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What is at stake in Hong Kong?

Prospects for Development and Environment at the 6th WTO Ministerial

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Preface

World trade policy prior to the Ministerial Conference in Hong Kong

By Barbara Unmüßig

The breakdown at Cancún was not taken as a signal or a chance to review WTO principles, objectives and procedures and to engage in a fundamental discussion on the design of international trade policy. In Doha in 2001 a promise was made that a development round would be negotiated and concluded.

However, the Hong Kong meeting is almost upon us and there is still no sign of a development round. The diplomatic pressure gauge is rising and draft agreements are being watered down so as to avoid having to openly admit another failed conference in Hong Kong.

The diverging interests between and within the various negotiating groups appear almost irreconcilable. New coalitions are constantly being formed alongside the central issues of agricultural trade liberalization, tariff reductions for non-agricultural products, services, and TRIPS. The power to define what is beneficial to development and what is not is no longer the domain of the developed countries. More advanced developing countries such as Brazil and India make their demands heard loud and clear. They all have to deal with the questions as to how much liberalization, how much market access and how many safeguards for individual sectors are in the interest of which of the country groups backed up by which economic (sectoral) interests.

Something else we can establish pre-Hong Kong: A cooperative, equitable negotiation of compromises between developing countries, more advanced developing countries, and developed countries is not in sight. The developed countries are far from finally stating a clear and close target date for the abolition of export subsidies, trade-distorting subsidies and export credits for agricultural commodities. The more advanced developing countries and developed countries with an agricultural export focus push for market access, which may be appropriate for the developed countries but is more harmful than anything else for poor developing countries. The latter insist that their protective interests, such as for example the tariff preferences between the EU and the ACP countries, should be maintained, recognized and possibly extended.

In return for minimal concessions in the agricultural arena the developed countries expect improved market access for non-agricultural products (NAMA) in the developing countries by way of tariff reductions. This issue has a similar degree of explosive potential as the Singapore issues (inclusion of investments, competition and trade facilitation into WTO rules) did prior to Cancún. The developed countries thus keep trying to make the rules and to predominantly enforce their own liberalization and protection agenda (see agriculture) just as they see fit.

With its multitude of general rules the WTO intrudes deeply into national economic and social policies. Therefore questions keep arising as to its democratic control, transparency and accountability. Little if any progress has been made on procedures and decision-making – a fact that gave rise to yet another recent complaint from a group of 33 developing countries. Despite the developing countries formally having equal rights – as in the UN the one country-one vote principle applies – there can be no doubt that the most important preparations for decisions are made in informal power circles in the WTO which are dominated by a handful of developing countries. The increased claims to participation, especially by the more

advanced developing countries, are only “met” through the group of “Five Interested Parties” (FIPS - EU, US, Brazil, India, Australia). But this does not make up for the lack of opportunities for participation or for the lack of transparency in decision-making which affect the majority of the developing countries. Apart from the diverging views in the agricultural and investment arenas, it was these very problems of legitimization which brought down Cancún. So far the developed countries have not yet sacrificed trade privileges to any considerable extent or have otherwise shown any substantial commitment when it comes to the democratic legitimization of decision-making processes.

It is obvious now that Hong Kong will not in any way deliver a breakthrough. There is even a fear of backsliding in some quarters, a fear that policy space for self-determined development and for the necessary socio-ecological regulation of imports and exports will be narrowed. As long as the WTO agenda is not a true reform agenda in the sense of promoting socially and ecologically benign development and democratic decision-making, a non-agreement does not necessarily have to equate to a “failure”.

The debate on the usefulness or otherwise of the abolition of barriers to trade through tariffs and other trade-distorting measures can and should go on within the WTO. If the will is there to conclude a development round, the focus must shift to what the individual societies consider the necessary trade-political limitations. The relationship between international trade law and international human rights and social standards as well as environmental agreements should have long been legally defined in favour of the latter. However, the WTO negotiators are not making any progress on these issues.

The basic principles of a reform of the WTO must include the recognition and protection of national development policies and their respective instruments and institutions. Political scope for the co-existence of a variety of development strategies and different rules for developed countries and developing countries must be accepted and recognized by WTO rules. At present the world trade regime yields inequitable results which is not all that surprising in a world of unequal players. The times of the classic North-South constellation have long passed. A multilateral trade regime must address these imbalances and make a positive contribution to social, ecological, and humane development.

In this Global Issue Paper we aim to throw some light on the conflicts and contentious issues in the current negotiations. We are focussing on those issues which are likely to be at the centre of attention: Agriculture, non-agricultural goods (NAMA), and services (GATS). But we also provide an overview of the issues that are neglected in the negotiations. Following an introduction on the historic development of the Doha Round, Marita Wiggerthale analyses the state of the agricultural negotiations. Arguing from the point of view of food security, sustainable rural development and livelihood protection for small farmers, she harbours more worries than hopes regarding a possible agreement at Hong Kong.

Liane Schalatek describes the diverging interests of the various coalitions in the negotiations on the liberalization of trade in services (GATS). The pressure to give up as yet rather substantial policy space provided by an approach involving bilateral requests and offers and a move towards aggressive liberalization across the board appears to be the principal danger, putting many areas of human welfare at risk.

Damian Sullivan and Alexandra Wandel take a look at market access negotiations for non-agricultural products. They highlight industrial policies and the establishment of domestic industries in developing countries as well as environmental policy concerns regarding the exploitation of natural resources as the principal problem areas. In these fields the developing countries have more to lose than to win.

Marita Wiggerthale concludes the paper with an overview of the neglected aspects of the WTO negotiations, making it abundantly clear how politically weak ecological and

development issues are systematically sidelined in the negotiating process, stuck in a position from which they fail to move on.

Barbara Unmüßig

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Introduction: From Doha to Hong Kong

By Marita Wiggerthale

On November 14, 2001 the time had come to launch a new round of negotiations – the ‘Doha Development Agenda’. And this was despite the fact that just a little earlier, when the WTO General Council met in late October, it did not look like an agreement could be reached. Many of the developing countries were rejecting the draft Ministerial Declaration. Egypt criticized the proposed development agenda as “nothing but lip service” and Nigeria complained that it was “clearly biased in favour of the interests of the developed countries.” India summed it up well: “If we have no say in setting the agenda, why should we be there?”¹

At the same time, industry representatives in the EU and the US put the pressure on. They asked their governments to commit themselves to an “ambitious new free trade round”. In the end they were successful. The work programme for the Doha Round appears like a wish list of global business. There is not only the promise of improved market access for agricultural commodities, manufactured goods, and services, but the “new topics” – competition, investments, trade facilitation, and public procurement have made their way into the agenda. However, due to India’s steadfastness it was agreed that prior to the start of the negotiations at the next ministerial conference an “explicit consensus” must be reached.

The agenda desired by the Group of 77 & China², which represented a total of 133 developing countries, looked very different: address the imbalances resulting from the Uruguay agreement, correct the meaningless Special and Differential Treatment of the Uruguay agreement in the form of a framework agreement, address development deficits prior to the start of new negotiations, fundamental reform of agricultural policy incl. the introduction of a “Development Box”, review of the rules governing agriculture, services, intellectual property rights, and investment measures. In short: The multilateral trade system had thus far not benefited the developing countries. Therefore the WTO should have been subjected to a “development check”.

However, the “Development Check Round” did not materialize and neither did the demand put forward by seven African countries – Kenya, Mozambique, Nigeria, Tanzania, Uganda, Zimbabwe and Zambia – not to engage in negotiations on manufactured goods. With negotiations till into the wee hours of the morning, “green rooms”, and by generally putting the screws on, the EU and the US went to great lengths to launch a new free trade round for their multinational companies. From the start the Development Round was mere rhetoric and those for whom it was staged, the developing countries, were least in favour of its shape and form.

The Doha negotiations take place in the context of a “single undertaking”, *i.e.* all agreements are combined in one negotiation package and adopted as one. Therefore “nothing is agreed until everything is agreed”. The work programme for the Doha Round comprises nineteen negotiating mandates, in part with clear timeframes: Implementation issues (late 2002), agriculture (March 31, 2002), services (requests by June 30, 2003, offers by March 31, 2003), dispute settlement (May 2003), Special and Differential Treatment (July 2002), decision on start of negotiations on the “new topics” at the 5th Ministerial Conference.

The period up until the 5th Ministerial Conference in Cancún, Mexico in September 2003 was a phase of “missed deadlines”: The timeframe for the negotiations on Special and Differential Treatment alone was overrun four times. Things did not look better for agriculture, services, dispute settlement, or implementation issues. In the end less and less deadlines were set not only so as not to give too much of an impression that the negotiations were not moving forward but also because they simply no longer made sense.

The developed countries in their majority treated the “classic” development issues as “academic exercises” without seriously discussing the key development problems even at a most basic level. This was and continues to be the case for implementation issues, Special and Differential Treatment and for the topics “Trade, debt and finance” and “Trade and technology transfer”. This alone shows that the commitment of the developed countries to the Development Round is little more than hot air.

Things did happen, however, in those areas of negotiation which were of interest to the majority of the developed countries, *i.e.* services and the “new topics” – manufactured goods came to the fore a little later – and agriculture as the area which is to pave the way to concessions from the developing countries. This is because the interests of the multinational corporations focuses on opening up new markets for their industrial products and services and on some of the “new topics” in order to secure their markets and increase their profits.

However, the developed countries’ negotiation offers in the agricultural area were not designed to address the imbalances that were impacting on the developing countries or to take the special concerns of food security and rural development into account. Quite the opposite: The joint EU-US proposal of August 13, 2003 was in essence a proposal to “keep going” with their trade-distorting agricultural policy and the substantial market-opening in the South. This was a completely unacceptable proposal which was categorically rejected by the newly established G-17 (later G-20). A completely new dynamic of negotiations was created. New negotiation groups were formed just prior to or at Cancún. Self-confidence was more than evident.

Therefore there was much disappointment and disbelief when on September 13 the Conference Chair, Derbez, tabled a negotiation draft which was rather similar to the one that had been rejected by many of the developing countries in August. In particular, the draft provided for the start of the negotiations on the “new topics” which had repeatedly and categorically been rejected by more than 70 developing countries. But it was also the US’ intransigence on the cotton issue which is of such vital importance to the West African countries – Benin, Chad, Mali and Burkina Faso – that caused much anger amongst the African delegations. And last but not least the “new” proposals on agriculture and industrial products were largely the “old ones”. As a consequence the Ministerial Conference at Cancún was suspended without a result.

Thus two of the last three WTO Ministerial Conferences failed. One would think that would be a good enough reason to learn a lesson and to reconsider negotiating positions. However, the EU and the US criticized the “obstructionists” and “nay-sayers”, *i.e.* those who seemingly had not understood what they had missed in Cancún: the developing countries. So the euphoria at Cancún was followed by a touch of disillusionment. The developing countries found themselves once more in the defensive.

Nevertheless, the balance of power has shifted in favour of the developing countries. Despite much pessimism the G-20 still exists and the G-33 is still steadfast in its defense of the need of effective protection measures. Only the G-90 (a coalition of LDCs, ACPs and the African Union) no longer exists as a group. While the LDCs, the ACP countries and the African Union now act separately again, it is especially the joint problem of preference erosion that creates a strong bond between them.

The “cooptation” of the G-20 through the integration of Brazil and India in the Group of the “Five interested parties” – EU, USA, Brazil, India, Australia – in early 2004, the defensive initial situation, the stale argument of the need to save the multilateral trade system and the intransparent decision-making processes ultimately led to the adoption of the July package by the General Council. In the areas of agricultural commodities and industrial products the July package laid the foundations for provisions which have since proved to be almost

uncorrectable. On the other hand they are the breeding ground for tensions which can erupt at any moment and harbour the potential failure of the negotiations prior to or at Hong Kong.

The expiry of the US Trade Promotion Authority in July 2007 is currently taken as final date for the conclusion of the Doha Round. Therefore, all modalities must be available for adoption at an extraordinary Ministerial Conference by the end of 2006 at the latest. The completion of the schedules takes about six months in the agricultural arena and about one year for industrial products. Therefore the idea of a meeting in April 2006 is currently being disclosed. In view of this seemingly strict deadline the pressure has risen substantially and with it the harshness of tone and the tensions in the negotiations.

