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## WHY A DERAILED WTO MINISTERIAL IS THE BEST OUTCOME FOR THE SOUTH

By Walden Bello\*

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BANGKOK, AUG (IPS) - With the fifth ministerial of the World Trade Organisation (WTO) fast approaching, the organisation that was hailed at its founding in 1995 as the crowning point of global economic governance is in gridlock.

Despite an obvious effort to put a positive spin to negotiations over the last two years, the recently issued draft ministerial declaration evinces little consensus on all the burning issues dividing WTO members.

### STALEMATED TALKS

WTO Director General Supachai Panitchpakdi trumpeted a “successful” last-minute compromise on the contentious issue of the relationship of trade-related intellectual property rights (TRIPs) and public health in the manufacture and import of vital drugs. Many analysts contend, however, that the compromise leans more toward protecting the patent rights of Northern pharmaceutical companies than promoting access to life-saving or life-prolonging medicine for millions of people in the South suffering from HIV-AIDS and other epidemics. It is very doubtful that it can unblock negotiations in the other areas, where North-South differences as well as internecine disputes among the rich countries, are more solidly entrenched.

Prior to the compromise, the talks had been stalemated by the US’ refusal to budge from its position that loosening of patent rights should be limited only to HIV-AIDS, malaria, and tuberculosis drugs, defying the declaration of the Fourth WTO Ministerial in Doha, 2001, which clearly placed public health issues above corporate intellectual property rights.

A last-minute attempt by the European Union and the United States to set up a negotiating framework to revive the stalled talks on agricultural liberalisation appears to have backfired, as developing countries bitterly criticised the two trading superpowers for regressing to their behaviour during the last years of the Uruguay Round (1986-94), crafting a backroom deal with no participation from the 144 other member countries. Brazil, India, and China —the powerhouses of the developing world— immediately responded with a paper telling the Europeans and Americans to quit beating around the bush and radically cut the high levels of subsidisation responsible for the dumping of cheap grain and meat on world markets that is putting hundreds of thousands of developing country farmers out of business.

There has been no movement whatsoever on negotiations to ring under WTO jurisdiction the so-called “trade-related” issues of investment, competition policy, transparency in government procurement, and trade facilitation, which Brussels and Washington have regarded as the centrepiece of the Doha Declaration. Indeed, there is fundamental disagreement over whether or not there is a mandate to even begin negotiations. The developing countries assert that the “explicit consensus” of each member country must be obtained to launch negotiations. The European Union (EU) and other developed countries, on the other hand, claim that there is already agreement to negotiate and it is only the “modalities” of the negotiations that need to be ironed out.

### THE CIVIL SOCIETY FACTOR

Some observers say that the three key ingredients of the “Seattle scenario” are emerging, alluding to the “formula” that produced the famous collapse of the Third Ministerial in Seattle in December 1999:

- the EU-US stalemate in agriculture is again at centre-stage;
- developing countries are more resentful than ever;
- civil society is on the move.

The civil society factor must not be underestimated. The numbers are not clear, but at least 15,000 people from all over the world may show up in Cancun. This would be the equivalent of five percent of Cancun’s population of 300,000 — a critical mass if any. At the moment, up to 10,000 peasants led by the Mexican farmers’ group UNORCA and the global peasant federation Via Campesina are planning to march to the Convention Centre located in the restricted section of the hotel zone to deliver a message to the ministerial assembly demanding that the WTO “get out of agriculture”. Another coalition called “Espacio Mexicano” is setting up a week-long “Forum of the People” that will climax on September 13 with a march coordinated with demonstrations in scores of other cities throughout the world on the theme “Against Globalisation and War”.

Perhaps the most significant development is the decision of the Zapatistas, the armed insurrectionary force based in indigenous and peasant communities in the forests and highlands of Chiapas in southern Mexico, to throw their weight behind the protests. “If the Zapatistas join the mobilisation against the WTO, then because of their great prestige throughout Mexico, the whole situation will be transformed,” says Hector de la Cueva, one of the coordinators of Espacio Mexicano. With thousands of Mexicans inspired to go to Cancun and anti-WTO actions throughout Mexico, the Zapatista decision could transform what is still seen by most Mexicans as a foreign gathering in a “Yankee tourist colony” into a massive national protest.

