



**WTO Negotiations: An Update before the Cancun Ministerial
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June 26, 2003

Executive Summary

With only 75 days to go until the Fifth WTO Ministerial Conference to be held in Cancun, Mexico, some issues under discussion since the last Ministerial in Doha are closer to resolution than others. Generally, however, progress in most areas depends on progress in agriculture. This report provides a summary of each of the major – but not all – areas under discussion.

- **Agriculture:** WTO Members in Doha set March 31, 2003 as the deadline to agree on negotiating modalities for agriculture, with draft schedules to be tabled in Cancun. Proposals range from deep cuts in tariffs, domestic support, and export subsidies (CAIRNS and US) to only modest reductions in tariffs and subsidies (EU and Japan). While there exists a draft text on modalities, WTO Members are divided on whether it should be used as a basis for negotiations.
- **Non-Agriculture Market Access:** Proposals range from “Swiss formula”-type (used in Tokyo Round) to product-by-product (used in Uruguay Round). Most Members indicated that the draft modalities text submitted by the negotiating group chair by the May 31, 2003 deadline was a good basis to work from. However, all indications are that the text will not be agreed to until there is more progress on agriculture.
- **Services:** Services request lists were due June 30, 2002 while draft commitments were due March 31, 2003 (though many Members interpret flexibility in this deadline). This is one of the few negotiating areas that has remained more or less on schedule. Twenty-five Members have submitted offers, including some developing countries; however, the quality of the offers has been the subject of criticism.
- **TRIPS and Public Health:** Paragraph 6 of the Doha TRIPS and public health declaration instructed the TRIPS Council to find an expeditious solution (by December 2002) to developing countries’ difficulties in making use of TRIPS compulsory licensing provisions. As of now no solution has been agreed upon, though there are hopeful signs that the issue may soon be resolved.
- **Special and differential treatment:** The initial deadline for making S&D provisions more precise, effective, and operational was extended from July 31 to December 31, 2002; however, discussions are still continuing on the 22 agreement-specific proposals and future work. The General Council Chair suggested putting the proposals under three different categories as a way to speed up the work.
- **Implementation:** WTO members have made little progress in reconciling differences over a multitude of implementation issues, including anti-dumping (special consideration for developing countries), rules of origin (“implications” of rules of origin and completion of the

harmonized work program), TRIPS (nullification and impairment of benefits), so far agreeing only to extend a deadline for reviewing provisions granting S&D treatment to developing countries and to set up a mechanism to monitor S&D.

- **Trade and Investment:** According to the Doha Declaration trade and investment negotiations (as with competition policy, trade facilitation, and transparency in government procurement) are to take place after the next ministerial conference (Cancun) on the basis of a decision, reached by consensus, on negotiating modalities at that ministerial. There are sharp divisions between proponents of such negotiations (Canada, EU, Japan and Korea) and developing countries that oppose expanding obligations to grant existing and future foreign investors guaranteed non-discriminatory treatment.
- **Trade and Competition Policy:** The working group on competition policy has focused on clarifying core principles including transparency, non-discrimination and procedural fairness, and provisions on “hardcore” cartels; ways of handling voluntary co-operation on competition policy among WTO member governments; and support for progressive reinforcement of competition institutions in developing countries through capacity building. The group is now attempting to clarify specific topics that need more discussion, and identify a set of elements that could be part of a negotiating mandate to be agreed at Cancun.
- **Trade facilitation:** The Doha Declaration instructs the Council for Trade in Goods to “review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries” in the period until the next ministerial conference. Developed country proponents of deepening existing commitments on trade facilitation have proposed adding specificity to current agreements on simplifying import fees and procedures. Developing countries, however, generally have doubts about whether the level of sophistication of their customs agencies would allow them to take on such commitments.
- **Transparency in Government Procurement:** Contributions have been submitted by several countries, including Australia, Canada, the US, the EU, Japan and Korea. Dispute settlement is an area under intense discussion. While the EU presses for transparency commitments in a future agreement to be subject to WTO dispute settlement in the same way current agreements are governed by the DSU, developing countries oppose linking a possible agreement to dispute settlement, making the point that WTO dispute settlement rules are designed to enforce market access commitments, and are not suited to enforce adherence to transparency obligations.

Agriculture

Negotiations on agriculture began in early 2000, under Article 20 of the WTO Agriculture Agreement ('AoA'). By November 2001 and the Doha Ministerial Conference, 121 governments had submitted a large number of negotiating proposals. These negotiations continue under the mandate given by the Doha Declaration. Agriculture is now part of the single undertaking with all negotiations due to end by 1 January 2005. The Declaration reconfirms the objective of the negotiations, which is to establish a fair and market-oriented trading system through a program of fundamental reform. This includes substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. The Declaration makes special and differential treatment for developing countries a central element of the negotiations. It provides that the outcome should be effective in practice and should enable developing countries to meet their needs, in particular with respect to food security and rural development. The Declaration confirms that negotiations will take non-trade concerns, including environmental protection, food security, rural development, etc., into account. Ministers in Doha agreed that "modalities" should be established by 31 March 2003 and that Members should submit comprehensive draft schedules of commitment by the Fifth Session of the Ministerial Conference (to be held in Cancun, Mexico, in September 2003).

