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World Trade Organization Negotiations: The Doha Development Agenda

Updated August 6, 2004

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Report Documentation Page

Form Approved
OMB No. 0704-0188

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1. REPORT DATE 06 AUG 2004		2. REPORT TYPE		3. DATES COVERED 00-00-2004 to 00-00-2004	
4. TITLE AND SUBTITLE World Trade Organization Negotiations: The Doha Development Agenda				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service, The Library of Congress, 101 Independence Ave, SE, Washington, DC, 20540-7500				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

World Trade Organization Negotiations: The Doha Development Agenda

Summary

The World Trade Organization was established in 1995 and is the principal international organization governing world trade. It has 146 member countries, representing over 95% of world trade.

On November 9-14, 2001, trade ministers from WTO countries met in Doha, Qatar for their fourth Ministerial Conference. At that meeting, they agreed to a work program for a new round of multilateral trade negotiations to conclude by January 1, 2005. The work program folds on-going negotiations on agriculture and services into a broader agenda that includes industrial tariffs, topics of interest to developing countries, changes in WTO rules, and other provisions. Because of the influence that developing countries had in setting the work program, the round has become known as the Doha Development Agenda.

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

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

In other areas, negotiators are meeting to clarify and improve disciplines under the antidumping and subsidies agreements. These talks on trade remedies are being observed closely by some Members of Congress, who did not want the issue on the agenda at all. Other discussions in the WTO are addressing the so-called "Singapore issues" — government procurement, trade facilitation (customs issues), investment and competition.

The fifth Ministerial Conference was held September 10-14, 2003 in Cancun, Mexico. The Ministerial in Cancun was to "...take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary." The meeting, however, ended unsuccessfully.

In February 2004, WTO members approved new chairpersons for the WTO bodies and working groups, and resumed negotiations in March 2004. On July 31, 2004, WTO members approved a framework to guide remaining negotiations. The July 31 framework included important terms on agriculture. Work is expected to slow down through the rest of 2004 because of leadership changes in the European Union and the U.S. elections. WTO members did not set a new deadline for the negotiations, but they did decide that the next Ministerial Conference will be in Hong Kong in December 2005.

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World Trade Organization Negotiations: The Doha Development Agenda

Background

The World Trade Organization (WTO) is the principal international organization governing world trade. It has 146 member countries, representing over 95% of world trade.

The WTO was established in 1995 as a successor institution to the General Agreement on Tariffs and Trade (GATT). The GATT was a post-World War II institution that was intended to promote nondiscrimination in trade among countries, with the view that open trade was crucial for economic stability and peace.

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

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

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

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

What Began at Doha?

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

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

There were additional reasons for the negotiations. Some officials thought that a new round of multilateral trade negotiations could help the sagging world economy. According to the WTO, the year 2001 showed "...the lowest growth in output in more than two decades," and world trade actually contracted that year.³

Just months before the Doha Ministerial, the United States had been attacked by terrorists on September 11, 2001. Some government officials called for greater political cohesion and saw the trade negotiations as a means toward that end.

Also at the time, countries were increasingly seeking bilateral or regional trade agreements. In 2001, almost 250 regional trade arrangements were either in force or under negotiation.⁴ There is disagreement on whether these more limited trade agreements help or hurt the multilateral system. Some experts say that regional agreements are easier to negotiate, allow a greater degree of liberalization, and thus are effective in opening markets. Others, however, argue that the regional agreements violate the general nondiscrimination principle of the WTO (which allows some exceptions), deny benefits to many poor countries that are often not party to the arrangements, and distract resources away from the WTO negotiations.⁵

With the backdrop of a sagging world economy, terrorist action, and a growing number of regional trade arrangements, trade ministers met in Doha. At that meeting, they adopted three documents that provided guidance for future actions. The *Ministerial Declaration* includes a preamble and a work program for the new round and for other future action. The *Declaration on the TRIPS Agreement and Public Health* presents a political interpretation of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS). A document on *Implementation-*

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

³ World Trade Organization. Annual Report 2002. p. 10.

⁴ Calculated by CRS from data presented in the 2002 WTO Annual Report, p. 40.

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

Related Issues and Concerns includes numerous decisions of interest to developing countries.⁶

The work program folded the on-going negotiations in agriculture and services into a broader agenda. That agenda includes industrial tariffs, topics of interest to developing countries, changes to WTO rules, and other provisions.