Mexican authorities are agitated, despite efforts by leaders of the international movement against corporate-driven globalisation to assure them that their demonstrations

and meetings will be non-violent. It turns out, in fact, that the federal government has been compiling an "enemies' list" of people to closely monitor during the ministerial. Leaked to the press in mid-August, the government memo contains about 60 names, among them Ecuadorian Indian leader Blanca Chancoso, Indian physicist Vandana Shiva, and American agro-ecologist Peter Rosset, who were designated as "ultras."

#### INSTITUTIONAL CRISIS

The current travails of the WTO are a continuation of the institutional crisis that first broke in Seattle in December 1991, triggered by resistance of civil society groups to the WTO's drive to subordinate critical dimensions of social life to corporate trade, by developing countries' resentment of a few developed countries imposing a doctrinaire global liberalisation programme inimical to their interests, and by the widespread repudiation of an undemocratic decision-making structure.

The depth of the reform needed was underlined by then UK Secretary of State Stephen Byers a few days after the Seattle collapse: "The WTO will not be able to continue in its present form. There has to be fundamental and radical change in order for it to meet the needs and aspirations of all 134 of its members."

No reforms followed in the wake of Seattle, and only US-EU strong-arming of the developing countries in the context of the 9-11 events produced a declaration mandating a limited set of negotiations to further trade liberalisation during the Fourth Ministerial in Doha, Qatar, in November 2001. But the so-called "Doha Round" quickly degenerated into a stalemate.

#### CRISIS OF GLOBALIZATION

The WTO's institutional crisis, however, is itself a reflection of an even deeper, more comprehensive crisis—that of the globalist project of accelerated integration of production and markets. One key trigger of this crisis was the Asian financial crisis of 1997, which brought home the lesson that the capital account liberalisation that was a centrepiece of the globalist ideology could be profoundly destabilising, resulting in such tragedies as that of Indonesia, where 22 million people fell below the poverty line in the space of a few weeks.

This discrediting of the presumed benefits of unfettered capital mobility could not but provoke a wide-ranging examination of the claims of another key tenet of the globalist project: that trade liberalisation promoted prosperity. The results of many investigations of this assumption carried out in the late 1990s were perhaps best summed up by World Bank researchers Matthias Lundberg and Lynn Squire: "The poor are far more vulnerable to shifts in relative international prices, and this vulnerability is magnified by the country's openness to trade. At least in the short term, globalisation appears to increase both poverty and inequality."

As the doctrine and institutions of capital mobility and trade liberalisation were increasingly eroded by a crisis of legitimacy, the globalist project was further undermined by another momentous development: the stock market collapse of March 2000, which inaugurated an era of global recession and deflation brought about by the excesses of speculative capital as well as global overproduction. Faced by an era of scarcity, rising joblessness, and slow growth, economic elites in both Europe and the US have increasingly turned away from promoting the project of an integrated global economy, with obstacles to capital and trade flows reduced to a minimum that served the universal interests of the global corporate class, and moved towards policies of protecting the interests of national or regional capitalist elites.

The EU-US conflicts over agriculture, steel tariffs, pharmaceuticals, GMO's, aircraft subsidies, and Microsoft's practices in Europe reflect this rising protectionism in both Brussels and Washington. These economic conflicts have been exacerbated by the divergent political paths on Iraq and the Middle East taken by the US and the cornerstone countries of the EU—Germany and France—which have unraveled the "Atlantic

#### ALLIANCE" THAT WON THE COLD WAR AGAINST THE SOVIET UNION

Bush's unilateralist economics, in particular, marks a turning away from the condominium of global capital that underpinned the multilateral institutions—the IMF, World Bank, and WTO—during the Clinton era. It is a response to the crisis of the globalist project that, with its brazen defense of US corporate capital exemplified in its stand on TRIPs and public health, is likely to deepen that crisis and the crisis of the multilateral institutions that were used to advance the globalisation agenda. For with the EU and the US at loggerheads on a whole range of issues, it has become that much more difficult for both to mount a coordinated strategy to split and intimidate developing countries at the WTO on matters where the two capitalist centres share a common interest, like pushing through a WTO-enforced investment agreement, which the developing countries have stubbornly opposed.

