

Issue Brief—The Doha WTO Ministerial

OVERVIEW OF DEVELOPING COUNTRY CONCERNS

Developing countries have become an increasingly vocal, and increasingly powerful, force in multilateral trade negotiations. These countries characterize the broad spectrum of their common concerns under the rubric of “implementation.” They insist that their difficulty in complying with WTO obligations reflects their limited technical capacity to do so; that developed countries have not fulfilled promises to provide them with the resources and technical assistance needed to help them create the domestic legal basis and policy structure for implementing the commitments. Developing countries also assert that developed countries have back-loaded their commitments to free textile imports from quotas, reneged on promises to reduce industrial tariffs on certain “sensitive” products, and maintained agricultural subsidies or other supports that prevent developing countries from competing on price. If there is one concern on which developing countries can agree, it is that their implementation concerns should be addressed before any negotiations on “new issues” proceed.

The objective of the General Agreement on Tariffs and Trade (GATT) has long been to open national markets to international trade through the progressive reduction of tariffs, removal of non-tariff barriers, and the formulation of global rules for fair as well as free trade. The fundamental premise of the GATT is that rules to reduce trade barriers and ensure free but fair trade are best formulated through multilateral consensus in a global forum bringing together all trading nations, developed and developing.

The GATT did this by providing a forum for conducting multilateral trade negotiations, the most recent being the Uruguay Round, which lasted from 1986 through 1994. It resulted, among other things, in the creation in 1995 of the GATT’s successor, the World Trade Organization (WTO).

The WTO regularized the process of consultations among trade ministers, specifying that Ministerial Conferences would be held at least every two years. The first Ministerial Conferences following the WTO’s creation (Singapore in 1996,

Geneva in 1998) focused on achieving progress on the “Built-In” agenda left over from the Uruguay Round (i.e., agriculture and services). The Seattle Ministerial in 1999 attempted to launch a new round of multilateral trade negotiations. Ministers failed to reach agreement at Seattle on the issues for consideration and the agenda through which a future round would translate agreed issues into meaningful negotiations. Many of the issues that confounded the Seattle Ministerial—especially those issues and concerns of relevance to developing country Members—remain unresolved. Developing countries characterize the broad spectrum of issue concerns under the rubric “implementation.” This paper provides an overview of such concerns.

Developing Country Participation in Multilateral Trade Negotiations

At its inception in 1947, the GATT started out with only 22 countries and was considered a developed nations “club.” Now, six years after the

establishment of the WTO, its successor organization has 142 members, with another 30 applying for membership. More important, the basic constituency of the WTO has changed significantly. It now has more developing nations as members than developed, and many of these developing nations are more accurately characterized as “least-developed” members.

Developing Country Concerns

As the powerful influence of the GATT and now of the WTO has extended over global trade, so has the imperative for developing nations to join the club, if only, in many cases, to signal their arrival among nation states. Many of them are only now beginning to realize, after joining the club and committing themselves to its rules, that membership requires complying with complicated and specific obligations driven by Western legal concepts, and that this imposes significant responsibilities that are in turn enforceable through an nearly judicial dispute resolution system.¹

Developing countries have subsequently asserted they did not understand the nature nor evaluate the extent of the commitments made and obligations incurred and that they lack the capacity to implement them. Their concerns contributed in some part to the failure of the WTO's Seattle Ministerial Conference in November 1999.

Moreover, many developing countries insist they have not received any tangible benefits as a result of undertaking obligations and commitments under the WTO. President Obasanjo of Nigeria recently stated that:

African countries have not so far been able to reap any benefits of their membership of the WTO because of

¹ We recently undertook a study to inventory the various obligations confronted by just one developing (but not least-developed) country. The obligations were divided into two categories—substantive and transparency—with the latter category subdivided into procedural, consultation, notification, and enquiry/contact points. For the country involved—typical of most other middle income developing country members—we identified more than 800 explicit obligations.

imbalances in the rights and obligations of membership in that organization. This situation results from the failure of major trading nations like the United States and Western European countries to faithfully implement the development dimension of various WTO agreements. The consequences have been the experience by African countries of continued deterioration in terms of trade, restrictions in market access, and tariff peaks in commodities of export interest to them.

