

Upon arrival in Qatar Lamy instantly made statements that he had offered some developing countries a total of 50 million Euros (US\$50 million) in aid to meet their WTO commitments, and indicated that the EC member states were ready to open up their markets to more textile imports from the developing world.

Just before the Conference began most delegates were shocked by the way the appointment of six core 'friends of the chair' or **facilitators, Ministers from Singapore, Canada, Switzerland, Chile, Mexico and South Africa** cropped up in Doha as if by magic. Although none of them were from the US or EC, they were clearly sympathetic to the positions of the two majors. They were chosen behind the scenes (according to reliable inside sources) by the WTO DG Mike Moore, the General Council Chair at the time, Hong Kong Ambassador Stuart Harbinson and Minister Youssef Kamal of Qatar who chaired the conference proceedings.

Ian Wilkinson, former deputy chief EC negotiator in Geneva however, believed the early selection of facilitators in Doha was a good idea. He said during an interview after Doha that 'In Seattle we went three days into the meeting without facilitators because some Ministers refused to take on the task.' He laid the blame squarely on Charlene Barchefsky, the US Trade Representative at the time and Chair of the Seattle Ministerial, whom he described as someone 'with a brittle personality, who did not have the moral authority or the technical capacity to pull the whole thing off', adding that 'the relationship between the EC and the US was at a low point.' Kamal on the other hand 'did not speak English that well, nor did he have the technical know-how on the issues – but he had a great personality and a natural charm, and was able to tell Ministers to shut up.' Kamal was effectively a stooge of the powerful countries and his verbal outbursts were no doubt confined to certain Ministers and not others.

At an NGO briefing by the ACP during Doha, Kenya's Trade Minister, as the African Caribbean and Pacific (ACP) Group Chair, emphasised that they were only willing to reach a compromise on the New Issues if they could win the EU/Africa Caribbean and Pacific group of countries or **the Cotonou/ACP waiver** (a waiver of the WTO rule that any deal granted to one member must be extended to all to accommodate the

EC-ACP Partnership Agreement), along with provisions for capacity building and greater transparency at the WTO.

The Latin American banana-producing countries opposed the ACP waiver, because they claimed it provided an unfair advantage to ACP countries besides they had already won a dispute through WTO dispute settlement system over the issue. To some extent Thailand and the Philippines also opposed it, as they wanted greater preferential access to the EC market for their tuna exports. The former Thai Ambassador commented that,

on this particular issue, the EC was taking from the poor and giving to the poor....The ACP waiver issue was brought up at the conference without any prior consultations. Though we were not totally opposed to the idea, we were ignored, despite the fact that we were in talks with the EC regarding our waiver requests for tuna before Doha

The ACP waiver was eventually left until the very end, as a carrot for the ACP countries. A Ugandan delegate described it rather as a 'crumb', which

was dangled at the last minute by the powerful countries to get the desired results from the Africans in particular. It shifted attention away from the main issues of contention in the draft declaration. The waiver was left lying in the WTO's Council for Trade in Goods for a year, and should have been settled before Doha. Instead it was successfully used it as a bargaining chip.

This was not only a bargaining chip between the EC and the ACP countries, but also between the EC and the US. While the US had initially supported the Latin American producers (many of whom are US-based multinationals), when it came to Doha they actively supported the waiver, presumably in the interests of EC-US solidarity. According to a Central American delegate,

the US forced us to agree to the waiver by threatening to cut off preferential agreements it has with us if we did not toe the line. The US, though initially on our side when the dispute began years ago, backed out to support the EC because they wanted to launch a New Round. Franz Fischler, EC Agriculture Commissioner, said directly to us Central American negotiators that they [the EC] would get what they wanted – i.e. the waiver – and that he did not care about their rights. Even Mike Moore, who was present when he lashed out at us, was a bit taken aback by his comments.

Thus with the help of the Americans the EC was able to use the Cotonou waiver as an artificial bargaining chip at the last minute in return for their support on the new issues. The complexity of the game meant the US had to bully the Central Americans to accept the offer; and the EC had to strike a deal with some Asian countries over their demands for a tuna export waiver.

On **TRIPS and Public Health**, Brazil played a key role representing the interests of the developing countries. A Brazilian negotiator described the process.

