

WTO Trade Negotiations Pause after Cancun

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Members of the World Trade Organization could not reach agreement at their September 2003 ministerial meeting in Cancun, Mexico, on how to move forward with the Doha multilateral trade negotiations. Ministers were to set the terms, or “modalities,” for the specific negotiations that were scheduled to conclude the Doha trade talks by January 2005. Instead, negotiators reached an impasse largely over agricultural subsidies and whether to open negotiations on new issues such as investment, competition policy, government procurement, and trade facilitation of customs matters. Consultations in subsequent months were to develop plans to renew the multilateral trade negotiations, but as the year 2004 began many of the original disagreements from the Cancun conference remained unresolved.

Introduction

Members of the World Trade Organization (WTO) held their Fifth Ministerial Conference from September 10 to 14, 2003, in Cancun, Mexico, where they could not reach agreement on how to move forward with the multilateral trade negotiations that opened in November 2001 in Doha, Qatar—known as the Doha Development Agenda. Ministers expected to conduct a midterm review-of-progress in the negotiations, followed by setting terms and structure (so-called negotiating modalities) for the specific individual negotiations that were to follow in 2004, with an eye to concluding the Doha trade talks by January 1, 2005.

Instead, negotiators found themselves early in the conference unable to reach agreement in the critical area of agriculture over the issue of agricultural subsidy reductions. The impasse arose largely due to an uncompromising stance taken by a recent grouping of approximately 20 developing countries—generally called the “G-20” although membership has varied.²

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² The G-20 membership consists variously of Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, and Venezuela. El Salvador withdrew before the end of the Cancun meeting, whereas Indonesia and Nigeria were not counted among the early members. Turkey was reported to have considered being a member.

The inability later in the conference to reach agreement in another significant area—the so-called Singapore issues of investment, competition policy, government procurement, and trade facilitation—led the conference chairman to close the ministerial meeting following consultations that indicated entrenched negotiating positions held by many delegations were not likely to allow a consensus to emerge in the time remaining at the conference.

The ministerial statement concluding the Cancun conference directed the officials of WTO members to continue work on outstanding issues, in coordination with the WTO Director-General and the chairman of the WTO General Council. The statement called for a WTO General Council meeting to be convened at the senior officials level no later than December 15, 2003 to take the necessary action to move toward a “successful and timely conclusion of the negotiations.”³

Modality and Other Deadlines Slipping by 2003

During 2002 and 2003, Doha negotiators were working to reach agreement on negotiating modalities in their respective groups, although largely without success. Negotiators on agriculture were to reach agreement on a first draft of their modalities by March 31, 2003, but at that time the chairman confirmed that the group had failed to reach a set of common modalities and that—without guidance from participants

³ WTO, “Ministerial Statement,” taken from WTO, “Day 5: Conference ends without consensus,” WTO Summary of 14 September 2003, found at Internet address <http://www.wto.org/>, retrieved Sept. 17, 2003.

on possible areas of convergence—there was no scope to attempt another draft.⁴ The group was to prepare a comprehensive draft of commitments in time for the Cancun meeting, once negotiating modalities were agreed. The nonagricultural market-access group was to agree on modalities to conduct negotiations on tariff and nontariff barriers by May 31, 2003, but this deadline also passed with developed and developing country participants unable to agree over the scope set in the chairman's draft text on modalities.⁵

In the services negotiations, progress appeared more forthcoming. Initial requests for market access in services began to be tabled by July 2002 and initial offers for services market access by April 2003. Services negotiators also managed to adopt a draft text of "Modalities for the Treatment of Autonomous Liberalization" in March 2003, a portion of their negotiating agenda.⁶

Although talks on intellectual property are circumscribed to negotiating a multilateral system of notification and registration of geographical indications for wines and spirits—as set out under the "built-in" agenda of the 1994 Uruguay Round Agreements—the chairman noted at the start of 2003 that delegations' positions remained quite divided.⁷ Elsewhere, however, negotiators did reach an agreement concerning the "Agreement on Trade-Related Intellectual Property Rights (TRIPs Agreement) and Public Health," a separate mandate from the 2001 Doha declaration.

Negotiators developing recommendations to make special and differential treatment more effective for developing country members finally reached an impasse in their deliberations by February 2003, despite several deadline extensions in 2002.