President Mkapa of Tanzania stated that the Uruguay Round resulted in “unmet promises and unfulfilled obligations” and added that

instead of rushing into a new round, attention should be given to assisting poor nations to build up a capacity that could help them participate effectively in the global trading system, as they had earlier been promised by developed nations.

Even former U.S. Trade Representative Clayton Yeutter has said that

the largest challenge lies with the developing countries, who are very disillusioned with the whole international trading system . . . [because] they feel they were the losers in the Uruguay round and that some of its implementation . . . has worked to their disadvantage.

Importance of Developing Country Members to a New Round

Historically, decision-making in the GATT has been by “consensus.” When many fewer countries were parties to the GATT, consensus was presumed “unless a member objects.” But unanimity is no longer likely in an organization of 142 members with divergent economic and commercial interests.

Developing countries, including “least-developed” ones, now constitute two-thirds of the WTO's membership. The era when the United States and the European Union and their “Quad” partners, Canada and Japan, could dictate a consensus as to the agenda of negotiating rounds has passed. Now, newly conscious of their effective majority in the WTO, and having learned

lessons from the Seattle conference, developing countries understand that they have much greater leverage with which to pursue their implementation concerns.

The current preparatory process for the Doha Ministerial Conference confronts at least seven major negotiating areas unresolved for inclusion in the ministerial declaration that would set the agenda for a new round. They are *agriculture* and *services* (automatically on the agenda as part of the built-in agenda prescribed by those Uruguay Round agreements); certain “new issues” not currently regulated by the WTO (e.g., *competition policy*, *environment*, and *investment*; administration of *anti-dumping*; and the developing countries’ *implementation* issues as a generic class).

The developing countries (led by Egypt, India, Malaysia, Pakistan and some of the African and Caribbean nations) have insisted that the difficulties they face in implementing and complying with existing WTO agreements be resolved—or at least significantly mitigated—*before* they agree to begin negotiations on any new issues. They insist that the technical, administrative, and financial problems they face in trying to comply with WTO obligations must be addressed. They argue that some existing agreements should be reviewed and clarified—even renegotiated—to remove perceived imbalances and provide them with greater flexibility reflecting their differing levels of development.

Developing nations insist that they raised nearly 100 separate implementation issues three years ago in the preparatory stage for the Seattle Ministerial and that nothing significant has been done with about most of them. They argue that agreeing to negotiate new issues—involving taking on new obligations and commitments—while they continue to struggle with understanding and implementing existing obligations and commitments, would only further isolate them from effective involvement in global trade and economic development.

Therefore, developing countries have said that negotiations on any *new* issues should be taken up *only if* there is a *consensus* among WTO members to do so, hinting broadly that they now have both the

power and the inclination to prevent such consensus.

Implementation Issues

Issues of implementation relate to fulfillment of WTO obligations and commitments by developed nations and developing nations alike. They fall into three categories:

- Inherent “imbalances” between developed and developing nations within the WTO framework;
- The inability or lack of capacity of developing nations to understand and implement obligations and commitments thereunder; and
- The failure of developed country Members to follow through on commitments regarding “special and differential treatment” in favor of developing nations.²

Imbalances

The issue of “imbalances” is advanced as one of basic inequities in the WTO framework of rules for global trade. Most of the WTO agreements establish time limits for compliance with the rules incorporated therein and many of those time limits have expired. Developing nations complain that it is unreasonable and unjust to subject nations—especially the less-developed and least-developed ones—at dramatically differing levels of economic, legal, and social development to the same complex and onerous rules and obligations and expect them to comply within such periods.

They argue that many such countries still lack the capacity and, therefore, are ill-equipped for understanding requirements of the trade agreements and constructing a coherent, effective, domestic legal basis and policy structure for implementing them. And, for this reason, many advocate that such countries be given permanent or lengthy extensions

² See “Special and Differential Treatment” in this series for a summary of such treatment provisions in the Uruguay Round agreement, and developing country concerns about their implementation.

of time for compliance with WTO obligations, flexibility in the nature of programs for their implementation, and insulation for some time from recourse to dispute resolution intended to enforce them.

Developing countries' concern is that they be permitted effectively to realize the as-yet-unfulfilled commitment of developed countries to provide them so-called special and differential treatment—a pledge incorporated into a number of WTO agreements.