At the end of the day, a deal was brokered between the US and Brazil.... The US fought it, but they realised there would be no Round

if they refused to budge, so they gave in...The EC tried to act as a mediator between us and the US, and claimed they were on our side. We, however, realised they were creating more obstacles than helping us, so we bypassed them and went face-to-face with the US...The breakthrough was the first one at Doha...

The EC's good guy role as a go-between became more of an obstacle when it was discovered that pharmaceutical companies such as Glaxo SmithKline had warned the British government that it would shift its base from the UK to the USA if the EC took a position contrary to its interests.

In the end, despite the principle of consensus, and the reservations of many developing countries, the text was pushed through with minimal concessions to developing countries. This had more to do with the process of the meetings, and behind-the-scenes pressure on the more reluctant members than with honest persuasion or democracy. They offered the crumbs of a political statement on TRIPs and public health and the EC/ACP waiver to buy the support of developing countries, and then they simply wore down the opposition.

The conference was illegally extended by a day after most developing country negotiators with scheduled flights had left. A final meeting lasting 36 hours, brought the conference to a close.

According to an Asian delegate,

Lamy and Zoellick, the marathon runners, are physically fit and knew our minds were not working [due to exhaustion], so they put out a draft after an all night meeting and got it through.... It was a psychological thing.

As a result the draft text was not that different from the final Conference document - that was the *fait accompli*.

A delegate from a developed country observed that:

the EC and US made a deal on the environment and anti-dumping. The environment text was essentially written by the US delegation and inserted in the Declaration at the last minute – and, of course, the anti-dumping issue was emasculated by the US.

The main changes in the text – on the environment and highly likely negotiations on all the New Issues in 2003 – represented a major coup for the EC, achieved with the support of the US. They also obtained a 'get-out' clause on the phasing out of subsidies in agriculture, and the ACP waiver. In this context, Lamy's statement to reporters that the EC was the 'orphan of the conference' because they came away with nothing seemed more than a little disingenuous.

Post Doha Reflections

Some months after the Conference delegates began to analyse the repercussions of the Doha outcome and made comments about the supposed gains they got out of the Doha 'Development' Agenda, particularly the ACP waiver.

The Zimbabwean Ambassador at the time was not entirely convinced that the price they paid for this 'crumb' was a good deal. A negotiator for an African ACP country felt that

in retrospect we made a mistake by linking success at Doha to the waiver, which expires in 2008. This is actually not a very long time, yet we could not resist accepting the waiver in exchange for endorsing the possible launch of the New Issues.

A delegate from an EC member state explained that

The [EC and US] banana distributors are the ones who benefit from the trade, not the ACP farmer.... I have difficulty seeing why countries like the Ivory Coast, Ghana and Cameroon were given preferences [banana quotas] in Doha. The waiver is not favourable for the Caribbean countries, after all.... Chiquita [a US multinational based in Latin America] is also not interested in free market policies. They need the quota system, which I suspect will be corrupted. The whole thing is very difficult to defend; it does not make economic sense.

A delegate from another EC member state believed that

preferential agreements can have negative effects, because of the conditionality attached.... Bananas don't really do well in the Caribbean climate anyway – their natural environment is in parts of Latin America. In ten years, the preferences just negotiated will be gone and ACP countries that had depended on bananas will then resort to growing marijuana.

A candid delegate from an EC member state in fact saw the possibility of negotiating on the New Issues as potentially detrimental for developing countries, as mentioned above.

However, EC President of the European Commission Romano Prodi commented to journalists after the conference that the Doha agreement was a sign that 'it would not be one world against another but a shared agreement', while EC Agriculture Commissioner Franz Fischler claimed Doha was a 'magnificent success.'

The Doha 'Development' Agenda turned out to be a huge disappointment for developing countries. Most of their apparent gains were in language than in substance. They got the political statement they sought on TRIPS and public health; the ACP waiver for the relevant developing countries, which should not have been part of the negotiations; a delay until 2003 for negotiations on the New Issues, with a vague clause leaving it ambiguous whether they will actually commence then; a commitment to capacity- building and technical assistance on the New Issues (though without any firm commitments to improving supply-side constraints); new working groups to discuss trade, debt and finance and technology transfer; and a

commitment that provisions on Special and Differential Treatment 'shall be reviewed with a view to strengthening them', which past experience suggests may not in the event bring any tangible benefits. Even their apparent victories were limited.