Finally, disagreement continued throughout 2002 and 2003 about whether or not the Doha declaration explicitly mandated negotiations to begin on a new set of topics known collectively as the "Singapore issues." These issues—involving the trade-related aspects of

investment, competition policy, transparency in government procurement, and facilitation of trade customs issues—have proved difficult ever since they were raised at the WTO First Ministerial Conference held in Singapore in 1996. WTO members were scheduled to decide whether or not to start these negotiations at the Fifth Ministerial Conference in 2003, but instead the impasse reached over opening negotiations on even some portion of them triggered the conference chairman to close the Cancun conference upon seeing a broad consensus as increasingly unlikely due to such entrenched positions.

TRIPs Decision on Pharmaceutical Imports

WTO members did achieve notable progress in advance of the Cancun ministerial meeting when they adopted a decision in the area of public health related to the TRIPs Agreement. The "Declaration on the TRIPs Agreement and Public Health"⁸ from the 2001 Doha ministerial conference tasked negotiators to find an expeditious solution to the difficulties faced by WTO Members possessing insufficient or no manufacturing capacity in the pharmaceutical sector when confronted with public health crises that constitute a national emergency. Foremost among such public health emergencies is that of human immunovirus/acquired immune deficiency syndrome (HIV/AIDS), found in particular in Southern Africa, but includes as well tuberculosis, malaria, or similar epidemics of extreme urgency. Negotiators succeeded, adopting the "Decision on the TRIPs Agreement and Public Health"⁹ on August 30, 2003 which allows developing countries—in particular the least developed countries—greater access to needed vital medicines when their governments were faced with widespread public health outbreaks.

The 2003 decision sets up a system that allows an eligible importing WTO member to obtain from an eligible exporting WTO member the needed pharmaceutical supplies to address public health problems that constitute an urgent national situation. Least developed country WTO members may automatically avail themselves of this pharmaceutical import system, whereas developing country WTO members must notify the TRIPs Council of a national emergency or circumstances of extreme urgency that

⁴ WTO, Committee on Agriculture, Special Session, *Eighteenth Special Session of the Committee on Agriculture—Report by the Chairman, Stuart Harbinson, to the Trade Negotiations Committee*, TN/AG/9, Apr. 8, 2003.

⁵ Trade Reports International Group, "Missing Yet Another Doha Deadline," *Washington Trade Daily*, vol. 12, No. 105, May 27, 2003.

⁶ WTO, Council for Trade in Services, Special Session, *Modalities for the Treatment of Autonomous Liberalization—Adopted by the Special Session of the Council for Trade in Services on 6 March 2003*, TN/S/6, Mar. 10, 2003.

⁷ WTO, Council for Trade-Related Aspects of Intellectual Property Rights, Special Session, *Fifth special session of the Council for TRIPs—Report by the Chairman, Ambassador Eui-Yong Chung, to the Trade Negotiations Committee*, TN/IP/5, Feb. 28, 2003.

⁸ WTO Ministerial Conference – Fourth Session, *Declaration on the Trips Agreement and Public Health – Adopted on 14 November 2001*, WT/MIN(01)/DEC/2, Nov. 20, 2001.

⁹ World Trade Organization, Implementation of Paragraph 6 of the Doha Declaration on the TRIPs Agreement and Public Health — Decision of 30 August 2003*, WT/L/540, Sept. 1, 2003.

require a patented medicine for public, noncommercial use. The importer must notify (1) the specific product names and expected quantities needed; (2) must confirm that it has insufficient manufacturing capacity in its pharmaceutical sector to produce this product; and (3) must grant a compulsory license under TRIPs Art. 31¹⁰ for a patented pharmaceutical product within its territory.

The exporter must also issue a compulsory license that confirms that only the amount necessary to meet the importer's need will be manufactured under that license, and that the entirety of the production will be exported to eligible importers that have notified their needs to the TRIPs Council. The exporter must confirm that the products manufactured under compulsory license will be marked or labeled specifically through special packaging, coloring, or shape. The exporter must also establish an Internet website that posts the quantities supplied to each importer and the distinguishing product features. The exporter must notify the TRIPs Council of the award of the compulsory license, giving the name and address of the licensed firm, products and quantities covered by the license, duration of the license, and the countries to be supplied with the product. The exporter must pay adequate remuneration, although the importer's obligation to pay remuneration will be waived under the decision. However, the importer is expected to take reasonable measures within its means to prevent the re-export of these pharmaceutical products manufactured under compulsory license.