Looking back over the last four years of negotiations the following summary assessment can be made:

- 1) The developing countries are very active in this round of negotiations and are better prepared for the challenges being faced than they were in the Uruguay Round. They clearly voice their positions and table proposals reflecting these. Nevertheless, the developing countries with no or only a small representation in Geneva are not in a position to ensure their continued attendance at all negotiations, to formulate technically refined positions or to prepare relatively up-to-date analyses of proposals with a view to the situation in their own countries. This situation has been and continues to be untenable.
- 2) Criticism of the negotiation process has not ceased. The undemocratic and intransparent decision-making structures have hardly changed since the Ministerial Conference in Seattle in 1999. Green rooms, mini-ministerials, FIPS or the “new QUAD” (Brazil, India, EU, USA) are still on the agenda. There is no guarantee of equitable and inclusive participation of all participants in the negotiations. As long as this participation can not be guaranteed there can be no balanced outcome to the negotiations.
- 3) Given the course of negotiations to date, the assumption that the WTO can be reformed and that there may be possibilities to maintain policy space for the application of tariffs and rules with a view to self-determined development appears questionable. The substantial reduction of tariffs for industrial products by way of a Swiss-like formula or the lack of an option to raise low tariff bindings in the agricultural sector validate this assessment.
- 4) The criticism voiced at the outset of the negotiations, that the Doha mandate is not a good basis for negotiations from the point of view of sustainability, has turned out to be true during their course. Any proposals which, on the basis of the “rhetorical development mandate” contained a fundamental, structural reform or stood for a deceleration of the process of liberalization, were not able to gain acceptance in the negotiation process. The Doha agenda is first and foremost a liberalization agenda.
- 5) During the course of the negotiations, the development concept was increasingly narrowed down to a concept of “development means improved market access”. While this fully reflects the interests of the exporting nations and their multinational companies, genuine development concerns were swept aside. The so-called “non-trade concerns” such as food security, environmental protection, and rural development are thus almost completely ignored.
- 6) Similarly, the concept of Special and Differential Treatment is increasingly becoming narrowed back down to the approach followed during the Uruguay Round (longer implementation periods, lower reduction commitments) and to financial aspects. The dissatisfaction with the rules set with the Uruguay Round, which do not take specific

development needs into account, and which is at the heart of the Doha mandate, has been forced into the background. Any approach considering two different sets of rules for developed countries and developing countries respectively is not being allowed. Under such conditions development does not stand a chance.

1 <http://www.ictsd.org/weekly/01-11-06/story1.htm>
2 <http://www.urfig.org/sup-wto-G77-china-qatar-pt.htm>

The negotiations on the reform of the Agreement on Agriculture

By Marita Wiggerthale

The agriculture negotiations have a central place in the Doha Round as the farming sector is regarded as the prime example of unfair world trade structures, is securing the livelihood of many people, especially in the South, is central to the sustainable preservation of genetic resources and biodiversity, generates a major proportion of export revenue for many developing countries, is the last bastion of protectionism in the eyes of the advocates of liberalization, is intertwined with culture and tradition like no other economic sector, is the basis of human life and, last but not least, its socially and ecologically compatible development is the key to the global fight against hunger and poverty. The WTO agriculture negotiations are basically a mirror image of this complex and controversial debate on farming. Furthermore, from the point of view of the developing countries only an acceptable proposal for the agriculture negotiations will bring about the relevant concessions for liberalization in the areas of services and industrial products.

The Doha mandate in the agricultural area

The Doha mandate forms the basis of and gives direction to the agriculture negotiations. WTO members aim to get closer to achieving their long-term objective of a “fair and market-oriented agricultural trade system” by 1) substantially improving market access, 2) reducing or discontinuing all types of export subsidies and 3) substantially reducing trade-distorting internal supports. The Special and Differential Treatment for developing countries is to be an integral part of all aspects of the negotiations, so as to allow them the consideration of their development needs including food security and rural development. Non-trade concerns are also to be considered in the context of the negotiations.

However, the Doha negotiating mandate for the farming sector is not limited to the negotiation of a new Agreement on Agriculture but it also concerns the negotiations on implementation issues, the discussions of the Committee on Trade and Development and the Committee on Trade and Environment as well as the decisions on the waiver for the EU-ACP partnership agreement and the EU transitional regime for banana imports.

The Doha mandate sets a timeframe for the agriculture negotiations. The so-called ‘modalities paper’ was to be completed by March 31, 2003 and sets out in detail which of the subsidies and tariffs are to be reduced by what percentage. Once this modalities paper has been adopted, the WTO members can begin to complete their schedules where they set out, product by product and subsidy by subsidy, the starting level and the end level following the reduction implementation. These schedules then become part of the Agreement on Agriculture.

From Doha to Cancún

The end result of the Uruguay Round is also the starting point for the current agriculture negotiations as part of the Doha Round: an unbalanced Agreement on Agriculture at the expense of the developing countries. The Agreement on Agriculture is designed in such a way that it continues to grant the developed countries support and protection for their farming sectors while the scope of the instruments at the disposal of the developing countries was

narrowed down further (*i.a.* prohibition on quantitative restrictions, reduction of price supports).

Hence it had been the objective of the developing countries to balance these imbalances. Many of them – the Like-Minded Group, LDCs, and African Group – demanded truly improved market access, a reduction in trade-distorting subsidies and the abolition of export subsidies in the North as well as a set of special provisions which allow developing countries to protect their production of staple foods, to support food security and to maintain employment opportunities in rural areas (see also under “Development Box”).

The developing countries’ offensive interests in the areas of market access and reduction in trade-distorting subsidies stood contrary to the interests of the “Friends of Multifunctionality” – *i.a.* EU, Japan, Switzerland, South Korea – whose aim was to largely maintain the status quo and which gave priority to the increased consideration of non-trade concerns.

In terms of the liberalization of the agricultural markets the most offensive demands came from the Cairns Group – Australia, Brazil, Indonesia, Philippines – which demanded a substantial liberalization of the agricultural markets in both North and South. In the autumn of 2002 this led to tensions within the group, *i.a.* on the issue of market access, as countries such as Indonesia and the Philippines demanded restrictions on the liberalization of trade in certain staple foods.

Table 1: Basic overview of the main negotiation parties and their focus of interest in the different phases of the negotiations

Interests: Main emphasis	Doha	Prior to Cancún	At Cancún	After Cancún
Exemptions for developing countries	Friends of the Development Box (later Like-Minded Group), African Group	Alliance of SP und SSM, African Uni-on, LDCs	G-33 (parts of G-20) G-90 (LDCs, AKP African Uni-on,)	G-33 G-90 (now split up again: LDC, AU, ACP)
Defensive interests	Friends of Multifunctionality, EU	Friends of Multifunctionality, EU (coalition with India)	G-10	G-10, EU (Coalition with India), ACP
Defensive + offensive			EU, USA	
Offensive interests	Cairns Group, USA	Cairns Group, USA	G-20 (especially Brazil, India!), Cairns (minor role)	G-20, Cairns Group, USA

The two concepts which, from the northern and southern perspective respectively, gave priority to sustainable development concerns were the Development Box and the concept of the “multifunctionality” of agriculture.

The proposal for a Development Box was first introduced by a group of eleven developing countries in June 2000 at the pre-Doha agriculture negotiations . Their aim was to more firmly establish development concerns – food security, securing the livelihoods of small farmers, rural development – in the Agreement on Agriculture. This proposal was also on the agenda in Doha but it did not make it into the Ministerial Declaration. The last offensive

proposal which was regarded as anywhere close to the Development Box was tabled in late 2002 by the Like-Minded Group. The group's demands included *i.a.*:

- Exemption of certain agricultural products from further tariff reductions;
- The possibility to raise low tariff bindings for staple foods;
- The right to impose an additional tariff on subsidized agricultural imports;
- The right to a special safeguard mechanism (SSM) for all agricultural products;
- No expansion of tariff rate quotas
- Exemptions for product-specific subsidies
- Introduction of a new Green Box category "Poverty alleviation, rural development, food security, diversification of agriculture, creation of employment opportunities".

The last time the term "Development Box" is used in an official document is in Harbinson's review paper (December 2002).

The concept of "multifunctionality" is based on the fact that agriculture does not only produce food but also other "public goods" such as environmental protection, rural development, and food security. In order to be able to take account of these concerns in the future the Friends of Multifunctionality were only ready to agree to a reduction in trade-distorting supports if the Blue Box was to be maintained and the scope of the Green Box extended. More specifically they demanded that permission be given for "direct payments to compensate for additional costs resulting from higher production standards". This was unacceptable to the Cairns Group. It accused the countries of "hidden protectionism". The negotiations could not progress under these conditions. Moreover, by the end of 2002 the EU had still not tabled a proposal.

Table 2: Country coalitions in the agriculture negotiations since Doha

Friends of the Development Box	Cuba, Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka, El Salvador, Peru, Senegal, Nigeria
Friends of Multifunctionality	EU, Japan, Switzerland, Norway, South Korea, Mauritius (MF6)
G10 (9 members)	Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway, Switzerland, South Korea, and Taiwan.
G20 (21 members)	Egypt, Argentina, Bolivia, Brazil, Chile, China, Guatemala, India, Indonesia, Cuba, Mexico, Nigeria, Pakistan, Paraguay, Philippines, Zimbabwe, South Africa, Thailand, Tanzania, Uruguay, and Venezuela.
G33 (44 members)	Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Dominican Republic, Ivory Coast, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Congo, Cuba, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Zambia, Senegal, Zimbabwe, Sri Lanka, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, South Korea, Suriname, Tanzania, Trinidad and Tobago Turkey, Uganda and Venezuela.
LDCs (32 members)	32 of the 50 LDCs are WTO Members: Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Congo, Democratic Republic of Congo, Djibouti, Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Zambia

ACP (56 members)	56 of the 79 African, Caribbean and Pacific (German) regional states are members of the WTO: Angola, Antigua and Barbuda, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Congo, Ivory Coast, Cuba, Democratic Republic of Congo, Djibouti, Dominica, Dominican Republic, Fiji, Gabon, Gambia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Papua New Guinea, Rwanda, St. Kitts and Nevis, St. Lucia, St. Vincent And of The Grenadines, Senegal, Sierra Leone, Solomon Islands, South Africa, Suriname, Swaziland, Tanzania, Togo, Trinidad And Tobago, Uganda, Zambia, Zimbabwe.
Cairns Group (18 members)	Argentina, Australia, Bolivia, Brazil, Chile, Costa Rica, Fiji, Guatemala, Indonesia, Canada, Colombia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, and Uruguay.
G90 (64 members)	The G90 includes 64 WTO Members from three different groups: The African Group, the ACP countries and the LDCs.
RAMs (6 members)	Countries which have recently joined the WTO: Albania, Croatia, Georgia, Jordan, Moldavia, and Oman.
FIPS/New QUAD	Five Interested Parties: Australia, Brazil, EU, India, and USA New QUAD: EU, USA, Brazil, India.

In December 2002 Stuart Harbinson, the then Chairman of the Committee on Agriculture presented a review paper (TN/AG/6 of December 18, 2002) which contained a comprehensive listing of all negotiation proposals made to date. It is striking that all those proposals (see the list below) which would either alter the structure of the Agreement on Agriculture or which question the WTO liberalization philosophy did not make it into the official papers.

Given the deadlock in the negotiations between US/Cairns and the “multifunctionalists” on the one hand and the “development protagonists” on the other, Harbinson’s attempt to produce a consensus modalities paper in the Spring of 2003 was destined to fail. It was refused by all sides. Therefore the deadline of March 31, 2003 set in the Doha declaration could not be met.

List of proposals made by developing countries which are no longer part of the negotiating agenda:

Positive list, *i.e.* list of products for which there are to be reduction commitments

Raising low tariff bindings

Commencing implementation period for developing countries following substantial reductions in trade-distorting support and abolition of export subsidies

Balancing mechanism, *i.e.* application of tariffs equivalent to the level of trade-distorting support and export subsidies

Changes in the box structure, *e.g.* only one box containing trade-distorting support and one Green Box

Countervailing duties for imports of subsidized products without the need to prove injury or causality

Abolition of paragraphs 5,6,7,11 of the Green Box

On account of the deadlocked negotiations Harbinson reported at the meeting of the Trade Negotiations Committee in July 2003 that at first agreement had to be reached on a tariff reduction formula. He stated that there was strong support for both a Uruguay formula – *i.e.* a rather low average reduction of tariffs – and a Swiss formula – *i.e.* a substantial reduction of high tariffs and a harmonization of tariff levels. There was also mostly disagreement with

regard to special products (SP) and the Special Safeguard Mechanism (SSM) for developing countries, *i.e.* the only elements left of the Development Box.

SPs are agricultural products which should be completely exempted from tariff reductions on account of their importance for food security, the protection of the livelihoods of small farmers, and rural development. The SSM would provide an opportunity to impose additional tariffs when imports are increasing or import prices are falling. Especially the Latin American Cairns members questioned the establishment of SPs in the new Agreement on Agriculture in principle. They also stated that substantial trade liberalization is a fundamental prerequisite for these instruments to be considered.

The turning point: an EU/US proposal and its consequences

On August 13, 2003 the EU and the US tabled a joint negotiation proposal which Harbinson wanted to take to Cancún as a basis for negotiations. A group of seventeen developing countries (G-17, which later became the G-20) – *i.a.* India, Brazil, China, South Africa, Mexico – reacted by tabling a counter proposal. The establishment of the G-20 marked a turning point in the agriculture negotiations leading to an increasing degree of unity amongst the developing countries and their organization in coalitions prior to and at Cancún: The “SP and SSM alliance” (which later became the G-33) and the G-90 (Coalition of LDCs, ACP, African Union). Since then the existing imbalance of powers has shifted in favour of the developing countries.