On the negative side, the text on revisiting anti-dumping rules was emasculated by the US; the wording on export subsidies and domestic support in agriculture was watered down allowing a 'get-out' clause for the EC; greater market access for industrial goods, opposed by developing countries, was brought into the negotiations; and wording on the environment, which they totally wanted out of the negotiations within the WTO and instead left with expert UN agencies, was strengthened, with a 'get-out' clause for the USA.

One disheartened least developed country (LDC) delegate said after Doha that the developing countries should have demanded the removal of all references to development interests of LDCs in the Doha Declaration. This he said would have made no practical difference, but would have prevented the powerful countries from cynically using the declaration to trumpet their supposed commitment to development to the public and to trade ministers unfamiliar with WTO technicalities and politics.

EC "Inducements" and Arm-twisting

The EC approached the issue of arm-twisting in a more subtle manner than the US in the run up to Doha in 2001. Pascal Lamy and his trade team held intense bilateral negotiations with countries opposed to negotiations on the New Issues, which were a key interest of the EC.

Developing countries detected a subtle carrot and stick approach in the countdown to Doha, to make sure that negotiators were aware of the EC's expectations on the New Issues in Doha, and on the ACP waiver, which became necessary to elicit support from the ACP countries. EC Trade Commissioner Pascal Lamy's endless trips to developing countries after the Seattle Ministerial were in essence an attempt at constructive engagement with his Southern counterparts on the need for launching a New Round.

In a nutshell the strategies used by the EC were varied and complex, and could be categorized as follows:

The *first* strategy was to ensure the support of countries wishing to accede to the European Union; this was almost a done deal.

A *second* strategy entailed hijacking the agenda through exclusive mini ministerial meetings that eventually fed into the drafting process of the conference document.

The *third* strategy was to offer a few incentives to key middle income countries, illicit their support, and where possible deploy them to convince their less affluent partners and allies to support developed country agendas.

A middle income country, like South Africa for instance, received considerable EC attention after Seattle. Both the US and EC decided to delegate part of the responsibility for aligning African positions with theirs to South Africa. As a result during African Group meetings within the WTO (before Doha) South Africa canvassed on behalf of the EC on the New Issues. Other African delegates were infuriated by this development and went round trying to re-orient their fellow African negotiators against warming to the idea of possible negotiations on the New Issues. South

Africa's less affluent neighbour, Lesotho, did in fact begin supporting negotiations on the New Issues before Doha.

In return South Africa expected EC support on reducing farm subsidies, technical assistance in trade related matters, support on focusing on implementation issues arising from the Uruguay Round, and the Cotonou waiver. Also the South Africans did not wish to rub the powerful countries the wrong way primarily because donor support for the highly ambitious New Partnership for African Development (NEPAD) was being sought by South Africa's President Thabo M'beki, the chief architect of the initiative.

Mexico too was one of the many middle income Latin American countries that declared a neutral position on the New Issues in return for a reduction in agricultural subsidies. Bilaterally Mexico became the first country in Latin America to sign a free trade agreement with the EC and as a result has become one of the EC/US "friendlies". Mexico was one of the countries working on other Latin American countries to change their minds on the New Issues.

Chile is another "friendly" that signed a bilateral trade deal with the EC in May 2002, six months after Doha. Both parties had in fact begun negotiations before Doha. In return they took a neutral position on the New Issues and tried to convince others to do the same.

It remains unclear what bilateral deals Brazil secured with the EC. At Doha however, the Latin American giant entrusted the EC with brokering a deal between them and the US over the TRIPs and Public Health issue. However Brazil eventually went face-to-face with the US on the matter.

Brazil remained neutral on the New Issues but demanded a phasing out of subsidies in agriculture.

A *fourth* strategy was to intensify the pressure directly on the poorer countries. The Least Developed Countries III conference in Brussels in May 2001 provided an opportunity for Lamy to hold bilateral discussions with less influential African Ministers on the EC positions, according to informed sources. He also 'gently reminded' some trade ministers of the importance of the various preferential arrangements countries enjoyed with the EC in promoting economic and trade cooperation. Developing country delegates reported that EC trade officials sent communiqués to their capitals before Doha clearly stating EC positions, though stopping short of demanding explicitly that Southern trade ministries align their positions accordingly.

The EC's gloves did however totally come off when resistance from Latin American countries began to mount on the issue of the Cotonou waiver just before Doha. A former Bolivian negotiator recalled that incessant calls were made to capitals and Brussels based missions about the matter. The Bolivian government was threatened with a withdrawal of its Generalised System of Preferences schemes (GSP), under the Andean agreements, if they refused to budge on the waiver issue. This was after all a key bargaining chip for the EC and they did not want it jeopardised.