The decision includes provisions for developing country WTO members that belong to a regional trade agreement, intended to take advantage of possible economies of scale and their subsequent enhanced purchasing power. WTO members agree not to challenge any measures taken in line with this decision through WTO dispute-settlement procedures. The TRIPs Council is to prepare an amendment to the TRIPs Agreement that, once adopted, would incorporate this decision into the TRIPs Agreement.

Castillo Draft Ministerial Text

In the broader negotiations, however, progress was not forthcoming at the same pace as the August 2003 adoption of the decision on the TRIPs Agreement and Public Health. Earlier in the summer, the 2003 chairman of the WTO General Council, Carlos Perez del Castillo, had issued his draft Cancun ministerial text in preparation for the Fifth WTO Ministerial

¹⁰ TRIPs Art. 31 is entitled "Other Use Without Authorization of the Right Holder."

Conference. In circulating his draft in July 2003, the chairman explicitly recognized that "The somewhat skeletal nature of this first draft is a reflection of the reality of our present situation. It reflects how far we still have to go in a number of key areas to fulfil the Doha mandates."¹¹ Although the Castillo draft text listed all the necessary categories where ministers needed to make decisions before and during the Cancun conference, it could provide only a framework and left as unresolved, bracketed text all the substantive information and document references that negotiators and ministers needed to provide once they reached agreement.

Cancun Ministerial Conference¹²

The Cancun ministerial conference took place in Cancun, Mexico, September 10-14, 2003. The conference chairman—Luis Ernesto Derbez, Mexico's minister of trade—selected five facilitators on the opening day to oversee discussions on the major subjects of (1) agriculture, (2) nonagricultural market access, (3) development issues, (4) the "Singapore" issues, and (5) other issues, which included notably the issue of a geographical indications register for wines and spirits called for under the TRIPs Agreement.

On the opening day, a proposal¹³ was submitted by Benin, Burkina Faso, Chad, and Mali for the consideration by the ministers at the conference that would presage the forthcoming difficulties in the agriculture negotiations at Cancun. Presented earlier in 2003 to the WTO Agriculture Committee and General Council, the cotton initiative at Cancun highlighted the damage done to the economies of these four least developed countries by the cotton subsidies paid to producers in the developed countries. The initiative called for the elimination of the developed country subsidies, as well as compensation to cover economic losses caused by these subsidies until their phaseout, in view of the heavy dependence of these four sub-Saharan African countries on cotton production and exports. A

¹¹ World Trade Organization, *Preparation for the Fifth Session of the Ministerial Conference — Draft Cancun Ministerial Text*, JOB(03)/150, July 18, 2003.

¹² Reporting based largely on WTO daily summaries of the Cancun ministerial conference — "Summary of 10 September 2003 — Conference kicks off with 'facilitators' named and cotton debated;" "Summary of 11 September 2003 — Cambodia and Nepal membership sealed as ministers start negotiations;" "Summary of 12 September 2003 — Day 3: 'Facilitators' start work on new draft declaration;" "Summary of 13 September 2003 — Day 4: As ministers comment on new draft, chairperson warns of dangers of failure;" and "Summary of 14 September 2003 — Day 5: Conference ends without consensus," found at <http://www.wto.org>, retrieved Sept. 15, 2003.

¹³ WT/MIN(03)/W/2+Add.1.

number of delegations at the conference supported the initiative in large part because the proposal sought a competitive solution within the framework of the multilateral trading system rather than through preferences or special and differential treatment. The United States responded that all trade distortions in the cotton production chain should be discussed—including subsidies—but also encompassing tariff and nontariff barriers to trade in cotton, government policies that support synthetic fiber production, and the like.

On the second day, Cambodia and Nepal were invited to accede to the WTO as the first two least developed countries to join the WTO through the full accession process. The five facilitators briefed the heads of delegation at the conference that progress in the other groups seemed to be strongly linked to progress in the agriculture group. In the agriculture group, exchanges centered on three groups: (1) the United States, (2) the European Union (EU), and (3) the Group of 20. The uncompromising stance taken by the G-20 regarding agricultural subsidy reductions was a major contributor to the impasse reached in negotiations in the critical area of agriculture.

On the third day, the facilitators reported unyielding results similar to the second day, prompting the conference chairman to stress to the participants that the conference was only a mid-term review intended to provide political guidance to negotiators working in Geneva, not the conclusion of major multilateral trade negotiations.