Proposals

Several more proposals for agriculture trade reform were submitted in 2002 with some Members supporting and others opposing comprehensive reform. New Members, developing Members, and transition economies repeatedly argued for special and differential treatment.

The Committee on Agriculture issued on 18 December 2002 an overview of the agriculture negotiations, which summarized the work carried out during the series of formal and informal Special Sessions of the Committee on Agriculture held during 2002. The report showed that deep divergence remained among WTO Members. By the end of March 2003, those differences could not be bridged and Members failed to agree with the modalities draft proposed by Chairman Stuart Harbinson.

Market Access

- **Tariffs:** The main outstanding issue in this area is the formula to be applied for further tariff reductions. A variety of proposals have been made in that respect. The two approaches for tariff reductions commanding the widest support are a harmonization "Swiss formula" approach, which would produce steeper cuts on higher tariffs, and a 'linear' formula (Uruguay Round approach), i.e., the same percentage reductions no matter what the starting tariff rate is. Variations are allowed for specific products so long as a simple average across all products meets the target.

The majority of Members agree that developing countries must be authorised to depart from the general rules for certain essential products, with the possibility of exempting certain products from reduction commitments for food security purposes.

- **Tariff quotas:** Issues include tariff quota volumes, in-quota tariffs, and quota administration.

- *Volumes*: Members differ on whether a major objective of the market access discussions should be for import volumes under existing tariff quotas to be expanded, whether the end objective should be the regulation of trade through tariffs only, or whether it would be more meaningful to expand quotas according to levels of domestic consumption.
 - *In-quota tariffs*: Some Members claim that in-quota tariffs should be nil. Other Members, argue, to the contrary, that keeping in-quota tariffs above zero will help narrow the gap between in and out-of-quota rates, and ultimately facilitate the transition to a tariff-only system. Another group of Members opposes zero in-quota tariffs in general, except if they benefit least-developed countries exclusively.
 - *Quota administration*: Improvement of tariff quota administration is a widely shared objective. Further technical work is required to build on the progress made in this area, including with regard to special and differential treatment.
- **Special safeguards**: Participants have to decide whether the special safeguard provisions of Article 5 of the Agreement on Agriculture should be eliminated and, if so, (i) whether this would be with immediate effect upon entry into force of the further market access commitments or by some future date, and (ii) whether this safeguard mechanism is for all countries or for developed countries only.
 - **State trading enterprises**: Among the key issues is the question of whether tariff quotas could be allocated to state trading enterprises. Some Members claim that the monopoly power and state ownership can allow state trading enterprises to disrupt market access through quotas and want this outlawed. Others disagree. There is broad support for improving transparency when state enterprises govern the administration of quotas.
 - **Other market access issues**: Those include food safety (e.g. measures taken for food safety should not be discriminatory, should be applied consistently, etc.), mandatory labelling (some say this is needed to provide information to consumers while others consider labelling a technical barriers to trade – TBT – issue), and geographical indications (some Members advocate for the extension of the higher protection currently given to wines and spirits to other products and would like the issue included in the agriculture talks rather than in TRIPS).

Export Competition

- **Export subsidies**: The main outstanding issues include the depth of reform in this area (with some Members calling for the phasing out of budgetary outlays and quantitative commitments and others proposing to use the Uruguay Round formula approach), the implementation period for further commitments, and special and differential treatment (especially the length of time developing countries would be given to implement the new commitments).
- **Export credits**: The establishment of strengthened disciplines for officially supported export credits, export credit guarantees, and insurance programs is a widely shared objective. Further technical work is required to build on the progress made in this area with regard to a rules-based approach, including special and differential treatment provisions, taking particularly into account paragraph 4 of the Ministerial Decision on Measures Concerning the Possible Negative Effects

of the Reform Programme for Least-Developing and Net Food-Importing Developing Countries and drawing on the specific inputs that have been submitted.

In addition, negotiations have also covered food aid and exporting state trading enterprises. Proposals to strengthen the existing provisions on export restrictions, particularly with a view to taking account food security concerns, have also been submitted.

Domestic Support

Negotiations in this area have covered the Green Box, Article 6.2 of the Agreement on Agriculture, the Blue Box, and the Amber Box.

- **Green Box:** There are three categories of proposals concerning possible changes in the provisions of Annex 2 of the Agreement on Agriculture ("Green Box"): (i) proposals to tighten the Green Box provisions, including proposals to remove certain direct payments from the Green Box or to subject such payments to reduction commitments; (ii) proposals to enhance existing Green Box provisions or to add new types of programs or payments under the Green Box; and (iii) proposals to clarify certain provisions of Annex 2.
- **Article 6.2 of the AoA:** There is wide support among participants to maintain and enhance the provisions of Article 6.2 of the Agreement on Agriculture (which exempt developing countries from including investment subsidies, input subsidies, and programs to encourage diversification from illicit narcotic crops in domestic support reduction commitments). A variety of specific proposals have been submitted with a view to broadening the scope of Article 6.2.
- **Blue Box:** Members do not agree as regards Article 6.5 of the AoA (direct payments under production-limiting programs). Some want to leave the Article as it stands while others support its elimination.
- **Amber Box:** The key outstanding issue is to decide on the reduction method and target for further AMS – Aggregate Measurement of Support – commitments. Proposals include reducing the final bound AMS commitment to zero within five years, subject to a 50 percent downpayment in the first year of implementation (developed countries); reducing non-exempt domestic support (to 5 per cent of the Member's average value of total agricultural production in the base period 1996-98 within five years); the Uruguay Round formula; and splitting the Amber Box into two parts with separate reduction commitments.