The former negotiator noted that 'officials were very afraid in the capitals as a result....it is a real jungle out there.'

The *fifth* strategy that never fails was the offers of aid, debt relief and technical assistance.

Tanzania (whose Minister was chair of the Least Developed countries), received multilateral debt relief from the IMF/WB two weeks after Doha, having waited for the announcement for over a year and in the event sunk even deeper into debt (due to the catastrophic fall in the world market price of its main exports, namely coffee and cotton).

The *sixth* strategy at the conference itself was to ensure that facilitators sympathetic to EC positions were chosen; that countries such as India who opposed the New Issues were isolated and viewed as 'obstructionists' by the world media; that a multitude of meetings were taken place all at the same time to wear down countries with small negotiating teams; and that a final exclusive 36 hour meeting took place after the conference was illegally extended as a final push to get countries to sign an agreement that was not in their interest.

The events of *September 11th* 2001 also played a significant role in *manufacturing* consensus in support of the Doha text. The few African ministers who put in some resistance in the final marathon meeting were made to feel that they were standing in the way of world peace, global stability and economic recovery, if they blocked the Doha Agenda.

In the end those middle income countries that remained neutral or supported the New Issues in return for ambitious wording on agriculture and implementation issues were disappointed (to say the least) when the EC significantly watered down its commitment to phasing out their agricultural subsidies by negotiating a get-out clause. Importantly, not only has the development component of the Doha agenda not been fulfilled, but developed countries are working towards reversing the minimal gains developing countries achieved – as the latest draft text for the Cancun negotiations clearly depicts.

Subtlety is the name of the Game:

The EC negotiators prefer to go even further behind the scenes than those of the US negotiators to twist the arms of their developing country "friends" and opponents alike during negotiations.

Although it was the EC's Ian Wilkinson who questioned the need for Malaysia to remain in the informal Like Minded Group (the LMG members include India, Malaysia, Kenya, Cuba, Jamaica, Honduras, Zimbabwe, Uganda, Indonesia, etc) at the WTO given its more significant level of development when compared to a fellow member like Cuba, it is the US negotiators that have made a more concerted and belligerent effort to break up the increasingly threatening group.

The EC might not go as far as to put non-compliant countries on a black list as the US did before Doha, rather they employ a 'gentler' method of dealing with countries refusing to toe the precise their line in negotiations by hinting that they might have preferential agreements (often fraught with conditionalities) withdrawn.

Whilst the US has been caught sending threatening letters to developing country envoys and openly requesting that Trade Ministers and Presidents remove their "uncooperative" Ambassadors and negotiators from the Geneva scene. These "unfriendly" countries are also *coincidentally* seen as obstructionist to the EC's trade agenda.

It is the US that openly threatens to pull out of the WTO and resort to bilateral and free trade agreements with countries individually, if developing countries refuse to accept their "offers" in multilateral negotiations. Zoellick also openly stated in 2002 that countries are lining up in their droves to sign free trade agreements with the US. Lamy on the other hand, quietly negotiates bilateral trade agreements as far away from the limelight as possible, in an attempt to further weaken the standing of developing countries in the multilateral trading system.

A final exclusive meeting in Doha yet again excluded about 100 ministers some of whom left on scheduled flights on the expected end date of the Conference. A secret decision was made to extend the Conference by one day, which lasted 36 hours. Lamy was described as sitting quietly and calmly in the room, allowing the US, Canada and South Africa to do the tough persuading on his behalf. As a consequence, he was able to raise his ambitions on getting items of interest to the EC incorporated into the final Doha text.

When Tanzania was offered its long over due debt relief two weeks after Doha there is no doubt that the majors including the EC were instrumental in facilitating this development – crucially Tanzania represented the Least Developed Country group in the final Green Room meeting in Doha. This is a normal tactic used by the majors; according to an informed and reliable source Zoellick recently informed a developing country trade minister that he would talk with IMF officials if need be to help speed up the country's multilateral aid and loan disbursements.

Technical assistance was offered to developing countries in Doha in areas they were not keen to start negotiating (such as the New Issues). These offers served to neutralize their arguments that the New Issues are too complex and that further study on their impact should continue in Geneva.