On the fourth day, the conference chairman distributed a new draft ministerial declaration—the Derbez draft ministerial statement—incorporating material rendered by the facilitators from their group discussions. Differences remained in most areas. In agriculture, some delegations thought the new draft text was not ambitious enough, while others considered it too ambitious. In market access negotiations, disagreements remained on the tariff cutting formula to be used, and on whether sectoral tariff eliminations should be voluntary or mandatory. On the Singapore issues, delegations remained divided with some insisting that there was no explicit consensus to open these negotiations as required by the Doha declaration while others insisted that these negotiations be opened. Regarding development issues, a number of African and Caribbean countries in particular said that the new draft did too little to promote special and differential treatment for developing countries. Concerning the cotton initiative, several countries pointed out that the new draft did not reflect the provisions to phase out cotton subsidies nor to compensate producers in the interim period. The conference chairman warned the

participants at the end of the fourth day that if the Cancun meeting failed because ministers were willing to let the process fail, then the negotiations may take a long time to recover.

On the final day, the conference chairman consulted with the heads of delegation to find that the Singapore issues had become the most difficult negotiating barrier to overcome. Conference chairman Derbez found that there had been little success in filling in the substantive decisions on modalities in agriculture and nonagricultural market access, in addition to decisions needed in other areas. After making several attempts to narrow differences through consultations, it was clear that there was no consensus, and the conference chairman decided to close the meeting. A six-paragraph ministerial statement was approved and issued that instructed members' officials to "continue working on outstanding issues ... taking ... into account the views expressed at the conference."¹⁴ The ministerial statement asked the WTO Director-General and the WTO General Council chairman to coordinate this work, and to convene a WTO General Council meeting at senior officials level no later than December 15, 2003 intended to permit WTO members "to take the action ... necessary ... to enable us to move towards a successful and timely conclusion of the negotiations."¹⁵

Derbez Draft Ministerial Text

The second version of the Cancun ministerial text,¹⁶ the draft prepared by the conference chairman Luis Ernesto Derbez, remained incomplete and unofficial at the close of the conference on September 14, 2003. As a consequence, it is not the agreed point of departure for subsequent negotiations. Nonetheless, as the conference chairman's best understanding of the status of negotiations at the time, a brief summary of the Derbez draft ministerial text follows. (See the addendum for summaries of the Derbez text annexes.)

The Derbez text welcomed the decision of the TRIPs Agreement and Public Health. It directed the *Special Session of the Committee on Agriculture* to conclude its work on establishing modalities for further

¹⁴ WTO, "Ministerial Statement," taken from WTO, "Day 5: Conference ends without consensus," WTO Summary of 14 September 2003, found at Internet address <http://www.wto.org/>, retrieved Sept. 17, 2003.

¹⁵ WTO, "Ministerial Statement," taken from WTO, "Day 5: Conference ends without consensus," WTO Summary of 14 September 2003, found at Internet address <http://www.wto.org/>, retrieved Sept. 17, 2003.

¹⁶ WTO, *Preparations for the Fifth Session of the Ministerial Conference — Draft Cancun Ministerial Text — Second Revision*, JOB(03)/150/Rev.2, Sept. 13, 2003.

commitments in agriculture. It also set out in Annex A what the conference chairman understood were the unresolved framework questions under discussion in the agriculture negotiations. The conference chairman set out in Annex B his understanding of the unresolved framework questions under discussion in the *Negotiating Group on Nonagricultural Market Access*. In services, the Derbez draft stressed that more offers were needed, as well as more work on rulemaking aspects affecting trade in services—in particular, GATS Art. VI, X, XIII, and XV. The text recognizes the developing countries' particular interest in the supply of services through the movement of persons (GATS service supply "mode 4"). The text set the *Special Session of the Council for Trade in Services* to review progress in the negotiations by March 31, 2004.

The Derbez text points out the need to accelerate work on antidumping and antisubsidy measures in the *Negotiating Group on Rules*, although it recognizes the group's progress made in improving transparency regarding regional trade agreements. The Derbez text called on the *Special Session of the Council for TRIPs* to continue its negotiations on a register for geographical indications for wines and spirits. It also encouraged the *Special Session of the Committee on Trade and Environment* to continue its work, inviting the secretariats of major multilateral environmental agreements to its meetings.¹⁷ The Derbez draft text slated negotiations concerning the Dispute Settlement Understanding to conclude by May 31, 2004, based on the chairman's text of May 28, 2003 for the *Special Session of the Dispute Settlement Body*.

