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World Trade Organization Negotiations: The Doha Development Agenda

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Summary

The World Trade Organization was established in 1995 and is the principal international organization governing world trade. It has 150 member countries, representing over 95% of world trade.

On November 9-14, 2001, trade ministers from WTO countries met in Doha, Qatar for its 4th Ministerial Conference. At that meeting, members agreed to a work program for a new round of multilateral trade negotiations. The work program folds on-going negotiations on agriculture and services into a broader agenda that includes industrial tariffs, topics of interest to developing countries, changes in WTO rules, and other provisions numbering 19 in all. Because of the influence that developing countries had in setting the work program, the round has become known as the Doha Development Agenda. Negotiations were to conclude by January 1, 2005, but this deadline was breached and no new deadline officially has been established.

Agriculture has been the linchpin in the Doha Development Agenda. U.S. goals were substantial reduction of trade-distorting domestic support; elimination of export subsidies, and improved market access. Industrial trade barriers and services are other market access topics in the negotiations.

Three issues are among the most important to developing countries, in addition to concessions on agriculture. One issue pertains to compulsory licensing of medicines and patent protection. A second deals with a review of provisions giving special and differential treatment to developing countries. A third addresses problems that developing countries are having in implementing current trade obligations.

In other areas, negotiators are meeting to clarify and improve disciplines under the antidumping and subsidies agreements. These talks on trade remedies are being observed closely by some Members of Congress, who did not want the issue on the agenda at all.

The 5th Ministerial Conference was held September 10-14, 2003 in Cancun, Mexico, but broke up without agreement. On July 31, 2004, WTO members approved a Framework Agreement to guide remaining negotiations. The July 31 framework included important terms on agriculture and began new negotiations on trade facilitation. The 6th Ministerial was held in Hong Kong from December 13-18, 2005. Although an original goal of the Ministerial was to agree on a package of modalities for the ongoing Doha Development Agenda (DDA) round of trade negotiations, this aim was dropped and members agreed to some modest advancements in agriculture, industrial tariffs, and duty and quota-free access for least developed countries.

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Background

The World Trade Organization (WTO) is the principal international organization governing world trade. It has 150 member countries, representing over 95% of world trade. It was established in 1995 as a successor institution to the General Agreement on Tariffs and Trade (GATT). The GATT was a post-World War II institution intended to promote nondiscrimination in trade among countries, with the view that open trade was crucial for economic stability and peace.

Decisions within the WTO are made by member countries, not WTO staff¹, and they are made by consensus, not formal vote. High-level policy decisions are made by the Ministerial Conference, which is the body of political representatives (trade ministers) from each member country. The Ministerial Conference must meet at least every two years. Operational decisions are made by the General Council, which consists of a representative from each member country. The General Council meets monthly, and the chair rotates annually among national representatives.

The United States was an original signatory to the GATT and a leading proponent of the GATT's free-market principles. It continues to be among the countries urging further discussions on opening markets to trade. Although decisions in the WTO are by consensus, the United States has a highly influential role in the WTO, because it is the largest trader in the world.

Periodically, member countries agree to hold negotiations to revise existing rules or establish new ones. These periodic negotiations are commonly called "rounds." The broader the negotiations, the greater the possible trade-offs, and thus theoretically the greater the potential economic benefits to countries. The multilateral negotiations are especially important to developing countries, which might otherwise be left out of more selective agreements. It must be remembered, however, that trade liberalization also results in job losses and other economic dislocations as well.

¹ The WTO staff is based in Geneva and numbers about 550. The organization is headed by a Director-General.

What Began at Doha?

On November 9-14, 2001, trade ministers from member countries met in Doha, Qatar for the fourth WTO Ministerial Conference. At that meeting, they agreed to undertake a new round of multilateral trade negotiations.²

Before the Doha Ministerial, negotiations had already been underway on trade in agriculture and trade in services. These on-going negotiations had been required under the last round of multilateral trade negotiations (the Uruguay Round, 1986-1994). However, some countries, including the United States, wanted to expand the agriculture and services talks to allow trade-offs and thus achieve greater trade liberalization.

There were additional reasons for the negotiations. Just months before the Doha Ministerial, the United States had been attacked by terrorists on September 11, 2001. Some government officials called for greater political cohesion and saw the trade negotiations as a means toward that end. Some officials thought that a new round of multilateral trade negotiations could help a world economy weakened by recession and terrorism-related uncertainty. According to the WTO, the year 2001 showed "...the lowest growth in output in more than two decades," and world trade actually contracted that year.³

In addition, countries increasingly have been seeking bilateral or regional trade agreements. In 2004, 160 regional trade arrangements had been notified to the WTO and many more are under negotiation.⁴ There is disagreement on whether these more limited trade agreements help or hurt the multilateral system. Some experts say that regional agreements are easier to negotiate, allow a greater degree of liberalization, and thus are effective in opening markets. Others, however, argue that the regional agreements violate the general nondiscrimination principle of the WTO (which allows some exceptions), deny benefits to many poor countries that are often not party to the arrangements, and distract resources away from the WTO negotiations.⁵

With the backdrop of a sagging world economy, terrorist action, and a growing number of regional trade arrangements, trade ministers met in Doha. At that meeting, they adopted three documents that provided guidance for future actions. The *Ministerial Declaration* includes a preamble and a work program for the new round and for other future action. This Declaration folded the on-going negotiations in agriculture and services into a broader agenda. That agenda includes industrial tariffs, topics of interest to developing countries, changes to WTO rules, and other

² For information on the results of the Doha Ministerial Conference, see CRS Report RL31206, *The WTO Doha Ministerial: Results and Agenda for a New Round of Negotiations*, coordinated by William H. Cooper.

