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The Doha Development Agenda: The WTO Framework Agreement

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name redacted, Coordinator
Foreign Affairs, Defense, and Trade Division

name redacted
Resources, Science, and Industry Division

name redacted and Danielle J. Langton
Foreign Affairs, Defense, and Trade Division

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Summary

On July 31, 2004, the 147 members of the World Trade Organization (WTO) reached a Framework Agreement for conducting future Doha Round trade negotiations. The Framework Agreement is the latest step in the Doha Development Agenda (DDA) round of trade negotiations at the WTO, which was launched at the 4th Ministerial of the WTO at Doha, Qatar in November 2001. This report provides analysis of the framework agreement and its significant results (agriculture, industrial market access, services, and trade facilitation) in the context of U.S. objectives.

The Framework addresses the three “pillars” of agricultural trade liberalization identified in the 2001 Doha Ministerial Declaration: substantial reductions in trade-distorting domestic support; the phase-out, with a view to total elimination, of all export subsidies; and substantial improvements in market access. A crucial trade-off for the negotiations is the extent to which developed countries reduce their trade-distorting domestic support in return for additional market access from large developing countries.

Non-agricultural market access (NAMA) received less scrutiny. The agreement provides general guidance for future negotiations on the modality for reducing tariffs, the binding of developing country tariffs, sectoral tariff elimination, and special and differential treatment (SDT) for developing countries. The NAMA talks may benefit from the new impetus in the agricultural negotiations.

The parameters of the services negotiations were established as part of the pre-Doha “built-in agenda” and in the Doha Ministerial Declaration that launched the new round. The framework reaffirms the commitments made at Doha and charges the negotiators to complete and submit their initial offers as soon as possible, to submit revised offers by May 2005, and to ensure that the offers are in sectors and modes of supply that are of interest to developing countries. Services involving the temporary movement of natural persons will remain contentious for both developed and developing countries.

The Framework sets forth modalities for negotiations on trade facilitation, including assessing the needs and priorities of member countries; providing technical assistance to developing countries; and addressing trade facilitation language in the GATT agreement. An early matter for clarification is whether the negotiations will yield enforceable rules, or merely guidelines, for trade facilitation.

While the Framework Agreement resolved several contentious issues regarding the negotiation of a future agriculture agreement, other issues were addressed in a cursory fashion, if at all. Much work remains to be done to flesh out the Framework to achieve an actual agreement on trade liberalization. The manner in which these issues are resolved may influence the level of Congressional support for any resulting agreement. The agreement also abandons the January 1, 2005, deadline for the negotiations, but instead sets December 2005 as the date for the 6th Ministerial to be held in Hong Kong. This report will be updated as appropriate.

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The Doha Development Agenda: The WTO Framework Agreement

On July 31, 2004, the 147 members of the World Trade Organization (WTO) reached a framework agreement for conducting future Doha Round trade negotiations. The agreement provides instructions on the manner in which talks are to proceed in agriculture, non-agricultural market access (NAMA), services, trade facilitation, and other issues. The success of these framework negotiations was seen as critical to the survival of the Doha Round after the failure at the 2003 Cancún Ministerial to reach agreement on these issues. While the framework reached agreement on difficult issues in the agriculture negotiations, much of the rest of the agreement restates decisions that still need to be made, accord on which remains elusive.

While this agreement provides only a framework for future negotiations, it has several implications for future Congressional activity. Any agreement reached resulting from this framework will require the passage by Congress of implementing legislation. In addition, progress on the Doha Round negotiations may influence possible Congressional action in 2005 concerning the potential extension of trade promotion authority and continued U.S. participation in the World Trade Organization. In addition, the next farm bill may be influenced by the negotiations or a potential agreement. This report provides analysis of the framework agreement in its significant results — agriculture, industrial market access, services, and trade facilitation — in the context of U.S. objectives.

Background and Overview of the Framework Agreement

The Framework Agreement is the latest achievement in the Doha Development Agenda (DDA) round of trade negotiations at the WTO. This round of trade negotiations was launched at the 4th Ministerial of the WTO at Doha, Qatar in November 2001. Trade ministers set an ambitious agenda to negotiate an accord by January 1, 2005. The 5th Ministerial Conference, to take place in 2003, would serve as a mid-term review for the negotiations.

The work program devised at Doha folded in continuing talks (the built-in agenda) on agriculture and services and launched negotiations on the reduction or elimination of non-agricultural (industrial) tariffs, clarification and improvement of disciplines for existing WTO agreements on antidumping and subsidies, and topics relating to special and differential (S&D) treatment for developing countries and assistance to developing countries with the implementation of existing WTO commitments. Trade ministers at Doha agreed to continue discussions on the

“Singapore issues” (government procurement, trade facilitation, investment, and competition policy) and to launch negotiations if an “explicit consensus” was reached on these issues at the 5th Ministerial Conference in 2003. The Doha Ministerial Declaration also directed negotiators to resolve a dispute related to the ability of least developing countries to access generic medicines for HIV/AIDS and other epidemics.

The Doha Ministerial documents paid special attention to the concerns of developing countries, and the round was formally entitled the Doha Development Agenda. This emphasis was partly in order to get the developing countries — a majority of the WTO’s membership — to agree to the commencement of the round. However, some developing countries had difficulty in implementing their Uruguay Round commitments, and many developing countries have expressed concern about undertaking new obligations. At Doha, negotiators agreed to resolve issues related to their implementation of the Uruguay Round agreements, to negotiate special and differential treatment for developing countries in the new round, and to provide technical assistance in the negotiations and implementation of the agreements.

Negotiations proceeded at a slow pace. Several deadlines for agreement on negotiating modalities — i.e. methodologies by which negotiations are conducted — were missed in the agriculture, industrial market access, and other negotiating groups. In addition, deadlines for submitting requests and offers in the services negotiations were also missed by many participants. Negotiators looked toward the 5th Ministerial — which took place September 10-14, 2003 in Cancún, Mexico — to resolve the modalities. In the weeks before Cancún, negotiating documents to achieve this resolution were criticized by all sides, and expectations for the Ministerial were reduced from agreeing on modalities to achieving an agreement on the framework for negotiating the modalities to be used in future negotiations.