#### FALSE CHOICES

With the WTO framework failing, both the EU and the US have turned to bilateral and multilateral trade agreements as a vehicle for liberalisation that would serve their particular interests. The race is on, and the US appears to be ahead. Washington recently announced free trade agreements (FTA) with Chile and Singapore, and this coming October it will unveil an FTA with Thailand at the Asia Pacific Economic Cooperation (APEC) summit in that country. Moreover, over the last two years, the Bush administration has devoted far more effort to concluding the Free Trade of the Americas (FTAA) than to jump-starting the WTO.

Developing countries are just as wary of FTA's as of they are of the WTO, recognising that they are just as much guided by the hegemonic interests of the stronger partners.

To those argue that the WTO is better for developing country interests than FTAs because it has institutionalised rules and procedures that constrain the more powerful countries, developing country analysts such as Aileen Kwa, Geneva representative of Focus on the Global South and author of the expose "Behind the Scenes at the WTO", point to rich country governments' systematic intimidation and coercion of Southern countries in the last few years in an attempt to pry open their markets, hiding behind a thick veil of non-transparency.

Indeed, developing countries must cease allowing themselves to be boxed into such false choices and start working on real alternative arrangements, such as creating regional economic blocs or restructuring economic existing ones such as Mercosur and ASEAN to serve as effective engines of coordinated economic progress via policies that effectively subordinate trade to development.

### FAILURE IS SUCCESS

One cannot discount that despite their deepening differences, the US and the EU may still pull together to coerce developing countries into approving new initiatives in trade and trade-related liberalisation in Cancun.

However, the increasingly likely scenario is a ministerial that will produce no agreements for significant new liberalisation and essentially reproduce the stalemate in Geneva. For developing countries constantly under siege to open their markets or cede control of areas thus far the preserve of national policy-making—like investment and competition—to the Washington and Brussels-dominated WTO, a failed, stalemated ministerial is the best outcome. It gives them the breathing space to organise and coordinate their defense and allows them and global civil society the opportunity to mount the reversal of corporate-driven globalisation that even the free-trade mouthpiece Economist sees as a very real threat to the future of capitalism because of the "excesses" of global capital. (END/COPYRIGHT IPS)

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### MANY A SLIP TWIXT CUP AND LIP

*The cautionary tale of the access to drugs campaign*

Nicola Bullard\*

BANGKOK, 5 Sept. — AS Cancun approaches, it is timely to consider what can be learned from the access to drugs campaign launched in the lead-up 2001 WTO ministerial and which bore its bitter fruit last weekend in Geneva in an agreement which, according to many analysts, puts developing countries in a worse position than they were pre-Doha.

The access to drugs campaign, spearheaded by the international NGOs Oxfam and Medecins sans frontieres (MSF), was tremendously popular from the start. The issue was compelling - greedy pharmaceutical companies denying poor people dying from HIV-related illnesses access to affordable drugs through their manipulation of the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement of the WTO. The campaign had everything going for it: human suffering and injustice versus greed and power. It was almost inevitable that even the most powerful countries in the WTO would have to respond and in the war of attrition of Doha, the Political Declaration on TRIPS and Health was the bright spot in a declaration long on promises and short on action.

At the time, the campaigners were delighted, albeit cautious, realising even then that the "devil is in the detail" and that a political statement is a long way from a comprehensive solution.

### INTO THE MAW OF THE WTO

In fact, the devil lurked in the corridors and board rooms. It took almost two years for the US, the EU and "big pharma" to cobble together a deal that protected their interests while appearing to be supporting the demands for justice for the sick and the poor.