³ World Trade Organization (WTO), *Annual Report 2002*. p. 10.

⁴ WTO, *Annual Report 2005*, p. 59.

⁵ For a discussion of the effect of free-trade agreements, see CRS Report RL31356, *Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy*, by William H. Cooper.

provisions. The *Declaration on the TRIPS Agreement and Public Health* presents a political interpretation of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS).⁶ A document on *Implementation-Related Issues and Concerns* includes numerous decisions of interest to developing countries.⁷

Especially worth noting is how the role of developing countries changed at the Doha Ministerial. Since the beginning of the GATT, the major decision-makers were almost exclusively developed countries. At the preceding Ministerial Conference (Seattle, 1999), developing countries became more forceful in demanding that their interests be addressed. Some developing countries insisted that they would not support another round of multilateral negotiations unless they realized some concessions up-front and the agenda included their interests. Because of the greater influence of developing countries in setting the plan of action at Doha, the new round became known as the Doha Development Agenda.

At the Doha meeting, trade ministers agreed that the 5th Ministerial, to be held in 2003, would “take stock of progress, provide any necessary political guidance, and take decisions as necessary,” and that negotiations would be concluded not later than January 1, 2005. With the exception of actions on the Dispute Settlement Understanding, trade ministers agreed that the outcome of the negotiations would be a single undertaking, which means that nothing is finally agreed until everything is agreed. Thus, countries agreed they would reach a single, comprehensive agreement containing a balance of concessions at the end of the negotiations.

Progress of the Negotiations: The Search for Modalities

Negotiations have proceeded at a slow pace and have been characterized by lack of progress on significant issues, and persistent disagreement on nearly every aspect of the agenda. Some issues have been resolved, notably in agriculture. However, the first order of business for the round, the negotiation of modalities, or the methods and formulas by which negotiations are conducted, still remain elusive four years after the beginning of the round.

The Cancun Ministerial. An important milepost in the Doha Development Agenda round was the 5th Ministerial Conference, which was held in Cancún, Mexico on September 10-14, 2003. The Cancún Ministerial ended without agreement on a framework to guide future negotiations, and this failure to advance the round resulted in a serious loss of momentum and brought into question whether the January 1, 2005 deadline would be met.⁸

⁶ See CRS Report RS21609, *The WTO, Intellectual Property Rights, and the Access to Medicines Controversy*, by Ian F. Fergusson.

⁷ The Ministerial Declaration (WT/MIN(01)/DEC/1), the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), and the Implementation-Related Issues and Concerns (WT/MIN(01)/DEC/17) are available through the WTO home page at [<http://www.wto.org/>].

⁸ For more detailed information on the Cancún Ministerial, see CRS Report RS21664, *The WTO Cancún Ministerial*, by Ian F. Fergusson; and General Accounting Office. *Cancun* (continued...)

The Cancun Ministerial collapsed for several reasons. First, differences over the Singapore issues seemed irresolvable. The EU had retreated on some of its demands, but several developing countries refused any consideration of these issues at all. Second, it was questioned whether some countries had come to Cancun with a serious intention to negotiate. In the view of some observers, a few countries showed no flexibility in their positions and only repeated their demands rather than talk about trade-offs. Third, the wide difference between developing and developed countries across virtually all topics was a major obstacle. The U.S.-EU agricultural proposal and that of the Group of 21, for example, show strikingly different approaches to special and differential treatment. Fourth, there was some criticism of procedure. Some claimed the agenda was too complicated. Also, Cancun Ministerial chairman, Mexico's Foreign Minister Luis Ernesto Derbez, was faulted for ending the meeting when he did, instead of trying to move the talks into areas where some progress could have been made.

At the end of their meeting in Cancun, trade ministers issued a declaration instructing their officials to continue working on outstanding issues. They asked the General Council chair, working with the Director-General, to convene a meeting of the General Council at senior official level no later than December 15, 2003, "...to take the action necessary at that stage to enable us to move towards a successful and timely conclusion of the negotiations."

Of possible importance to future negotiations is a text that was developed during the Cancun Ministerial. Ministerial chairman Derbez invited trade ministers to act as facilitators in Cancun and help with negotiations in five groups: agriculture, non-agricultural market access, development issues, Singapore issues, and other issues. The WTO Director-General served as a facilitator for a sixth group on cotton. The facilitators consulted with trade ministers and produced draft texts from their group consultations. The Ministerial chairman compiled the texts into a draft Ministerial Declaration⁹ and circulated the revised draft among participants for comment.