From Cancún to Geneva. The Cancún Ministerial, however, failed to achieve even these expectations. Trade ministers at Cancún became embroiled in disputes over agriculture and the Singapore issues. The G-20, an informal group of developing countries led by Brazil, India, China, and South Africa, demanded substantial concessions from developed countries in the agriculture negotiations in response to perceived United States-European Union (EU) collaboration. Some developing countries also refused to support the beginning of negotiations over the Singapore issues, which had been pushed by the EU, because of sovereignty issues or capacity constraints. In the end, deadlock over the Singapore issues broke up the talks before agriculture issues were even formally discussed.

Subsequent to the collapse of the talks, U.S. and EU negotiators criticized both the substance and tactics of the G-20 group. Developing countries defended their actions as representing their paramount interest in breaking down the agricultural barriers and subsidies in the United States and the EU. Initially, U.S. reaction in the aftermath of the Ministerial was to give increased emphasis to the negotiation of bilateral and regional free trade agreements (FTA). The European Union undertook a review of its policy towards the WTO and multilateral trade negotiations.

However, signs of movement in the negotiations could be detected by the beginning of 2004. In January, U.S. Trade Representative Robert B. Zoellick sent a letter to the 147 WTO trade ministers expressing the hope that 2004 would not be

“a lost year for the WTO negotiations.” While eschewing concrete proposals, the letter signaled U.S. reengagement with the process. The EU’s acceptance, meanwhile, of the elimination of agricultural export subsidies “by date certain” also moved the negotiations along. Compromise was also achieved over the negotiation of the Singapore issues as the EU and others decided that the inclusion of competition policy, investment, and government procurement in the round had to be abandoned if the negotiations were to move forward in the face of developing-country resistance. Developing countries too played an active part in negotiations this year, first by India and Brazil negotiating directly with the developed countries (as the so-called “non-party of five”) on agriculture, and second by working toward acceptance of trade facilitation as a subject for negotiation.

After intense negotiations in late July 2004, WTO members reached what has become known as the Framework Agreement (or the July package) which provides broad guidelines for completing the Doha round negotiations. The agreement contains a 4-page declaration, with four annexes (A-D) covering agriculture, non-agricultural market access, services, and trade facilitation, respectively. In addition, the agreement acknowledges the activities of other negotiating groups (such as those on rules, dispute settlement, and intellectual property) and exhorts them to fulfill their Doha round negotiating objectives. The agreement also abandons the January 1, 2005 deadline for the negotiations, but instead sets December 2005 as the date for the 6th Ministerial to be held in Hong Kong.

U.S. Priorities. Throughout the Doha Round, increased market access for U.S. agriculture, industrial goods, and services has been the primary goal for U.S. negotiators. In the agricultural negotiations, the United States has sought improved market access, especially from developing countries, and the end of all export subsidies. The United States has also sought expansive tariff liberalization in the non-agricultural market access talks, including support for an early proposal for a “tariff-free world” by the year 2015 and for sectoral tariff elimination. The United States has also made cross-border trade in services a priority, reportedly seeking to have services make up one of the pillars of the Framework Agreement.¹ The United States has been less concerned with the disposition of the Singapore issues, with USTR Zoellick at one point reportedly referring to them as a “distraction.”² The United States has also sought to limit the scope of negotiations on disciplines to WTO rules, especially in light of Congressional support for maintaining current U.S. trade remedy practices.

Previous rounds of trade liberalization were successful in reducing tariffs in the manufactured goods sector. That negotiated liberalization has proceeded further in this area perhaps is reflected in the distribution of world trade. Of the \$7.6 trillion exchanged in world trade in 2002, industrial goods comprised 71.9%, agriculture 7.6%, and services 20.5%. Trade in services was only brought under world trade rules by the Uruguay Round’s General Agreement on Trade in Services in 1995.

¹ “New WTO Framework Shows Little Progress on Services, NAMA,” *Inside U.S. Trade*, August 6, 2004.

² “Zoellick, Lamy Clash Over Inclusion of Singapore Issues in Doha Round,” *Inside U.S. Trade*, February 27, 2004.

Agriculture, though previously negotiated, remains a thorny issue for both producer and consumer, and developed and developing countries. The liberalization of these sectors potentially offers the greatest boost to world trade, but also potentially the most wrenching changes to the societies that undertake them.

The Agriculture Framework Agreement³

Introduction. The agreement on a framework for completing the agriculture negotiations in the DDA is contained in Annex A of the “July package.” The Framework Agreement addresses the three “pillars” of agricultural trade liberalization identified in the 2001 Doha Ministerial Declaration: substantial reductions in trade-distorting domestic support; the phase-out, with a view to total elimination, of all export subsidies; and substantial improvements in market access.⁴ Failure to agree on a framework for the agriculture negotiations would have contributed to uncertainty about prospects for concluding the DDA and about the viability of the WTO as a global forum for negotiating further farm trade liberalization. The Framework now becomes the basis for establishing specific formulas, schedules, end dates and other parameters (referred to as “modalities”) for achieving DDA objectives for agriculture during the next phase of negotiations which seem likely to continue into 2006.

U.S. aims for the DDA negotiations include substantial market opening for agricultural products by all WTO members, especially, the developing countries. The United States wants all agricultural export subsidies eliminated. The United States has consistently maintained that trade-distorting domestic support should be reduced substantially, but also wants to preserve “safety-net” farm income programs enacted in the 2002 farm bill.⁵ The European Union (EU), while willing to eliminate export subsidies over time, wants an end to export credit guarantees and some food aid programs that it claims are export subsidies. The EU also wants to maintain direct decoupled payments to farmers (along with payments linked to production) established under recently enacted reforms of its Common Agricultural Policy (CAP). The developing countries, a large and diverse group that constitutes a majority of WTO members, want special and differential treatment with respect to tariff or subsidy reduction. The poorest or least developed countries (LDCs) among them want to maintain the trade preferences they currently enjoy.

Many U.S. agricultural interest groups support multilateral agricultural trade liberalization. These groups believe that trade-offs possible in a comprehensive

³ Prepared by (name redacted), Senior Specialist in agricultural Policy, Resources, Science and Industry Division.

⁴ The objectives for agricultural trade liberalization in the DDA are contained in paragraph 13 of the Doha Ministerial Declaration which is available at [http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm]

⁵ U.S. and other WTO member countries’ negotiating positions (as well as other background information on the DDA agriculture negotiations) are available at [http://www.wto.org/english/tratop_e/agric_e/negoti_e.htm.]

negotiation would result in improved market prospects for U.S. agricultural exports. For most U.S. farm groups, the trade-off of most interest is substantial market opening by developing countries in exchange for substantial reductions in domestic support by developed countries. U.S. producers of import-sensitive crops (e.g., citrus, dairy, sugar, some fruits and vegetables), who feel disadvantaged by previous trade agreements (e.g., NAFTA) or threatened by possible new agreements, are less supportive of agricultural trade liberalization.