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

At the Doha meeting, trade ministers agreed in the Ministerial Declaration that the fifth Ministerial, which would be the next one, would “take stock of progress, provide any necessary political guidance, and take decisions as necessary.” WTO members subsequently decided that the fifth Ministerial will be held in Cancun, Mexico, on September 10-14, 2003. The Doha Ministerial Declaration directs that negotiations be concluded not later than January 1, 2005. With the exception of actions on the Dispute Settlement Understanding, trade ministers agreed that the outcome of the negotiations would be a single undertaking, which means that nothing is agreed to until everything is agreed to. Thus, countries agreed they would reach a single, comprehensive agreement containing a balance of concessions at the end of the negotiations.

Significance of the Negotiations

Trade economists argue that the reduction of trade barriers allows a more efficient exchange of products among countries and encourages economic growth. Multilateral negotiations offer the greatest potential benefits by obliging countries throughout the world to reduce barriers to trade. The gains to the United States and to the world from multilateral trade agreements have been calculated in the billions of dollars. For example, a recent study by the International Trade Commission found that if the tariff cuts from the Uruguay Round were removed, the welfare loss to the United States would be about \$20 billion.⁷ A study by the University of Michigan found that if all trade barriers in agriculture, services, and manufactures were reduced

⁶ The Ministerial Declaration (WT/MIN(01)/DEC/1), the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), and the Implementation-Related Issues and Concerns (WT/MIN(01)/DEC/17) are available through the WTO home page at [<http://www.wto.org/>].

⁷ U.S. International Trade Commission. *The Impact of Trade Agreements: Effect of the Tokyo Round, U.S.-Israel FTA, U.S.-Canada FTA, NAFTA, and the Uruguay Round on the U.S. Economy*. Publication 3621. August 2003.

by 33% as a result of the Doha Development Agenda, there would be an increase in global welfare of \$574.0 billion.⁸

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

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

The Doha Agenda

At the Doha Ministerial, trade ministers directed that a Trade Negotiations Committee (TNC) be established to supervise the negotiations and have its first meeting not later than January 31, 2002. Countries decided that the chair of the TNC should be WTO Director-General Supachai Panitchpakdi. The negotiations are being held in five newly established working groups and in other, existing bodies in the WTO. Selected topics under negotiation are discussed below in five groups: market access; development issues; Singapore issues; WTO rules; and other issues.

Market Access

Agriculture. Article 20 of the Agreement on Agriculture that was reached in the mid-1990s during the Uruguay Round called for continued negotiations toward "...the long-term objective of substantial progressive reductions in support and protection...." By early 2001, WTO members had achieved some preliminary work in those sectoral negotiations, and later that year, agriculture was wrapped into the broader Doha agenda.

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

Agriculture has been the linchpin in the Doha Development Agenda.⁹ U.S. goals in the new round were elimination of agricultural export subsidies, easing of tariffs and quotas, and reductions in trade-distorting domestic support. The Doha Ministerial Declaration included language on all of these three pillars of agricultural support. It stated that the members committed to “comprehensive negotiations aimed at substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade distorting support.”

In the Declaration, trade ministers agreed to a March 31, 2003 deadline for negotiators to agree on modalities in the agriculture talks. Modalities are formulas or other measures by which a goal is reached. For example, in the negotiations to reduce agricultural tariffs, the United States supports the “Swiss formula, which reduces higher tariffs more than lower tariffs: Final tariff = (initial tariff $\times a$)/(initial tariff + a), where a is a coefficient that negotiators must determine.¹⁰

The chairman of the WTO working group on agriculture, Stuart Harbinson, submitted a first draft of a modalities paper in mid-February 2003 for countries to consider before the March 31 deadline. Virtually every country opposed the draft. The EU and Japan said that the draft was too rigid and did not include some practices that should fall under disciplines, such as export credits. The United States and a group of agriculture exporters known as the Cairns Group argued that the Harbinson draft did not go far enough in opening markets.

Another point of disagreement was the inclusion in the Harbinson draft of a proposal that would allow developing countries to identify certain “special products” that would be protected from market opening. Developing countries were divided on whether such a list should be included. Developed countries generally opposed the concept.