The Derbez text was widely criticized at Cancun, but in the months following that meeting, members looked increasingly at this text as a possible negotiating framework. On agriculture, the Derbez text drew largely on both the U.S.-EU and Group of 21 proposals. It included a larger cut from domestic support programs than the U.S.-EU proposal made, contained the blended tariff approach of the U.S.-EU proposal but offered better terms for developing countries, and provided for the elimination of export subsidies for products of particular interest to developing countries. On the Singapore issues, it included a decision to start new negotiations on government procurement and trade facilitation, but not investment or competition.

The WTO Framework Agreement. The aftermath of Cancun was one of standstill and stocktaking. Negotiations were suspended for the remainder of 2003.

⁸ (...continued)

Ministerial Fails to Move Global Trade Negotiations Forward; Next Steps Uncertain. Report to the Chairman, Committee on Finance, U.S. Senate, and to the Chairman, Committee on Ways and Means, House of Representatives. GAO-04-250. January 2004.

⁹ WTO document JOB(03)/150/Rev.2.

However, in early 2004, then-U.S. Trade Representative (USTR) Robert Zoellick offered proposals on how to move the round forward.¹⁰ The USTR called for a focus on market access, including an elimination of agricultural export subsidies. He also said that the Singapore issues could progress by negotiating on trade facilitation, considering further action on government procurement, and possibly dropping investment and competition. This intervention was credited at the time with reviving interest in the negotiations, and negotiations resumed in March 2004.

On July 31, 2004, WTO members approved a Framework Agreement that includes major developments in the most contentious and crucial issue — agriculture.¹¹ Because agriculture is the linchpin in the negotiations, the Framework, which provides guidelines but not specific concessions, was regarded as a major achievement. With a broad agreement on agriculture and on other issues, negotiators were given a clearer direction for future discussions. However, the talks settled back into a driftless stalemate, where few but the most technical issues were resolved.

The Hong Kong Ministerial. The stalemate in 2005 increased the importance of the 6th Ministerial in Hong Kong as potentially the last opportunity to settle key negotiating issues that could produce an agreement by 2007, the *de facto* deadline resulting from the expiration of U.S. trade promotion authority. Although a flurry of negotiations took place in the fall of 2005, WTO Director-General Pascal Lamy announced in November 2005 that a comprehensive agreement on modalities would not be forthcoming in Hong Kong, and that the talks would “take stock” of the negotiations and would try to reach agreements in negotiating sectors where convergence was reported. The final Ministerial Declaration of December 18, 2005, reflected areas of agreement in agriculture, industrial tariffs, and duty-free and tariff-free access for least developed countries (see sectoral negotiations section below for details). Generally, these convergences reflect a step beyond the July Framework Agreement, but fall short of full negotiating modalities.¹²

Significance of the Negotiations

Trade economists argue that the reduction of trade barriers allows a more efficient exchange of products among countries and encourages economic growth. Multilateral negotiations offer the greatest potential benefits by obliging countries throughout the world to reduce barriers to trade. The gains to the United States and to the world from multilateral trade agreements have been calculated in the billions of dollars. For example, a recent study by the International Trade Commission found that if the tariff cuts from the Uruguay Round were removed, the welfare loss to the

¹⁰ Summary of USTR letter at [http://www.ustr.gov/wto/2004-01-12-doha_advance.pdf]. Actual letter at Inside U.S. Trade. Text: Zoellick Letter to Trade Ministers. January 16, 2004.

¹¹ See CRS Report RL32645, *The Doha Development Agenda: The WTO Framework Agreement*, coordinated by Ian F. Fergusson.

¹² The final Ministerial Declaration (WT/MIN(05)/DEC), December 18, 2005 is available at [http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.pdf]. For more information, see CRS Report RL33176, *The World Trade Organization: The Hong Kong Ministerial*, coordinated by Ian F. Fergusson.

United States would be about \$20 billion.¹³ A study by the University of Michigan found that if all trade barriers in agriculture, services, and manufactures were reduced by 33% as a result of the Doha Development Agenda, there would be an increase in global welfare of \$574.0 billion.¹⁴ Other studies present a more modest outcome predicting world net welfare gains ranging from \$84 billion to \$287 billion by the year 2015.¹⁵

Multilateral negotiations are especially important to developing countries that might otherwise be left out of a regional or bilateral trade agreement. Developing country blocs can improve trade and economic growth among its members, but the larger share of benefits are from the trade agreements that open the markets of the world. Multilateral trade negotiations are also an exercise in international cooperation and encourage economic interdependence, which offers political benefits as well.

When a country opens its markets, however, increased imports might cause economic dislocations at the local or regional level. Communities might lose factories. Workers might lose their jobs. For those who experience such losses, multilateral trade agreements do not improve their economic well-being. Also, if a country takes an action that is not in compliance with an agreement to which it is a party, it might face some form of sanction. Further, some oppose WTO rules that restrict how a country is permitted to respond to imports of an overseas product that employs an undesirable production method, for example a process that might use limited resources or impose unfair working conditions. Thus, while multilateral trade agreements have been found to offer broad economic benefits, they are opposed for a variety of reasons as well.