Draft Modalities

The WTO Committee on Agriculture met in a special session on 22-24 January, to consider “modalities” or negotiating guidelines for the reform of agricultural trade. The main goal of the meeting was to “build bridges” to narrow the many wide gaps prevailing between Members’ negotiating positions. The discussions were based on the overview paper issued by the Chairman of the WTO Agriculture Negotiations in December 2002.

However, WTO Members failed to bridge their differences during this meeting which was intended to provide a basis for preparing the first draft of a methodology framework for agricultural negotiations.

First Modalities draft for Further Commitments on Agriculture (17 February 2003)

It is in that context and while being pulled in opposite direction by conflicting demands from major players, that Chairman Harbinson presented a first draft on Modalities regarding agricultural negotiations on 17 February 2003.

The paper called for the elimination of export subsidies and for some disciplines on export credits. It did not address demands for negotiations on new rules to cover the non-trade concerns of labelling, food safety, and protections for food products with geographic names, though it stated that negotiators will further consider the extent to which these issues should be taken into account in the modalities to be established.

On domestic support, the draft calls for a flat 60 percent reduction to trade-distorting or “amber box” support. The paper provides an option that would cap “blue box” spending and then reduce it by 50 percent over five years, but also includes an option for eliminating the blue box.

On market access, the draft proposes that developed countries cluster tariffs into three groups of low, medium and high tariffs. Tariffs in each cluster then would be subject to separate average and minimum reductions.

The draft proposed that over five years all tariffs of more than 90 percent be reduced by an average of 60 percent and a minimum of 45 percent. Tariffs lower than 90 percent and greater than 15 percent would be reduced by an average of 50 percent and a minimum cut of 35 percent. All tariffs lower than 15 percent would be reduced by an average of 40 percent and a minimum of 25 percent. Developing countries would use similar formulas but would be required to make less significant cuts. The paper states that all tariffs on processed products should be higher than tariffs for the products in their primary forms.

On export competition, the draft proposed the use of complex formulas to reduce and then eliminate export subsidies over 10 years. Members would reduce and eliminate export subsidies on one set of agricultural products representing at least 50 percent of the countries’ aggregate bound level of budgetary outlays and quantitative commitments over five years. On the remaining products, members would have 10 years to reduce and then eliminate export subsidies.

On export credits, the paper called for mandatory repayment period for loans of six months for most agricultural products, but would allow longer repayment terms for developing countries.

The paper's key element of special and differential treatment is to allow developing countries to designate certain strategic products (SP) essential to their needs for food security, rural development and/or livelihood security. These SP products would be subject to less substantial tariff reductions and benefit from other S&D provisions scattered throughout the proposal.

The modalities draft would grant an exception for developed country tariff reductions for long-standing preference regimes that benefit developing countries. Tariff reductions affecting these products would be implemented over eight years instead of five years, as long as the products concerned account for at least 25 percent of the total merchandise exports of the beneficiary country on average for the previous three years. In-quota duties on these products would be eliminated.

The draft also foresees the creation of a new special safeguard that would apply to SP products in developing countries.

Second Draft of Modalities for Further Commitments in Agriculture (18 March 2003)

During the negotiations at the end of February 2003, the major players did not move from previous positions expressed in their proposals. The 24-28 February meetings to discuss the first draft were aimed at giving the Chairman clear guidance and constructive ideas to permit the preparation of a second draft. This, however, was not the case as some countries criticized the paper for its lack of ambition, and pushed for deeper cuts in subsidies and tariffs, while others called the paper overly ambitious, saying it needed to be scaled back along the lines of their proposals.

A new draft was presented on 18 March 2003. It showed relatively minor changes affecting mostly developing countries.

For example, the revised paper is more explicit in seeking to ensure that processed products are subject to a larger tariff reduction rate than raw materials (reflecting demands by developing countries that the Doha agenda address tariff escalation). The new paper calls for the rate of tariff reduction on a processed product to be 1.3 times higher than the tariff reduction of the product in its primary form.

In addition, the revised paper includes the possibility that developing countries would designate agriculture products as “strategic products” subject to much lower mandatory tariff reductions based on either four-digit or six digit harmonized tariff codes. The previous paper only suggested use of the six-digit code. Members must negotiate over how many products developing countries may designate as SP.

In the revised paper, four instead of three groupings of tariffs would be subject to different rates of reductions for developing countries. For example, in Harbinson's initial draft, tariffs lower than or equal to 120 percent and higher than 20 percent would be subject to an average reduction of 33 percent and a minimum reduction of 23 percent. In the new draft, tariffs lower than or equal to 120 percent and higher than 60 percent would be subject to a 35 percent average cut and a 25 percent minimum cut. Tariffs lower or equal to 60 percent and greater than 20 percent would be subject to an average 30 percent reduction and a minimum 20 percent reduction.