After Doha, in an unusual display of 'generosity', Northern Donors pledged \$18 million to the WTO Secretariat's Doha Development Global Trust fund – twice the amount requested by the Secretariat for capacity building and technical assistance. The primary focus of the training which is provided jointly by the WTO Secretariat and the United Nations Conference on Trade and Development (UNCTAD) is on the New Issues.

As professor Yash Tandon of Seatini notes on the history of technical assistance and capacity building in the multilateral trading regime:

'Capacity building was conceived narrowly in terms of compliance...to assist developing countries to comply with the obligations they had undertaken on signing the Uruguay Round Agreements...these workshops have severe limitations as they do not for example analyse for the participants how the Uruguay Round Agreements as negotiated, prejudiced their countries....and how they might negotiate a better deal for themselves at subsequent rounds of negotiations...whilst they helped to increase the individual knowledge of participants they did very little to help develop the infrastructural capacities of countries, nor to develop their supply side capacity, nor to overcome the very many hurdles the developed countries erected against imports from developing countries'.

In the final analysis these "inducements" offered by the EC, in the form of debt relief and the Cotonou waiver (which was used as an artificial bargaining chip in Doha),

and the Everything but Arms initiative are close to being as worthless as the US's African

Growth and Opportunity Act (AGOA), a preferential trade agreement for selected African countries. A vast number of these preferential agreements are fraught with conditionalities that sometimes go beyond trade concerns. In the case of AGOA for example, 'beneficiaries' of the agreements are expected to lift barriers to US investment and trade and are expected to protect intellectual property rights.

Aid and debt relief have also not exactly been of great benefit to the least developed countries - again these offers are strongly linked with conditionalities that limit their effectiveness.

In short, such inducements have done little to improve the dire trading and economic regimes in the majority of developing countries; instead they find themselves locked in a vicious cycle of political impotence, unfair multilateral trading rules and a drastic paring down of their decision making powers at the national level.

Today, Africa's share of world trade has dropped from 8% since the start of the Uruguay Round agreements to 2% currently, and this includes South Africa. It is economically more lucrative to be a cow in Europe than an ordinary African in Africa - a direct result of EC farm subsidies which amount to a billion dollars a day.

EC behind the scenes tactics in the run up to Cancun

Is it going to be a case of déjà vu all over again at Cancun?

The key sign that this might be the case is linked to the fact that there has been a deadlock in all major areas of the negotiations since the so called Doha "Development" Agenda was launched in 2001.

On the 24th of August a second draft text was released by the current General Council

Chair (Uruguayan Ambassador to the WTO) again on his 'own responsibility' amid claims that divisions were so deep amongst negotiators that producing a consensus text proved impossible. Developing countries roundly condemned this tactic before Doha, unfortunately it is fast becoming normal practice at WTO and blatantly goes against the procedural rules of the WTO.

Poor countries have voiced concern that this second draft for Cancun failed to reaffirm their commitment to eliminating farm subsidies.

Lori Wallach director of Global Trade Watch said of the second draft:

This text admits [the talks] are jammed, and lists places where things had to be done and where nothing's been done.....the question is, as they [negotiators] get more desperate to finish negotiations, will they get to Cancun and say "we're stuck?"

Lamy and his team enjoy such deadlocks, as they appear to work best when the stakes are high and crucially when the developing countries are most vulnerable to their advances. In Doha for instance, Lamy kept asking his negotiating team to stand firm, believing a crisis was needed if the talks were to get anywhere.

Attempts are also being made to split up the Francophone and Anglophone countries in Africa. An Anglophone African delegate confirmed that the Francophone countries have constantly reneged on commitments to adhere to certain negotiating positions in the interest of all developing countries. The delegate believes that the EC have a role in this.

Aid, debt relief, technical assistance, and preferential trade agreements under the Generalised system of Preferences (GSP) would be dangled or threats of their withdrawal hinted.

The EC is due to renegotiate GSP schemes with developing countries in 2004; Cancun could be used to 'gently remind' the 'beneficiaries' that 2004 was just round the corner.

The press in Japan (Kyodo) has already begun leaking information that the WTO has started to consider holding another ministerial conference six months after Cancun, Mexico. This 'extraordinary conference' is likely to be held in Geneva around March 2004, as the WTO majors and top Secretariat staff have come to the realization that there are very deep divisions between countries over the future scope and direction of trade negotiations. Worryingly the intervening six months after Cancun could be used by the major powers to regroup, strengthen their demands and remind developing countries of the bilateral 'benefits' they enjoy from the developed countries.