Following the collapse of the Fifth Ministerial in Cancún and the blame game targeted at the G-20 it was not until EU Commissioners Pascal Lamy and Franz Fischler followed up on 9 May 2004 with a letter outlining concessions the EU was willing to make, that a new dynamic emerged in the negotiations. Their offer included the abolition of export subsidies and a “Round for Free” for the G-90 countries. While the move on export subsidies was received well by the WTO members it came under serious fire from its own ranks including France, Poland, Hungary and Ireland, since the EU Commission had not engaged in internal consultation prior to tabling it – further proof of its oftentimes intransparent and undemocratic way of conducting negotiations.

The offer of a “Round for free” for the G-90 was an attempt to divide the developing countries and thus to weaken the negotiating position of the G-20. But this attempt proved unsuccessful as the G-90 did not accept the proposal, particularly because the seemingly “generous offer” was no such thing: On its own the EU can not decide on the introduction of a new category of developing countries, nor can it decide on the expansion of the EBA initiative and its establishment as part of the Agreement on Agriculture. The assurance of tariff and quota free market access was designed as a form of ‘consolation’ for the LDCs and ACP countries affected by preference erosion who can only lose out in a more liberalized marketplace. Furthermore, the G-90 countries were to raise tariff bindings to an adequate level “only” for their agricultural and industrial goods. This inherently means to fix the applied tariffs at their low level. On this issue Article XXVIII bis of GATT 1994 states: “The binding against increase of low duties [...] shall, in principle, be recognized as a concession equivalent in value to the reduction of high duties.” It should also be considered that the EU can still secure market access in these countries through the EPA negotiations.

In the end the inclusion of Brazil and India into the informal negotiating group of the “Five interested parties” (FIPS) – India, Brazil, EU, USA; Australia – proved to be the more “successful” strategy. Without FIPS the adoption of the July package on August 1, 2004 by the General Council would have been impossible. The negotiating position of the G-20 was weakened, the key concerns of Brazil (an end to export subsidies) and India (no Swiss formula) were picked up and they were largely isolated from the rest of the developing countries. No doubt these two partial successes can in themselves be regarded as something

positive but they fall well short of the G-20's original demands. In view of the many distinct coalitions in the agricultural arena it is also very unsatisfactory from a democratic point of view that the G-33, the G-10, and the G-90 were not represented at the negotiating table. Especially the G-10 has criticized this type of "exclusive negotiations".

The time after the July package was characterized by difficult discussions on a formula for converting specific tariffs (*e.g.* 10 c per pound) into *ad valorem* tariff equivalents (*e.g.* 10% of the value of the imported commodity). It was not until the mini-Ministerial in Paris on May 3-4, 2005 that a breakthrough was achieved on the issue. The agreement on a conversion formula was the first step on the way to developing a tariff reduction formula. The only product exempted from this conversion formula was sugar, in support of Brazil.

The agreed approach to a formula will lead to higher tariffs on raw materials than on processed products. On the basis of the July Framework for tariff reduction the higher *ad valorem* tariffs are then to be reduced more substantially. The mini-Ministerial in Dalian/China on July 7-8, 2005 achieved an approximation of positions regarding the formula structure for tariff reductions. The EU signalled their willingness to accept the G-20 proposal which envisaged five bands of tariff rates for developed countries and four bands of tariff rates for developing countries.

Destination Hong Kong: Full speed ahead towards liberalization

With the start of the mini-Ministerial in Zurich on October 10-12, 2005 the agriculture negotiations got rolling. On October 10 the US tabled a negotiation proposal and the EU followed suit on October 11. These were followed in quick succession by a number of proposals on individual elements of the negotiations by the G-20 and the G-33.

Domestic Support

Table 3: Proposals by the EU and the G-20 on the reduction of trade-distorting domestic support

EU proposal	EU (bn. €)	US (bn. \$)	G-20 proposal	EU (bn. €)	US (bn. \$)
AMS at end of Uruguay Round	67.2	19.1	AMS at end of Uruguay Round	67.2	19.1
AMS post reduction: 70% EU, 60% US	20.2	7.6	AMS post reduction: 83% EU, 70% US	11.4	5.7
Estimate post 2003/EU Notification US 2001/02 ¹	16.3	14.4	Estimate post 2003/EU Notification US 2001/02 ¹	16.3	14.4
Required change	+ 3.9	- 6.8	Required change	-4.9	-8.7

¹ Based on estimates by Oxfam

Note: The **US proposal** envisages an 83% reduction (see G-20 proposal) for the EU and a 60% reduction for the US (see EU proposal).

While both the EU and the US praise their offer as a "substantial" concession, the G-20 criticizes it as insufficient and civil society organizations as misleading. The EU and the US shift subsidies from the Amber into the Blue Box and from the Blue one into the Green Box. Thus they do nothing but "creative bookkeeping". The necessary reduction in dumping can not be achieved in this manner.

But criticism was also voiced within the EU/US. In the US, the Chairman of the Senate Agriculture Committee, Chambliss, rejected any cuts in counter-cyclical payments in the new Blue Box. The American Farm Bureau Federation also stated that no more than a 50% cut would be feasible. Within the EU, France accused the EU Commission to have overstepped its negotiating mandate. In early October, fourteen Member States, including France, Austria, Belgium, Ireland, Italy, Greece, Poland and Hungary, had criticized the EU's conduct of the negotiations. However, a special ministerial meeting on October 18 gave Mandelson majority support.

The US and the EU failed to meet their notification obligations to the WTO since early 2000. Therefore, there are no up to date figures on the breakdown of their subsidies by the different categories of the Agreement on Agriculture. However, the US introduced their 2002 Farm Bill and the EU settled their Luxembourg Agreement in June 2003. Nevertheless, using estimates it becomes apparent that there will be no reduction or only a minor effective reduction in trade-distorting subsidies for the EU and the US. In the case of the US this is made possible by shifting approximately 7 billion US\$ from the Amber Box to the new Blue Box. The US proposals to only accept food aid in the form of in-kind aid (instead of funds for purchasing local/regional food) and to establish a peace clause for the Green Box are also completely unacceptable.

Market access in the developed countries

The harshest criticism of the EU's tariff reduction formula came from Australia and New Zealand. While the US offered a 90% reduction in the highest band, the EU proposed a maximum 50% reduction. In view of the criticism the EU increased their offer for average tariff reduction from a 36% cut to roughly a 40% cut. Nevertheless the criticism has not stopped. While France threatens a veto if further concessions are made, the EU offer is still being rejected as insufficient by the US (supported by Agrtrade – 100 US agricultural and food industry organizations) and Brazil. At the same time the G-10 and the ACP countries view the tariff reduction offer as too far reaching.

Table 4: Proposals for a tariff reduction formula for developed countries

EU (Oct. 28)		USA (Oct. 10)		G-20 (Oct. 12)	
Band	Reduction	Band	Reduction	Band	Reduction
0-30%	35% (20-45%)	0-20%	55-65%	0-20%	45%
30-60%	45%	20-40%	65-75%	20-50%	55%
60-90%	50%	40-60%	75-85%	50-75%	65%
> 90%	60%	> 60%	90%	> 75%	75%
Maximum tariff (cap): 100%		Maximum tariff (cap): 75%		Maximum tariff (cap): 100%	
Sensitive Prod.: 8% of tariff lines		Sensitive Prod.: 1% of tariff lines		Sensitive Prod.: 1% of tariff lines	
SSG: continue for beef, butter, poultry, fruit/vegetables, sugar		SSG: ???		SSG: Abolish	

It is difficult to assess the EU offer from the point of view of family farms within the Community. For sensitive products, in particular, there is not much of a "gap" between bound and actual support levels. The tariff reduction proposed by the EU could, for example, increase imports in milk powder, butter, tomatoes, and sugar and thus suppress internal prices.

However, keeping the Special Safeguard Mechanism (SSM) in accordance with Art. 5, as demanded by the EU, could buffer negative effects in part.

On no other issue do the developing countries' positions diverge as much as on the tariff reduction formula for developed countries, since the strong market-opening demanded by the G-20 and the "old Cairns members" entails a real loss of revenue for those countries which enjoy preferential market access. The ACP countries, in their proposal of October 21, demanded accordingly that products which have been given preferential treatment for a long time should be notified as sensitive products and be treated moderately. They also point to Par. 16 of the Harbinson text of March 18, 2003 which provides for the maintenance to the maximum extent possible of nominal margins in the context of the implementation of tariff reduction commitments as well as for longer time periods for reductions for preference products.

Special and differential treatment (SDT)

Looking at the tariff reduction formula for developing countries and the safeguard instruments SP and SSM, the US proposal is a 'disaster' for family farming, small farmers and food industry workers worldwide, according to the Institute for Agriculture and Trade Policy (IATP). The institute further states that the US proposal for market access shows no interest in accommodating developing country concerns nor those of the G-10 developed countries. The US refer to the July package where on the one hand the entitlement for protection against import floods is acknowledged by way of the SP and Special Safeguard Mechanism but where at the same time a demand is made for "meaningful improvement in market access". Moreover, the traditional 2/3 commitment by the developing countries is also being questioned. The US also propose sectoral initiatives and bilateral negotiations in order to secure improved market access for their main products in key markets. Food security, sustainable rural development, and livelihood concerns of workers in rural areas are thus completely ignored.

Table 5: Proposals for a tariff reduction formula for developing countries

EU (Oct. 28)		USA (Oct. 10)		G-20 (Oct. 12)		ACP (Oct. 21)	
Band	Reduction	Band	Reduction	Band	Reduction	Band	Reduction
0-30%	25% (10-40%)	0-20%	a-b	0-30%	25%	0-50%	15%
30-80%	30%	20-40%	b-c	30-80%	30%	50-100%	20%
80-130%	35%	40-60%	c-d	80-130%	35%	100-150%	25%
> 130%	40%	> 60%	d-e	> 130%	40%	> 150%	30%
Maximum tariff (cap): 150%		Maximum tariff (cap): x%		Maximum tariff (cap): 150%		Maximum tariff (cap): none	
SP: mentioned		SP: yes, but tariff reduction!		SP + SSM: integral part of "Special and Differential Treatment", cooperation with G-33		SP: supports G-33	
SSM: not mentioned		SSM: yes, but tariff reduction!				SSM: supports G-33	

But the EU proposal also demonstrates the EU's old reservations about the SSM, especially with regard to the price trigger which does not even get a mention. Furthermore, the EU will push for a limitation on the number of special products.

Table 6: Number of developing countries forced to reduce their applied tariffs (EU/G-20 and US formula)

	Poultry	Sugar	Sorghum	Oilseeds	Vegetable oils	Wheat	Rice	Maize	Total
US formula	28	24	20	18	20	12	25	20	167
EU/G-20 formula	23	20	17	16	13	11	17	16	133

Source: Calculations by Oxfam.

However, the EU at least acknowledges the 2/3 principle for tariff reduction by developing countries. But the proposals of the EU and the G-20 on the tariff reduction formula is also going much too far from the point of view of family farming and food security in the South.

Oxfam has calculated how the US formula and the EU/G-20 formula respectively impact on applied tariffs of selected products in around 60 countries. As the table shows, the tariff reduction formula the US is proposing would force 28 developing countries to cut their current tariffs on poultry, or 23 countries if the EU/G-20 formula is applied. Was one to apply the minimum tariff rates of 40-60% for staple foods as suggested by the FAO, the number of developing countries affected by rising imports would be even higher, *e.g.* 32 in the case of poultry. Any substantial reduction in applied tariffs will entail further increases in imports and will push more small farmers out of the market.

On October 12 the G-33 submitted a proposal for the design of criteria for SP, followed by a proposal on SSM at the end of October. In particular, the proposal to automatically grant SP status to products which profit from trade-distorting support (export subsidies, Amber Box and Blue Box) is a welcome development. This would allow for the inclusion as SPs of products competing with staple foods in the developing countries but which are not produced to any great extent in these countries (*e.g.* wheat as a product competing with rice in Sri Lanka). However, the G-33 unfortunately pulled back in a form of “hurried adaptation” when it came to the design of the SSM. Quantitative restriction are no longer mentioned and instead of demanding their application to all agricultural products, including SPs, the group now merely asks for the negotiation of a list of permitted products.

This dominant discussion on the tariff reduction formula pushes all other important issues into the background. The G-33 proposals are not given the attention and support they deserve. It is regrettable that they do not make reference to the undermining of potentially positive effects of SP and SSM in the case of these countries being forced to substantially lower their tariffs on the basis of the tariff reduction formula. Moreover, the lack of representation within FIPS once more proves to be a considerable disadvantage. It is for a reason that the G-33 has repeatedly criticized that it had not been invited to critical meetings, most recently on October 13.

Another issue that has not been given adequate consideration is the commodity issue. On June 3, 2005 Ivory Coast, Kenya, Rwanda, Tanzania and Zimbabwe submitted a further proposal, after their earlier proposal of July 2003 had not been considered in the agriculture negotiations. The countries request a discussion on potential special market access provisions, supply management systems and price stabilization schemes for commodities such as tea, coffee, and palm oil as part of a consultation process within the WTO. However, the promised consultations have yet to materialize.