Just as they did on the first draft, Members criticized the paper for either its lack of ambition or for being overly ambitious.

The 31 March 2003 deadline

Under the Doha Mandate, WTO Members were required to agree on modalities regarding the negotiations on agriculture by 31 March 2003. WTO Members failed to meet the deadline as differences between Members remained too significant.

However, Members hope to agree on the modalities before the Cancun Ministerial. Special sessions of the agriculture negotiating group have been scheduled for June and July. Finally, it is widely believed that the failure to agree on modalities in agriculture is having a negative impact on other issues under negotiation.

Non-Agricultural Market Access

According to paragraph 16 of the Doha Declaration, the ministers agreed to launch tariff-cutting negotiations on all non-agricultural products. The essential objective is to reduce and where possible, to eliminate tariffs as well as non-tariff barriers, particularly on products of interest to developing countries. The negotiations have to take fully into account the special needs and interests of developing and least-developed countries, including through less than full reciprocity in reduction commitments.

The negotiating group on industrial market access began its substantive work only in August 2002 after a debate over a deadline to determine the negotiating methodology for reducing tariffs and non-tariff barriers. The debate was settled at the July session of the Trade Negotiations Committee, when WTO Members decided they would agree on modalities no later than 31 May 2003.

The talks on non-agricultural market access prompted a number of proposals. Some were ambitious and called for the complete elimination of tariffs by 2015 while others simply attempted to narrow the range of tariff dispersion. Reactions to these proposals have been mixed. While the proposals tabled focused mainly on formula approaches to tariff reduction or elimination, there were a number of other issues that required consideration and resolution. These include special and differential treatment, how to deal with non-tariff barriers, and the question of the definition and treatment of environmental goods.

The Negotiations

Prior to the 26 – 28 May 2003 meeting of the Negotiating Group on Non-Agricultural Market Access, differences between WTO Members remained in several areas, including:

- How to address the mandate of special treatment for developing and least-developed country participants, including through less than full reciprocity in reduction commitments;
- Which type of formula to use to reduce tariffs;
- Whether these negotiations should include reference to the complete elimination of tariffs; and
- How to define and address non-tariff barriers.

Tariffs

Developing countries cited the importance of "less than full reciprocity in reduction commitments" for tariffs between developed and developing countries, arguing that tariffs are an "instrument of domestic industrial policy" for many developing countries and that revenue from customs duties forms a significant share of their overall revenue. Some developed countries countered those claims saying that tariffs are neither an equitable nor economically efficient means for developing countries to raise revenues, as they "tend to distort resource allocation and shift the tax burden to the poorest segments of the economy".

Several developed countries proposed the total elimination of tariffs and wanted that option included in the modalities text. Some developing countries, however, stated that economic

realities and level of development of each Member must dictate the pace at which tariff reduction takes place.

Different formulas were advanced for tariff reductions, including line-by-line, sector-by-sector, zero-for-zero, the 'Swiss' formula (with different coefficients), a reduction in the average tariff, or a combination of these. Harmonisation and request/offer processes have also been put forward by some countries as supplementary approaches.

A group of developing countries said it preferred a linear percentage reduction in tariffs, wherein lower percentage average reductions could be used for developing countries, and higher ones for industrialized Members. These countries argued against Swiss-type formula approaches, saying they impacted more heavily on tariff structures of developing countries. Some developed countries argued that a linear based formula would not address the mandate to eliminate tariff peaks, high tariffs, and tariff escalation, whereas a harmonization formula would address those issues.

Non-Tariff Barriers

Little concrete proposals were made regarding the reduction or elimination of non-tariff barriers. Many proposals included detailed information on what the scope of NTB negotiations should be. Many proposals noted that the type of NTB would often determine the appropriate forum and the way to address them. Several NTB submissions pointed to NTBs that relate to existing WTO Agreements (e.g. Customs Valuation, Import Licensing, Preshipment Inspection, Sanitary and Phytosanitary measures, Technical Barriers to Trade, etc.) and suggested ways to address them. The majority of those specifically stated that the matter should be taken up in the relevant WTO Committee.

Generally, the various proposals on modalities for NTBs fell into four categories; request/offer, vertical or sectoral approaches, horizontal or multilateral approaches, and dispute settlement.

Six submissions pointed to request/offer as a possible modality for negotiating NTBs. However, in two of these submissions Members noted that there may be difficulties or limitations using this approach because there were over 140 WTO Members to potentially negotiate with. One submission noted that a bilateral request/offer process could lead to a plurilateral NTB agreement.

A second approach suggested in three proposals was a vertical or sectoral approach to address NTBs that are prevalent in certain sectors. In this respect, the following sectors were put forth as possibilities using this method: forest products, textiles and clothing, motor vehicles, and fisheries.

Thirdly, three submissions referred to horizontal or multilateral approaches to address NTBs whereby the outcome would be equally applicable to all WTO Members. One of these submissions suggested the technical regulations, conformity assessment, and quantitative restrictions as possible areas to focus on.

Finally, one submission suggested leaving certain NTBs for the WTO dispute settlement process to use as a possible methodology.