Key provisions in the agriculture framework address trade-distorting domestic support, export competition, market access, cotton subsidies, and other issues.

Trade-Distorting Domestic Support. Overall, trade-distorting support of agriculture will be reduced by means of a “tiered” or “banded” approach applied to achieve “harmonization” in the levels of support.⁶ Harmonization in this case means that WTO member countries having higher levels of trade-distorting domestic support will make greater overall reductions. Developed subsidizing countries will make a “down payment” on the overall cut by reducing trade-distorting domestic support 20% from bound (maximum permitted) levels of support in the first year after negotiations are completed. WTO member countries will make separate reduction commitments in the components of trade-distorting support, i.e., amber box (most trade-distorting), *de minimis* (a category of spending now exempted from cuts if it accounts for less than 5% of the value of production), and blue box (currently defined as payments based on fixed areas and yields; a fixed level of production or a fixed number of livestock).

Product specific amber box support will be capped at average levels according to a methodology to be negotiated; and the definition of the blue box will be modified to include direct payments that do not require production (e.g., U.S. counter-cyclical support)⁷, and capped at 5% of a member country’s average total value of agricultural production during an historical period. *De minimis* spending also will be reduced according to a formula to be negotiated. Non-trade distorting measures (green box) will be reviewed to ensure that they have no, or at most minimal, trade distorting effects or effects on production. Developing countries will receive special and differential treatment for all types of trade-distorting support in the form of longer implementation periods and lower reduction commitments; least developed countries (LDCs) will not be required to make any cuts in domestic support.

Export Competition. By “the end date” to be negotiated, WTO member countries will eliminate: export subsidies, and export credits, credit guarantees or insurance programs with repayment periods beyond 180 days. By the same end date, WTO member countries will eliminate trade-distorting practices of exporting State

⁶ WTO categories of domestic support are explained in CRS Report RL32053, *Agriculture in WTO Negotiations*, September 30, 2003, p. 5; the report can be viewed at [<http://www.congress.gov/erp/rl/html/RL32053.pdf>]

⁷ For information on this program, see *What is Counter-Cyclical Assistance?* in the CRS Agriculture Policy electronic briefing book at [<http://www.congress.gov/brbk/html/ebagr21.html>].

Trading Enterprises (STEs) and the provision of food aid not in conformity with disciplines to be agreed, including disciplines to prevent commercial displacement. Developing country WTO members will benefit from longer implementation periods for phasing out export subsidies. Furthermore, WTO member countries will ensure that export credit programs appropriately provide for differential treatment in favor of least-developed and net food-importing countries. STEs in developing countries which enjoy special privileges to preserve domestic price stability and ensure food security will receive special consideration for maintaining monopoly status.

Market Access. All WTO member countries (except the least developed countries — LDCs) will reduce import tariffs using a tiered formula. Harmonization of tariff levels will be achieved through deeper cuts in higher tariffs. Tariff reductions will be made from bound, not applied, rates; higher tariffs will be subject to deeper cuts with some flexibility for “import-sensitive” products. The number of tiers (bands) and the tariff reduction for each band remain to be negotiated. WTO countries may designate a number (to be negotiated) of sensitive products for which “substantial improvement” in market access must be achieved through a combination of tariff quota increases and tariff reductions applied to each product. Developing countries will be able to designate a number of products as “special products,” based on criteria of “food security, livelihood security, and rural development needs.” These special products will be eligible for more flexible treatment as regards market access. A Special Safeguard Mechanism (SSM) will be established for developing countries, while a Special Agricultural Safeguard (SSG) for developed countries (as currently provided for in the Uruguay Round Agreement) remains under negotiation. (Safeguards permit reversion to previous tariff levels if imports surge.)

Cotton. Cotton was not mentioned in the 2001 Doha Ministerial Declaration. However, a number of African cotton producing and exporting countries proposed a sectoral initiative on cotton that called for eliminating all trade-distorting cotton subsidies and providing compensation for economic losses of African cotton producers while subsidies were phased out.⁸ The United States, while not agreeing with the African proposal, worked with the African countries on a formulation in the Framework to address the cotton initiative. The “July package” stresses the importance of the sectoral initiative on cotton (the decision), while the agriculture Framework (Annex A) provides that work on cotton will be carried out under all three pillars and that the DDA will work to achieve “ambitious results expeditiously.”

Other Issues Addressed in the Framework. The agriculture Framework states that “particular concerns of recently acceded countries will be effectively addressed through specific flexibility provisions.” This provision is viewed as a concession to China who argued that it had already made substantial commitments in all three pillars in its accession negotiations. Sectoral initiatives (e.g., a proposal for zero-for-zero tariffs in oilseeds advanced earlier by the United States), differential

⁸ Background information on the African cotton initiative can be viewed at [http://www.wto.org/english/tratop_e/agric_e/negs_bkgrnd20_cotton_e.htm]; see also CRS Report RS21712, *The African Cotton Initiative and WTO Agriculture Negotiations*, January 16, 2004.

export taxes (as employed by Argentina), and geographical indications (GIs, protection for products with geographical names⁹, an important issue for the EU and some other countries) remain “issues of interest but not agreed.” Disciplines on export prohibitions and restrictions will be strengthened. Rules on agricultural trade policy monitoring and surveillance will be enhanced so as to ensure transparency, including “through timely and complete notifications” with respect to commitments in the three pillars.

Implications for U.S. Agriculture. An eventual agreement on agricultural trade liberalization in the DDA round would have both market effects for the U.S. agricultural sector as well as effects on U.S. agricultural policies and programs.