Harbinson issued a revision of the draft in mid-March 2003, but countries were unchanged in their opposition, and negotiators missed the March 31, 2003 deadline for agriculture modalities. One reason for the delay was that the EU had not completed reform of its Common Agricultural Policy (CAP), which would influence its negotiating position. A major issue for the EU was whether or not to approve separation (“decoupling”) of payments to farmers based on production. Those types of payments are among the most trade-distorting (“amber box”). On June 26, 2003, EU agriculture ministers approved a reform package that included partial decoupling for certain products. The action was seen by many as a positive step for advancing the trade negotiations.¹¹

⁹ For further information, see CRS Report RL32053, *Agriculture in WTO Negotiations*, by Charles E. Hanrahan.

¹⁰ See “Swiss formula” in CRS Report 97-905, *Agriculture: A Glossary of Terms, Programs, and Laws*, 4th Edition, coordinated by Jasper Womach.

¹¹ See Buck, Tobias, Guy de Jonquieres and Frances Williams. “Fischler’s New Era for Europe’s Framers: Now the Argument Over Agriculture Moves to the WTO.” *Financial Times*. June 27, 2003.

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

Another difficulty is “geographical indications,” or the protection of product names that reflect the original location of the product. An example is the use of “Bordeaux wine” for wines from the Bordeaux region only. Europeans, joined by India and some other countries, want a mandatory registry of geographical indications that would prevent other countries from using the names. The United States and yet other countries refuse to negotiate a mandatory list, but will accept a voluntary list with no enforcement power. The EU says it will not accept an agriculture agreement without a geographical registry.¹²

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

In the month before the Cancun Ministerial, several new proposals on agriculture were offered. On August 13, 2003, the United States and the EU released a joint proposal that seemed to ignite action by other countries.¹³ Many countries, including the Cairns Group, criticized the U.S.-EU proposal for not going far enough in lowering domestic support or export subsidies. Developing countries contended that the U.S.-EU proposal would do little to help poorer countries. There was broad support, however, for the U.S.-EU approach to blend the leading formulas for reducing agricultural tariffs, rather than pick one formula or the other. The concept of a blended approach to tariffs was part of a major proposal by about 20 developing countries, including Argentina, Brazil, India, and China (the Group of 21). Proposals were also offered by several African countries and by a small number of developed countries.

The differences between developing and developed countries was perhaps most evident in the discussions on cotton subsidies. Four African countries — Benin, Burkina Faso, Chad, and Mali — called for an end to cotton subsidies and compensation for losses. The United States is a major provider of subsidies. U.S. negotiators responded by refusing to address cotton subsidies separately and calling for subsidies to be considered as part of a broader context that included other fibers, textiles, and apparel.

¹² For further information, see CRS Report RS21569, *Geographical Indications and WTO Negotiations*, by Charles E. Hanrahan.

¹³ WTO document JOB(03)/157; at [<http://usinfo.state.gov/topical/econ/wto/ag030813.htm>].

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

Those negotiations began in early 2000. Negotiating guidelines and procedures were established by March 2001. Under the request-offer approach being used, countries first request changes in other countries’ practices, other countries then respond by making offers of changes, and finally the countries negotiate bilaterally on a final agreement.

The Doha Ministerial Declaration recognized the work already undertaken and reaffirmed the March 2001 guidelines as the basis for continuing the negotiations. It directed participants to submit initial requests for specific commitments by June 30, 2002 and initial offers by March 31, 2003.

The services talks are going slowly. There were about 50 requests made by the June 2002 deadline. By the Cancun Ministerial, there had only been about 30 offers, and many of the offers would simply keep in place changes that have already been made.¹⁴ In May 2003, the head of the working group on services commented on the slow pace of the negotiations and wondered whether the offers were liberalization or standstill commitments.¹⁵ A major reason for the slow pace is that countries want to see what will be decided in the agriculture talks before they decide what they are willing to offer in other market access areas.

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

Non-Agricultural Market Access. In the Doha Declaration, trade ministers agreed to negotiations to reduce or eliminate tariffs, including tariff peaks, high tariffs, and tariff escalation, as well as nontariff barriers. They accepted less than full

¹⁴ For information on the U.S. services offer, see CRS Report RS21492, *Services Negotiations in the WTO: An Overview of the U.S. Offer*, by James K. Jackson.