The tricky and cynical agreement reached in Geneva last weekend increases the power of the WTO, places tremendous obstacles in the path of poor countries wishing to issue compulsory licences and enough disincentives and red tape to deter developing countries capable of manufacturing generics from exporting to poor countries. In short, the noose has been tightened and the loopholes closed, all to the advantage of the pharmaceutical companies who called the new agreement "balanced." Their restrained assessment of the outcomes should be read bearing in mind that their aggressive ambit claim, promoted as the US position — that the scope of the diseases covered under the agreement should be limited to a handful of "eligible diseases" and a restricted list of countries - was ultimately resisted by developing countries.

## “WORSE THAN BEFORE DOHA”

Activists close to the negotiations were bitterly disappointed. Jamie Love of the Consumer Project on Technology wrote “The persons who have negotiated this agreement have given the world a new model for explicitly endorsing protectionism.” Oxfam and MSF called the solution “unworkable” saying the “deal was designed to offer comfort to the US and the Western pharmaceutical industry” and that “Global patent rules will continue to drive up the price of medicines.” Catherine Dihn of MSF Australia said the agreement would lead to the “drying up” of generic products, leaving commercial products with no competition. “More people will die as a result of this agreement,” she said. “The situation is worse now than it was pre-Doha.” Supporting this view, the chief of the Indian Pharmaceutical Alliance said “the policy is riddled with barriers which will make generic drugs more expensive than necessary.”

## WIN-WIN FOR BIG PHARMA

Big pharma’s priority was to ensure their continued access to the lucrative markets of middle-income countries and to stamp out any possible competition from burgeoning pharmaceutical industries in countries such as Brazil and India. They won on both counts, while maintaining the illusion that poor countries would still have access to affordable drugs. The question is, of course, who is going to supply them when the new agreement prohibits production or export of generics for “commercial purposes”.

WTO director general Supachai Panitchpakdi claimed it as proof that “the WTO can handle humanitarian as well as trade issues.” But this flattering assessment sidesteps the political context in which the agreement was reached. Ten days before Cancun, the climate in Geneva was fractious and the WTO secretariat was dealing with testy governments, a back-log of unresolved issues and a long list of unfilled promises outstanding from Doha. Obviously, something must have “transpired” in the corridors which explains the almost unexplainable fact that several African countries suddenly became proponents of a “solution” which they must have known was unworkable, unbalanced and overly restrictive. The US and the EU had almost two years to listen to the demands of the developing countries yet they chose to railroad this through at the 11th hour. Why? To give the impression that the WTO agenda is “moving”? To force an agreement at a time when everyone is over-stretched and tensions are high? Whatever the reason, one thing is for sure: the WTO has shown not that it is capable of dealing with humanitarian as well as trade issues, as Dr supachai claim, but that it will deal with humanitarian issues as if they were trade issues.

## TRIPS IS THE PROBLEM

Access to affordable drugs is a fundamental right and the problem in TRIPS was, and remains, a real one. However, the narrow focus of the access to drugs campaign detracted from the larger problem: the TRIPS

agreement in its totality. TRIPS is possibly the most egregious of the WTO agreements (although the competition is tough) because it legalises monopolies, consolidates the power of corporations and potentially allows life itself to be patented and privately owned. Furthermore, the agreement was doomed to unravel because there was no commitment in Doha to change the “letter” of the TRIPS agreement. Once the “politics” in the political statement came into play back in Geneva the outcome was sadly predictable, save a miraculous shift in power relations.

The demand should be “TRIPS out of the WTO”. This may not have the popular appeal of the “access to drugs” campaign but, in the end, it’s the only solution, and it’s not too late. We have all learned a lot from this experience, not least that there seems to be no limit to the duplicity and rottenness of the WTO and the vested interests it protects.