Market Effects. Market effects of global agricultural trade liberalization are difficult to estimate at this point in the negotiations because such specifics as the extent of tariff reduction, the timing for the elimination of export subsidies, or the percentage reductions in trade-distorting support remain to be negotiated. In general, however, substantial tariff reductions (or increased market access quotas) could result in expanded exports of many U.S. commodities including grains, oilseeds, cotton, and fruits and vegetables. Other U.S. commodity sectors such as dairy or sugar could experience more intense competition from foreign suppliers, but those effects would be mitigated by designating such products as import-sensitive (as provided in the Framework Agreement) and therefore subjecting them to longer phased reductions in tariffs and/or increases in quotas. Export subsidy elimination could also benefit a number of U.S. commodity sectors, e.g., dairy, meat and livestock products, and cereals by improving competitive conditions in third-country markets, but tightening of disciplines on U.S. export credit programs could penalize producers of commodities that have benefitted from such programs, e.g., grains and cotton. Market effects of reducing trade-distorting domestic support should be to increase prices for commodities that have benefitted from payments that encourage excess production and downward pressure on prices.

Policy and Program Effects. The harmonizing approach in the agriculture Framework suggests that others, notably the European Union (EU), would have to cut trade-distorting support more than would the United States. In the EU case, its bound level of amber box support is currently (depending on exchange rates) around \$80 billion while the U.S. bound level is \$19 billion. According to U.S. trade negotiators, the United States likely should have no difficulty in meeting the aim of cutting the sum of trade-distorting support levels by 20% in the first year as reductions would be made from “bound”, or permitted, rather than “applied”, or actual, levels. The U.S. Dept. of Agriculture (USDA) estimates that the U.S. bound level of domestic support under a new WTO agreement could be as high as \$39 billion (the current U.S. bound level of support for amber box spending plus estimates of the future bound levels of *de minimis* and blue box spending), while actual spending could be considerably less, rendering the 20% cut in the first year meaningless for the United States. However, depending on the outcome of the negotiations, future cuts could be higher, provided that other countries also

⁹ See CRS Report RS21569, *Geographical Indications and WTO Negotiations*, July 14, 2003.

substantially reduce their trade-distorting support and tariffs. Some in Congress have expressed opposition to cuts in “safety-net programs” put in place by the 2002 farm bill, as would be required by the agriculture Framework agreement. Cotton is the only agricultural commodity mentioned by name in the agriculture Framework. U.S. cotton producers object to this singling out of cotton for special attention.¹⁰

The elimination of EU export subsidies has been a longstanding objective of U.S. agricultural trade policy as has requiring greater transparency by STEs such as the Canadian Wheat Board. Pressure from U.S. and developing country WTO members in the DDA round plus successive reforms of the EU’s Common Agricultural Policy (CAP), which has reduced its reliance on export subsidies, led the EU to offer to eliminate them by a date certain. In exchange, however, the EU countered that all forms of export subsidies, including U.S. export credit guarantees and food aid, should be eliminated. This trade-off between export subsidies and export credit and food aid programs is reflected in the Framework Agreement. USDA’s export credit guarantee programs, which have provided guarantees for about \$4 billion of agricultural exports annually in recent years, apparently would be substantially altered by the agreement. Current U.S. export credit programs can guarantee financing of from 180 days to 10 years.¹¹

U.S. food aid programs (e.g., P.L. 480 Title II commodity donations for humanitarian purposes) which meet the criterion of not displacing commercial sales appear to be unaffected by the Framework Agreement.¹² Although earlier versions of the Framework implied that commodity food aid would be eliminated in favor of cash grants, the agreed-upon framework states that “...(t)he question of providing food aid exclusively in fully grant form” will be addressed in the negotiations. The role of international organizations vis-a-vis WTO member countries’ food aid programs will also be addressed in the negotiations.

The DDA and the Next Farm Bill. DDA negotiations seem likely to be concluding just as Congress would be taking up a new farm bill to succeed the six-year Food Security and Rural Investment Act of 2002 (P.L. 107-171). While implementing legislation, as called for in the Trade Act of 2002 (Title XXI of P.L. 107-210), would be a vehicle for conforming U.S. law to a DDA trade agreement, farm bill changes may be needed to meet U.S. commitments in a final DDA agreement on agriculture. Farm bill programs that most likely would be candidates for change would include commodity price and farm income support (Title I of P.L. 107-171) and export and food aid programs (Title III of P.L. 107-171). Members and committees will be monitoring the continuing agriculture negotiations with attention to the economic benefits anticipated from further global agricultural trade liberalization and to the adjustments that could accompany a new multilateral agricultural trade agreement.

¹⁰ The response of the U.S. Cotton Council, a producer groups, is available at [<http://www.cotton.org/news/2004/WTORESPONSE.cfm>.]

¹¹ Details on current U.S. agricultural export credit guarantee programs is available at [<http://www.fas.usda.gov/excredits/>]

¹² Details on current U.S. food aid programs are available at [<http://www.fas.usda.gov/food-aid.html>]

Non-Agricultural Market Access¹³

Non-agricultural market access (NAMA) received less scrutiny than agriculture in negotiations for the Framework Agreement. The Framework integrated draft language on NAMA prepared for the Cancún Ministerial in September 2003; a text that was neither approved nor considered at Cancún. In the Geneva deliberations, developed nations sought to include the Cancún language wholesale, yet developing countries resisted. They insisted on a paragraph, included in the first paragraph of the text, indicating that “additional negotiations are required to reach agreement on the specifics of some of these elements,” the elements being the formula, treatment of unbound tariffs, flexibilities for developing countries, participation in sectoral tariff modalities, and preferential tariff beneficiaries. USTR Zoellick reportedly minimized the importance of this language, emphasizing that it was about “specifics” of already agreed upon “elements.”¹⁴ However, the insistence of developing countries to the incorporation of this language in the text, and not as a preamble or chairman’s statement- implying a lesser legal status, indicates that developing countries place a different significance on this paragraph. Depending on the interpretation accorded it, this paragraph could reopen many of the issues worked-out in the Framework text. It also reflects the continued lack of consensus on many of the basic components of the market access negotiations.

Future progress in the market access negotiations rests on the resolution of several issues, on which the Framework Agreement often provides only general guidance. These include the modality for reducing tariffs, the binding of developing country tariffs, the issue of sectoral tariff elimination, and special and differential treatment (SDT) for developing countries. As indicated by the opening paragraph, inserted at the insistence of developing countries, none of these issues have been settled.

While other areas of WTO negotiations have received greater scrutiny in the Doha round, trade of industrial and primary products, the subject of the NAMA negotiations, continue to make up the bulk of world trade. Nearly \$5.5 trillion in manufactures and primary products were traded worldwide in 2002, accounting for 72% of world trade activity.¹⁵ In the United States, industrial and primary products accounted for 65% of exports and 79% of imports in 2003.¹⁶ Hence, the outcome of these negotiations could have a substantial impact on U.S. trade patterns and on the world economy.