Outlook on the Hong Kong negotiations

As it is unlikely that any more proposals will be submitted prior to Hong Kong a compromise is likely to lie somewhere in between the demands and offers currently at hand. Any assessment from the point of view of food security, sustainable rural development and small farmer livelihoods must thus be negative. Especially the pressure from the G-20, the Cairns Group and the US to guarantee far-reaching market access will have serious adverse consequences for small farmers. Moreover, given the well-known opposition to SP and SSM it can be expected that these will be further watered down. According to the currently available proposals there will also be no comprehensive reduction in dumping. All in all we are facing yet another worst case scenario in the agriculture negotiations.

Given the collapse of the FIPS negotiations on October 19 and the lack of will on the part of the EU and the US to submit more far-reaching proposals, an agreement is doubtful. The positions of the US/Cairns/G-20 on the one side and the G-10/ACP and EU on the other side remain far apart.

On October 19, the four West African countries have also made it clear that they have no interest in the negotiations except for finding a solution to the pressing cotton issue. They demand (1) emergency measures to deal with internal supports and export subsidies, (2) abolition of all cotton subsidies, (3) compensation of cotton producers for their substantial losses, and (4) treatment of the cotton issue outside of the agriculture negotiations. Demands (2) and (4) have a substantial deal breaker potential. Benin, Burkina Faso, Chad and Mali have made an application to the WTO that the cotton issue be put on the Hong Kong agenda.

Same is true for bananas – Honduras requested this topic as an item for the agenda. On October 27 a panel had unexpectedly rejected the EU's compromise proposal on new rules for the banana market regime to be applied from January 1, 2006. During the Uruguay Round the Latin American export countries, backed by Dole and Del Monte, had only approved the transitional regime because they had been promised a "tariff only" system from January 2006, *i.e.* the abolition of the quota system. They reject, however, the MFN tariff of €7/tonne proposed by the EU. During the Uruguay Round the negotiations had almost collapsed over the banana issue.

Looking at the overall negotiations and the envisaged trade-off between a worst case- type package on agriculture and the looming concessions with regard to trade liberalization for industrial goods and services, a lack of success in Hong Kong is more likely to contribute to development as at least it would mean that political scope yet existing will not suffer further restrictions.

Non-Agricultural Market Access (NAMA): A threat to environment and development?

By Damian Sullivan, Friends of the Earth International and Alexandra Wandel, Friends of the Earth Europe

While agriculture negotiations have dominated the World Trade Organizations' Doha 'Development' Round agenda, negotiations occurring in non-agricultural markets access (NAMA), otherwise known as industrial goods, are of key concern to many developing country governments and civil society across the world. Non-agricultural market access negotiations encompass all products not covered by Annex 1 of the Agriculture Agreement; this includes fish, forestry, gems, minerals and raw materials along with industrial products. The stated aims of the negotiations are to lower tariffs and to reduce non-tariff barriers (NTBs) to trade in these goods. The broad range of goods covered in the negotiations, combined with their centrality to many developing country economies, means that the results of the NAMA negotiations will have a big impact on environmental sustainability, development and unemployment.

NAMA negotiations were mandated in paragraph 16 of the Doha Ministerial Declaration, which was adopted in November 2001. The declaration specified that the aim of negotiations was to:

reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without a priori exclusions.

The Doha mandate included an explicit recognition to 'take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments'.³ Also specified was the inclusion of 'appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations'. NAMA negotiations commenced in January 2002, in the 'Negotiating Group on Market Access', which is headed by Ambassador Stefan Johannesson from Iceland. Along with the reduction of tariffs and non-tariff barriers the group was tasked with addressing environmental goods and specifically, 'the reduction or, as appropriate, elimination of tariff and non-tariff barriers'.⁴

Following the collapse of Doha Round negotiations in Cancun in 2003, the WTO General Council meeting in July 2004 developed a new package to move ahead with negotiations on the Doha Round.⁵ Non-agricultural market access was covered in Annex B of the General Council Decision, known as the NAMA Framework. The Framework forms the basis of the current negotiations, however it is not without controversy. The Framework, was put forward unamended from an earlier draft (the Derbez text) by Ambassador Johannesson even though it had been criticized by a number of developing countries, most notably the African, Caribbean and Pacific group and the LDC group. Rather than accommodating the criticisms the text was included unamended.

Alongside the negotiations for across the board tariff cuts, and tariff bindings, there is space for accelerated sectoral liberalization in specific sectors. The process is designed to be initiated and developed in 'informal Member-driven processes based on the critical mass approach'.⁶ That is, a group of countries can commence negotiations and see if other countries want to join in, once a critical mass is reached, the outcomes will be applied on a Most Favoured Nation basis. Developing countries however have argued that the approach should

be voluntary. The sectors where work has been occurring are: electronics/electrical equipment; bicycles and sporting goods; chemicals; fish; footwear; forest products; gems and jewellery; pharmaceuticals and medical devices; and raw materials.

Developed and Developing Country Interests

The stakes in the NAMA negotiations are high. For wealthy developed nations, headed by the United States and the European Union, the NAMA negotiations provide the opportunity to secure access to the lucrative markets of the more advanced developing nations. With average tariffs on industrial goods higher in the South than the North, rich countries look set to make large gains at relatively low cost. In the context of the Doha Round negotiations, the US and EU are attempting to ensure that any concessions they have to make in the agriculture negotiations will be countered by gains it makes in the NAMA and services (GATS) negotiations. It is estimated that the benefits will largely fall to wealthy Northern countries.

Estimating the benefits from liberalization is a difficult and contentious task and estimates of the impacts of liberalization in industrial goods have produced a wide variety of results. Brown, for example, estimates that the:

incidence of benefits of liberalization of trade in mining and manufactures during the Uruguay Round, global gain was in the order of \$90 billion, of which \$65 billion went to mature industrial countries, \$6 billion to NIEs⁷, and less than \$20 billion to developing countries.⁸

Similarly Brown estimates that one-third cuts in tariffs in manufacturing post the Uruguay Round negotiations would:

lead to global gains of some \$210 billion. Of this around \$160 billion would go to industrial countries (\$58 billion to Japan, \$31 billion to the United States and \$63 billion to the EU plus EFTA), \$16 billion to NIEs and around \$30 billion to the developing world.⁹

As Akyüz points out, debates over the size of financial and economic benefits obscure the real problem with the NAMA negotiations for developing countries. That is, tariffs provide developing countries with a means to promote domestic industrial development and in particular the protection of new industries. The NAMA negotiations will restrict the ability of developing countries to employ tariffs as a policy tool. Regardless of whether tariffs are the most efficient policy tool they will restrict the policy space for developing countries. The cuts will affect current tariff levels and the bound tariff rates. The use of industrial tariffs by developing countries is not without precedent, indeed Northern countries successfully used industrial tariffs in the process of their development. As Wade states

“Almost all now-developed countries went through stages of industrial assistance policy before capacities of their firms reached the point where a policy of (more or less) free trade was declared to be in the national interest. Britain was protectionist when it was trying to catch up with Holland. Germany was protectionist when trying to catch up with Britain. The United States was protectionist when trying to catch up with Britain and Germany, right up to the end of the World War II. Japan was protectionist for most of the twentieth century up to the 1970s, Korea and Taiwan to the 1990s.”¹⁰

Tariffs also provide developing countries with a significant source of direct revenue. Tariffs cuts will reduce this important revenue stream. Certainly developing countries will make some gains in access to northern markets, and in increased access to other Southern countries. However the costs, in lost revenue, and reduced policy space will be high.

The Third World Network (TWN) has outlined specific elements of the NAMA framework that will impact on developing country policy flexibility.¹¹ Firstly, the requirement to **bind almost all tariffs** (95%) will limit the ability of developing countries to use tariffs as an effective policy tool. Further tariffs that are **unbound** will be subjected to particularly harsh treatment.¹² Discussions on the **formula** for tariff reductions (specified in paragraph 4) have focussed on the use of a non-linear **Swiss Formula** approach. Put simply the Swiss Formula approach involves greater cuts to higher tariffs. As a result, developing countries who generally have higher tariffs will be subject to higher cuts. Further, the formula approach as specified in the NAMA framework applies **line by line** and to each product as such there is no possibility of an average reduction as there was in the Uruguay Round. The **flexibilities** that are built into the July Framework (paragraph 8) are very limited. Developing countries can choose to have 5% of tariff lines unbound (by export value); or have less than formula cut (at most 50% cut) on 10% of tariff lines (determined by total import value). Even these limited flexibilities proposed are at risk. The EU is proposing that flexibilities be reduced if developing countries get more lenient tariff cuts, while the US is arguing that flexibilities should be completely foregone if developing countries get a more lenient tariff reduction formula.

NAMA negotiations: At the expense of the environment?

NAMA also presents other challenges. The NAMA negotiations pose a broad and significant threat to the environment with most countries ignoring the potential environmental and social impacts of liberalizing trade in raw materials.

All natural resources are included in the NAMA negotiations and sectors such as fish, gold, diamonds and primary aluminium have even been proposed for complete liberalization. Increased liberalization in raw materials sectors could lead to increased exploitation of and trade in scarce natural resources and remove governments' ability to use trade measures to manage stocks sustainably and for the common good. A NAMA deal could also limit governments' use of tariff and other trade measures to preserve the livelihoods of millions of fisherfolk around the world and ensure that people in developing countries can still rely on fish as a key source of protein. Liberalization of fisheries could unsettle local communities, which depend on local fishing to survive and threaten the already dangerously low levels of global fish stocks. The UN Food and Agriculture Organization (FAO) reports that 70 % of the world's commercial fish stocks are already over-exploited or are fully exploited. Some 34 million people worldwide live from fishing - most living on less than one dollar a day. For poor coastal communities around the world, access to and conservation of fisheries resources is a matter of sheer survival.

In the forestry sector, the findings of European Commission's Sustainability Impact Assessment (SIA) predicts that *'in biodiversity hotspot countries, such as Brazil, Indonesia, Congo Basin countries and Papua New Guinea, possible negative impacts on biodiversity can be irreversible. Developing countries which have established forest industries protected by high import tariffs, may incur considerable environmental and social costs'* and that *'it would be wise to adopt a precautionary approach to trade liberalization'*¹³ The report further predicts an increase in illegal logging as well as unsustainable harvesting. This is why many NGOs demand the conduct of full environmental and social assessment and the exclusion of forestry, fisheries and minerals from the NAMA negotiations.

Environmentalists have also pointed out that the challenge to non-tariff barriers will place legitimate government regulations designed to protect the environment and health at risk. Friends of the Earth has identified 212 ‘notifications’¹⁴ of national legislation considered to obstruct trade, as part of the negotiations for the WTO’s non agricultural market access agreement (NAMA). Whether all of these notifications remain on the table is uncertain at the moment, but it is clear that many may, since the NAMA negotiations are intended to eliminate non-tariff barriers to trade. The range of measures notified provides startling evidence of the ways many governments intend or would like to use the WTO to challenge environmental standards and labelling.

Interests and positions of major political actors in the negotiations

Developed countries have been the primary architects of NAMA negotiations in the WTO. Northern countries can see the opportunity for their companies to increase exports as tariffs are reduced. Unlike agriculture where protection is greatest in the North, in industrial goods protection through tariffs is higher in the South. Northern countries estimate they will reap more benefits from the tariff reductions in the South than the costs to them, as most of their tariffs are relatively low. The key proponents of deep cuts through the NAMA negotiations are the United States, EU, Japan, Canada, Australia, New Zealand, Singapore, Hong Kong, Norway, and Switzerland. Chile and Costa Rica are also pushing for deep cuts.

In the negotiations, the Northern position is central to the negotiations through the focus on the Swiss Formula approach. Variations of the Swiss Formula have been proposed by the US, EU and Norway. Common to all these proposals is deeper cuts for developing countries because they have higher tariffs. One area of common ground between the US and the developing countries is the need to address non-tariff barriers to trade. The Northern countries have different priorities in the various sectoral issues. The US for example, is promoting accelerated liberalization in the following sectors forests, wood and paper products; gems and jewellery; electronics/electrical; and chemicals.

Corporate lobby groups in key sectors have been mounting high profile campaigns to ensure deep cuts through the NAMA negotiations. The US based National Association of Manufacturers (NAM) coordinated a ‘global manufactures fly-in’ to Geneva, which included eleven of the world’s most powerful industry lobby groups, all from developed economies.¹⁵ The lobbyists held with Ambassador Johannesson, the NAMA Negotiations Chair and ambassadors from several key countries. NAM Director of International Trade Policy Christopher Wenk, made the objective clear:

The principal objective of this fly-in is to demonstrate that manufacturing organizations from around the world are determined that the Doha Round should result in truly ambitious cuts in industrial tariff barriers.¹⁶

Similarly US based retail lobby groups, the National Retail Federation (NRF) and the EU’s EuroCommerce have undertaken lobbying missions. In the forest products sector, lobbyists have successfully placed forest and wood product liberalization up the agenda. The recent US and New Zealand proposal to increase liberalization included explicit reference to being driven by forestry industry interest, and cited the ongoing meetings between forests industry representatives and NAMA negotiators.