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## CANCUN AND THE BATTLE FOR DEVELOPING COUNTRIES' MARKETS: ANOTHER FORM OF WARFARE

Aileen Kwa\*

GENEVA, August 2003 — THE WTO perpetrates a subtle and pervasive form of re-colonisation and warfare. It calls on members to relinquish their sovereign rights and policy freedom (by constraining their ability to put in place domestic regulations) in order to allow pillage by transnational corporations. The saturation of Northern markets makes it imperative that transnational corporations get access to markets in the South. The ever-expanding ambit of WTO rules are designed to do just that; pry open developing country markets, not only through the drastic reduction of tariffs, but by “beyond the border” measures. The result is the further subjugation of economies and peoples in the developing world.

Many well-meaning civil society actors and government players are of the opinion that, while the WTO is far from perfect, reform and the call for fairer trade rules, should be the order of the day. But can such ‘reform’ take place?

Since its very inception and since the first WTO Ministerial in 1996, reforms have been on the table. Nothing has come of these efforts except more empty promises of future reforms if the developing world enters negotiations for further liberalisation. The promises on implementation, special and differential treatment, public health, agriculture made at the 2001 Ministerial in Doha in exchange for developing countries agreeing to yet another round of negotiations, have not materialized. Some sort of “package” is likely to emerge at the Cancun ministerial, but current indications are that it will be more valuable for the North’s public relations than in addressing the real concerns of poverty, hunger and unemployment. In fact, the major powers are setting their sights on Cancun as another milestone in opening up even more markets. If they manage to push such an agreement through, the majority in the South can look forward to more de-industrialisation and ‘de-agriculturalisation’.

### WHAT'S ON THE TABLE IN CANCUN?

**AGRICULTURE:** Agriculture will be the linch-pin at the ministerial. Developing countries had hoped to benefit from the Uruguay Round agricultural liberalisation but instead found themselves taking on liberalisation commitments, whilst the developed countries increased their levels of protectionism. Post-Uruguay Round, OECD subsidies to producers have increased from around \$248 billion to about \$311 billion and “dumping” - the export of products below the cost of production - has increased. In the US and the EU, money is given to farmers to stay in production, whilst multinationals offer producers rock-bottom farm gate prices. Indirectly, but surely, government

subsidies are primarily benefiting the agri-business corporations.

Developing countries’ farmers have been wiped out by dumping. Domestic prices for staples have plummeted in recent years and small farmers in the South are losing the battle to compete with the cheap imports flooding their domestic markets. Rural unemployment and poverty are on the rise. WTO rules are not solely responsible for this. IMF and World Bank conditionalities directing national governments to apply very low duties on imported foods are also a major cause of the crisis in the rural sector.

Even as the skewed rules are not being addressed, the US and the EU are plotting for yet another round of take-over of developing country markets. China and India are prime targets but so, too, is every other developing country that needs to feed its people - from Honduras and Peru to Zambia, Sri Lanka and Indonesia.

As this is taking place, the latest scandal is that the US and the EU are attempting to impose a formula for further agricultural tariff reductions in the current round. That is, they are figuring out how they can “share” the markets of the developing world, whilst protecting their own. It is no surprise that the negotiations are particularly lax where it comes to tightening the loopholes in “domestic supports” - the mechanism used by the EU and the US to protect their domestic markets. The Cairns Group, led by Australia, New Zealand, and supported by Brazil, Argentina, South Africa, Thailand and Malaysia (to name only a few) are also vying with the US and EU for other countries’ markets. The battle in Cancun will be about how they carve out markets amongst themselves. In order to boost its case, the EU will also be using its CAP reform of shifting subsidy payments away from price related payments to (supposedly) de-coupled direct payments as a pretext for arguing that it has undertaken reforms and that its \$50 billion subsidies are mostly non-trade distorting!

The majority of developing countries which do not have a large share of the markets, seem to be setting their sights on damage limitation. In the negotiations thus far, they have argued for limited exceptions to be carved-out for certain sensitive food security and livelihood products. However, what the developed countries are offering at this point is hopelessly narrow and insufficient to address the depth of developing countries’ problems. Rather than insisting on correcting the dumping legalized under the Uruguay Round as a pre-condition to any further tariff cuts, there seems to be a puzzling resignation by developing country diplomats to comply with yet another round of liberalisation.