¹³ Prepared by (name redacted), Analyst in International Trade and Finance, Foreign Affairs, Defense, and Trade Division.

¹⁴ “New WTO Framework Shows Little Progress on NAMA, Services,” *Inside U.S. Trade*, August 6, 2004.

¹⁵ World Trade Organization, *International Trade Statistics 2003*, pp. 103-4.

¹⁶ Bureau of Economic Analysis, “International Trade in Goods and Services, 2003 Annual Revision,” June 14 2004.

Tariff Reduction. The Framework Agreement endorsed the use of a non-linear formula applied on a line-by-line basis as a modality to conduct tariff reduction negotiations. A non-linear formula can work to even out or harmonize tariff levels between participants. This type of formula could result in a greater percentage reduction of higher tariffs than lower ones, resulting in a greater equalization of tariffs at a lower level than before. By contrast, an example of a *linear formula* would be one that reduced tariffs by a certain percentage across the board. Consequently, this formula would not change the relative tariff rates between members. A country with relatively high tariffs before undergoing the formula would still have high tariffs relative to other countries afterwards. This approach is generally favored by countries with high tariffs or certain tariff peaks that the country seeks to preserve. Certain non-linear formulas, such as an harmonization formula, seek to even out or harmonize the tariff rates among nations.

An harmonization formula would also work to reduce tariff peaks and tariff escalations, another stated goal of the declaration. Tariff peaks are considered to be tariff rates of above 15% and often protect sensitive products from competition. Tariff escalation is the practice of increasing tariffs as value is added to a commodity. As an example of tariff escalation, cotton would come in with a low tariff, fabric would face a higher tariff, and a finished shirt would face the highest tariff. Tariff escalation is often employed to protect import-competing, value-adding industry. The emphasis on tariff peaks and escalation results from findings that the use of peak tariffs and escalations are particularly levied against the products of developing countries, as well as becoming increasingly costly to the consumer in developed countries.¹⁷ The Framework does not specify implementation period for tariff cuts, but developing countries are to be afforded longer implementation periods.

Tariff Binding. The Framework encourages the continued binding of tariffs. Tariffs are bound when a country commits not to raise them beyond a certain level. Therefore, binding has been seen as the first step in tariff reduction. Bound tariffs are often significantly higher than tariff levels that are actually applied, which has led to questions as to the usefulness of reductions from bound rather than applied rates.

The United States supports reduction from applied rates, which would result in greater cuts to actually levied tariffs. Some contend that the use of the applied rate may serve as a disincentive for countries to undertake unilateral liberalization. Countries would likely hesitate to undertake unilateral tariff reductions if they know that multilateral liberalization efforts would use such rates as a starting point. It may also increase the incentive to raise applied rates prior to negotiation.¹⁸

Under the Framework Agreement, tariff reductions would be calculated from the bound, rather than the applied, level. Reductions in unbound tariff lines would be calculated from twice the currently applied rate. Participants (i.e., developing countries) who have bound less than 35% of their tariff lines would be exempt from

¹⁷ World Bank, *Global Economic Prospects*, 2004, p. 91.

¹⁸ Joseph Francois and Will Martin, "Formula Approaches for Market Access Negotiations," *The World Economy*, January 2003, p.17.

tariff reduction commitments in the Round provided that they bind the remainder of their non-agricultural tariff lines.

In addition, all tariffs would be bound in *ad valorem* terms; all remaining non *ad valorem* tariffs would be converted and bound by a methodology to be determined by negotiation. An *ad valorem* tariff is set as a percentage of the value of an imported good, while a non-*ad valorem* tariff uses some other measurement such as a fixed rate per unit or weight of goods. While *non-ad valorem* tariffs are more prevalent in agriculture, they continue to be employed for non-agricultural tariffs and are not solely a developing country phenomenon. A recent study calculated that 4.2% of lines in the United States tariff schedule remained non *ad-valorem* and for Switzerland the figure was 82.8 percent.¹⁹

Non-Tariff Barriers. The industrial market access talks also encompass negotiations on the reduction of non-tariff barriers (NTBs). NTBs include such activities as import licensing, quotas and other quantitative import restrictions, conformity assessment procedures, and technical barriers to trade. The Framework instructs members to submit notification of NTBs by October 31, 2004 for negotiators to identify, examine, categorize and, ultimately, negotiate. The Framework “takes note” of several modalities by which negotiations on NTBs could proceed.

Sectoral Tariff Reductions. The Framework also identifies sectoral tariff elimination as a modality for NAMA negotiations. The Framework instructs negotiators to define issues of product coverage and participation. This represents a retreat from previous draft texts that specifically proposed sectors (electronics, fish and fish products, footwear, leather goods, motor vehicle parts and components, stones, gems and precious metals, and textiles and clothing) for sectoral tariff elimination.²⁰ While the text anticipates flexibility for developing country members, it also stresses the importance of involvement “by all participants,” thus discouraging the possibility that developing countries could opt out of these negotiations.

Special and Differential Treatment for Developing Countries. The text affords several flexibilities to developing country members. The Framework permits developing countries longer periods to implement tariff reductions. Developing countries may also avail themselves of either of the following flexibilities: (1) applying less than formula cuts for up to 10% of tariff lines provided that the cuts applied are no less than half the formula cuts and that the tariff lines do not exceed 10% of the value of imports; or (2) keeping tariff lines unbound, or not applying formula cuts for 5% of tariff lines provided they do not exceed 5% of a member’s imports. LDCs would not be required to apply formula cuts, nor participate in the sectoral cuts, but would undertake to “substantially” increase the level of bound tariffs. Developed-country participants and others are encouraged to grant LDCs duty-free and quota-free access to their markets by a date not specified.

¹⁹ Marc Bacchetta and Bigit Bora, “Industrial Tariff Liberalization and the Doha Development Agenda,” WTO Working Paper, 2003, p. 15.

²⁰ Draft Elements for Modalities for Negotiations on Non-Agricultural Products, Revision, WTO Document TN/MA/W/35/Rev.1, September 1, 2003.

Newly- acceded countries would also be given flexibilities based on the market access commitments of their accessions. The Framework also acknowledges the challenge of designing tariff reductions for countries that are already beneficiaries to various preference programs such as the U.S. African Growth and Opportunity Act or the European Union's Everything But Arms Initiative. In devising the formula, credit is to be given for autonomous liberalization in developing countries.