The Derbez text recommended that the WTO General Council continue monitoring special and differential treatment provisions highlighted during the negotiations. It proposed that ministers adopt a number of revisions to several of the Uruguay Round Agreements that would affect how special and differential treatment is applied to developing country members. The Derbez text also recommended consultations aimed at extending the negotiations on geographical indications beyond wines and spirits. Nonetheless, the Derbez text pointed out that most implementation issues remain unresolved.

Regarding the Singapore issues, the Derbez text would have negotiations begin on transparency on government procurement (set out in Annex D) and on trade facilitation (set out in Annex E). The draft text suggests further study of the issues of trade and investment, and trade and competition policy,

¹⁷ These include the secretariats of organizations such as the United Nations Environment Programme and the United Nations Conference on Trade and Development.

convening their respective working groups to develop procedural and substantive modalities for possible negotiations in the future.

Negotiating Developments after Cancun

Following Cancun, the WTO Director-General and General Council chairman held initial consultations with member governments, followed by two rounds of intensive consultations on the four key issues considered the lynchpin issues emerging from the Cancun meeting: (1) agriculture, (2) nonagricultural market access, (3) the Singapore issues, and (4) the cotton initiative. The General Council chairman Perez reported informally to heads of delegations in Geneva, giving his overall assessment of his consultations and his view of the way forward on December 15, 2003, as called for in the ministerial statement at the end of the Cancun conference.¹⁸ The chairman said that during his consultations that members were constructive and affirmed their commitment to enter into substance. Nonetheless, he pointed out that no concrete sign of this commitment was as yet forthcoming, such as more flexible negotiating positions.

Agriculture

On agriculture, the chairman concluded that members would like to see domestic support, market access, and export competition—the "three pillars" of the agriculture talks—addressed in parallel. His suggestion on the way forward was to substantially reduce or phaseout total support over an agreed timeframe, based on the agricultural measurement of support (AMS) index. He suggested that the so-called blue box—support payments to farmers to take land out of agricultural production—should be first capped, and later reduced in subsequent negotiations. The so-called green box—support payments to farmers for nontrade distorting activities, such as research and development—might remain as set out in the Derbez text emerging from Cancun. On market access, he pointed out the main difficulty that remained was the "blended formula" for reducing agricultural tariff rates and liberalizing nontariff barriers, although he noted that most members agreed to a common approach to market access for both developed and developing countries provided that clear special and differential provisions

¹⁸ WTO, "Statement by the Chairperson of the General Council December 15-18, 2003," found at <http://www.wto.org/>. The initial consultations were reported October 14 referencing JOB(03)/199, with the reports on the major rounds of consultations held on November 18 under JOB(03)/212 and finally on December 9, 2003 under JOB(03)/221.

were in place to account for development, food security, and similar needs in developing countries. On export competition, members largely agreed that all unfair export competition should be subject to reduction or elimination, with the key disagreement being the end-date for the phaseout of agricultural export subsidies. His consultations showed that preferential treatment for special products, as well as special safeguards for agricultural products, have grown to become important elements of the special and differential treatment discussions.

Nonagricultural Market Access

Members largely agreed that the Derbez text on nonagricultural market access was carefully drafted and could be used as a starting point. Members largely agreed that a formula approach was key to these negotiations, but that there was no agreement yet on the specific formula to be used. Members did not agree on the sectoral component for tariff liberalization, whether this component was voluntary or mandatory, or whether it was a core or a supplementary modality of the negotiations. Many members viewed the Derbez text as balancing the two elements, thereby linking the outcome of one with the other.

Singapore Issues

The chairman found no consensus in his consultations concerning the Singapore issues, other than possibly to allow each subject to advance on its merits, i.e. to “unbundle” the four issues from being a single subject. His suggestion to members was to continue to explore possible negotiating modalities for trade facilitation and for transparency in government procurement, and leave investment and competition policy for further reflection.

Cotton Initiative

The chairman noted that his focus in consultations was on the substance of the trade and development aspects of the cotton proposal, leaving aside the procedural issue of whether to discuss the cotton initiative under the agriculture negotiations or as a standalone issue. For trade matters, his discussions concluded that the role of domestic support policies was the principal instrument affecting the cotton sector, followed by the role of market access policies. The role of direct export subsidies appeared to present minimal impact on the world market for cotton. Discussions of the development aspect of the cotton initiative coalesced around but did not resolve three broad

elements that emerged from the chairman's consultations: (1) the extent to which WTO competence extended to the areas of financial and technical assistance, (2) various providers of financial and technical assistance beyond the WTO, and (3) development projects and programs specific to cotton.