The Doha Agenda

Doha Round talks are overseen by the Trade Negotiations Committee (TNC), whose chair is the Director-General of the WTO, Pascal Lamy. The negotiations are

¹³ U.S. International Trade Commission. *The Impact of Trade Agreements: Effect of the Tokyo Round, U.S.-Israel FTA, U.S.-Canada FTA, NAFTA, and the Uruguay Round on the U.S. Economy*. Publication 3621. August 2003.

¹⁴ Brown, Drusilla K., Deardorff, Alan V. and Robert M. Stern. *Computational Analysis of Multilateral Trade Liberalization in the Uruguay Round and Doha Development Round*. Discussion Paper No. 489. School of Public Policy. The University of Michigan. December 8, 2002.

¹⁵ Thomas W. Hertel and Roman Keeney, "What is at Stake: The Relative Importance of Import Barriers, Export Subsidies and Domestic Support," in Anderson and Martin, eds., *Agricultural Trade Reform in the Doha Agenda* (Washington: World Bank, 2005); and Kym Anderson, Will Martin, and Dominique van der Mensbrugge, "Doha Merchandise Trade Reform: What's At Stake for Developing Countries," July 2005, available at (www.worldbank.org/trade/wto). The different outcomes in these studies are due substantially to the assumptions concerning the liberalization resulting from the Doha Round as well as from differences in the econometric models themselves. For example, the World Bank studies do not attempt to quantify services liberalization.

being held in five working groups and in other, existing bodies in the WTO. Selected topics under negotiation are discussed below in five groups: market access; development issues; Singapore issues; WTO rules; and other issues.¹⁶

Market Access

Agriculture. The Uruguay Round Agreement on Agriculture called for continued negotiations toward “...the long-term objective of substantial progressive reductions in support and protection....” By early 2001, WTO members had achieved some preliminary work in those sectoral negotiations, and later that year, agriculture was wrapped into the broader Doha agenda.

Agriculture has become the linchpin in the Doha Development Agenda.¹⁷ U.S. goals in the new round were elimination of agricultural export subsidies, easing of tariffs and quotas, and reductions in trade-distorting domestic support. The Doha Ministerial Declaration included language on all of these three pillars of agricultural support. It stated that the members committed to “comprehensive negotiations aimed at substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade distorting support.”

The course of the negotiations in the lead up to Cancun were influenced by the reform of the EU’s Common Agricultural Policy (CAP). A major issue for the EU was whether or not to approve separation (“decoupling”) of payments to farmers based on production. Those types of payments are among the most trade-distorting (“amber box”). On June 26, 2003, EU agriculture ministers approved a reform package that included partial decoupling for certain products. The action was seen by many as a positive step for advancing the trade negotiations.¹⁸

The EU reform largely addressed one of the three pillars of agricultural reform — domestic support — but did little in a second pillar — market access. In the WTO negotiations on market access, the United States and the Cairns Group support a leveling, or harmonizing, of tariff peaks, or high rates. In comparison, the EU and Japan want flexibility to cut some items less than others to arrive at an average total rate cut. The formula for reducing agricultural tariffs remains a problem.

Another difficulty is “geographical indications,” or the protection of product names that reflect the original location of the product. An example is the use of “Bordeaux wine” for wines from the Bordeaux region only. Europeans, joined by India and some other countries, want a mandatory registry of geographical indications

¹⁶ For a detailed ‘state of play’ of the DDA following the Hong Kong Ministerial, see CRS Report RL33176, *The World Trade Organization: The Hong Kong Ministerial*, coordinated by Ian F. Fergusson.

¹⁷ For further information, see CRS Report RL32053, *Agriculture in WTO Negotiations*, by Charles E. Hanrahan.

¹⁸ See Buck, Tobias, Guy de Jonquieres and Frances Williams. “Fischler’s New Era for Europe’s Framers: Now the Argument Over Agriculture Moves to the WTO.” *Financial Times*. June 27, 2003.

that would prevent other countries from using the names. The United States and yet other countries refuse to negotiate a mandatory list, but will accept a voluntary list with no enforcement power. The EU says it will not accept an agriculture agreement without a geographical registry.¹⁹

Developing countries view reform in agricultural trade as one of their most important goals. They argue that their own producers cannot compete against the surplus agricultural goods that the developed countries, principally the EU and the United States, are selling on the world market at low, subsidized prices. Some African countries also are calling for an end to cotton subsidies, claiming that such subsidies are destroying markets for the smaller African producers.

The July 2004 Framework Agreement provided a basis for which to continue the agriculture talks. On domestic subsidies, subsidies will be reduced by means of a “tiered” or “banded” approach applied to achieve “harmonization” in the levels of support. Subsidizing countries will make a down-payment of a 20% reduction in levels of support in the first year of the agreement. Market access through tariff reduction will be increased the use of a tiered formula with a harmonization component, but with some exceptions for “import sensitive products.” The European Union finally agreed to the elimination of export subsidies, considered a major negotiating goal of the United States.