Services²¹

Background. Trade in services is only mentioned briefly in the WTO negotiating framework and was given its own annex in the Framework Agreement only after proponents strongly argued for such treatment. Authors of initial drafts of the Framework had lumped services trade in with "other issues." "Services" refers to a broad range of economic activities, essentially any economic activity that is not a tangible good, for example financial services, tourism, transportation, and legal services.

Services account for a major and growing portion of the U.S. economy and for a good portion of the rest of the world economies.²² In 2003, services accounted for about 58% of U.S. Gross Domestic Product (GDP), a sharp increase from 42% of GDP in 1965. In 2003, services industries employed 83% of the U.S. workforce, a substantial rise from 66% in 1965.²³ The World Bank estimates that in 2002, services accounted for 68% of total world GDP.²⁴

Services, while important, play a smaller role in U.S. trade than they do in the U.S. economy as a whole. In 2003, services accounted for 30.1% of U.S. exports of goods and services and 14.1% of U.S. imports of goods and services.²⁵ Several factors may account for the smaller figure: most services must be bought and sold through direct contact between the buyer and seller and are not conducive to cross-border trade; while nations have reduced or eliminated tariffs and other barriers to trade in goods, they have been more reluctant to liberalize trade in services; and data limitations have resulted in under-reporting of trade in services.

Services are bought and sold via four means or "modes": (1) cross-border trade; (2) consumption abroad where the consumer physically travels to another country to buy the service; (3) commercial presence where the service is provided by a firm in one country via its branch, agency, or wholly-owned subsidiary located in the country of the buyer; and (4) the temporary presence of natural persons where an individual

²¹ This section was written by William Cooper, Specialist in International Trade and Finance; Foreign Affairs, Defense, and Trade Division

²² CRS calculations based on data in White House. Council of Economic Advisers. *Economic Report of the President*. February 2004. p. 296.

²³ Ibid. p. 338.

²⁴ World Bank. *World Development Indicators*. 2004. p.188.

²⁵ U.S. Department of Commerce. Bureau of Economic Analysis.

supplier travels temporarily to another country to supply services (so-called mode 4 services). Negotiations in bilateral, regional or multilateral fora, to liberalize trade in services, focus on reducing barriers in one or more of these four modes.

Multilateral rules on trade in services are very new and were established under the General Agreement on Trade in Services (GATS) as part of the set of agreements reached during the Uruguay Round negotiations. They are administered by the World Trade Organization (WTO) which was established on January 1, 1995 also as part of the Uruguay Round. The GATS contains basic principles and rules on trade in services, some of which, for example, national treatment and most-favored-nation treatment, are parallel to long-established rules for trade in goods under the General Agreement on Tariffs and Trade. Article XIX of the GATS required WTO members to begin a new set of negotiations on services in 2000 as part of the so-called WTO “built-in agenda.” It was agreed before the Doha Ministerial that services negotiations would operate in a request-offer format. The new set of GATS negotiations began in February 2000, and during the remainder of that year, the members reviewed the status of commitments already made and developed a set of guidelines.²⁶

Doha Round Negotiations. The negotiations on services were folded into the agenda of the new round at the November 2001 WTO Ministerial in Doha, Qatar. In their declaration establishing the agenda for the new round, the ministers affirmed their support for the work that had already been accomplished in the services negotiations. Each WTO member first indicates what general concessions they request from the other members and then, separately, each member indicates what concessions it is willing to offer. Members stipulated on the Doha documents that by June 30, 2002, GATS members should have submitted their requests for commitments from other members to liberalize trade in services and, by March 31, 2003, should submit their offerings of what their initial commitments would be toward liberalizing trade in services in their economies.

The United States had completed its requests for commitments from other member countries on July 1, 2002. The U.S. requests call for many of the countries to improve transparency in regulations of services to boost efficiency across all services industries. In addition, U.S. requests centered on reduction of trade restrictions in 12 service industries: telecommunications; finance; express delivery; energy; environment; distribution services; education and training; lodging and other tourism services; professional services; computer and related services; advertising services; and audiovisual services.²⁷

Other countries, including the 15 members of the EU, submitted their own requests, including requests made of the United States to reduce trade barriers in services. Of note, is a request by the EU, Japan, South Korea, and Norway that the

²⁶ U.S. proposed negotiation guidelines are summarized in documents located at [<http://www.ustr.gov/sectors/services/docsvcs.shtml>.]

²⁷ Office of the United States Trade Representative. *U.S. Proposals for Liberalizing trade in Services: Executive Summary*. July 1, 2002. [<http://www.ustr.gov/sectors/services/docsvcs.shtml>.]

United States provide greater access to its markets for foreign maritime services providers. Japan, for example, points to the Jones Act of 1920, which limits shipping within the United States to vessels manufactured, owned, and operated by U.S. companies. The EU has also focused some of its requests on the U.S. financial sector, particularly restrictions on the foreign establishment of state-chartered subsidiaries, branches, or representative offices.²⁸

On March 31, 2003, the United States submitted its offer on reducing trade barriers in services to meet the deadline established in the Doha Ministerial statement. The U.S. offer covers 15 areas: accounting services; advertising and related services; audiovisual and related services; distribution services; education and training services; energy services; environmental services; express delivery services; financial services; legal services; movement of natural persons (mode 4); small and medium-sized services enterprises; telecommunications, value-added network, and complementary services; and transparency in domestic regulation.²⁹

The negotiations on services have gone slowly since the Doha Development Agenda was launched. Besides the United States, 43 other WTO members (the EU is counted as one member) have made offers on reducing their trade barriers. Some negotiators and other observers have argued that not much progress would be made until the WTO negotiators resolved how agricultural issues would be addressed.³⁰ Developing countries were reluctant to make offers on services until they saw how far some of the developed countries were willing to go on agriculture. Because the Framework Agreement addressed many agricultural trade issues, supporters of liberalized trade in services are anticipating that the services negotiations will gain momentum.

Framework Issues. The Framework itself mentions services only briefly because they were not the focus of the negotiations over the framework and the parameters of the negotiations had already been established as part of the “built-in agenda” and in the Doha Ministerial Declaration that launched the new round. The Framework reaffirms the commitments made in the Doha Ministerial Declaration and charges the negotiators to complete and submit their initial offers as soon as possible, to submit revised offers by May 2005 and to ensure that the offers are of high quality. The Framework also charges the negotiators to bear in mind when making their offers the sectors and modes of supply that are of interest to developing countries.