Procedures

The chairman suggested that arrangements be made to resume negotiations under the Doha Development Agenda by reactivating the Trade Negotiating Committee and the negotiating groups early in 2004, following the February 2004 WTO General Council meeting held to elect new officers for the year.

Conclusion

The extensive consultations held by the WTO General Council chairman with WTO members following Cancun indicated that a number of core issues from the meeting remained unresolved by the end of 2003. Although members agreed in principle to resume negotiations, there appears little readiness among participants to alter negotiating stances that could resolve the current stalemate over how to restart negotiations.

USTR Proposal on Resuming Negotiations

In an effort to avoid a hesitant resumption of negotiations in 2004, the United States Trade Representative (USTR) sent an open letter in January 2004 to trade ministers participating in the Doha Development Agenda, suggesting that negotiations concentrate on several core areas so as to maintain focus during 2004.¹⁹ The areas mentioned were (1) agriculture, (2) nonagricultural market access, (3) services, (4) special and differential treatment, and (5) the issue of trade facilitation, from among the Singapore issues. Other issues mandated by the Uruguay Round Agreements and Doha declaration—such as dispute settlement improvements, and trade and environment matters—would be included in the Doha Round as well, but not part of the core subjects.

¹⁹ Office of the United States Trade Representative, “A Common-sense Approach to Advance the Doha Development Agenda,” *Trade Facts*, Jan. 12, 2004, found at Internet address <http://www.ustr.gov>, retrieved Jan. 15, 2004; Inside Trade Publications, “Zoellick Calls For WTO Mid-Year Frameworks, Ministerial By End Of 2004 — Letter From USTR Robert Zoellick To Trade Ministers,” *Inside U.S. Trade*, found at Intranet address <http://www.insidetrade.com>, retrieved Jan. 15, 2004.

The USTR, Robert Zoellick, proposed that negotiating frameworks might be developed by mid-2004, if senior officials in capitals were actively engaged in prodding negotiators forward in their work in Geneva. To help focus on this timetable, the USTR proposed that participants meet in Hong Kong—the agreed host for the WTO Sixth Ministerial Conference—at the end of 2004 rather than the previously scheduled end of 2005.

February 2004 WTO General Council Actions

Discussion of these issues was raised at the first WTO General Council meeting held February 11-12, 2004. WTO members agreed on a slate of chairpersons for 2004 for both WTO committees as well as bodies established under the Trade Negotiations Committee for the Doha Development Agenda. For WTO bodies, the 2004 officers include: General Council, Amb. Shotaro Oshima (Japan); Council for Trade in Goods, Amb. Alfredo Chiaradia (Argentina); Council for Trade in Services, Amb. Peter Brno (Slovak Republic); and the TRIPS Council, Mr. Joshua Law (Hong Kong China).²⁰ For the negotiating groups under the Doha Development Agenda, chairpersons include: Agriculture, Amb. Timothy Groser (New Zealand);

²⁰ Chairpersons for other WTO bodies include: Dispute Settlement Body, Amb. Amina Mohamed (Kenya); Trade Policy Review Body, Amb. Asavapit Puangrat (Thailand); Committee on Trade and Development, Amb. Coulon Trevor Clarke (Barbados); Committee on Balance of Payments, Mr. Giulio Tonini (Italy); Committee on Trade and Environment, Amb. Naela Gabr (Egypt); Committee on Budget and Administration, Amb. Ronald Saborio Soto (Costa Rica); Working Group on Trade, Debt and Finance, Amb. Peter Balas (Hungary); and Working Group on Technology Transfer, Amb. Jaynarain Meetoo (Mauritius).

Non-Agricultural Market Access, Amb. Stefan Johansson (Iceland); Services, Amb. Alejandro Jara (Chile); Trade-Related Intellectual Property Rights Special Session, Amb. Manzoor Ahmad (Pakistan); Rules, Amb. Eduardo Perez-Motta (Mexico); Trade and Environment Special Session, Amb. Toufiq Ali (Bangladesh); Review of Dispute Settlement Understanding, Amb. David Spencer (Australia); and Committee on Trade and Development Special Session, Mr. Faizel Ismail (South Africa).²¹

The Doha Round chairpersons are to serve until the Sixth Session of the WTO Ministerial Conference, to be held in Hong Kong, China. However, many argued at the General Council meeting that there should first be some progress in the negotiations in Geneva before setting a date for the Sixth Ministerial Conference, rather than risk pressing forward with a ministerial conference date before results were evident.²² Although other members expressed a need for deadlines to spur negotiations forward, to date the participants in the Round have declined to take up the USTR proposal of a ministerial conference on an advanced schedule at the end of 2004. The next WTO General Council meeting is scheduled for May 17-18, 2004.