¹⁵ Pruzin, Daniel, “WTO Services Group Chair Voices Concern Over Services Offers, Disdain of Scare Stories,” *Daily Report for Executives*, Bureau of National Affairs, Inc. May 23, 2003.

reciprocity in reductions for developing and least-developed countries. The modalities for the reduction or elimination of tariffs and nontariff barriers were to be determined by the end of May 2003.

In mid-May 2003, the chairman of the working group, Pierre-Louis Girard, issued a first draft of a modalities agreement. Most countries complained about it. The draft proposed a formula cut based on average bound tariffs¹⁶, and it included tariff elimination for specific sectors. The United States and the EU wanted a more aggressive approach that would result in greater tariff reductions, especially for high tariffs. They argued for applied rates, rather than the higher bound rates, as the basis for reduction. The United States favored the proposed sectoral negotiations. Developing countries with high tariff peaks, such as India, did not support the May 2003 draft, but other developing countries were not as opposed because of provisions on special and differential treatment.

On August 18, 2003, the chairman said that the group could not reach agreement on modalities, and he would present a framework instead to the General Council before the fifth Ministerial in Cancun.¹⁷

Development Issues

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

Access to Patented Medicines. A major topic at the Doha Ministerial regarded the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The issue involves the balance of interests between the pharmaceutical companies in developed countries that held patents on medicines and the public health needs in developing countries. Before the Doha meeting, the United States claimed that the current language in TRIPS was flexible enough to address health emergencies, but other countries insisted on new language.

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

On December 16, 2002, then-TRIPS Council chairman Eduardo Perez Motta produced a draft that would allow countries that lack the manufacturing capacity to

¹⁶ Bound tariffs are the upper limits that countries commit to in negotiations.

¹⁷ Pruzin, Daniel. "Harbinson, Girard Wave White Flag on Modalities Deal for Talks in Cancun." *Daily Report for Executives*. Bureau Of National Affairs, Inc. August 19, 2003.

produce medicines to issue compulsory licenses for imports of the medicines. All WTO members approved of the chairman's draft except the United States. The U.S. position, representing the interests of the pharmaceutical industry, was that the chairman's draft did not include enough protections against exploitation of compulsory licenses. The United States sought a limit on the diseases that would be covered by the chairman's text, but other countries refused a list of diseases. The United States decided to oppose the chairman's draft and unilaterally promised not to bring a dispute against any least-developed country that issued compulsory licenses for certain medicines.

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

On August 30, 2003, WTO members reached agreement on the TRIPS and medicines issue. Voting in the General Council, member governments approved a decision that offered an interim waiver under the TRIPS Agreement allowing a member country to export pharmaceutical products made under compulsory licenses to least-developed and certain other members. An accompanying statement by the General Council chair, Carlos Perez del Castillo, included provisions that the United States insisted on as a condition of accepting the decision. The statement represented several "key shared understandings" of Members regarding the Decision, including the recognition that the decision should be used to protect public health and not be an instrument to pursue industrial or commercial policy objectives, and the recognition that products should not be diverted from the intended markets. The statement listed a number of countries that either agreed to opt out of using the system as importers or agreed that they would only use the system in national emergencies or extreme urgency.

Special and Differential (S&D) Treatment. In the Doha Ministerial Declaration, the trade ministers reaffirmed special and differential (S&D) treatment for developing countries and agreed that all S&D treatment provisions "...be reviewed with a view to strengthening them and making them more precise, effective and operational." In the Declaration, the trade ministers endorsed the work program on S&D treatment presented in another Doha document, *Decision on Implementation-Related Issues and Concerns* (Implementation Decision). That document called on the WTO Committee on Trade and Development to identify the S&D treatment provisions that are already mandatory and those that are non-binding, and to consider the implications of "...converting [S&D] treatment measures into mandatory provisions, to identify those that Members consider should be made mandatory, and to report to the General Council with clear recommendations for a decision by July 2002." It also called for the Committee on Trade and Development "to examine additional ways in which S&D treatment provisions can be made more effective, to consider ways...in which developing countries...may be assisted to make best use of [S&D] treatment provisions, and to report to the General Council with clear recommendations for a decision by July 2002."