**TRIPS AND PUBLIC HEALTH:** If any agreement has given the WTO a bad name, it must be the Trade Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS agreement requires members to provide a 20-year long patent protection to inventions and even free trade ideologues such as Jagdish Bhagwati have called for the

TRIPS to be dropped from the WTO. The agreement impedes the transfer of technology to the developing world. But this is not all. The most outrageous impact of TRIPS is that it gives transnational corporations patent protection over seeds, the very source life, and medicines.

Only because of extraordinary amounts of public pressure did the major powers in Doha agree to a political declaration allowing for countries to take measures necessary to address their public health interests, such as the manufacturing of cheaper generic drugs domestically in order to mitigate public health concerns, like the AIDS crisis and treatable diseases such as malaria and tuberculosis. However, one area the major powers refused to address in Doha was the question of how countries without adequate manufacturing capacity could obtain generic drugs. The deadline for addressing this issue - December 2002 - slipped by without WTO Members coming to agreement, despite intense negotiations. The 16 December 2002 text presented by the TRIPs Council Chair, Mexican Ambassador Eduardo Perez Motta has been agreed to by all members except the US which has stalled, not least, one suspects, because the pharmaceutical industry is one of the biggest campaign contributors to the Bush administration.

Developing countries have made clear that this outstanding issue must be resolved before Cancun. Whilst it is mostly reported in the mainstream press that the US is playing hardball, it is not so widely known that the 16 December text, if agreed to, is in fact an extremely cumbersome and even unworkable solution. A myriad of 'safeguards' for the big pharmaceutical firms have been put in place by the European Commission, even as the Commission portrays itself as the good Samaritan in these negotiations.

A host of legal and bureaucratic red tape must be traversed if a country wants to export a generic drug, essentially making it expensive, if not outright impossible for any generic drug manufacturer to be able to make the enterprise profitable. There are similar bureaucratic nightmares for importers. The current 16 December text mandates that any manufacturing company wanting to export a generic drug must first apply for a compulsory license from its government to be able to produce and export the drug. The government would issue a compulsory license with many conditions attached: that only the amount required by an importing country can be produced, the generic drug must look distinctly different from the original. The company will then have to declare on a public website what drug has been produced, the quantity, the country to which this will be exported and the distinguishing features. The exporting member government will have to notify the WTO TRIPs council, and will also have to put in place anti-trade diversionary measures - that is, they have to ensure that the product reaches the intended country and is not re-exported elsewhere. The consequences of trade diversion for the exporting country are not clear.

Analyst Brook Baker summed it up thus, "Each license application would be predicated on: prior negotiations with the patent holder, preparation of expensive legal documents, and prosecution by legal experts. In other worlds, each license would be costly and time-consuming."

An importing country wanting to avail of this solution must notify the TRIPs council, undertake an 'assessment' to establish that it does not have manufacturing capacity to produce the drug domestically, or that existing capacity is insufficient to meet its needs. Here again, it is unclear what would happen if there are conflicts of judgment about what constitutes "adequate manufacturing capacity". What is clear, though, is that it opens the door for countries to be pressured into relinquishing their right to import, or severely restricting this right.

The US has already informed the Philippines' government that it will not be eligible for this solution, hence signaling that many countries at a similar level of development will also be denied access to imports. Developing countries with small markets, such as those in Central America and the Caribbean, would find it too expensive to manufacture these drugs domestically. Furthermore, those manufacturers that do want to export would be locked out of access to important export markets.

The only apparent respite from all these conditions has been offered to countries which are part of a trade blocks where 50 per cent of the members are 'least developed countries' (LCDs). This exemption would apply mainly to African countries and seems to be a strategy to buy-off and split African countries from other developing countries. Under this exception, a compulsory license from an exporting country can be applied for a product for the entire trading region, rather than on a country-by-country basis. Each importing country, however, must still apply for a compulsory license to import the generic medicine.