Developing Countries

In their rhetoric for deep NAMA cuts, both the US and EU are arguing that Southern countries will gain through increased South-South trade as a result of reduced barriers to trade. For their part, developing country proposals have emphasized that the NAMA negotiations must not undercut the development dimensions of the Doha round. To this end, most developing

country government's are seeking to reduce the impacts of tariff cuts in their country, while gaining some level of increased market access in the North. A further emphasis of the proposals has been the need for greater attention to special and differential treatment; the importance of non-reciprocity and flexibilities. Different countries and country groupings have emphasized different aspects of the negotiations.

Argentina, Brazil, and India have rejected the basic Swiss formula approach and have promoted a modified version which links a country's item-specific tariff cuts to its overall level of tariff protection -- the higher a country's average tariff rate, the higher its tariffs will remain even after the formula is applied on an item-by-item basis.' The **African Group** have argued for that there needs to be special treatment of existing preferences available to some developing countries. As the group states, "These preferences can provide the policy space needed to undertake the gradual national industrial objectives and commitments which are consistent with the development goals of some African countries'. A number of countries have requested to be exempted from tariff reductions, these include the newly acceding transition economies, **Armenia, Georgia, the Kyrgyz Republic, and Moldova** and a group of developing countries, **Congo, Ivory Coast, Cuba, Ghana, Kenya, Mauritius, and Zimbabwe**.

For many Southern countries including the least developed countries, reducing non-tariffs is a key element of the negotiations. While tariffs appear to be low in the north, these countries see non-tariff-barriers as a significant barrier to market access for their products.

Negotiations where to now

The WTO Secretariat and leaders in the NAMA negotiators are pushing to get agreement in time for the Hong Kong Ministerial in December. Following the October trade negotiating committee (TNC) meeting, Pascal Lamy, WTO Director General, where negotiations were up to and the timeline till Cancun:¹⁷

there is consensus emerging on the use of a Swiss formula, with a limited number of negotiated coefficients, even if we are not yet there. For the Mid-November text, we need a range of numbers (coefficients) for the formula; comparable detail on flexibilities; and agreement on how to fix the base rate for unbound tariffs.

Lamy's statement however seeks to hide the many differences in the negotiations and seeks to develop a consensus that does not exist. After Lamy's statement, negotiators from India, Brazil and Argentina rejected the idea that they were part of a consensus on a 'Swiss' tariff-reduction formula associated with a "limited number of coefficients."¹⁸

Movement in NAMA is dependent on an agreement in agriculture being reached. The EU is trying to tie progress in agriculture with progress in NAMA. However the other key negotiating countries (the Five Interested Parties (FIPS), Brazil, India, the European Union, the United States and Australia) are insisting the EU must move on agriculture before there can be real progress in NAMA and the round.

Third World Network summarized the process till Hong Kong. The chairs of the various Negotiating Groups, including NAMA, will produce drafts on their respective topics that they will submit to Lamy, who will coordinate the drafts as inputs to the main text. The first draft of the main text is scheduled to be produced by mid-November. On 1-2 December, the General Council will have its last meeting before Hong Kong where the organization and conduct of the Ministerial would be discussed.¹⁹ Lamy has also outlined a post Hong Kong 'road-map'. He suggested that NAMA would take longer than the 10 months for the 'best case scenario' in the agriculture negotiations.

Many NGOs²⁰ are demanding to

- Halt NAMA negotiations and agree to a full, independent review of the potential environmental and developmental impacts of NAMA.
- Protect governments' policy space, including through the use of tariffs and non-tariff barriers genuinely intended to develop fair and sustainable economies and protect the environment, including through the sustainable management of natural resources.
- Promote resource conservation by stopping further liberalization of natural resources, such as forest, fish, oil, gas and mining products in the NAMA negotiations and elsewhere.

³ WTO Website, Non-agricultural market access negotiations;

http://www.wto.org/english/tratop_e/markacc_e/markacc_negoti_e.htm

⁴ The mandate for negotiations on environmental goods is contained in Paragraph 31 (iii) of the Doha Ministerial Declaration

⁵ WTO Website, Doha Development Agenda, Doha Work Programme The July 2004 package

http://www.wto.org/english/tratop_e/dda_e/dda_package_july04_e.htm

⁶ Negotiating Group on Market Access, 'State of Play of the NAMA negotiations: Chairmen's Commentary' 8 July 2005, JOB(05)/147;

www.tradeobservatory.org/library.cfm?refID=73384

⁷ Newly industrialized economies (NIEs) comprise among others Hong Kong, China; Republic of Korea; Singapore and Taipei/China.

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- ⁸ Brown, Drusilla, Alan Deardorff, and Robert Stern. (2001). "CGE Modelling and Analysis of Multilateral and Regional Negotiating Options." University of Michigan School of Public Policy Research Seminar in International Economics. Discussion Paper 468, p. 31, table 1; cited in Yilmaz Akyüz The WTO negotiations on industrial tariffs: what is at stake for developing countries? Third World Network Website: <http://www.twinside.org.sg/akyuz.htm>
- ⁹ Brown, Drusilla, Alan Deardorff, and Robert Stern. (2001). ... p. 31, table 5; cited in Yilmaz Akyüz The WTO negotiations on industrial tariffs: what is at stake for developing countries? Third World Network Website: <http://www.twinside.org.sg/akyuz.htm>
- ¹⁰ Wade, Robert. (2003). *Governing the Market*. Princeton University Press. Second Edition p. xv; cited in Yilmaz Akyüz The WTO negotiations on industrial tariffs: what is at stake for developing countries? Third World Network Website <http://www.twinside.org.sg/akyuz.htm>
- ¹¹ Martin Khor And Goh Chien Yen (2004) *The WTO Negotiations On Non-Agricultural Market Access: A Development Perspective* http://www.twinside.org.sg/title2/par/mk_cy001.doc
- ¹² For an unbound tariff, the applied rate will be multiplied by (two) to obtain the base value and the formula will be applied. Many developing countries have low applied rates (particularly due to structural adjustment), and will end up with their unbound tariffs being bound at very low levels, many even below the present applied rates.
- ¹³ Katila and Simular, Saforc Indufor Oy: Sustainability Impact Assessment of proposed WTO negotiation, final report for the forest sector, study commissioned by the European Commission, June 2005, page v.
- ¹⁴ Examples: Mandatory labelling for electric home appliances including energy efficiency, requirement of a prior test for energy efficiency for electric products, ecolabelling of footwear based on recognized environmental management schemes.
- ¹⁵ Lobby groups involved were: Australian Industry Group, the Canadian Manufacturers & Exporters (CME), Korea International Trade Association (KITA) , Nippon Keidanren, the Union of Industrial & Employers' Confederations of Europe (UNICE), Confederation of British Industry (CBI), Le Mouvement des Entreprises de France (MEDEF), Confederation of Danish Industries (DI), Confederation of Norwegian Business and Industry (NHO), Confederation of Swedish Enterprise, and Bundesverband der Deutschen Industrie, e.V. (BDI).
- ¹⁶ NAM Media Release April 11, 2005 'NAM leads manufacturers' fly-in to Geneva seeking reduction of tariff barriers to trade: Asia-Pacific, European, and Latin American manufacturing groups join NAM effort'; Online at: http://www.namawatch.org/docs/corporate/National_Association_of_Manufacturers451_2_70397.pdf
- ¹⁷ WTO Website 'Lamy says the engines of negotiations are "buzzing" again' http://www.wto.org/english/news_e/news05_e/tnc_13oct05_e.htm
- ¹⁸ Bridges Weekly Vol. 9, No. 35, 19 October 2005 'TNC: Lamy Outlines Doha Round Roadmap For Hong Kong And Beyond'; <http://www.ictsd.org/weekly/05-10-19/story2.htm>
- ¹⁹ Martin Khor, 'WTO General Council discusses text drafting, TRIPS, commodities', www.twinside.org.sg/title2/twninfo280.htm 19 Oct 2005
- ²⁰ See Our World Is Not For Sale Network, Stop the WTO destroying developing country industries and selling off our natural resources!, see http://www.ourworldisnotforsale.org/signon_nama_statement.asp

The GATS negotiations going into Hong Kong: The “spoiler” that came from behind....

By Liane Schalatek, Heinrich Böll Foundation, Washington Office

For the past two years since the last (failed) WTO Ministerial in Cancun in August 2003, it has been relatively quiet around GATS, the General Agreement on Trade in Services. While an important part of the negotiations under the Doha Round since 2001, the attention of politicians, negotiators, media and trade observers alike – looking ahead to the upcoming 6th WTO Ministerial in Hong Kong in December and intent on avoiding a repeat of the Cancun debacle for the WTO – has focused more on the “make-or-break” issue of agriculture, particularly on time schedules and formulas to ultimately end agricultural export subsidies and reduce domestic support measures significantly. Trade talks around NAMA, the negotiations on tariff reduction and market access in non-agricultural (industry) sectors, came in a distant second, while the ongoing new round of service liberalization talks scantily registered as an also-run – until recently.

In Geneva, where negotiators are feverishly preparing for Hong Kong, a number of critical developments in September and October have put the services talks back in the race for most effective “spoiler” in Hong Kong – in a dead heat with and inseparable from the agriculture negotiations. At the heart of the brewing controversy over the services talks – and the agriculture ones for that matter – is how much of a development round the “Doha Development Agenda” really wants to be, but more fundamentally, whether and what kind of autonomy in policy regulation and in setting their own agenda, path and pace for economic development WTO member countries, especially developing and least developed countries, are allowed to maintain under ever increasing levels of multilateral liberalization. The development stakes of the current service talks are great indeed: Already today, the service sector accounts for the largest and fastest growing share of total economic output, eclipsing industry and agriculture by far, not only in industrialized countries, but also in middle- and low-income countries and providing the largest share of employment in most of the 148 current WTO member countries.

The Doha Mandate for Multilateral Service Liberalization

The GATS, which came into force in January 1995, is the first and only set of multilateral rules governing international trade in services. It was included in the Uruguay Round of trade talks at the request of industrialized countries like the EU and the United States, both large services exporters, against the concerns of many developing countries. The GATS consists of two parts: a framework agreement containing general rules and principles as well as national “schedules” which detail the specific commitments each country makes on access to its domestic market by foreign suppliers. The schedules follow a “positive list” approach with some built-in flexibility (see GATS Article XIX:2). This means that a country making an offer chooses – according to its economic interests and development prerogatives and at its own pace – which of the currently 12 sectors divided into 163 services sub-sectors it wishes to include in its service liberalization schedule.

The GATS defines four ways in which a service can be traded, known as “modes of supply”:

- Mode 1: Cross border supply of services – the service delivery does not require the presence of the service supplier in the territory of the consumer; i.e. outsourcing or telephone calls;
- Mode 2: Consumption of services abroad, i.e. tourism;

- Mode 3: Commercial presence – granting a foreign service supplier the right to set up subsidiaries or branches to provide services in another country; i.e. banks, insurance; and
- Mode 4: Movement of natural persons – individuals traveling from their country to supply services in another country, i.e. a construction worker.

Generally speaking, these modes are of differing interests to different countries, with developed countries such as the EU, the US or Japan, which are the demandeurs of further trade liberalization, most interested in modes 1 and 3, while most developing countries see their best opportunities under GATS in liberalizing mode 4, particularly the temporary movement of low or unskilled workers via so-called “GATS visa”.

In an attempt to appease developing countries’ objections to the initial inclusion of service liberalization in the WTO regime and given the vast asymmetries of service sector capacity and regulation in developed and developing countries, the GATS framework was constructed to give considerable flexibility to developing countries. The preamble of the GATS specifically highlights respect for national policy objectives and a country’s right to regulate as well as the particular need of developing countries to exercise this right as among the agreement’s goals.

Like the Agreement on Agriculture, the GATS contains a “built-in-agenda” (Article XIX), which mandates member states to initiate progressive liberalization talks on services by January 1, 2000. Guidelines and procedures for the service negotiations were agreed upon by the WTO Council for Trade in Services (CTS) in March 2001. Member states adopted therein a request-offer approach as the main method for negotiating new commitments on national treatment and market access. Additionally, the guidelines mandated continued negotiations on outstanding issues, so-called “horizontal” and “GATS rules” issues. From a sustainable development perspective, these issues are as important as market access and of keen interest to developing countries and national regulatory authorities. They include for example the establishment of an emergency safeguard mechanism (ESM)²¹ as allowed under Article X of the GATS, but also disciplines for services subsidies, domestic regulation and government procurement, a multilateral assessment of services liberalization or the question of how to credit member countries for autonomous liberalization undertaken outside the WTO (often as part of structural adjustment programs mandated for poorer developing countries by the World Bank and the IMF).