As at Doha the majors come to these conferences armed with a formidable team of development cooperation Ministers and the highest ranking IMF/World Bank officials to assist in the "carrotisation" process and the creation of last minute artificial bargaining chips.

On the 24th of August Agence France Presse and Dow Jones reported that the IMF and World Bank:

Moved to whet the appetite of poor countries for a new round of global trade liberalization, offering loans and technical aid to help them cope with the short-term harm that freer trade can cause...the institutions' top executives wrote on Wednesday to the WTO pledging to assist poor countries that lower trade barriers under the Doha round of trade talks.

These "offers" are often timed to coincide with developing countries' loan disbursement negotiations with the IMF/WB.

During a meeting in Brussels with ACP countries on the 31st of July, Lamy announced the launch of "Trade.com" the EC's \$50 million trade assistance programme aimed at enhancing the capacities of ACP countries to negotiate and implement the rules of trade agreements.

There have been reports from delegates that the EC delegates are indeed calling Least Developed Country capitals reaffirming their positions and dropping subtle hints about the 'benefits' they enjoy from preferential agreements.

An interesting development has been the efforts being made by Lamy to discredit the US negotiators. According to an African minister who happened to be stuck with Lamy on a five hour flight suggested that Lamy expressed disappointment at the way the Americans have held up the Cancun talks. Developing countries are simply being used as pawns in this instance as the powerful trading blocks begin hatching out their slightly different positions and ambitions in the various substantive areas. Each therefore will seek allies in the preparation process and try to portray the "good guy" image for as long as possible.

Moreover Lamy and Zoellick work closely together despite their slightly varied positions and the occasional public displays of disapproval they end tough negotiating days with private drinks, as was the case at the Montreal Canada mini-ministerial in August 2003. After all these two trade supremos represent

governments and crucially insatiable transnational corporations that are the primary beneficiaries of this current hugely iniquitous model of globalisation.

A more concrete attempt at “persuasion” was the proposed Joint EC/ACP Cancun declaration: see Annex I. This unprecedented proposal did not get past a few Geneva based missions; such was the reaction from delegates that the plan was abandoned. The ACP countries in the end released their own hard hitting declaration detailing their joint negotiating positions for the Cancun ministerial in Brussels on the 1st of August 2003.

Should Cancun turn out to be a “magnificent success” by developed country standards, it will only be in the aftermath of the Conference that one could truly start to decipher EC “inducements” offered to “friends” and foe alike.

Lamy is busy using up his air miles and burning the telephone lines meeting and talking with developing country trade Ministers and leaders, quietly doing his homework, whilst meticulously assessing the cracks that could be exploited when the pressure begins to mount.

Conclusion

Cancun could well become an arm-twisting and dirty tricks cesspit. There is every sign however, that developing countries are standing very firm and refusing to be taken for a ride once more.

It is essentially up to the developing countries to remain united and unwavering in their legitimate demands for fairer more just world trade rules in both substantive and procedural areas at the Cancun Ministerial meeting.

It however appears that these demands will fall on deaf ears; On the 18th of August 2003 Lamy responded to suggestions by Geneva-based NGOs that the process leading up to and at Ministerial Conferences should be more transparent by arguing in a letter that whilst there was room for improvement, ‘flexibility’ was still needed, he stated that:

We need to look for flexible instruments that can facilitate the formation of consensus without diminishing the role of the formal decision-making bodies.

Power therefore remains deeply entrenched at the WTO and any suggestion for reform is ignored. According to a developing country delegate ‘power is best exercised in a situation of uncertainty and flexibility that is why process issues are so vague in the WTO’.

Another delegate marvelled at the ironies of the regime by observing that whilst WTO rules in the substantive areas are largely rigid (and mainly serve the interests of developed countries) the procedures at ministerial conferences, where the rules are endorsed, are questionably flexible.

Therefore here is a system where ‘Consultations’ with Members on key decisions are held one-to-one, in private, with no written record, and the interpretation left to an individual who has a stake in the outcome. Protestations that inconvenient views have been ignored in this process are ignored. Chairs of committees and Conference facilitators are selected by a small clique, and often have an interest in the issues for which the committee is responsible. The established principle of decision-making by consensus is routinely overridden, and the views of decision-makers are ‘interpreted’ rather than a formal vote being taken. Rules are ignored when they are inconvenient, and a blind eye is turned to blackmail and inducements. The list is

endless.