While there was no breakthrough at the December 2005 Hong Kong Ministerial, members agreed to eliminate export subsidies, and “export measures with equivalent effect” by 2013, a date favored by the European Union (EU). Members agreed to cut domestic support programs with a three band methodology. As the largest user of domestic agricultural subsidies, the EU was placed in the highest band. The United States and Japan were placed in the second band and lesser subsidizing countries were placed in the third band. However, the actual percentage cuts that these bands represent remain subject to negotiation. Members also renewed a commitment to achieve a tariff cutting formula by April 30, 2006. In the parallel negotiations on Cotton, members agreed to eliminate export subsidies for cotton and to provide duty-free and quota-free access for LDC cotton producers by year-end 2006. Members also agreed to reduce domestic support for cotton in a more ambitious manner than for other agricultural commodities as an “objective” in the ongoing agricultural negotiations.

Services. Along with agriculture, services were a part of the “built-in agenda” of the Uruguay Round.²⁰ The General Agreement on Trade In Services (GATS), which was concluded in that Round, directs Members to “...enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement [January 1, 1995]...[to achieve] a progressively higher level of liberalization.”

¹⁹ For further information, see CRS Report RS21569, *Geographical Indications and WTO Negotiations*, by Charles E. Hanrahan.

²⁰ See CRS Report RL33085, *Trade in Services: The Doha Development Agenda Negotiations and U.S. Goals*, by William H. Cooper.

Those negotiations began in early 2000. Negotiating guidelines and procedures were established by March 2001. Under the request-offer approach being used, countries first request changes in other countries' practices, other countries then respond by making offers of changes, and finally the countries negotiate bilaterally on a final agreement. The Doha Ministerial Declaration recognized the work already undertaken and reaffirmed the March 2001 guidelines as the basis for continuing the negotiations. It directed participants to submit initial requests for specific commitments by June 30, 2002 and initial offers by March 31, 2003.

The services talks are going slowly. By July 2005 the WTO had received 68 initial commitment offers representing 92 countries (the EU represents 25 members) and 24 offers remained outstanding from non-LDC members (55 if LDCs are included). Only 28 revised offers have been tendered by November 2005, although the July Framework stipulated a March 31, 2005 deadline. All members were to have submitted their initial offers by March 31, 2003. Many have also decried the poor quality of offers, many of which only bind existing practices, rather than offer new concessions. No substantive breakthrough was achieved in the services negotiations at Hong Kong.

One area of controversy is so-called "Mode 4" services. Mode 4 relates to the temporary movement of business persons to another country in order to perform a service on-site. Developing countries want easier movement of their nationals under Mode 4. They claim that the services negotiations have centered on the establishment of businesses in other countries, which has been a focus of developed countries, while there has been no negotiation on Mode 4, which would help them. Developed countries, especially the United States, have opposed discussions on Mode 4 services trade. Congress might oppose easier entry for business persons, based on Senate approval of a resolution (S.Res. 211) expressing the sense of the Senate that future U.S. trade agreements and implementing legislation should not contain immigration-related provisions. Mode 4 services will be a difficult issue to resolve.

Non-Agricultural Market Access (NAMA). In the Doha Declaration, trade ministers agreed to negotiations to reduce or eliminate tariffs on industrial or primary products, with a focus on "tariff peaks, high tariffs, and tariff escalation." 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. The talks are also seeking to reduce the incidence of non-tariff barriers, which include import licensing, quotas and other quantitative import restrictions, conformity assessment procedures, and technical barriers to trade. The sectoral elimination of tariffs for specific groups has also be forwarded as an area of negotiation. Negotiators accepted the concept of less than full reciprocity in reductions for developing and least-developed countries.

Doha negotiators agreed to reach modalities for the reduction or elimination of tariffs and non-tariff barriers by the end of May 2003. This deadline, as were subsequent ones, was not met. NAMA issues were not discussed at Cancun, and there was no agreement on the draft texts proposed for consideration at that Ministerial. The July 2004 Framework Agreement adopted the use of a non-linear tariff reduction formula applied on a line-by-line basis, (i.e. one that it can work

towards evening out or harmonizing tariff levels), and the Hong Kong Ministerial did agreed to use a Swiss formula. The Ministerial did not agree on the specific equation or coefficients, but negotiators did agreed on an April 30, 2006 deadline to resolve these modalities. The Framework Agreement also agreed that tariff reductions would be calculated from bound, rather than the applied, tariff rates, although the approach for doing so remains unresolved.

Negotiators are also grappling with the concept of “flexibility,” or the nature and extent of developing country-special and differential treatment, as it relates to formula cuts. In addition to longer implementation times, the July Framework Agreement allows for less than formula cuts for a certain (undetermined) amount tariff lines, keeping a percentage of tariff lines unbound, or not applying formula cuts for an (undetermined) percentage of tariff lines (the so-called Paragraph 8 flexibilities). At Hong Kong, negotiators did agree to provide tariff-free and quota-free access for LCDs by 2008. However, this agreement provides the caveat that 3% of tariff lines can be exempted as sensitive products such as textiles, apparel, and footwear.