In paragraph 15 of the Doha Ministerial Declaration, adopted at the 4th WTO Ministerial in November 2001, trade ministers confirmed these guidelines and procedures “as the basis for continuing the negotiations” and stipulated that initial requests for commitments were to be made by June 2002 and initial offers by March 2003, well in time before the 5th WTO Ministerial in Cancun in August 2003. Since 2001, the new round of services negotiations has focused almost exclusively on market access and more specifically on the bilateral request-offer exercise. While these have progressed sluggishly – with initial offers supposedly (most of them were not released to the public) lacking both in depth and quality according to many observers and negotiators – virtually no progress has been made up to now in parallel negotiations on “horizontal” and “GATS rules” issues. Post-Cancun, the so-called “July-Package” in 2004 – while reaffirming deadlines, mandate and negotiating guidelines – called for a new round of offers in an effort to speed up the negotiations. As of July 2005, 74 countries (counting the 25 EU member states as one) had made initial or revised offers; of these, 64 were from developing member countries. Some 24 non-LDC developing countries – among them South Africa and Venezuela as markets of interest – by July had not yet tabled an offer, with political pressure on them increasing to do so soon. Virtually all WTO countries had received initial requests from some 90 developed and developing countries. Least-developed countries (LDCs) have so far not actively participated in the process with few

requests and limited offers. This lack of engagement reflects their disappointment about unfulfilled promises of services liberalization stemming from the Uruguay Round (e.g. a mandated multilateral assessment of trade in services that never materialized) and their sober calculation that they largely will not benefit from current service talks.

Positions and Interests of Major Players in the Negotiations

Key demandeurs in services negotiations are a core group of developed countries, namely the EU, Canada, Japan, the US, Switzerland, New Zealand and Korea as well as some developing countries, foremost India, Chile and Mexico. The EU Commissioner for Trade Peter Mandelson tabling some of the most aggressive proposals during the summer made it clear that services are a core issue of the EC's agenda preparing for Hong Kong. This reflects the fact that with 24 percent of global services trade the EU is the world's largest exporter and importer of services. With three Singapore issues (investment, government procurement and competition) now off the Doha Agenda following the failed Cancun Ministerial, GATS represents an alternative way for the EU and other developed countries to get some rules on investment via substantial commitments in mode 3 within the services framework. For the EU, which insists as treating the Doha Round as a "single undertaking", substantial advances in market access in services and non agricultural sectors (NAMA) are thus the quid-pro-quo to be able to offer some flexibility and ambition in agriculture negotiations to politically deflect internal opposition in the EU to further tariff cuts in agriculture. Service sectors most of interest to the EU include telecommunications, postal and courier services, financial services, transport, construction, energy and environmental services.

The US are likewise seeking broad commitments in sectors such as financial services, legal services, telecommunications, express delivery and logistics, energy services, higher education and environmental services. Services trade – with US service exports totalling more than \$340 billion or 30 percent of total US export value in 2004 – is one of the few areas where the US maintains a surplus, helping to reduce the large US trade deficit, which has become such a politically sensitive issue in Washington. Unlike the EU, though, the United States – together with India and Brazil – see the question of sequencing in trade negotiations differently: in their view, progress in agriculture has to come first before any advances in services or NAMA can be made. At home, US Trade Representative Rob Portman faces strong opposition by Congress to any substantial US offer in mode 4 relating to visas for the movement of labourers across borders. With Trade Promotion Authority (TPA)²² running out in mid-2007 and the diminishing likelihood of its renewal – giving the generally unfavourable climate for trade deals in the US at the moment (the Central American Free Trade Agreement, CAFTA, just passed by two votes this summer) – the US have to strongly push for a conclusion of the Doha Round by the end of 2006 or risks not getting congressional approval for any negotiated package deal. Thus, the US are unlikely to give in to broad mode 4 requests by developing countries, where many African countries and LDCs have asked for coverage spanning low to high skilled occupations without the requirement for commercial presence or residency and for simpler, more transparent visa requirements. Likewise, the EU is defensive in mode 4, offering no new commitments beyond those movements of natural persons already allowed, such as intra-corporate transferees, business visitors or independent professionals, which most developing countries cannot profit from.

In contrast to the majority of developing countries, India emerged as a key demandeur in services talks; this reflects the country's wish to profit from a global trend to outsource services (under mode 1), as well as its interest in the movement of its highly skilled information technology professionals, which is the one segment of mode 4 negotiations where developed countries are most likely to make at least some concessions.

Benchmarking Proposals and Complementary Approaches in Recent Negotiations

Ideas and proposals to change the method of negotiation in services first emerged a year ago, when the key demandeurs of services talks determined that the offers put forward were too few and too limited. Service negotiations started again after the summer recess at the end of September with a surprise. In informal talks and later in the CTS, several developed countries (including the EU, the US, Japan, Switzerland, Canada, Australia, New Zealand and Korea) put forward some initial proposals (first as “non-papers”, later tabled as formal proposals) to establish quantitative and qualitative benchmarks as “complementary approaches” to bilateral negotiations. From September into October, more papers were presented by Canada, India, Chile, Hong Kong, China and Pakistan, with a second more ambitious proposal by the EU on October 27th.

These are a clear departure from the original intention of the GATS to negotiate services liberalization mainly through the bilateral request-offer approach, even though, technically, the negotiating guidelines of 2001 in paragraph 11 do allow for “bilateral, plurilateral or multilateral approaches.” The establishment of benchmarks would effectively establish a multilateral minimum degree of services liberalization commitments for all signatories of the final Doha agreements. The proposals furthermore explore the option to pursue plurilateral requests as well.

Many developing countries such as Brazil, Argentina, Thailand, Malaysia, Indonesia, the Philippines and South Africa, as well as groups of developing countries such as the LDCs, the African Group and Caribbean countries rejected these proposals forcefully in the Services Council meetings in September and October, pointing out that the setting of benchmarks would threaten the flexibility guaranteed to developing countries under the GATS (Article XIX:2) and thus their ability to retain some policy space for national policy objectives and development through deliberate sequencing of further liberalization to happen only when their domestic markets are deemed ready. They argued that the establishment of mandatory minimum market access requirements for services trade would burden developing countries disproportionately, since industrialized countries had already made far more liberalization commitments in the past, effectively securing a round for free for developed countries. They fear mostly the “crowding out” of domestic suppliers since a framework for an effective ESM in services is still missing, and object that the proposals – contrary to the stated objective of the GATS in ensuring that developing countries are the primary beneficiaries of the services negotiations – would benefit only developed countries who already account for 80 percent of global services exports.

With respect to **quantitative benchmarks**, the EU in its latest proposal has pushed the farthest, essentially asking industrialized countries to include new or improved commitments in at least 139 (or 85%) of the existing 163 services sub-sectors; developing countries are asked to include new or improved commitments in 93 sub-sectors (or 2/3 of the industrialized country commitment). LDCs are not expected to undertake significant quantitative new commitments at this time, although the EU in its requests did include demands to some of the poorest countries to open selected services sectors to European service providers.

In terms of **qualitative targets or benchmarks**, proponents have asked for model commitments across the four modes of supply. This was pushed by India, Taiwan and Japan in addition to the EU. The qualitative parameters suggested include among others the authorization of at least 51 percent foreign ownership in mode 3 (commercial presence), which – demanded by the EU – would force countries to treat foreign investors like local companies; a removal or substantial reduction of economic needs tests (also mode 3, pushed by both EU and India); removal of any limitations on mode 2 (consumption abroad) and abolishing any requirement of commercial presence in the cross border supply of services (mode 1). In contrast, the EU is defensive in mode 4 (movement of natural persons), where its

understanding of a model commitment does not go beyond what the EU currently allows, namely limited movement of highly skilled professionals only in the categories of intra-corporate transferees, business visitors, independent professionals and contractual service suppliers. In this respect, India's proposal goes a bit further to include the substantial removal of economic needs tests for these categories and by asking for more relaxed rules regarding the length of stay under a "GATS visa". Yet the Indian proposal, too, still falls way short of the greatly expanded movement of natural persons, particularly low and unskilled ones, which most developing countries see as the most, if not the only beneficial outcome for them in the current round of service liberalization talks.

Lastly, **plurilateral requests** were proposed by the EU as another approach to service negotiations. Without a clear definition of what constitutes a "critical mass", the EU proposal suggests that a group of countries with an export interest in a sector, constituting a "critical mass" of WTO member countries, can make a joint group request to a member state. Obviously, this would dramatically increase the political force exerted on unwilling countries to relent to the "peer pressure" to avoid being completely sidelined ("left behind") in services talks, for example with respect to standard setting. Besides the EU, Canada, Australia, Chile, Taiwan as well as India support a complementary plurilateral approach to negotiations.

The Draft Ministerial Text on Services

When the new Chairman of the Council for Trade in Services (CTS), Ambassador Fernando de Mateo of Mexico, presented a first Draft Ministerial Text on Services on October 26th, the above described submissions of a small group of WTO members were made the basis for and at least partially included the draft text. This happened despite a very vocal opposition by many developing countries – including the Caribbean countries, the African group, ASEAN minus Singapore, and Rwanda speaking on behalf of the LDCs and entering into record. Indeed, with Brazil taking the lead, 14 developing countries²³ submitted a joint paper which flatly rejected both the EU benchmarking proposal as well as any reference to numerical or qualitative targets in the services text of the Ministerial Declaration for Hong Kong. This incident repeats a disturbing pattern apparent in the ongoing Doha Round negotiations whereby a sympathetic committee chairperson sets aggressive liberalization demands by a powerful minority of WTO members as the unassailable basis for further deliberations (including them as unbracketed text, which technically could only be changed by consensus) – ignoring expressed opposition by a majority of WTO member countries.

The first draft ministerial text on services urges a number of qualitative parameters for improved commitments in modes 1-4, prescribing that members shall ensure "to the greatest extent possible" improvements "across sectors" in modes 1 and 2, and "enhanced levels of foreign equity participation" in commercial presence (while stopping short of the EU desire to see a minimum of 51% included). In mode 4, the draft basically follows India's submission in calling for a "substantial reduction in economic needs tests" and for expanded options for the renewal of visas for highly skilled professionals.

With respect to economic needs tests (ENTs), the draft basically forbids inscribing new ones if they are not already covered in existing legislation. In effect, this undermines a member country's ability to regulate and legislate. Since GATS commitments, once undertaken, can not be taken back (or only by incurring significant penalties), ENTs are an important instrument for developing countries, e.g. to regulate foreign investment allowed under mode 3. This is especially important, because many developing countries do not have sufficient regulatory capacity and reach to ensure service provision that responds to national development goals and requirements. The draft text's demand for a "substantial reduction of MFN [most favoured nation] exemptions" – currently around 400 in the GATS – likewise would limit the tools available to developing countries for slowing and restricting pace and scope of services liberalization in accordance with their domestic development objectives.

On numerical targets and indicators (the quantitative benchmarks of the EU proposal), the draft text is blank except for the heading. While the EU did so far not succeed in getting its fleshed out version accepted, just having the agenda item in the draft could serve as negotiation chip for the EU to get what many insiders consider to be the EU's absolute minimum for speeding up service liberalization talks, the plurilateral approach.

Although the draft text reaffirms the bilateral request-offer negotiations as "the main method for negotiation", it explicitly allows also for a plurilateral approach with plurilateral requests to be submitted as soon as February 2006. The commitments resulting from a group of countries approaching – bullying, really – an individual country for a request "shall apply on an MFN basis", making them the mandatory yardstick for countries not involved in the plurilateral negotiations. Even if it is unlikely that language on making the plurilateral approach mandatory will be approved by all members – there is strong opposition by a majority of WTO member countries – the bilateral request-offer approach as the intended main mode of negotiations will be weakened and sidelined just by retaining some reference to plurilateral approaches in services negotiations in a Ministerial Declaration coming out of Hong Kong. This could speed up consolidation of already concentrated markets, leading to the crowding out of many (domestic) small and medium-scale service providers.

Not very surprising, lastly, the draft ministerial text on services of October 28th is mum on the creation of an emergency safeguard mechanism under GATS and the question of a comprehensive multilateral assessment of the GATS. The latter was promised to WTO member states in Article XIX.3 of the GATS before the start of a new negotiating round. Both measures are of immense importance for developing countries, not only for them to gain data and knowledge about the impact of the previous service liberalization round so as to guide their commitments under the current round, but also to retain the possibility to temporarily suspend their service liberalization schedules in order to protect domestic service providers.

Outlook for the WTO Ministerial in Hong Kong

At this moment, it is still far from certain that the EU and other demandeurs of numerical and qualitative benchmarks in the current services talks will succeed in securing this language in the Hong Kong Ministerial Declaration. The opposition of many developing countries, mostly the less developed ones in Africa, the Caribbean and the Pacific, is vocal and adamant that complimentary approaches to the bilateral request-offer negotiations would undermine the spirit of the GATS and the flexibility it purports to extent to developing countries to ensure that they benefit from service liberalization for their own development. However, the EU will drive a hard bargain to have at least some reference to the plurilateral approach secured in a final text, in order to keep its internal critics (mainly France) at bay who are opposing significant concessions in the agriculture talks. Brussels knows and has spelled out that it will only be able to justify opening its market in agriculture if it can gain significant market access in services and NAMA talks for its providers.