Meeting of the Negotiating Group, 26 – 28 May 2003

Members met at a session of the Negotiating Group on Non-Agricultural Market Access (NGMA) to consider Chairman Pierre-Louis Girard's draft modalities text, which was circulated on 16 May 2003. Contrary to drafts tabled on other negotiating issues, the text was not rejected as a basis for negotiation. Most Members actually considered it a good starting point.

The formula suggested by the paper attempts to meet the Doha Declaration's mandate of "less than full reciprocity" for developing Members. According to the formula, the higher a country's average tariff rate, the less it will be required to reduce its tariffs. Since developing countries on average maintain higher duties than developed countries, the formula would lead developed countries to make proportionally larger cuts than developing countries.

While Members have not rejected the text as a basis for negotiation, several objections were raised. One developed Member objected strongly to the sectoral tariff elimination proposed, preferring instead an average percentage cut, which would allow Members to protect sensitive sectors. Another developed Member stated that it would have liked to see the modalities cut the higher tariffs as well, adding that modalities should not reward those Members that maintain higher duties. Some African countries expressed their concern about how the modalities might affect preferential market access arrangements and how the proposed tariff concessions could affect an important source of revenue for them.

On non-tariff barriers, the text states that the negotiating group will continue with the identification and examination of the various types of NTBs, then will seek to categorize them. The work will proceed subsequently as follows:

- NTBs agreed upon by participants would be dealt with by the negotiating group on the basis of modalities, which could include request/offer, horizontal, or vertical approaches;
- NTBs being addressed in other bodies and which have a specific negotiating mandate in the Doha Declaration would continue to be addressed in those bodies;
- NTBs related to other areas of the Doha Declaration but which do not have a specific negotiating mandate would progress in other fora; and
- NTBs that currently do not have a specific negotiating mandate would, as needed, be reported to the TNC in order to be forwarded to the appropriate WTO body for action.

In all cases, work progress would be reported to NGMA for transparency and reporting. Consultations on non-agricultural market access modalities are likely to continue through June and July, but many WTO Members do not foresee much change in the current draft. Nor do they foresee consensus on the issue until more progress is achieved in other key areas in the negotiations, especially agriculture, TRIPS and Public Health, and special and differential treatment and implementation.

Services

The WTO General Agreement on Trade in Services (GATS) commits Members to enter into successive rounds of negotiations to progressively liberalize trade in services beginning not later than five years from the entry into force of the WTO Agreement. Accordingly, the services negotiations started officially in 2000 under the direction of the Council for Trade in Services (CTS). In March 2001, the CTS fulfilled a key element in the negotiating mandate by establishing the negotiating guidelines and procedures. The Doha Declaration in November 2001 endorsed the work already done in the CTS, reaffirmed the negotiating guidelines and procedures, and established some key elements of the timetable including, most importantly, the deadline for the conclusions of the negotiations as part of a single undertaking. According to the Doha mandate, participants were to submit specific commitments by 30 June 2002 and initial offers by 31 March 2003.

The Negotiations

Credit for Autonomous Liberalization

According to paragraph 15 of the Doha Declaration, WTO Members “*reaffirm the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001(...)*.” Paragraph 13 of these Guidelines and Procedures provide that “*based on multilaterally agreed criteria, account shall be taken and credit shall be given in the negotiations for autonomous liberalization undertaken by Members since previous negotiations. Members shall endeavour to develop such criteria prior to the start of negotiation of specific commitments.*”

Generally, developed countries are in favour of greater openness in trade in services, while developing countries are hesitant to take on more market opening measures. Some developing countries, therefore, are seeking to reduce the degree of market opening they need to make in new services negotiations by requesting their trade partners to provide “credit” for liberalization they have undertaken on their own since the Uruguay Round.

WTO Members finally agreed on this issue on 6 March 2003. The decision on Modalities for the Treatment of Autonomous Liberalization itself does not obligate countries to grant negotiating credit for unilateral market openings undertaken by trading partners. Instead, it sets criteria and procedures for how countries, which are conducting services talks on a bilateral, request-offer basis, should consider whether such autonomous liberalization should allow countries to forego demands for further openings or should be reciprocated by concessions from another country.

However, newly acceded WTO Members fell short in their effort to have their accession commitments counted as autonomous liberalization measures. Instead, the chairman of the services negotiations acknowledged the services market openings of recently acceded members and the difficulties these countries may have in making further concessions in the services negotiations.

Emergency Safeguard Mechanism

A key developing country demand in the services negotiations is the ability to impose safeguards in cases where a domestic service sector is being injured by foreign competition. However, key developed countries have not so far agreed to allow that such safeguard be used. There is also very little convergence as to what form the safeguard might take.

Requests

Countries that were first to submit initial requests regarding market access for services to their trading partners by the 30 June 2002 deadline include the U.S., New Zealand, Poland, Norway, Switzerland, and Thailand. Developing countries generally presented their requests later to their trading partners. Requests to developing countries by developed Members, particularly the U.S. and EU, were fairly comprehensive.

Initial Offers

According to the Doha mandate, initial offers should have been submitted by 31 March 2003. The countries presenting their offers to the CTS by the deadline included Australia, Canada, New Zealand, and the U.S. The EU presented its Proposal on 29 April 2003. The WTO Secretariat indicated it expected offers to trickle in up until the next WTO Ministerial in September.