Both the United States and the EU have favored using sectoral tariff elimination as an alternative modality for the NAMA negotiations, but negotiations have stalled on which products to cover and the extent of participation (i.e. whether developing countries or LDCs would be able exempt themselves from commitments). As noted above, the industrial market access talks also encompass negotiations on the reduction of non-tariff barriers (NTBs). No agreements have been reached on what modalities are to be used in negotiating reductions of NTBs.

The NAMA talks are being linked more and more to the agricultural talks, with some movement on one becoming increasingly necessary on the other. Developing countries have been unwilling to commit on NAMA without agreement on agriculture, but now some developed countries are tying agriculture progress to NAMA.²¹

Development Issues

Three development issues are most noteworthy. One pertains to compulsory licensing of medicines and patent protection. A second deals with a review of provisions giving special and differential treatment to developing countries. A third addresses problems that developing countries were having in implementing current trade obligations.

Access to Patented Medicines. A major topic at the Doha Ministerial regarded the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).²² The issue involves the balance of interests between the pharmaceutical companies in developed countries that held patents on medicines and the public health needs in developing countries. Before the Doha meeting, the United

²¹ *Inside U.S. Trade*, September 30, 2005

²² See CRS Report RS21609, *The WTO, Intellectual Property Rights, and the Access to Medicines Controversy*, by Ian F. Fergusson.

States claimed that the current language in TRIPS was flexible enough to address health emergencies, but other countries insisted on new language.

Section 6 of the Doha document *Declaration on the TRIPS Agreement and Public Health* (TRIPS Declaration), recognized that “...WTO Members with insufficient or no manufacturing capabilities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement.” In Section 6, the trade ministers instructed the WTO TRIPS Council “...to find an expeditious solution to this problem and to report to the [WTO] General Council before the end of 2002.”

On December 16, 2002, then-TRIPS Council chairman Eduardo Perez Motta produced a draft that would allow countries that lack the manufacturing capacity to produce medicines to issue compulsory licenses for imports of the medicines. All WTO members approved of the chairman’s draft except the United States. The U.S. position, representing the interests of the pharmaceutical industry, was that the chairman’s draft did not include enough protections against possible misuse of compulsory licenses. The United States sought a limit on the diseases that would be covered by the chairman’s text, but other countries refused this initiative. The United States decided to oppose the chairman’s draft and unilaterally promised not to bring a dispute against any least-developed country that issued compulsory licenses for certain medicines.

One concern of the pharmaceutical industry was that the medicines sent to the developing country might be diverted instead to another country. To address this problem, it was suggested that the medicines be marked so that they can be tracked. Another concern was that more advanced developing countries might use the generic medicines to develop their own industries. For this problem, it was proposed that countries voluntarily “opt-out,” or promise not to use compulsory licensing.

On August 30, 2003, WTO members reached agreement on the TRIPS and medicines issue. Voting in the General Council, member governments approved a decision that offered an interim waiver under the TRIPS Agreement allowing a member country to export pharmaceutical products made under compulsory licenses to least-developed and certain other members. An accompanying statement represented several “key shared understandings” of Members regarding the Decision, including the recognition that the decision should be used to protect public health and not be an instrument to pursue industrial or commercial policy objectives, and the recognition that products should not be diverted from the intended markets. The statement listed a number of countries that either agreed to opt out of using the system as importers or agreed that they would only use the system in national emergencies or extreme urgency. At the Hong Kong Ministerial, members agreed to a permanent amendment to incorporate the 2003 Decision, which will become effective when it is ratified by two-thirds of the member states.

Special and Differential (S&D) Treatment. In the Doha Ministerial Declaration, the trade ministers reaffirmed special and differential (S&D) treatment for developing countries and agreed that all S&D treatment provisions “...be reviewed with a view to strengthening them and making them more precise, effective and operational.” In the Declaration, the trade ministers endorsed the work program

on S&D treatment presented in another Doha document, *Decision on Implementation-Related Issues and Concerns* (Implementation Decision). That document called on the WTO Committee on Trade and Development to identify the S&D treatment provisions that are already mandatory and those that are non-binding, and to consider the implications of "...converting [S&D] 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." It also called for the Committee on Trade and Development "to examine additional ways in which S&D treatment provisions can be made more effective, to consider ways...in which developing countries...may be assisted to make best use of [S&D] treatment provisions, and to report to the General Council with clear recommendations for a decision by July 2002."

The negotiations have been split along a developing-country/developed-country divide. Developing countries wanted to negotiate on changes to S&D provisions, keep proposals together in the Committee on Trade and Development, and set shorter deadlines. Developed countries wanted to study S&D provisions, send some proposals to negotiating groups, and leave deadlines open. Developing countries claimed that the developed countries were not negotiating in good faith, while developed countries argued that the developing countries were unreasonable in their proposals.

By the Cancun Ministerial, developing countries had offered about 85 proposals on S&D provisions, but developed countries had agreed to only a handful of these. At Hong Kong, members agreed to five S&D provisions for LDCs, including the tariff-free and quota-free access for LDC goods described in the NAMA section.