And unlike in Cancun, where the G70 of developing countries stood firm in opposing the inclusion of the Singapore issues, mainly investment, in the Doha Round, there is no such powerful unified front with regards to GATS and new complimentary approaches. India is one of the demandeurs of these approaches, eyeing gains in mode 1 and mode 4. Mexico likewise is pushing for more service liberalization. Brazil and Argentina stand to gain from increased market access in agriculture and might therefore very well be willing to cut a bargain with the EU on services, as might be other developing countries hoping for developed countries' concessions in agriculture. And the US needs success in agricultural market access with as minimal a reduction in domestic support measures as possible politically, while it depends on further liberalization of services to an even larger extent economically.

Will the service negotiations thus be the “other” possible spoiler (besides agriculture) in Hong Kong? Could the controversies around service liberalization talks and the bitter feeling of most developing countries that they have really nothing much to gain, but everything to lose – including the space and the right to manage their own development – prevent a timely conclusion of the Doha Round by the end of 2006? The latest developments and proposals for complementary approaches and benchmarking have definitely upped the ante.

²¹ An ESM is a temporary measure, which is already included in other WTO agreements such as the Agreement on Agriculture or GATT. It allows for the temporary suspension of GATS commitments by a member state if service imports occur in such increased quantities that domestic suppliers of like services are under threat for survival.

²² The TPA gives the American President the right to negotiate broad and binding trade agreements, under the US constitution the prerogative of the US Senate, which Congress can only approve or reject as a whole, but not amend or dissect. It guarantees that the US is following through on trade commitments made on the international level domestically.

²³ The G 14 with respect to opposition to benchmarking in GATS are: Brazil, Argentina, Cuba, Dominican Republic, Guatemala, Kenya, Indonesia, Malaysia, Paraguay, the Philippines, Thailand, Uruguay and Venezuela. Several other countries, which did not join the common statement, also criticized the EU proposal, including Chile, Egypt and Mexico, with the latter being one of the original demandeurs of further liberalization under GATS.

Overview of other important topics in the Doha Round

by Marita Wiggerthale

Given that the debate on trade liberalization in the areas of agricultural goods, industrial products, and services dominates the Doha Round, other issues get pushed into the background. Nevertheless, some of them may play an important role in Hong Kong.

TRIPS and health

Even so the “TRIPS & Health” issue is not being negotiated as part of the single undertaking, it will be on the agenda once again at Hong Kong. On August 30, 2003 a compromise had been reached which allowed countries under a derogation to import cheap generic drugs on the basis of compulsory licences if they are not themselves in the position to manufacture these medicines. So far no country has made use of this derogation. “Doctors Without Borders (MSF)” is of the opinion that the application of the compromise is complicated and not suited to promoting economically viable industries for the manufacture of generic drugs in developing countries.

The controversial legal assessment and the handling of the compromise text are at the core of the endless debate. While a part of the text, written by the Chairman of the Negotiating Committee (“Chairman Text”) would at first appear to be designed to avoid abuse, it is in essence a humble bow to the US drugs manufacturers. The fronts between the supporters (*i.a.* Argentina, India, Brazil, Philippines) and non-supporters (*i.a.* EU, USA) of the African proposal (IP/C/W/437) remain hard set. The former do not want the “Chairman Text” to be established as part of the TRIPS Agreement, the latter do. Brazil and Malaysia declared that there is no time pressure with regard to Hong Kong and that it was more important to concentrate on the content and quality of the changes to the TRIPS Agreement.

Trade, debt and finance

Based on the Doha mandate a Working Group on Trade, Debt and Finance (WGTDF) was established. The mandate also includes the examination of any possible recommendations on steps that might be taken within the mandate and competence of the WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness. Discussion topics included *i.a.* the possible contribution of improved market access in the North to improvements in solvency of developing countries, the question of deteriorating Terms of Trade, the maintenance of open markets on a global scale in times of financial crises, the relationship between the work of the IMF and the World Bank with a view to strengthening financial systems, and the WTO negotiations on financial services.

Up until 2003 talks were of a mere analytical or even just theoretical character. This has not changed to date. While the developed countries just prior to Cancún had envisaged to discontinue the mandate, discussions did continue “on a low flame” without however yielding any concrete results. Therefore it is likely that its mandate will merely be renewed at Hong Kong but not extended or strengthened. Argentina’s proposal to establish a permanent WTO Committee on Trade, Debt and Finance was rejected by the US and other developed countries.

Trade and Transfer of Technology

Based on the Doha mandate a Working Group on Trade and Transfer of Technology (WGTTT) was established to examine the relationship between trade and the important issue for developing countries of technology transfer. Cuba, India, Indonesia, Kenya, Pakistan,

Tanzania and Zimbabwe made concrete proposals for recommendations. In their opinion the following recommendations should have been adopted at the Cancún Ministerial Conference:

- 1) Examination of the provisions contained in various WTO Agreements which may hinder technology transfer to developing countries and how to mitigate these;
- 2) Consideration of addressing the restrictive practices adopted by Multinational Enterprises in transfer of technology;
- 3) Review of the impact of tariff peaks and escalation in developed countries on technology transfer and recommendations on how to address their adverse impact;
- 4) Assessment of the difficulties faced in meeting the standards set by different agreements for lack of relevant or required technology, and *i.a.* deliberation on the practicality of developing an early warning system with regards to standards;
- 5) Review of the needs for and desirability of internationally agreed disciplines in relation to transfer of technology with a view to promoting trade and development, and the development of recommendations.

However, the developed countries have repeatedly challenged the working group's jurisdiction to develop concrete proposals. This 'development' issue holds as little interest for them as the issue of trade, debt and finance. For this reason the developed countries wanted to also see this work discontinued after Cancún. But work continued on a low flame as for the WGTDF, similarly without any concrete results. At this point however it appears that this topic will fittingly re-emerge from oblivion for Lamy's "development package".

Review of the Dispute Settlement Understanding (DSU)

The final documents on the Uruguay Round stated that the rules and procedures governing the DSU were to be subjected to a comprehensive review by the end 1998. In view of a lack of progress the negotiating mandate as part of the Doha mandate was limited to "improvements and clarifications" of the current DSU. The following points are open to discussion: Shortening of the duration of the panel and appeal stages; establishment (or not) of a permanent dispute settlement body; possibility of more active participation of third parties in the arbitration proceedings and their improved information about the negotiations; issues concerning a more transparent character of the process.

At a meeting on October 24 these negotiations were basically postponed indefinitely. The developing countries made reference to the fact that the negotiations on agriculture, industrial goods, and services required their full concentration and that for this reason they would advocate a recommencement of DSU negotiations post Hong Kong. Ultimately, no more than a report on the state of negotiations by the Australian Chairman Spencer is expected at the Hong Kong meeting. In any case the DSU does not come under the single undertaking.

Problems of small economies

The Doha mandate is to examine issues relating to the trade of small economies. The objective of this work is to frame responses to the trade-related issues identified for their fuller integration into the multilateral trading system. It is emphasized that the aim is not to create a new sub-category of developing countries.

This topic of the negotiations falls under the remit of the Committee on Trade and Development (CTD). As for other 'soft' topics the discussions did not move forward for the longest time. On October 17, a group of 21 developing countries eventually submitted a proposal on procedures which brought a certain dynamic to the unproductive talks. It envisages to take specific proposals on agriculture, NAMA and fisheries subsidies into the relevant negotiations and to give the Committee on Trade and Development a monitoring role

in this respect. The EU, USA, China, India and Brazil voiced their cautious support. However, no more than a renewal of the mandate is expected at the Hong Kong meeting.

WTO rules: Fisheries subsidies, anti-dumping, regional trade agreements (RTAs)

The negotiating mandate provides for the clarification and improvement of the disciplines under Article VI of the GATT 1994 (Anti-Dumping) and the Agreement on Subsidies and Countervailing Measures as well as the rules on fisheries subsidies and regional trade agreements. Negotiations are slow-moving. The outcomes of these negotiations are strongly conditioned on the outcomes in the areas of agriculture and NAMA. The discussions are very technical in part. Expectations with a view to Hong Kong have as yet not been voiced.

Anti-dumping: A country can draw on agreements on anti-dumping if the dumping is carried out by a commercial operation and if it can be shown to have damaged established industries. The logic on which the imposition of anti-dumping tariffs is based that normally competitive producers should not be pushed out of the market by unfair competition. The idea is also to avoid companies achieving market domination through dumping. Despite the increasing use of anti-dumping measures on the part of the developing countries, they mostly remain victims of these measures. Of the 1229 anti-dumping cases initiated in the first five years (1995-99), 66% were taken against developing countries. The negotiations on anti-dumping must now address how abuse can be minimized and how clearer rules on providing evidence of material injury caused in the importing country can be defined.

Fisheries subsidies: With regard to fisheries subsidies the question is how subsidies can be designed in such a way that they do not provide incentives for further overfishing. Derogations for developing countries are also being discussed in this context. According to the WWF as a minimum backsliding from previous achievements must be prevented, *i.e.* the recognition of the harmful impacts of fisheries subsidies and of the need for strong new WTO disciplines. However, it is doubtful whether this topic will be part of the Hong Kong agenda given the strong resistance of Japan, South Korea and Taiwan.

Regional agreements: Since the establishment of the WTO the number of regional trade agreements has increased exponentially. Regional trade agreements must be compliant with the WTO, *i.e.* with Article XXIV of the GATT. This Article states that in a free-trade area duties and other restrictive regulations of commerce must be eliminated “with respect to substantially all the trade”. The upcoming negotiations are now to clarify *i.a.* the precise meaning of “with respect to substantially all the trade” and whether there should be derogations for developing countries.

Committee on Trade and Environment (CTE)

The Doha mandate provides for the clarification of the relationship between multilateral environmental agreements (MEAs) and the WTO rules as well as for a liberalization of trade in environmental goods and services. Pursuant to paragraph 51 of the DMD the CTE is also to identify developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected. With regard to the relationship to MEAs, environmental NGOs demand this clarification to be made outside of the WTO context²⁴. The main topic and contentious issue has for a long time been the determination of the approach to negotiations on trade liberalization for environmental goods. While in October a decision on an approach to negotiations in Hong Kong appeared possible it is now clear that the environment and environmental goods will not be on the agenda at the Hong Kong meeting.

Trade facilitation (TF)

Trade facilitation is the only one of the so-called “new topics”²⁵ to find its way into the negotiating agenda and the “single undertaking”. Trade facilitation concerns the question as to how customs procedures can be simplified and be rendered more cheap and cost efficient from the point of view of the companies involved in trade. It is one of the few topics on which good progress has been made in the negotiations. At the negotiating meeting in early October an overview of all proposals was discussed. Proposals concerning existing national laws, such as the responsibilities of parliaments or the impacts on revenue from duties, drew particular criticism. With a view to Hong Kong it would be necessary to come to an agreement on the speed and scope of the negotiations and provisions for technical support. However, a consensus has not yet been reached on these points. It is currently expected that work on a first modalities paper is likely to commence in early 2006.

Implementation-related issues and Special and Differential Treatment (SDT)

The negotiations on implementation-related issues and concerns include all those proposals which aim to solve existing difficulties with the implementation of the Uruguay agreement. So far progress in the negotiations has been disappointing. At a meeting of the negotiating committee, that as Director General of the General Council he will, as part of the mandate he was given in July 2004 and again in July 2005, start a consultation process on all outstanding implementation-related issues. There is as yet no information available as to the content of this consultation and thus as to what may be on the Hong Kong agenda in this regard.

The negotiations on Special and differential treatment concern the introduction of new special provisions which are to ensure in the various WTO Agreements that the state of development and the concerns of developing countries are given due consideration. Prior to Cancún the Committee Chairman had summarized the 88 proposals that had been submitted and categorized them in three groups: 1) 38 proposals for which there is largely agreement (14) or could soon be achieved (26); 2) 38 proposals which, in part, are also being negotiated as part of the specific negotiations on agriculture, NAMA and GATS; 3) 12 proposals on which delegates have most difficulty in finding a consensus. There was no progress until July as the developed countries kept pushing for the creation of new sub-categories of developing countries as a first step. The developing countries however were united in their rejection of this course of action. Of the total of 88 proposals submitted at the start of the negotiations, five LDC proposals and 14 proposals made by the African Union are most probably to be dealt with until Hong Kong. However, on October 12 these countries requested more time from the Committee on Trade and Development for reviewing their proposals.

The LDC in their ‘Livingstone Declaration’ of June 2005 have made a number of demands, including a binding commitment on duty-free and quota-free market access for all products from LDCs, full market access under GATS, especially for less-skilled and non professional services providers under Mode 4, the complete exemption for LDCs from any reduction commitments, a strengthening of existing preferential systems, the expeditious implementation of cotton-related decisions and of the commitments made in the Marrakesh Declaration, flexibilities to determine the levels of NAMA binding commitments, SSM for agriculture and rapid measures to address the problem of price declines for raw materials.