The fact that only a few Members presented their services offers, with developing countries notably absent, is seen by some as a reaction to the many other deadlines missed in the current round of negotiations (i.e. TRIPS and public health, implementation issues and concerns, special and differential treatment for developing countries, and agriculture). Up to date, only about 30-plus developing countries have presented their services requests and none have presented their initial offers.

TRIPS and Public Health

Under paragraph 6 of the Declaration on TRIPS and public health, WTO Members recognize that “*WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. They instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002.*” Compulsory licensing is the practice by a government to authorize itself or third parties to use the subject matter of a patent without the authorization of the right holder for reasons of public policy. The issue outlined in paragraph 6 arises out of concern related to TRIPS Art. 31(f), which requires that production under compulsory licensing must be primarily for the supply of the domestic market.

Developed and developing countries were largely divided on the subject initially. Generally speaking, developed countries are proponents of limiting countries’ ability to export generic medicines under “compulsory licenses” to third markets, whereas developing countries would like to maintain flexibility in making use of TRIPS’ compulsory licensing provisions. More specifically, developed and developing countries were divided on the following topics:

- The diseases to be covered;
- The products to be covered;
- The countries that could import or export;
- The safeguards against diversion;
- The legal mechanism to use; and
- The rules of transparency.

A series of proposals were submitted and discussed in 2002. The informal meeting held in Sydney in November 2002 was an important step towards reaching consensus. However, WTO Members were still unable to meet the deadline set in Doha, as the U.S. objected to the text submitted on 16 December 2002.

The debate on the scope of diseases centers around developing country demands that countries agree to adopt language from the Doha Declaration on TRIPS and Public Health, which states that countries without manufacturing capacity should be able to import drugs to combat public health problems and uses AIDS/HIV, malaria, and tuberculosis as illustrative examples, and some countries’ insistence that this ability should be confined to infectious diseases of comparable gravity as those listed in the declaration.

In the meantime, the U.S. announced that it would not challenge any WTO Member that “*breaks WTO rules to export drugs produced under compulsory license to a country in need.*” The moratorium covers HIV/AIDS, malaria, tuberculosis, and other infectious epidemics, and does not apply to developed country Members or high income developing countries. Some countries joined the moratorium until a multilateral solution could be found, whereas others also declared an interim moratorium, but did not limit it to HIV/AIDS, malaria, tuberculosis, and other infectious epidemics.

After the failure to agree on the 16 December text, the EU and Japan submitted a new draft compromise in January and February 2003. However, WTO Members were again not able to agree on the proposals.

As a result of the continued impasse, Chairman of the TRIPS Council Eduardo Perez Motta told the TRIPS Council on 18 February that he was not in a position to put forward a new solution over the scope of diseases, which has prevented some countries from signing on to a decision on more flexible drug patent rules that Motta drafted in December. Most countries at the TRIPS meeting reiterated their support for the December 16 compromise text.

At an OECD Ministerial at the beginning of April 2003, ministers emphasized the need to reach a solution on access to medicines as soon as possible. An agreement on this issue appears to be essential given the critical nature of this issue and given the need to ensure the confidence of developing countries in the negotiations.

Special and Differential Treatment and Implementation Concerns

The WTO Agreements contain provisions that give developing countries special rights. These provisions include, for example, longer time periods for implementing agreements and commitments or measures to increase trading opportunities for developing countries. In the Doha Declaration, member governments agreed that all special and differential treatment provisions should be reviewed with a view to strengthening them and making them more precise. In addition, the Decision on Implementation-Related Issues and Concerns (paragraph 12) mandates the Committee on Trade and Development ('CTD'), among other things, to identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions, to identify those that Members consider should be made mandatory, and to report to the General Council with clear recommendations for a decision by July 2002."

The July 2002 deadline proved ambitious. In fact the CTD's special session was not able to reach a conclusion by the new deadline of December 2002 either and set to report to the General Council at its meeting on 10-11 February 2003.

In order to meet this new deadline, the CTD held a series of informal meetings at the end of January. Discussions continued to focus on the two themes considered in December; 1) agreement-specific proposals, based on 22 proposals laid out by the Chair (Amb. Ransford Smith of Jamaica), with the addition of other proposals by the Africa Group and India; and 2) the overall structure of future work.

However, industrialized and developing countries failed to bridge their differences during these informal meetings, putting in peril the mid-February deadline for the CTD to offer recommendations to the General Council. On 10 February, the CTD adopted a report, which recommended that the General Council provide clarification, as it considers appropriate, on the S&D mandate. The report – and the request –, however, was put in jeopardy when a handful of countries prevented it from being adopted at the 10 February General Council Meeting.

Current Status

General Council Chair Perez del Castillo (Uruguay) held a series of informal consultations in late March and early April with both developed and developing countries. On that basis, he circulated an 'approach paper' on 7 April outlining how Members might move ahead with the deadlocked S&D negotiations for developing countries.