Implementation Issues. Developing countries claim that they have had problems with the implementation of the agreements reached in the earlier Uruguay Round because of limited capacity or lack of technical assistance. They also claim that they have not realized certain benefits that they expected from the Round, such as increased access for their textiles and apparel in developed-country markets. They seek a clarification of language relating to their interests in existing agreements.

Before the Doha Ministerial, WTO Members resolved a small number of these implementation issues. At the Doha meeting, the Ministerial Declaration directed a two-path approach for the large number of remaining issues: (a) where a specific negotiating mandate is provided, the relevant implementation issues will be addressed under that mandate; and (b) the other outstanding implementation issues will be addressed as a matter of priority by the relevant WTO bodies. Outstanding implementation issues are found in the area of market access, investment measures, safeguards, rules of origin, and subsidies and countervailing measures, among others.

Little progress has been made on implementation issues. The Hong Kong Ministerial Declaration reiterates previous instructions adopted in August 2004, and instructs the negotiating bodies and others to "redouble" their efforts to find solutions to implementation issues. A deadline of July 31, 2006, was given for the General Council to review progress on implementation issues, and take appropriate action.

Trade Facilitation

The first WTO Ministerial Conference, which was held in Singapore in 1996, established permanent working groups on four issues: transparency in government procurement, trade facilitation (customs issues), trade and investment, and trade and competition. These became known as the Singapore issues. These issues were pushed at successive Ministerials by the European Union, Japan and Korea, and opposed by most developing countries. The United States was lukewarm about the inclusion of these issues, indicating that it could accept some or all of them at various times, but preferring to focus on market access.

In 2001, the Doha Ministerial Declaration called for further clarification to be undertaken on the four Singapore issues before the 5th Ministerial in 2003 (at Cancún), and for negotiations will take place on the basis of a decision to be taken *by explicit consensus* [italics added] at the 5th Ministerial. At Cancún, deadlock over the Singapore issues was a contributing factor in the breakup of that summit. After further negotiations during 2004, a compromise was reached in the July 2004 Framework Agreement: three of the Singapore issues (government procurement, investment, and competition) were dropped and negotiations would begin on trade facilitation.

Trade facilitation aims to improve the efficiency of international trade by harmonizing and streamlining customs procedures such as duplicative documentation requirements, customs processing delays, and nontransparent or unequally enforced importation rules and requirements. Although negotiations are still in their infancy, the talks have thus far revolved around the scope and obligations of the new disciplines. The scope has thus far revolved around proposals dealing with freedom of transit, fees and formalities, and administrative transparency. Discussions have also occurred concerning the technical assistance and trade capacity building needed by developing countries to implement any subsequent agreement. Developed countries, including the United States and the European Union, favor the negotiation of a concrete rules-based system with appropriate accountability, while some developing countries prefer optional guidelines with “policy flexibility.”

Although negotiations have proceeded in a constructive manner, no major breakthroughs in trade facilitation were announced in Hong Kong and the Ministerial declaration did not agree on a date for beginning text-based negotiations. The ministerial served as a review of progress and a discussion of plans for future work.

WTO Rules

Rules Negotiations. The Doha Round negotiations included an objective of “clarifying and improving disciplines” under the WTO Agreements on Antidumping (AD) and on Subsidies and Countervailing Measures (ASCM).²³ The United States sought to keep negotiations on trade remedies outside of the Doha Round, but found many WTO partners insistent on including them for discussion. U.S. negotiators did

²³ See CRS Report RL32810, *WTO: Antidumping Issues in the Doha Development Agenda*, by Vivian C. Jones.

manage to insert language asserting that “...basic concepts, principles and effectiveness of these Agreements and their instruments and objectives” would be preserved. However, Congressional leaders were highly critical of this concession by U.S. trade negotiators.²⁴

The Doha Ministerial Declaration also calls for clarifying and improving disciplines on fisheries subsidies, and both the Ministerial Declaration and the Implementation Decision have special provisions on trade remedies and developing countries. In addition to trade remedies, the Declaration calls for clarifying and improving WTO disciplines and procedures on regional trade agreements.

The Declaration identified two phases for the work on trade remedies: “In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase.” No deadlines were set for these phases. So far, countries are still essentially in the first phase.

The United States has primarily been on the defensive in the rules talks. Many countries have attacked the use of antidumping actions by the United States and other developed nations as disguised protectionism. However, many developing countries are now using antidumping actions themselves, which may goad some countries to reexamine the necessity for discipline. Most of the proposals on trade remedies focus on providing more specificity or restrictions to the AD/ASCM Agreements in terms of definitions and procedures. Yet, no agreements have been reached, even on what is to be negotiated.

The leading proponents of such changes have been a group of 15 developed and developing countries known as the “Friends of Antidumping” (Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Mexico, Norway, Singapore, South Korea, Switzerland, Taiwan, Thailand, and Turkey; though not all countries sign onto every proposal). They have made numerous proposals, and in essence their proposals would reduce the incidence and amount of duties. Many of their proposals would require a change in U.S. laws. Although the EU is a major user of trade remedies and not a member of the “Friends” group, it has agreed with some of the group’s proposals.