The negotiating Framework notes the particular interest that developing countries have in issues pertaining to mode-4 supply of services. A number of developing countries, including African countries and India, have complained that developed countries’ offers to date have been largely deficient in the area of mode-4. They assert that the developed countries often require a commercial presence by the

²⁸ *Washington Trade Daily*. July 5 and July 6, 2002.

²⁹ For more information on the U.S. offer, see CRS Report RS21492, *Services Negotiations in the WTO: An Overview of the U.S. Offer*.

³⁰ Coalition of Services Industries. *US Services Industry Association Welcomes WTO Agreement to Move Ahead with Doha Round Trade Talks*. Press release. July 31, 2004.

foreign supplier and/or employ strict requirements, such as pre-employment conditions, economic needs tests, and quota restrictions on visas before permitting temporary entry of foreign professionals.³¹ Because developing country concerns run head-on into U.S. and EU heightened post-9/11 concerns about entry of foreigners, this issue could be difficult as the services negotiations progress.

In many member countries, services are a large portion of economic activity. Yet, services account for only a small portion of total trade, indicating many untapped opportunities for trade in services if barriers are eliminated. However, for many countries, especially developing countries, liberalization in services trade is a very sensitive issue that may make achieving the opportunities difficult if not elusive.

Trade Facilitation³²

Background. The WTO negotiating Framework sets forth modalities for negotiations on trade facilitation. As one of the Singapore issues, trade facilitation was pushed by the EU and other countries but met resistance from some developing countries. Developing country members were not necessarily opposed to the goals of trade facilitation, but they were reluctant to negotiate new commitments in the WTO for many reasons, mainly because they wanted the Doha round to focus on settling implementation issues from previous agreements. They were also concerned about their capacity to implement potentially costly trade facilitation agreements. However, developed country members (including the United States) insisted that trade facilitation would benefit all members by creating a more efficient global trading system, and they agreed to include provisions on technical assistance and special and differential treatment in the negotiating Framework to ensure that developing country needs were met. This may have influenced the developing countries to agree to the inclusion of trade facilitation in the negotiating Framework.

Previous WTO rules have addressed trade facilitation, but it was first introduced as a separate topic in the WTO at the Singapore Ministerial in 1996. The Doha Ministerial statement agreed to continue discussions on trade facilitation and to begin negotiations after setting modalities at the Cancun Ministerial. The trade facilitation discussions in the WTO since Doha have concentrated on three core areas: improving the relevant articles of the GATT 1994; individual country needs and priorities regarding trade facilitation, especially those of developing countries; and technical assistance to developing countries in the area of trade facilitation.

Trade facilitation aims to improve the efficiency of international trade through strengthening trade rules concerning customs procedures. It has become a more important issue in recent years as trade has been liberalized and trade flows have increased. Because of these trends, the costs of complying with administrative trade

³¹ Developing Nations Again Criticize Lack of Mode 4 Offers in WTO Services Talks. *International Trade Reporter*. April 8, 2004. p. 600.

³² This section was written by (name redacted), Analyst in International Trade and Finance; Foreign Affairs, Defense, and Trade Division.

procedures comprise a greater portion of the total costs of trade than before.³³ These costs can come from overly cumbersome and redundant documentation requirements, delays in processing goods through customs, and nontransparent or unequally enforced importation rules and requirements. In the modern “just in time” economy, where traders rely on quick turnaround and shipping to meet orders, this poses a significant problem. According to the United Nations Conference on Trade and Development (UNCTAD), the average customs transaction involves 20-30 different parties, 40 documents, 200 data elements (30 of which are repeated 30 times), and the re-keying of 60-70% of all data at least once.³⁴

WTO negotiations on trade facilitation seek to improve trade procedures by utilizing technology more effectively, enhancing cooperation among customs and other officials, reducing documentation requirements and other administrative burdens, and ensuring a fair and transparent system of administering trade. Trade facilitation has the potential to reduce the cost of trade, increase opportunities for trade, diminish corruption associated with customs procedures, increase compliance with customs rules, and reduce the cost of goods to consumers for both developed and developing countries. Trade facilitation may have the most visible impact on small and medium enterprises (SMEs), because they are often priced out of international trade due to the relatively high costs of administrative barriers for small volumes of goods. Since SMEs are said to contribute significantly to job creation and economic growth in both developed and developing countries, increasing their ability to benefit from trade may positively affect world economic growth.

U.S. Position. The United States has the potential to benefit from trade facilitation in the same way as other countries. Certain U.S. industries in particular rely on the ability to quickly clear goods through customs, such as agricultural importers and exporters, and the express delivery industry. U.S. trade with developing countries may also benefit. Such trade has been increasing; total U.S. trade with LDCs nearly doubled from 1996 to 2003, from \$7.6 billion to \$14.1 billion, and U.S. trade with its Generalized System of Preferences (GSP) beneficiaries increased by 73%, from \$193 billion in 1996 to \$261 billion in 2003.³⁵ This trade has traditionally been hindered by several factors, including the fact that developing countries tend to have the least efficient administrative trade procedures. Now that other barriers to trade with developing countries, such as protective tariff regimes, are being dismantled, trade facilitation may help both the United States and developing countries further realize gains from trade with each other. Reducing the costs of trade with developing countries could help U.S. businesses establish new export markets and lower-cost suppliers in developing countries. The United States may also become more involved in providing technical assistance as part of a negotiated agreement in trade facilitation.

³³ Swedish Trade Procedures Council (SWEPRO), *Trade Facilitation: Impact and Potential Gains*. August 2002.

³⁴ UNCTAD cited in Doha WTO Ministerial 2001: Briefing notes. *Trade Facilitation: Cutting Red Tape at the Border*. Available at: [http://www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/brief15_e.htm].

³⁵ United States International Trade Commission, Interactive Tariff and Trade Data Web. [<http://dataweb.usitc.gov>].