²¹ No chairpersons were appointed for the Singapore Issue Working Groups (Transparency in Government Procurement, Interaction between Trade and Investment, and Interaction between Trade and Competition). Discussions on trade facilitation continue to be held under the aegis of the General Council. Consultations continue in the General Council regarding trade facilitation and transparency in government procurement, whereas future consultations will address how the issues of investment and competition policy might be treated at some later point.

²² U.S. Department of State, "11 February 2004 Meeting of WTO General Council Meeting," prepared by U.S. Mission, Geneva, message reference No. [none], Feb. 19, 2004.

Addendum

Summaries of Derbez Text Annexes

Note.—In the summaries, [tbd] means “to be determined.”

Annex A—Framework for Establishing Modalities in Agriculture

The members would reaffirm their commitment from the 2001 Doha declaration to establish a fair and market-oriented trading system for agriculture through fundamental reform that strengthened rules and specific commitments on support and protection directed at correcting and reducing distortions in world agricultural markets. The draft ministerial text set out decisions to be taken at Cancun in the principal categories under negotiation that involved (1) domestic support, (2) market access, (3) export competition, (4) least developed countries, and (5) newly acceded members. These decisions, set out largely in the detailed form of numerical answers to draft provisions involving ‘some percent’ range in support reduction or reduction over ‘some number’ of years, were left incomplete at the end of the Cancun ministerial conference due to the lack of consensus.

Domestic support

- Reduction in the final bound Aggregate Measure of Support (AMS) of percent to [tbd] percent
- Product-specific AMS to be capped during the period [tbd]
- De minimis domestic support reductions of [tbd] percent
- Direct payment support shall not exceed 5 percent of the total value of agricultural production in the 2000-2002 period by [tbd] percent, and subsequent support shall be reduced linearly by [tbd] percent for a further [tbd] years.
- Allowed total AMS support will be reduced by at least [tbd] percent.

Market access

Under the blended tariff reduction formula:

- [tbd] percent of import-sensitive tariff lines shall be reduced [tbd] percent on average, with a minimum [tbd] percent cut;
- [tbd] percent of tariff lines of import-sensitive tariff lines shall result from the com-

ination of tariff cuts and expansion of tariff-rate quotas (TRQs);

- [tbd] percent of standard tariff lines will be reduced by a “Swiss” formula¹ reduction;
- [tbd] percent of tariff lines shall be duty free;
- The resulting simple average tariff reduction for all agricultural products shall be no less than [tbd] percent;
- For tariffs above a maximum of [tbd] percent, developed country participants shall reduce these tariffs to at least the maximum or offer effective market access in these or other areas through a request-offer process.
- Tariff escalation will be addressed by applying a factor of [tbd] to the tariff reduction of the processed product in cases where the tariff for the processed product is higher than that for the product in its primary form.
- In-quota tariffs shall be reduced by [tbd] percent.
- The use and duration of the special agricultural safeguard (SSG) remains under negotiation.

Export competition

- Members commit to eliminate export subsidies for products listed as of particular interest to developing countries, to be implemented over [tbd] years.
- Members commit to reduce export subsidies, on a budget and quantity basis, with a view to phasing them out.
- Members commit to eliminate the trade-distorting element in export credits by reducing repayment terms to that in commercial practice, such as a term of [tbd] months.

Least developed countries

- Least developed countries shall be exempt from reduction commitments. Whether developed countries will provide duty- and quota-free market access for agricultural products from least developed countries is under negotiation.

¹ A “Swiss” formula reduction is a nonlinear—or exponential—reduction formula that lowers higher tariff rates proportionally more than lower tariff rates, thereby “harmonizing” resulting tariff profiles more than would result using a linear reduction formula.

Recently acceded members

- Recently acceded members may enjoy longer timeframes and/or lesser tariff reduction commitments.

Other matters

- The so-called peace clause is to be extended by [tbd] months.
- Further work on modalities is to consider a number of issues of interest but not yet agreed, including the continuation clause, export taxes, geographical indications, implementation periods, linkages between the three main agricultural categories under discussion (that is, import access, export competition, and domestic support), nontrade concerns, proposals for flexibility for certain groupings, sectoral initiatives, single disk export privileges, as well as other detailed rules.