Furthermore, on October 21 Zambia as LDC spokesperson submitted a proposal to the TRIPS Council, which demands a further 15 years extension for LDCs of the transitional period for the implementation of the TRIPS commitments. On 29 November 2005 Least-developed countries have been given an extension until 1 July 2013 (i.e. additional 7,5 years) to provide protection for trademarks, copyright, patents and other intellectual property under the WTO agreement, following a decision reached by member governments.

The “development package” in Hong Kong

Director General Lamy has announced a development package for Hong Kong. This “small” development package is to contain issues such as LDCs, EBA, “Aid for Trade”, “TRIPS & Health”. “Aid for Trade” will include financial commitments from developed countries. These funds are to compensate for negative impacts (*e.g.* preference erosion), existing supply problems and the costs of implementation. However, it is doubtful whether in reality “new” development aid funds will be offered. Moreover, it is obvious that this “small” development package is intended as a form of ‘consolation’ for those who loose out in a more liberalized marketplace (LDCs, ACP, African Union) in order to force their acceptance in the important areas of agriculture, industrial goods, and services. The “big” development package, *i.e.* rules with respect to NAMA, agriculture, and services is *de facto* an anti-development package. Existing principles such as “less than full reciprocity” and the voluntary principle with regard to GATS are being violated in these negotiations. Therefore, most of the phrasings on development issues continue to be little more than hot air.

²⁴ http://www.foeeurope.org/publications/2005/alternatives_wto.pdf

²⁵ The “new topics” are: investments, competition, public procurement, and trade facilitation.

Glossary

Amber Box: Payments to producers and other domestic subsidies which are to be increasingly reduced under the rules of the Agreement on Agriculture of the Uruguay Round. For the EU, for example, market price supports are part of the Amber Box.

AMS: The AMS or Aggregate Measurement of Support is the amount of domestic support for agricultural producers, excluding only expenditure which is exempted by other articles of the agreement. All government agricultural expenditure should be included in the Amber Box unless it falls under the criteria governing the other Boxes (Blue and Green Boxes, see below).

Applied tariffs: Applied tariffs are those tariffs which are *de facto* used by WTO members in their trade with goods. They are fixed tariff line by tariff line. A tariff line is for example 'butter with less than 85% fat', or 'fresh boneless meat'.

Autonomous liberalization: Generally includes measures used unilaterally by members on their own initiative or as a result of IMF structural adjustment programmes for market liberalization. The negotiating mandate for autonomous liberalization under GATS provided for the recognition of liberalization achieved since 1995 in the form of 'credits', *i.e.* earlier national efforts were to be taken into account under GATS.

Blue Box: With the "Blair House Agreement" the EU and the USA achieved a breakthrough in the agriculture negotiations as part of the Uruguay Round in 1992; the so-called Blue Box was created. Article 6.5 of the Agreement on Agriculture states that the Blue Box allows unlimited direct payments to farmers under production-limiting programme. Payments are based on fixed area and yields or a fixed number of head of livestock.

Bound tariffs: Every country must notify its bound tariffs in so-called "schedules". These bound tariffs are maximum tariffs which must not be exceeded.

Built-in agenda: The built-in agenda describes those negotiating areas for which the continued process of liberalization was already established in the Uruguay agreement. This is the case, for example, for the Agreement on Agriculture (Art. 20) and the Agreement on Services (Art. XIX).

Commitments: Commitments are binding promises by WTO members to reduce their tariffs and subsidies. These are described in the modalities and established in the schedules.

Countercyclical payments: These are payments made to farmers for certain products covering the difference between a domestic (lower) market price and a higher, guaranteed target price. Their aim is to protect farmers from possible loss of revenue caused by low prices.

EBA initiative: An EU initiative from 2001 which unilaterally guarantees least developed countries tariff and quota-free access for their exports. Rice, bananas, and sugar have thus far been exempted and will be integrated from 2009 on.

Economic needs test: Measure which requires proof that the import (goods, but mostly services) can not be provided by domestic suppliers.

EPA negotiations: The current negotiations on the Economic Partnership Agreements. According to the EU Commission the objective is to create a free-trade zone within a 10-12 year period, which complies with Art. XXIV of the GATT. In this case ACP countries would have to abolish their tariffs, with few exceptions, by the end of the transitional period. The waiver for the current Cotonou Agreement ends on December 31, 2007.

FIPS (Five Interested Parties): An informal negotiating group consisting of the EU, US, India, Brazil, and Australia. Has been in existence since early 2004.

GATS (General Agreement on Trade in Services): GATS was adopted by the WTO in 1995. The WTO thus extended its remit to include the trade in services. Since early 2000 negotiations have been held with a view to the further liberalization of the services sector.

GATT (General Agreement on Tariffs and Trade): GATT was in existence from 1948 until 1994 and regulated world trade in goods. Following the creation of the WTO in 1995, the GATT became a WTO agreement.

Green Box: In the Agreement on Agriculture this box is called Annex 2 of the AoA. It is a list of direct payments which are excluded from the AMS calculations (Amber Box). They are taken to have a minimal or no trade-distorting effect and are not capped. These include:

- Paragraph 2: General services, e.g. research, extension, inspection services etc.
- Paragraph 3: Public stockholding for food security purposes
- Paragraph 4: Internal food aid (at current market prices)
- Paragraph 5: Direct payments to producers
- Paragraph 6: Decoupled income support
- Paragraph 7: Government financial participation in income insurance and income safety-net programmes
- Paragraph 8: Payments for relief from natural disasters
- Paragraph 9: Structural adjustment assistance provided through producer retirement programmes
- Paragraph 10: Structural adjustment assistance provided through resource retirement programmes
- Paragraph 11: Structural adjustment assistance provided through investment aids
- Paragraph 12: Payments under environmental programmes
- Paragraph 13: Payments under regional assistance programmes

Marrakesh Decision: The Marrakesh Decision was adopted together with the Marrakesh Agreement in 1994. Its purpose was to buffer negative impacts resulting from the reform of agricultural policies (e.g. higher world market prices) and to compensate LDCs and food-importing countries. However, the decision was never implemented.

MFN (Most Favoured Nation): The WTO most-favoured-nation treatment principle states that any condition a country grants a trade partner in the WTO context it must also grant all other WTO member states. An MFN tariff is thus a tariff that applies to all WTO members.

Modalities: Modalities are commitments entered into by governments. Modalities represent the type of language in which the texts of the agreements are written. An example for a modality for export subsidies would be that these should be reduced from a defined level by X% over Y years. The text of an agreement includes these modalities. They determine what is permitted and what is prohibited and how things ought to change. The modalities are annexed by the schedules and together these represent the complete agreement.

NAMA (non agricultural market access): The NAMA negotiations are concerned with the liberalization of trade in industrial products. They also include forestry, fisheries, mineral oil, and minerals, amongst others.

National treatment: National treatment is a GATT principle. It implies that foreign providers of goods and services must not be discriminated against in favour of domestic providers, *i.e.* they must not be disadvantaged.

NIE (Newly Industrializing Economies): NIEs are developing countries which are taken to be ascending on the 'industrial ladder'. These include, amongst others, Singapore, Hong Kong, Taiwan, South Korea, Indonesia, Philippines, Thailand, and Malaysia.

Non- Trade Concerns – NTCs: The NTCs are listed in the Preamble to the Agreement on Agriculture. They include food security, rural development, and environmental protection. The EU would also like to establish animal welfare and eco-labelling in the new Agreement on Agriculture.

Notification: Notification is the term used for the annual process through which the WTO members notify the state of compliance for implementation commitments, any policy changes and other relevant information, as prescribed in the agreements.

Peace clause: The peace clause annuls the Agreement on Subsidies and Countervailing Measures (ACSM). It forbids countries to protect their markets from exporting countries which subsidize their agricultural sector within committed levels as part of the Agreement on Agriculture. In other words, as export subsidies and domestic support are legal under the Agreement on Agriculture, importing countries abstain from exercising their rights under GATT to protect their markets from subsidized imports. The peace clause ended in December 2003. The US proposal provides for its reinstatement as part of the Green Box.

Positive list: A list of elements, units, or products to which the provisions of the international trade agreements apply.

Preference erosion: The value of preferential market access decreases if domestic prices for agricultural goods in the EU decline as a result of agricultural policy reforms or through progressive tariff reduction as market access is no longer limited to the preference countries. If their products can not compete with those of the other importers they will no longer be able to sell them.

Preferences: Preferences are exemptions within GATT which allow for the preferential treatment of some WTO members at the expense of others. Classic examples of preferences are the unilateral preferential agreements of the EU: the EBA initiative and the ACP Cotonou Agreement.

Price trigger: The price trigger describes the threshold for import prices. If the import price falls short of the trigger, the country in question can impose a protective tariff to prevent market disruption.

Request-offer approach to negotiations (GATS): This bilateral phase of the GATS negotiations included requests and offers made by individual members to other members. However, any liberalization offer will ultimately apply to all WTO members.

Schedules: Every member has to submit a schedule, including a time-frame, of reduction commitments in order to complete the agreement. Such a schedule sets out, for example, the tariff levels for each product at the outset of the agreement to which the agreed percentage reduction is then applied. It therefore contains the maximum tariff and subsidy levels as well as the abolition of provisions for regulation in the services sector. This allows for the monitoring of compliance with the commitments made.

Sensitive products: Sensitive products are mainly understood as products of developed countries that are given a certain flexibility for tariff reduction. However in practice developing countries also can design sensitive products.

Special and differential treatment (SDT): When GATT was developed in various rounds following its establishment in 1947 and an increasing number of developing countries signed the agreement, the member countries established a principle in the 1960s the aim of which was to give developing countries a higher degree of flexibility than the developed countries. The “Special and Differential Treatment” recognizes the disadvantages developing countries suffer in the world trading system. The conditions for participation in world trade that poorer countries face are clearly worse on account of their limited capacities. This recognition is termed Special and Differential Treatment.

Special products: This term first appeared in the second Harbinson proposal in the Spring of 2003. Special products are those staple foods which may be excluded from reduction commitments for reasons of food security, rural development, and livelihood protection. This derogation only applies to developing countries.

Special Safeguard (SSG) Clause: Article 5 of the Agreement on Agriculture gives those countries, which at the start converted non-tariff measures into tariffs, the right to impose protective tariffs in the case of import floods or price decline in order to protect their domestic production from market distortion. The special safeguard clause is time-limited. It was established in order to protect domestic industries from world market price fluctuations. It was mostly the developed countries which carried out tariffication. A mere 21 developing countries have access to this provision. Other developing countries decided to set general maximum tariff rates for all their imports. This decision means that they are prevented access to the special safeguard clause.

Special safeguard mechanism: The Special Safeguard Mechanism is designed to give developing countries possibilities in the future to impose additional tariffs in the case of import floods or price decline on the world market in order to protect their domestic farming sectors from market disruption.

Swiss formula: A formula approach first introduced in the Tokyo Round (1973-79) of the GATT negotiations. It includes substantial reductions for high tariffs, leading to a higher degree of harmonization in tariffs.

Tariff band: A tariff band describes which tariff rates will be subject to a certain tariff reduction. For example, one tariff band contains all tariffs between 0% and 30% for developing countries. They shall be subject to a 25% reduction (EU/G20 proposal, October 2005).

Tariff quotas: Tariff quotas establish quantitative restrictions (quotas) for imported goods. Higher tariff rates apply to quotas outside of the quota. Lower tariff rates apply to imports within the quota. In the context of the Agreement on Agriculture, tariff quotas regulate minimum market access.

Tariffication: The newly created word “tariffication” describes the process of the conversion of non-tariff trade barriers, such as variable expenditure and quantitative restrictions, into tariffs. The negotiating parties of the Uruguay Round regard this exercise as essential in order to achieve transparency and to facilitate further reductions in trade barriers. It reflects the interests of exporting countries which wish to maximize market access.

Trade Promotion Authority (TPA): A process through which the US Congress waives the right to make proposals regarding international trade agreements. This gives full authority to the administration to conduct the negotiations. The TPA ends in mid-2007.

Waiver: A waiver is an authorized derogation from legally binding commitments entered into in the WTO context. Members can apply for a waiver with reference to Art. IX of the WTO Agreement. Waiver conditions are normally subject to negotiation and are time-limited.

About the Authors

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Heinrich Böll Foundation

The Heinrich Böll Foundation, affiliated with the Green Party and headquartered in the Hackesche Höfe in the heart of Berlin, is a legally independent political foundation working in the spirit of intellectual openness.

The Foundation's primary objective is to support political education both within Germany and abroad, thus promoting democratic involvement, socio-political activism, and cross-cultural understanding.

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Since 1998, the Heinrich Boell Foundation has an office in Washington, DC. The Washington office focuses its work on the issues of global governance (including global environmental governance, international trade and finance matters), sustainable development, social equity and gender democracy.

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