The United States has worked with other WTO members toward launching trade facilitation negotiations, through its membership in the so-called “Colorado Group.” This group comprises a diverse group of entities, including the United States, Australia, Canada, Chile, Columbia, Costa Rica, the European Union, Hong Kong, China, Hungary, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, and Switzerland. The current controversy in trade facilitation is that many of the developing countries are opposed to new WTO disciplines, and they would prefer optional guidelines. However, many other countries agree with the U.S. position that a rules-based system is essential for establishing accountability and implementing concrete changes to facilitate trade. They also agree that developing country concerns can be adequately addressed through attention to technical assistance and special and differential treatment.

Issues for Negotiation. The negotiating Framework modalities cover the three core issues of trade facilitation that member countries have been discussing since Doha: clarifying and improving aspects of certain existing WTO rules concerning trade facilitation; providing technical assistance to developing countries; and identifying and considering the needs and priorities of all countries, especially developing countries, including special and differential treatment. It does not specifically state whether the negotiations will result in guidelines or new rules, yet it provides for assistance to developing countries in implementing whatever rules may be negotiated.

The existing WTO rules singled out for attention are Articles V, VIII, and X of the General Agreement on Tariffs and Trade (GATT).³⁶ Each of these articles concern different aspects of trade facilitation, and they were initially agreed on prior to the formation of the WTO. Trade facilitation was seen as less important than market access and other areas negotiated under the GATT during this time, and thus the GATT does not provide specific rules for customs procedures. Article V deals with Freedom of Transit, the rights of goods passing through a territory between countries. Article VIII deals with Fees and Formalities Connected with Importation and Exportation, requiring efficient and fair fees for moving goods in and out of countries. Article X deals with the Publication and Administration of Trade Regulations, requiring transparent trade regulations and the equal enforcement of these regulations, including a judicial review process. In order to carry out its task, the Framework further directs the Trade Negotiations Committee to establish a Negotiating Group on Trade Facilitation, and appoint its chair.

The negotiations are to consider the principle of special and differential treatment for developing countries. Special and differential treatment has traditionally meant granting longer transition periods for developing countries, but the Framework states that the extent and timing of entering into commitments shall be related to the implementation capabilities of developing country members. Also, the members agreed that developing countries will not be required to undertake

³⁶ These articles are found in the GATT 1947, the original GATT agreement that preceded the formation of the WTO in 1995. The GATT 1994 includes the GATT 1947 plus some additional agreements and understandings. Both of these agreements may be informally referred to as the GATT.

infrastructure investments beyond their means. The Framework encourages developed country members to provide technical assistance to developing countries within the area of trade facilitation.

Through the negotiations, members agree to identify their own trade facilitation needs and priorities, and consider the concerns of developing countries regarding the potential costs of proposed measures. Technical assistance and capacity building for developing country participation in the negotiations is emphasized, and developed member countries are expected to provide this assistance. Developed country members are also expected to provide support in implementing the commitments that arise from the negotiations, whether that be in building human and institutional capacity or physical infrastructure. The Framework recognizes that a negotiated agreement may require some members to further develop their infrastructure, and this may be burdensome for some developing countries. In this case, developed countries are expected to make every effort to ensure support and assistance for implementing the commitments. However, a developing country will not be required to implement a commitment with costs beyond its means if it does not receive adequate support from developed member countries. That stipulation is necessary because the Framework points out that developed countries cannot commit to open-ended support. The members also agree to review the support and assistance provided, and assess whether it supports implementing the negotiated agreements.

Looking Ahead

The Framework Agreement resolved several contentious issues regarding the negotiation of a future agriculture agreement. For other issues, the Framework was less clear or the issue was left unaddressed. Much work remains to be done to flesh out the Framework to an actual agreement on trade liberalization. For the Doha negotiations to succeed, however, these issues must be addressed and resolved. In turn, the manner by which these issues are resolved may influence the level of Congressional support for any resulting agreement.

- **Agriculture.** Agreement to reduce domestic support according to a harmonizing formula (WTO members with higher levels of trade-distorting support must cut more) represents substantial progress, but difficult negotiations are expected over specifics such as the percentage cuts in overall support and in specific categories of trade distorting support (amber box, newly-defined blue box, and *de minimis*).
- Similarly, the EU's concession on eliminating export subsidies is supposed to be matched with U.S. cuts in export credit guarantees and food aid programs. Just how parallel reductions in these programs might be achieved as well as the schedule and end date for eliminating export subsidies likely will be difficult negotiating issues. The market access provisions of the agricultural Framework Agreement are less precise than those for domestic support or export competition.

- A critical trade-off to be resolved is the extent of market opening by mid-level developing countries such as Brazil or India versus the extent of reduction in trade-distorting domestic support that developed countries will make. Resolving this trade-off is critical to both realizing market benefits from further agricultural trade liberalization as well as gaining eventual support in Congress for a WTO trade agreement.
- **Services.** Regarding the services negotiations, mode-4 delivery of services (temporary entry of foreign personnel) will likely be an issue of critical interest to some members of Congress. Provisions pertaining to temporary entry of personnel were included in the free trade agreements that the United States entered into with Chile and Singapore. Members were strongly critical of trade agreements that included provisions affecting U.S. immigration policy, and vowed to oppose future agreements that did so.³⁷ Mode-4 is the most critical issue for a number of large developing countries, including India and China who have criticized the offers made by developed countries, including the United States, that have restricted Mode-4 liberalization to foreigners who are executives and highly skilled employees of foreign firms that have an established presence in the local economy.
- **Non-Agricultural Market Access.** Although the NAMA language was replicated from the 2003 Cancún text, language inserted at the insistence of the developing countries casts doubt on the finality of these decisions. The first activity of negotiators is to determine the tariff formula, or whether to use or whether to use a different tariff reduction modality. The success of the NAMA negotiations may also depend on cooperation of developing countries, some of which are withholding active participation awaiting progress in the agriculture negotiations.
- **Trade Facilitation.** In establishing talks on trade facilitation, member countries may first reach an agreement on whether to negotiate new rules, or merely guidelines, for trade facilitation. This may be accomplished by first reaching agreement on concrete steps for the provision of technical assistance, and the application of special and differential treatment. Developing countries may prove more likely to engage in the talks if they are confident that they will not be forced to take measures beyond their capacity, and it may be possible to agree to negotiate new rules.

³⁷ See also, Senate Judiciary Committee Members Criticize USTR on Temporary Entry Provision. *International Trade Reporter*. July 17, 2003. p. 1216. In addition, on July 31, 2003, the Senate passed S. Res.211, expressing the sense of the Senate that future trade agreements to which the United States is a party should not contain immigration-related provisions.

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