The approach paper was based basically on two premises. The first is that all proposals are still on the table, and the second is that the best way to proceed is to informally categorize (although not attempt to prioritize) the 80-plus proposals made to date. Perez del Castillo offered three categories, which actually did not differ greatly from those that have been on the table since late 2002.

The Approach Paper was circulated as an official Proposal from the Chair among WTO Members on 5 May 2003. It puts proposals in three categories:

- The first category relates to those proposals with the best chance of success, which would include the 12 Agreement-specific proposals already agreed by Members in February 2003,

issues identified by the Chair as having potential for movement, and some issues identified as having real developmental value.

- The second category encompasses those proposals that overlap with other negotiating areas and/or are already under consideration elsewhere. These proposals would be sent to the relevant bodies, which would be instructed that the item(s) be “addressed as a priority.” This includes areas such as dispute settlement, subsidies, anti-dumping, agriculture, services, etc.
- The third and final group comprises those proposals that, as they currently stand, would be difficult to move forward.

The first basket is essentially intended as the 'down payment' for developing countries to accept moving ahead with the other two categories. However, developing countries urge that the basket include meaningful proposals and not just procedural items. Developed countries for their part have noted a willingness to engage on the matter further, but have reportedly indicated that they have already been as flexible as possible. Some have reportedly been very hesitant to proceed without looking at the controversial crosscutting and systemic issues first (which include differentiating between developing countries, with some gaining more flexibilities than others).

However, developing countries expressed concerns regarding the second category. This concern stems mostly from their experiences with implementation issues, where numerous issues were relegated to other bodies, often “to be addressed as a priority,” but which in the end see little movement. The concern is that S&D issues would follow a similar path, and the Doha mandate "that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational" will be rendered essentially worthless. The Chair has reportedly made attempts to ensure that the special sessions of the CTD will retain oversight on all three baskets.

In reference to developing country fears that proposals in the second category would become lost in the tedious work programs of the various bodies, the Chair of the General Council pointed out that developed countries had given up some of their rigidities surrounding the possible outcome of the exercise. He noted specifically the assurances he had been given by developed countries that they might be prepared to look at changes in the existing balance of rights and obligations and/or possible amendments to existing WTO texts. This latter point was a major stumbling block in the discussions held during late 2002 and early 2003, as developed countries had been adamant that no mandate existed under which the balance of rights and obligations could be altered.

General Council Chair Perez del Castillo also reiterated in a recent meeting with some developing country delegations that he would personally oversee the process at the level of the General Council on the first and third categories, and supervise discussions on the second category. He has reportedly set 15 June as the timeframe for the first assessment of the consultations on these matters.

The African Group has told Castillo that it does not agree with the process of categorizing S&D proposals. In particular, the group argues that since S&D is not a part of the single undertaking of the Doha agenda, it is not appropriate to direct S&D proposals to other negotiating groups, as the chairman proposed.

The African Group also is objecting to having the discussion on S&D carried out under the auspices of the General Council. The group argues that trade ministers in Doha mandated the CTD to handle the S&D discussion, and that the General Council should only answer the CTD's

call for a clarification on whether the CTD was mandated in strengthening S&D to change text of WTO agreements, altering the rights and balances of members in the process. In addition, they say Castillo has other obligations as General Council chairman and does not have the time necessary to dedicate to S&D.

Regarding developed countries, they consider that this first box of suggested proposals includes many far-reaching demands that they are not able to accept. The proposals circulated by Chair Perez del Castillo group 38 agreement-specific proposals into category one, augmenting the 12 agreed on 'in principle' at the end of 2002 with 26 additional proposals where he feels an agreement can be reached. In a note of 7 April, included in the circulation of the proposal, Ambassador Perez del Castillo noted that these additional 26 represented proposals that "have a developmental value that in [his] judgement makes it necessary that [Members] try to address them and make progress, whether in their current form or otherwise".

Singapore Issues

The Singapore Issues encompass four areas: investment, competition policy, trade facilitation, and transparency in government procurement. The Doha Declaration did not launch negotiations immediately in those areas. WTO Members in Doha agreed that “*negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations.*”

Investment

The seven issues that ministers identified in the Doha Declaration as requiring clarification with respect to investment include:

- The definition of investment;
- Transparency requirements in a potential agreement;
- The types of non-discrimination requirements – such as national treatment or most-favoured-nation treatment – that should apply;
- The types of special provisions that should be adopted for developing countries;
- The negotiating methods to use, specifically the feasibility of using a positive-list type approach in which countries' obligations only extend to sectors that they specifically include in their schedules;
- Exceptions and balance of payments; and
- Dispute settlement.

The Negotiations

There are sharp divisions between proponents of a Multilateral Framework on Investment and developing countries, which largely oppose expanding obligations to grant foreign investors and potential foreign investors guaranteed non-discriminatory treatment.

Countries disagree fundamentally over the mandate given in the Doha Declaration with respect to investment. Industrialized countries generally take the declaration to mean that negotiations on investment should begin after the 2003 Cancun Ministerial, while developing countries insist that negotiations will be contingent on a consensus decision to be taken at that ministerial (this applies to the other Singapore Issues as well).

Some developed Members have advocated a negotiating approach similar to that taken under GATS, which would allow governments to open up areas where they want to attract foreign investors and exclude those considered too sensitive for economic, political or developmental reasons.