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

By the Cancun Ministerial, developing countries had offered about 85 proposals on S&D provisions, but developed countries had agreed to only a handful of these. The July 2002 deadline for the Committee on Trade and Development to report to the General Council passed without a report, as did a year-end 2002 deadline and a mid-February 2003 deadline. In February 2003, the General Council chair transferred the S&D talks into the General Council and split the proposals into three groups: (1) about 30-40 would stay in the General Council for a decision (countries had agreed on only 15 proposals by July 2003); (2) 38 were sent to negotiating groups with instruction to consider the proposals quickly and report back in time for the Cancun Ministerial; and (3) the rest were labeled unlikely for agreement. No new deadlines have been set.

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

Before the Doha Ministerial, WTO Members resolved a small number of these implementation issues. At the Doha meeting, the Ministerial Declaration directed a two-path approach for the large number of remaining issues: (a) where a specific negotiating mandate is provided, the relevant implementation issues will be addressed under that mandate; and (b) the other outstanding implementation issues will be addressed as a matter of priority by the relevant WTO bodies. The latter were directed to report to the Trade Negotiating Committee by the end of 2002 for appropriate action.

There was not enough agreement for the year-end 2002 report by the relevant WTO bodies to the Trade Negotiating Committee. Developed and developing countries had not been able to agree on implementation issues such as the growth rate of textile quotas and special treatment under subsidies rules. In February 2003, the chair of the Trade Negotiating Committee directly took over the work on implementation issues and worked with the WTO bodies. By the end of July 2003, there had been little progress on resolving the implementation issues.

Singapore Issues

The first WTO Ministerial Conference, which was held in Singapore in 1996, established permanent working groups on four issues: transparency in government

procurement, trade facilitation (customs issues), trade and investment¹⁸, and trade and competition. These became known as the Singapore issues.

At the Doha Ministerial, the EU pressed for negotiation on broad rules for all of these four issues. The United States had supported negotiations on the two issues related to market access — government procurement and trade facilitation — but did not openly support the other two issues — investment and competition. Developing countries opposed any talks on investment and competition. As a compromise, the Doha Ministerial Declaration stated that further clarification will be undertaken on all four Singapore issues before the fifth Ministerial (at Cancun), and negotiations will take place after the fifth Ministerial on the basis of a decision to be taken *by consensus* [italics added].

By the Cancun Ministerial, there had been little movement from the positions held at Doha. The EU and Japan insisted that all four issues be considered as a block. The United States and some other countries appeared to be open to consideration of the issues on a separate basis. India and a few other developing countries were adamantly opposed to any negotiation on competition and investment, but might have considered further study of the topics.

The investment issue has been especially controversial, and certain issues have come to light in the negotiations. First, investment negotiations could possibly overlap and even conflict with some rules under the GATS on establishment of service providers. A decision might have to be made on whether goods only, or goods and services, would be covered under any investment agreement. Second, the United States reportedly wanted portfolio investment, in addition to foreign direct investment, included in an agreement, but seemed to be alone in this approach. Third, an “opt-in/opt-out” approach has been mentioned that would permit countries to be flexible in participating in a Singapore issue agreement, but response to this approach has been dubious.

WTO Rules

Trade Remedies. At Doha, the United States was opposed to negotiations on trade remedies, especially antidumping. However, it faced almost universal opposition and eventually was unsuccessful in keeping out the language on trade remedies. The Ministerial Declaration states that members “...agree to negotiations aimed at clarifying and improving disciplines...” under the WTO antidumping and subsidies agreements. U.S. officials point out that the Declaration also states that the “...basic concepts, principles and effectiveness of these Agreements and their instruments and objectives” would be preserved. Congressional leaders, however, are highly critical of this concession by U.S. trade negotiators.¹⁹

¹⁸ For further information, see CRS Report RS20448, *Foreign Investment Issues in the WTO*, by James K. Jackson.

¹⁹ “Zoellick Stance on Trade Remedy in WTO Provokes Criticism.” *Inside U.S. Trade*. November 13, 2001.