Annex B—Framework for Establish Modalities in Market Access for Nonagricultural Products**Items largely agreed**

The ministers would reaffirm their aim to reduce or eliminate tariff barriers—including tariff peaks, high tariffs, and tariff escalation—and nontariff barriers on nonagricultural goods. In this endeavor, the ministers also would reaffirm that they would pay special attention to products of particular export interest to developing countries, special and differential treatment for developing countries, and less-than-full reciprocity on the part of developing countries in the reduction of these market access barriers.

The ministers agree to reducing tariff barriers by a nonlinear formula, applied on a line-by-line basis, allowing for less-than-full reciprocity on the part of less and least developed country participants. They agree on comprehensive product coverage, with no prior exclusions. They agree on reductions from bound tariff rates after full implementation of current concessions. They agree on a 2001 base year for MFN applied tariff rates (rates applicable on November 14, 2001). They agree on credit for autonomous liberation for developing countries if the tariff lines were bound on an MFN basis subsequent to the conclusion of the Uruguay Round. They agree that all specific duties shall be converted to and bound at ad valorem equivalent duties, on a basis yet to be determined. They

agree to hold negotiations on the basis of HS1996 or HS2002 nomenclature, with results finalized into HS2002 nomenclature. They agree that the import data reference period shall be 1999-2001.

Items to be decided

Participants with binding coverage less than [35] percent of their nonagricultural tariffs will bind [100] percent of these tariffs, instead of participating in the formula tariff reduction. These bindings are not to exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions. The ministers direct the negotiating group to pursue possible tariff harmonization or elimination on a sectoral basis as well. The ministers agree that developing countries participants are to have longer implementation periods for tariff reductions, plus additional flexibility in implementing reductions through provisions not as yet finalized that would reserve some percent of these tariff lines from the reduction formula. The ministers agree that least developed countries are to be exempt from the formula as well as any sectoral tariff reductions or eliminations. Ministers are called upon to agree to duty- and quota-free market access for least developed countries for nonagricultural products by the year [tbd]. Developed countries are asked to consider elimination of low duty tariffs. The ministers agree on the importance of reducing nontariff barriers (NTBs), instruct participants to intensify their work on this matter, and encourage further notifications of NTBs, so as to facilitate request/offer, horizontal, and vertical negotiating approaches.

Annex C—Special and Differential Treatment

Annex C set out draft text regarding special and differential treatment for developing and least developed countries covering 27 separate items in the Uruguay Round Agreements and related decisions and rulings. The provisions addressed are found largely in the understandings on various GATT 1994 Articles (e.g. GATT Art. XVII, XVIII, XXXVI, XXXVII, and XXXVIII), several in the General Agreement on Trade in Services (GATS Art. IV, XXV, and the telecommunications annex), several in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Art. 66.2, 67, and 70.9), and a number concerning the Ministerial Decision on measure in favor of least developed countries (par. 2 and 3).

Annex D—Transparency in Government Procurement

Members would agree that the first meeting of the Trade Negotiating Committee after the Cancun ministerial meeting would establish a Negotiating Group on Transparency in Government Procurement and appoint a chairman. Negotiations on a multilateral agreement on transparency in government procurement would be based the Doha declaration, paragraph 26,² and would build on the progress attained in the Working Group on Transparency in Government Procurement. Members would reaffirm that any negotiations would not restrict the scope of countries to

² Paragraph 26 of the Doha declaration reads: “26. Recognizing the case for a multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. These negotiations will build on the progress made in the Working Group on Transparency in Government Procurement by that time and take into account participants’ development priorities, especially those of least-developed country participants. Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers. We commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion.”

give preferences to domestic supplies and suppliers, but would be limited merely to the transparency of awards in government procurement matters. No prior judgment would be assumed regarding coverage of transactions beyond goods (such as services) or central government procurement (such as subcentral or municipal government procurement); applicability of the WTO Dispute Settlement Understanding; and only procurement above certain value thresholds would be negotiated. Developing and least developed countries would receive special consideration concerning their development priorities.

Annex E—Trade Facilitation

Members would agree that the first meeting of the Trade Negotiating Committee after the Cancun ministerial meeting would establish a Negotiating Group on Trade Facilitation and appoint a chairman. Negotiations would aim to clarify and improve relevant aspects of GATT Articles V, VIII, and X so as to improve the movement, release, and clearance of goods including goods in transit. Developing and least developed countries would receive special consideration concerning their implementation capacities, and could receive technical assistance in this area.