According to reports from the recent informal Montreal mini-ministerial in preparation for Cancun (28-30 July), US trade representative Robert Zoellick told Ministers that in order for US to sign on to the 16 December text, he wanted Brazil and India to make public announcements that they would not use the solution for commercial purposes - clearly another attempt to split the African countries from India and Brazil. But practically speaking, if Brazil and India do not export these drugs, would African manufacturing capacity in the immediate and medium term be able to provide for the needs of the continent?

The latest development is that the US wants a caveat put into the text (or highlighted in a cover letter by the Chair of the WTO's TRIPs Council) stating that the solution will only be used for 'humanitarian purposes'. The actual definition of how broadly or narrowly this will be interpreted is still unknown, but it is clearly another

attempt to narrow the coverage and flexibility of any solution.

What could emerge before or at Cancun is a solution that severely limits the ability of developing country manufacturers to export generic drugs and hence limit the availability of cheap medicines where they are most needed. Even more worrying is that developing countries will be asked to pay a high price, in terms of constraints and trade-offs, for a "solution" that is unlikely to go far in solving their public health crises.

Professor John Barton, Chair of the UK Independent Commission on Intellectual Property Rights, provides a reality-check on how limited these negotiations are in actually solving the enormity of the problem:

"A legal solution of the kind now being negotiated at the WTO on compulsory licensing is unlikely to resolve the economic problems that the world will face after 2005. At that point, India, in particular, is required to apply patent protection to new medicines and its new laws will inevitably reduce the ability of its generic suppliers to provide products in competition with those on patent.

"Even with 'liberalised' compulsory licensing rules, potential generic suppliers will then find it much more difficult to offer to produce medicines at low cost. This will reduce the value of compulsory licensing as a bargaining tool for governments negotiating with suppliers of medicines and will leave prices higher than they otherwise would be. Dealing with this coming situation may require alternate production arrangements; it will certainly require much more than a change in compulsory licensing rules."

**INDUSTRIAL TARIFFS:** The other area of major concern that will be discussed in Cancun will be that of industrial tariffs. In Geneva, formulas are being worked out between the US, EU and Canada for steep tariff cuts for the developing world. Earlier proposals by the major powers indicated that the US would like to have tariffs be brought down to zero by 2015 and the EU's proposal is to have maximum tariffs of only 15 per cent. The latest joint US, EU and Canada plan was sprung on developing countries at an informal meeting on 12 August, much to the anger of developing country delegations, who fiercely opposed the proposal. The trio had put forward a Swiss formula (that is, bringing all tariffs down to a narrow 'harmonised' band) implying that developing countries, which generally have higher tariffs, would have to apply steeper tariff cuts than developed countries. They also called for a line-by-line tariff cut approach (that is, cuts in sensitive products cannot be excluded) as well as a sector for sector approach (that is, harmonization or elimination of tariffs for textiles and apparel, for environmental goods and 'other sectors to be defined'). If the developed countries get their way in Cancun, the implication is that developing countries' industrial tariffs would be brought down across the board to very low levels. Tariffs are the only protection most developing countries have against the superior

competitive and technological edge of the northern transnational corporations. Slashing tariffs will only cause further deindustrialisation and unemployment.

**THE 'SINGAPORE' ISSUES - INVESTMENT, COMPETITION, TRANSPARENCY IN GOVERNMENT PROCUREMENT AND TRADE FACILITATION:**

A critical decision will have to be made in Cancun on whether or not to commence negotiations in the areas of investment, competition, transparency in government procurement and trade facilitation. If the US and EU have their way, the agreements in investment and competition will remove the ability of governments to regulate the activity of foreign investors. Eventually, these new agreements would require developing countries to change legislation in order to give foreign companies national treatment, that is the same treatment as local companies. Given the obvious inability of local companies in the South to compete with the transnational giants, any agreement to expand the WTO agenda in the above manner will further exacerbate the inequities of the current trade system.