Some developing countries even suggest that special and differential treatment was never more than rhetoric on the part of the developed nations. Others note the unfairness of the fact that while developing country performance under the WTO agreements is characterized as “obligatory,” the commitments of the developed nations to implement special and differential treatment are couched generally only in “hortatory” terms.

Developing Country Implementation

Developing countries have stated that their problems with understanding and implementing obligations and commitments undertaken as a result of their membership in the WTO affects their compliance with a number of WTO agreements, particularly

- Trade-Related Intellectual Property Rights (TRIPS),
- Trade-Related Investment Measures (TRIMS),
- Agriculture,
- Services (General Agreement on Trade in Services or "GATS"),
- Textiles and Clothing,
- Customs Valuation,
- Rules-of-Origin,
- Technical Barriers to Trade (often referred to as "Standards"),
- Sanitary and Phyto-sanitary Standards, and
- Safeguards.

Developing countries therefore are calling for a review of these agreements in the context of their capacity to understand and implement them, the time period within which they must do so, and, the technical, administrative, and financial difficulties they confront in attempting to do so. Indeed, in some cases, they are asking for their “reconsideration,” which some developed nations have taken to mean a desire to renegotiate.

Developing countries insisted they would continue to need substantial technical and financial capacity-building assistance and, if technical assistance is to be given time to work, extensions of time within which to use such assistance to better understand and implement WTO obligations.

Developed Country Implementation

Developing countries have a number of complaints about developed country implementation of their WTO obligations and commitments.

First, developing countries often assert that the reason for their inability to implement WTO obligations and commitments is that the developed country members have failed to implement their commitment to provide sufficient technical and other assistance to enable the developing countries to implement their obligations.³

Second, many of the developing countries are textile/apparel exporters. These countries assert that developed country members have subverted the Agreement on Textiles and Clothing (ATC) to phase out bilaterally negotiated quotas on imports to them of textiles/apparel from developing countries, essentially by “backloading” the release of textile sectors from quotas (e.g., freeing up only subsectors with regard to which there is no demand, no domestic production or little competition from imported products, while

³ A number of WTO agreements (TRIPS, GATS, Customs Valuation, TBT, and SPS) provide a variation on the theme that developed country members “shall furnish, on mutually agreed-upon terms [or “if requested”], technical assistance . . .” to help developing country members meet the requirements of these WTO agreements.

retaining as long as possible restrictions on more sensitive subsectors).⁴

Third, many developing countries essentially accuse developed countries of renegeing on promises to reduce industrial tariffs to levels at which developing country exports can be competitive in their import markets or of retaining or actually increasing tariffs on certain “sensitive” products such that they become subject to “tariff peaks.”

Finally, developing countries that are themselves exporters of agricultural commodities have accused some developed countries (in particular the United States and the European Union) of maintaining subsidies or other support programs that artificially lower the international prices of their exported commodities to prejudice the ability of developing country exports of such commodities to compete in the same markets.⁵

The Bottom Line for Developing Countries

The developing countries emphasize that their implementation concerns should be addressed upfront without linking them to any negotiations relative to new issues. They are in effect calling for a post-Doha agenda comprised of negotiations on the built-in agenda (agriculture and services), negotiations or other considerations relating to

resolution or mitigation of their implementation issues, and study and analysis of the WTO's various existing working groups, while leaving all other possible negotiating topics for the Fifth Ministerial Conference scheduled for 2003.

Of particular concern to developing countries is the Draft Text on Implementation issued recently by the WTO for consideration at the Doha Ministerial. While addressing implementation concerns, it is separate from the Draft Ministerial Declaration. (At past ministerials, the Ministerial Declaration summarized the results of the Conference.) Developing countries feel the release of a separate document on implementation could downplay implementation issues. Therefore they would like to see implementation issues integrated into the Draft Ministerial Declaration.

Other Developing Country Agenda Issues

The developing countries have also suggested that certain other topics—themselves qualifying as new issues—should be addressed at the Doha ministerial even if not for inscription in the negotiating agenda of a new round. They are asking for the Doha conference to authorize WTO working groups to study the relationships of international trade to (1) transfer of technology, (2) international finance, and (3) resolution of international debt.

⁴ See “Textiles Trade and the Views of Developing Countries.”

⁵ See “Agriculture and the Views of Developing Countries.”