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

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

In its submissions to the WTO, the United States has sought to preserve national laws on trade remedies, and direct attention to dumping and subsidy practices rather than their remedial duties.²⁰ Almost all other countries, however, are seeking changes to the WTO rules on duties. The leading proponents of such changes have been a group of 15 developed and developing countries called Friends of Antidumping (Brazil, Chile, Colombia, Costa Rica, Hong Kong, Israel, Japan, Mexico, Norway, Singapore, South Korea, Switzerland, Taiwan, Thailand, and Turkey; not all countries sign onto every proposal). They have made numerous proposals, and in essence their proposals would reduce the incidence and amount of duties. Many of their proposals would require a change in U.S. laws. Although the EU is a major user of trade remedies and not a member of Friends of Antidumping, it has agreed with some of the group’s proposals.

There reportedly has been some domestic disagreement on whether the U.S. stance should be a defensive one, where the United States avoids any change to existing WTO dumping and subsidies agreements, or an active one, where the United States seeks changes that could address problems with foreign practices.²¹ Some observers have said that this conflict represents the different interests of U.S. import-competing industries and U.S. export industries. The United States has sought some changes in the WTO rules, submitting papers on antidumping proposals on issues such as transparency, foreign practices to circumvent a duty order, and the WTO standard used by dispute panels in reviewing national applications of trade remedy laws.

The United States also has submitted proposals on subsidies, such as expanding a list of prohibited subsidies and imposing disciplines on support to sales of natural resources. It has suggested that the WTO consider sectoral negotiations on steel subsidies similar to on-going talks in the Organization for Economic Cooperation and Development (OECD), but there appears little support for this suggestion. The United States and the EU support limits on fisheries subsidies, but Japan strongly opposes such limits.

²⁰ “U.S. Strikes Hard Line on Reforming Trade Remedy Rules in WTO,” *Inside U.S. Trade*, October 18, 2002.

²¹ See “U.S. WTO Proposal on Subsidies Disciplines Takes Criticism from Home.” *Inside U.S. Trade*. March 28, 2003.

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

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

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

At the July 24, 2003 meeting of the General Council, WTO members approved a new deadline of May 31, 2004. They said that the May 16, 2003 text would be the basis for the negotiations “as well as proposals submitted by members.”

Other Issues

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

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

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

Recent Developments

The WTO Ministerial Conference in Cancun in September 2003 was seen as an opportunity for countries to agree on a framework to guide talks through the end of the round, but that did not happen. Negotiating sessions were cancelled after the meeting. They have not yet resumed, but might begin again in the next month.

The Cancun Ministerial

An important milepost during the Doha Development Agenda was the fifth Ministerial Conference, which was held in Cancún, Mexico on September 10-14, 2003. The Doha Ministerial Declaration stated, “The Fifth Session of the Ministerial Conference will take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary.” The Cancún Ministerial, however, ended without agreement on a framework to guide future negotiations.²² The failure to advance the round indicated a serious loss of momentum and brought into question whether the January 1, 2005 deadline would be met.

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

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

Of possible importance to future negotiations is a text that was developed during the Cancun Ministerial. Ministerial chairman Derbez invited trade ministers to act as facilitators in Cancun and help with negotiations in five groups: agriculture, non-

²² For more detailed information on the Cancún Ministerial, see CRS Report RS21664, *The WTO Cancún Ministerial*, by Ian F. Fergusson; and General Accounting Office. *Cancun Ministerial Fails to Move Global Trade Negotiations Forward; Next Steps Uncertain*. Report to the Chairman, Committee on Finance, U.S. Senate, and to the Chairman, Committee on Ways and Means, House of Representatives. GAO-04-250. January 2004.

agricultural market access, development issues, Singapore issues, and other issues. The WTO Director-General served as a facilitator for a sixth group on cotton. The facilitators consulted with trade ministers and produced draft texts from their group consultations. The Ministerial chairman compiled the texts into a draft Ministerial Declaration²³ and circulated the revised draft among participants for comment.

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

The Final Months of 2003

The final months of 2003 were a period of standstill and stock-taking. The WTO Director-General cancelled negotiating sessions until further notice. After holding consultations with member countries, the General Council chair told an informal meeting of heads of delegations in Geneva on December 9, 2003, that there had been some progress, but that there had been “little real negotiation, or movement towards accommodation among positions.”²⁴

At the December 15, 2003 meeting of the General Council, the WTO Director-General said that although members were not yet at a point where negotiations could resume full momentum, they now had a “clearer grasp of the remaining differences and of the solutions needed to bridge them.”²⁵ At the same meeting, the General Council chair reviewed the consultations that had taken place since Cancun and summarized the issues for further work in four key outstanding issues: agriculture, cotton, non-agricultural market access and the Singapore issues.²⁶ Countries expressed support at the meeting for restarting the work of the negotiating groups.