Some developing country negotiators, attempting to limit the damage, are trying to de-link the four issues and may agree to transparency in government procurement and trade facilitation, but not to investment and competition. More likely, though, all four issues will remain as a package deal demanded of them in exchange for the (non) "solution" to TRIPs and health.

It is argued that "transparency" in government procurement does not mean "market access". However, it must be noted that the TRIPs agreement began as a clause calling on GATT signatories to address the problem of counterfeit goods. In the course of the seven-year negotiations, this seemingly harmless issue turned into a full-fledged and far-reaching agreement. Market access is the thinly veiled aim of the US and EU in these talks. Many developing country governments fear that transparency in government procurement will inevitably open the way for market access in government procurement whereby governments wanting to purchase goods or services would have to give foreign companies equal access to contracts, or presumably be brought before the WTO's dispute settlement body. This is dangerous since government procurement is often used as a development tool to provide contracts to fledgling domestic companies to help their growth.

Trade facilitation is also seemingly harmless. Which government, after all, would not want their customs facilities to be improved and made more efficient? For the South, the problem here is two-fold if this turns into a full-fledged agreement:

1) Who is going to bear the costs? A country may find that it has to incur billions in order to modernize its customs and port facilities. Should such expenditure be a priority when countries are facing more pressing social and economic problems? 2) Speeding up customs procedures would mean that countries may not be able

to uncover fraudulent pricing practices that are not uncommon. This would in turn impact on their tariff revenues.

The EC has argued that they would have to “get” the Singapore issues in return for liberalising in agriculture. But the EC is not liberalizing in agriculture, and it will be up to ministers in Cancun to ensure that they do not give up their last bastion of control over their domestic markets in exchange for EC trade commissioner Pascal Lamy’s spurious claims of reform in agriculture (see Kwa, “EU’s CAP ‘Reform’? Let Us Not Be Fooled”, 26 June 2003).

### RAMMING THROUGH A RAW DEAL

Unless developing countries take the extraordinary step of standing their ground under pressure, the package they will be offered in Cancun is likely to be not only a bad deal but one that will have grave implications for their people. Ambitious targets are being set for liberalisation in industrial tariffs, agriculture, services (a call will be made to improve countries’ offers) and possibly new negotiations in some of the Singapore issues. In return, developing countries will get a less than satisfactory solution in TRIPS and health and some very watered down special and differential treatment clauses that have very little trade value.

Those unfamiliar with the WTO often wonder why developing countries continue to swallow such bitter pills. The main reason is that the WTO tends to make decisions amongst a small select group of about 25 members. Those outside the inner circle will be barred from the most critical meetings during the Ministerial. A deal will be knocked together in Cancun and put before the 146 members. Those stubborn countries daring to resist will be blackmailed, bribed, or threatened. Aid, IMF /World Bank loans will be promised or withdrawn. Market access, particularly any preferential trading arrangement, will be put on the line. Complaints and smear campaigns, even through the media as happened to India in Doha, will be launched against any minister, trade diplomat or government daring to step out of line. The severity of such threats for an individual negotiator or minister cannot be underestimated. (See “Behind the Scenes at the WTO: the real world of international trade negotiations,” Fatoumata Jawara and Aileen Kwa, Zed Books, September 2003.)

At the end of the day, the outcome of Cancun and positions taken by developing country ministers will depend on their calculation of how best to deal with the conflicting pressures. Will domestic pressures they face from civil society and perhaps even national parliaments, be sufficient to counter the political pressures from the major powers? And a more fundamental question: would ministers, whatever the political pressures, be able to hold to their convictions? For the innumerable vulnerable populations in the South - war is being waged.

A leader the Zapatistas explains this war:

“Globalisation with its free trade agreements, World Trade Organisation, and the Free Trade Area of the Americas, are implements and elements for the extinction of the heritage of each country, its sovereignty and its culture. Facing this war and the threat that globalisation presents worldwide, we can no longer ignore the fact that what is being sought is our humiliation and subjugation.” Comandante Zebedeo, EZLN, Mexico, 9 August, 2003

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