Any country whose political system operates the way the WTO does – where procedures are interpreted with such ‘flexibility’, procedural rules are routinely ignored, and people or interested groups routinely use bribery and blackmail to achieve their political ends – would not only be rightly condemned by the international community as undemocratic and corrupt, it would also face a real and constant threat of revolution. No developed country would contemplate running its government in this way; and yet they are happy both to exploit the system and to defend it against pressure for democratic reform at the international level. The Western media, who would be the first to condemn such processes and practices at the country level, do not raise so much as a murmur.

*This paper contains excerpts from the book “Behind the Scenes at the WTO: the real world of international trade negotiations” Jawara & Kwa, 2003.
Publishers: Zed Books, 7 Cynthia Street, London, N1 9JF, UK,
www.zedbooks.demon.co.uk .*

ANNEX I

PRESS RELEASE

IRONIES GALORE: PROPOSED JOINT EC/ACP CANCÚN DECLARATION

Focus on the Global South

25th July 2003

It has come to our attention that the European Commission (EC) trade officials have been in talks with the Brussels based African Caribbean and Pacific (ACP) Secretariat on the matter of issuing a **Joint Declaration** on the 5th World Trade Organisation (WTO) Ministerial Conference in Cancún in September 2003.

A proposed draft joint declaration has been in circulation within the relevant Geneva-based Missions since April. Concerned delegates have secretly expressed mixed feelings about this development, as it amounts to a gagging order by the EC – the EC's idea being that language *it* considered appropriate would be guaranteed in the declaration, so as not to create unnecessary embarrassment.

It remains to be seen whether this dangerous precedent would in fact be executed at the ACP meeting in Brussels next week.

The ACP Group has traditionally produced WTO Ministerial Declarations on their own terms and without interference from non members.

In view of the fact that the EC has since Doha been a major hindrance to progressive talks on the issues most important to developing countries especially the least developed, the proposed joint declaration expresses regret that:

Important deadlines set at Doha on issues of particular interest to ACP countries, such as TRIPS and Public Health, Special and Differential Treatment, Implementation, and Agriculture modalities have all been missed. *We affirm the need for immediate and meaningful progress.*

A particularly alarming paragraph that appears to preempt ACP positions in certain contentious and controversial proposed negotiating areas, such as the Singapore or New Issues states that:

Adherence to the principle of the single undertaking as understood at the 4th WTO Ministerial Conference remains the cornerstone of this round, enabling the interests of all WTO members to be reflected, and ensuring further trade liberalisation...

On market access, despite a call by developing countries for the complete elimination of developed country agricultural subsidies, the joint declaration says:

Market access negotiations in the Doha Round have to take into account and permit to maintain a fair and significant level of preferences for industrial and agricultural products from ACP countries. In this regard, the ACP and the EC support the application of an approach to liberalisation that would be *gradual and sufficiently flexible* to take into account the interests of ACP States in a balanced manner.

Predictably the usual wording by developed countries on technical assistance - which is not in any way linked to addressing the supply side constraints of least developed

countries but rather to *help* ACP countries *better negotiate* within a system that is breathtakingly flawed and iniquitous– is present in the declaration:

[The EC/ACP] underline the importance they attach to trade-related technical assistance and capacity building measures and the need to improve the quantity, quality and co-ordination of trade related development assistance, *all of which remain crucial issues to help developing countries to fully participate in the negotiations* and to benefit from their results.

The pièce de résistance, as ever, highlights process issues, an area where the EC and other developed countries have been the most persistent and consistent violators. Here the proposed joint declaration says:

Given the importance of the 5th WTO Ministerial Conference in Cancún, [the EC/ACP] emphasise that the preparatory process and participation in the Conference must be transparent *to the greatest extent possible, involving all WTO members* in order *to promote trust and confidence* in the system.

Bearing in mind the exclusive and illegal developed country dominated mini-ministerial meetings that have been and are still taking place (the last one is due to be held in Canada between the 28th to the 30th of August), the declaration audaciously proposes that:

The Conference agenda should be manageable and focus on issues requiring real political guidance. *We therefore call for an effective and inclusive preparatory process and the appropriate decisions* taking place earlier in Geneva.

Anyone closely following WTO processes may indeed ask if this proposed draft document is worth the paper it is written on.

Excerpts in this press release originate from ACP/61/045/03 Rev 2, Brussels, April 2003.