A group of developing countries recently submitted a proposal insisting on the importance of investors' obligations and the responsibilities of home countries. The paper would oblige multinational companies to take on commitments in areas such as ensuring technology transfer, ensuring transparency in financial transactions, etc. The proposal was rejected by developed countries.

Industrialized countries are also trying to narrow their differences over the scope of investment discussions, including whether the discussions will include such issues as portfolio

investment and whether a multilateral agreement would prevent countries from pursuing more advanced bilateral investment treaties.

Competition Policy

The Doha Declaration instructs the Working Group on the Interaction between Trade and Competition Policy to focus its efforts in the run up to the fifth ministerial on clarifying:

- Core principles including transparency, non-discrimination, and procedural fairness, and provisions on “hardcore” cartels;
- Ways of handling voluntary co-operation on competition policy among WTO member governments; and
- Support for progressive reinforcement of competition institutions in developing countries through capacity building.

The Declaration directs that the work must take full account of developmental needs. This would include technical co-operation and capacity building on such topics as policy analysis and development, so that developing countries are better placed to evaluate the implications of closer multilateral co-operation for various developmental objectives. Co-operation with other organizations such as the UN Conference on Trade and Development (UNCTAD) is also envisaged.

The Negotiations

The Working Group on the Interaction between Trade and Competition Policy identified two areas of focus for its work this year in advance of Cancun, including the kind of flexibility that would be built into commitments and the type of mechanism needed to ensure compliance with the agreement.

In a meeting of the working group in mid-February, discussion focused on whether it was possible for countries to undertake commitments to cooperate across borders on competition if those countries did not have full-fledged competition laws. A key issue is whether binding commitments, if agreed to, would require countries to enact comprehensive competition laws, or if some exceptions could be made for those countries that do not have such laws.

A paper was presented that argued for flexibility, saying that any agreement that included commitments should not prescribe how those commitments should be reflected into member countries' body of laws and regulations. Many countries are at different levels in terms of how developed their competition frameworks are, and may not have the resources or the need to develop a comprehensive competition law.

On the topic of ensuring compliance, countries discussed the desirability of a dispute settlement mechanism as opposed to a peer review system to ensure that countries complied with their commitments. Some Members suggested that peer review and dispute settlement in a possible agreement could be complementary.

Patterned after the Trade Policy Review Mechanism, the peer review would look at how WTO members handle competition in their laws and regulations and how that impacts their economies, but it would not examine how they have handled individual anti-trust cases.

Trade facilitation

The Doha Declaration recognizes the case for “*further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area*”.

In the period leading to the Fifth Ministerial Conference in 2003, the WTO Goods Council, which has been working on this subject since 1997, was to “*review and as appropriate, clarify and improve relevant aspects of Articles V (‘Freedom of Transit’), VIII (‘Fees and Formalities Connect with Importation and Exportation’) and X (‘Publication and Administration of Trade Regulations’) of the General Agreement on Tariffs and Trade (GATT 1994) and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries.*”

The Negotiations

Developed country proponents of deepening existing commitments on trade facilitation have advanced several concrete proposals in the WTO to add specificity to current agreements on simplifying import fees and procedures. Developing countries, on the other hand, have expressed reservations about a potential agreement dealing with trade facilitation, in large part because they doubt that their customs administrations are sufficiently sophisticated to allow them to take on such commitments.

On Article X (publication and administration), several Members have called for widening the scope of information to be published, a consultation mechanism for affected parties prior to the finalization of customs regulations, the legal right of appeal against customs decisions, a single inquiry point for trade-related information, and expanded technical assistance for developing countries.

Most developed countries have also called for streamlining the processing of imports under Article VIII (fees and formalities), whereas developing countries again expressed concerns over the cost-benefit of excessive disciplines in this area.

There is greater potential for agreement on Article V (freedom of transit) among developed and developing countries, as some Members pointed out that customs procedures are increasingly more onerous for goods destined for transit than for those intended for immediate import.

Transparency in Government Procurement

The Doha Declaration states that discussions on government procurement “*shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers.*” The declaration also stresses development concerns, technical assistance, and capacity building.

The Negotiations

Many developing countries support limiting the scope of discussions in this area, citing government procurement as one of the few policy tools available for achieving socio-economic

objectives. Developed countries maintain that greater transparency would not diminish that function.

Developing countries generally oppose obligations to notify Members of all tenders or to translate them into the official languages of the WTO, as well as to WTO reviews or examination of domestic laws and regulations. Some developed countries assert that while the qualification and registration process or criteria for awarding contracts would remain flexible, award decisions should be transparent while safekeeping confidential information.

A proposal was submitted to the working group that suggested four categories around which to organize the elements of an agreement: general parameters of a potential agreement, transparency of procurement systems, transparency of specific procurements, and operational provisions to fulfil the objectives of a potential agreement.

Dispute settlement is another contentious area in the discussions. While some developed country Members press for transparency commitments in a future agreement to be subject to WTO dispute settlement proceedings, developing countries oppose linking a possible agreement to dispute settlement, stating that WTO dispute settlement rules are designed to enforce market access commitments and are not suited to enforce adherence to transparency obligations.