The United States itself has sought some changes in the WTO rules, submitting papers on antidumping proposals on issues such as transparency, foreign practices to circumvent a duty order, and the WTO standard used by dispute panels in reviewing national applications of trade remedy laws. The United States also has submitted proposals on subsidies, such as expanding a list of prohibited subsidies and imposing disciplines on support to sales of natural resources. It has suggested that the WTO consider sectoral negotiations on steel subsidies similar to on-going talks in the Organization for Economic Cooperation and Development (OECD), but there appears little support for this suggestion. The United States and the EU support limits on fisheries subsidies, but Japan strongly opposes such limits.

²⁴ “Zoellick Stance on Trade Remedy in WTO Provokes Criticism.” *Inside U.S. Trade*. November 13, 2001.

Dispute Settlement. At the end of the Uruguay Round, trade ministers called for a full review of WTO dispute settlement rules and procedures within four years after entry into force of the agreement establishing the WTO. That deadline, January 1, 1999, passed without a review completed.²⁵

At Doha, trade ministers continued the call for a review of dispute rules. The Ministerial Declaration directed that negotiations be held on improvements and clarifications of the Dispute Settlement Understanding (DSU). They stated that the negotiations should be based on work done so far and on any additional proposals. They set a deadline of May 2003. They directed that these DSU negotiations would be separate from the rest of the negotiations and would not be a part of the single undertaking.

Members are examining nearly all of the 27 Articles in the DSU. In early April 2003, the chair of the working group circulated a framework document that included over 50 proposals. There was some dissatisfaction that the document needed more focus. On May 16, 2003, the chair issued another text that was accepted by most countries. The United States and the EU favored additional reforms that were not a part of the text. For example, the United States has called for open public access to proceedings, and the EU had sought a roster of permanent dispute panelists.

Other Issues

Environment. The Ministerial Declaration included several provisions on trade and environment. Among the provisions, the trade ministers agreed to the following: (1) negotiations on the relationship between existing WTO rules and trade obligations in multilateral environmental agreements (MEAs); (2) procedures for the exchange of information between MEA Secretariats and WTO committees, and the criteria for granting observer status; and (3) the reduction or elimination of trade barriers to environmental goods and services. It was agreed at Doha that the WTO's Committee on Trade and Environment shall report on these and other issues to the fifth Ministerial (Cancun) and make recommendations where appropriate.

The EU has said that its priorities include observer status for MEAs. The United States is pushing for rules on fisheries subsidies, as mentioned above, and tariff reductions on environmental products.

E-Commerce. The trade ministers at Doha took note of the work that has been done in the General Council and agreed to continue the Work Program on Electronic Commerce. They instructed the General Council to report on further progress and report to the fifth Ministerial. They declared that Members will maintain their current practice of not imposing duties on electronic transmissions until the Fifth Ministerial. A major issue for electronic commerce is whether such commerce should be classified as trade in goods (U.S.-supported) or as trade in services (EU-supported).

²⁵ See CRS Report RS20088, *Dispute Settlement in the World Trade Organization: An Overview*, by Jeanne Grimmer.

Congressional Role

Although the executive branch conducts trade negotiations in the WTO, the Congress has constitutional responsibility for regulation of U.S. foreign commerce. As part of this constitutional role, Congress conducts oversight of the negotiations. Oversight might be in the forms of hearings or meetings with executive branch officials. Members often communicate their positions through public statements and letters. They may also act as advisors at trade negotiations.

Under legislation on trade promotion authority that was passed in 2002 (P.L. 107-210), Congress prescribed trade objectives for U.S. negotiators in the Doha Development Agenda and in other trade negotiations. These objectives give direction to negotiators on U.S. priorities. In the 2002 Act, Congress also outlined requirements that the executive branch must meet, as a condition for expedited procedures for legislation to implement trade agreements, including those reached in the Doha Development Agenda. Among the conditions for expedited legislative procedures, the executive branch must consult with Congress at various stages of the negotiations, notify Congress before taking specified actions, and submit reports as outlined. Expedited procedures would apply to any trade agreement entered into (signed) before July 1, 2005. A two-year extension to that deadline was written in to the 2002 Act if the President requested the extension and Congress did not disapprove it. The President requested the extension on March 30, 2005, and Congress took no action to disapprove it by the June 30, 2005 deadline. Thus any trade agreement will be considered under TPA until June 30, 2007, which has become a *de facto* deadline for the Doha Round.

If agreements are reached at the end of the negotiations, Congress will face a decision on whether to approve statutory changes to implement those agreements. If all requirements are met by the executive branch, and unless Congress decides otherwise, the trade agreements will be considered under trade promotion procedures (fast-track procedures). Under those procedures, an implementing bill is automatically introduced, considered in committee and on the floor under specified deadlines, and not amendable. As the negotiations progress, Congress will also likely hold oversight hearings to gauge the progress in the negotiations.