Negotiations Resumed in 2004

In a letter dated January 11, 2004, U.S. Trade Representative (USTR) Zoellick offered proposals on how to move the round forward.²⁷ Among his proposals, the USTR called for a focus on market access, including an elimination of agricultural

²³ WTO document JOB(03)/150/Rev.2.

²⁴ WTO web page at [http://www.wto.org/english/news_e/news03_e/news03_e.htm].

²⁵ Ibid.

²⁶ Ibid.

²⁷ Summary of USTR letter at [http://www.ustr.gov/wto/2004-01-12-doha_advance.pdf]. Actual letter at Inside U.S. Trade. Text: Zoellick Letter to Trade Ministers. January 16, 2004.

export subsidies. He also said that the Singapore issues could progress by negotiating on trade facilitation, considering further action on government procurement, and possibly dropping investment and competition. He suggested that the next Ministerial be held in Hong Kong before the end of 2004. Other countries' responses to the USTR's letter have generally been positive regarding these proposals. He also suggested that the next General Council chair, which is an annually rotating position, come from a developing country. That proposal, however, received almost no support.

On February 11, 2004, WTO members took two major steps relating to the Doha round at their General Council Meeting. First, members approved new chairpersons for WTO bodies and for trade negotiating groups for the Doha round. Of note, the new General Council chair is Shotaro Oshima from Japan. With these new chairpersons, multilateral trade negotiations resumed in March. Second, the General Council made no decision on the next Ministerial Conference. The United States had wanted a commitment by WTO members to ensure momentum. Other countries, however, wanted to see more progress in the talks before scheduling another ministerial meeting.

Following the collapse of negotiations at the Cancun Ministerial, the deadline of January 2005 seemed unlikely to be met. WTO members agreed that they would try to reach a framework by the end of July 2004 to guide remaining negotiations. They wanted to reach the framework by mid-year 2004, because they expected to lose momentum in the second half of 2004 because of changes in European Union leadership and U.S. elections.

On July 31, 2004, WTO members approved a framework agreement that includes major developments in the most contentious and crucial issue — agriculture. Because agriculture is the linchpin in the negotiations, the framework, which provides guidelines but not specific concessions, is regarded as a major achievement. With a broad agreement on agriculture and on other issues, negotiators have a clearer direction for future discussions. Negotiations might not resume seriously until 2005, and no new deadline has been set. When they approved the framework agreement, however, WTO members also agreed to hold their next Ministerial in Hong Kong in December 2005, and this might be seen as the possible end to the Doha round.

Congressional Role

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

Under legislation on trade promotion authority that was passed in 2002 (P.L. 107-210), Congress prescribed trade objectives for U.S. negotiators in the Doha Development Agenda and in other trade negotiations. These objectives give

direction to negotiators on U.S. priorities. In the 2002 Act, Congress also outlined requirements that the executive branch must meet, as a condition for expedited procedures for legislation to implement trade agreements, including those reached in the Doha Development Agenda. Among the conditions for expedited legislative procedures, the executive branch must consult with Congress at various stages of the negotiations, notify Congress before taking specified actions, and submit reports as outlined. Expedited procedures would apply to any trade agreement entered into (signed) before July 1, 2005. A two-year extension to that deadline would be allowed if the President requested the extension and Congress did not disapprove it.

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

The Doha Development Agenda originally had a January 1, 2005 deadline, but WTO members agreed to continue negotiations beyond that deadline with no new final date. If an agreement package is concluded and the United States signs it before July 1, 2005, expedited procedures might apply to any implementing bill. If an agreement package is not reached by July 1, 2005, the President will have to request the two-year extension under P.L. 107-210, and Congress might decide whether or not to approve the extension. Implementing legislation for any Doha round trade agreements probably would not be introduced until late in 2005 at the earliest. Although the 108th Congress is not expected to consider implementing legislation, it is active in oversight and might consider resolutions or other legislation related to the negotiations.