

### **Doha Mandates**

*Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, 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. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area."*

(Paragraph 27 of the Doha Ministerial Declaration)

*The Doha Ministerial Declaration also provided identical mandates for investment, competition policy, transparency in government procurement and trade facilitation.*

(Paragraphs 20, 23 and 26 of the Doha Ministerial Declaration)

## **Trade Facilitation**

The July Package (WT/L/579) represented the first concrete agreement on the status of the Singapore Issues in the Doha Round since talks broke down at the Cancun Ministerial. WTO Members agreed on the basis of 'explicit consensus' in the General Council to formally launch negotiations on trade facilitation, while dropping the more contentious issues of investment, competition policy and transparency in government procurement from the Doha Work Programme.

Annex D of the July Package states that negotiations "shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit." Article V deals with freedom of transit for goods from another Member, and states that all charges imposed on goods in transit must be 'reasonable'. Article VIII says that fees and formalities connected with importation and exportation must be about equal to the cost of the services rendered, so that they do not constitute a form of indirect protection, and calls for reducing the number and diversity of such fees. GATT Article X requires all trade regulations to be clearly published and fairly administered.

The modalities for the negotiations contain a series of unprecedented caveats for special and differential treatment (S&D) for developing and least-developed countries, such as tying the extent of their obligations under the final agreement to their capacity to implement them. Technical assistance and capacity building provisions are also more binding than they are elsewhere: if developing and least-developed countries do not receive the additional support and assistance that they need to develop infrastructure necessary to implement their commitments, they simply will not have to.

### **Mandated Deadline**

As the agreement by explicit consensus to launch negotiations on trade facilitation makes the issue part of the Doha

single undertaking, the negotiations will conclude when the Doha Round does.

### **Background**

The 1996 Singapore Ministerial Declaration established working groups to analyse issues related to investment, competition policy and transparency in government procurement. It also directed the Council for Trade in Goods to "undertake exploratory and analytical work [...] on the simplification of trade procedures in order to assess the scope for WTO rules in this area." (For an overview of the run-up to the WTO Cancun Ministerial, refer to the ICTSD-IISD Doha Round Briefing Series, Volume 2).

Para. 27 of the Doha Declaration provides the mandate for the Working Group on Trade Facilitation. The post-Doha work programme is organised around the following three 'core' agenda items: (i) GATT Articles V, VIII and X, each to be addressed in consecutive meetings (ii) trade facilitation needs and priorities of Members, particularly developing and least-developed countries and (iii) technical assistance and capacity-building.

At the Cancun Ministerial Conference, despite the EU's eleventh hour willingness to take investment and competition off the negotiating table, sharply differing positions among many WTO members prompted Ministerial Conference Chair, Mexico's Foreign Minister Luis Ernesto Derbez, to end the meeting. Some attribute the breakdown to Minister Derbez's decision to address the highly divisive Singapore issues prior to agriculture, where agreement appeared possible.

Following Cancun, General Council Chair Carlos Pérez del Castillo started a series of informal 'green room'-style consultations on 14 October 2003. These meetings were endorsed by the General Council on 21 October, where Members indicated some willingness to continue Doha Round talks in Geneva on a number of key areas – including the Singapore issues.

In the aftermath of the Cacus collapse, informal meetings at the Heads of Delegation level discussed potential approaches to the Singapore issues. Many developing countries strongly opposed the plurilateral approach to investment proposed by the EU. They feared that developed countries would negotiate an agreement with strong investor protections amongst themselves, and then pressure individual developing countries to sign up to it.

A willingness to discuss trade facilitation emerged by the first week of December 2003. Bangladesh, on behalf of the least-developed country (LDC) group, supported by 15 other developing countries including China and India, submitted a communication on the Singapore issues (WT/GC/W/522) requesting that investment, competition and transparency in government procurement be dropped. As there was no consensus on the way forward, the Chair suggested continuing discussions on trade facilitation and transparency in government procurement.

The debate remained largely unchanged until April 2004, when a 'core-group' of developing countries and LDCs said they were prepared to discuss trade facilitation, but only for the purpose of clarifying substantive modalities for negotiations. In addition to insisting that negotiations must be based on 'explicit consensus', they called for the remaining Singapore issues to be dropped altogether from the WTO work programme, and expressed a desire to see prior movement in issues such as agriculture before starting discussions on trade facilitation.

## Trade Facilitation in the July Package

Developing countries' acceptance of negotiations on trade facilitation in the July Package was largely due to "development language unprecedented in WTO negotiating history", as well as progress (compared to Cancun) on the critical issue of agriculture.

Annex D includes provisions on special and differential treatment (S&D) for developing countries and LDCs, as well as technical assistance and capacity-building. The language on S&D far exceeds that in other agreements in that it links new obligations to the successful delivery of technical assistance and capacity to developing countries. Para. 2 states that the principle of S&D "should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members."

Annex D is also peppered with references to cost considerations, which may help assuage developing country and LDC concerns about facing dispute settlement proceedings for non-implementation of obligations that were beyond their means to implement.

With regard to new infrastructure required to implement obligations, para. 6 says that "where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required," backed up by the stipulation that such Members "would not be obliged to undertake investments in infrastructure projects beyond their means." Para. 6 does, however, nod to developed country concerns about the legal and financial implications of the assistance commitments by adding: "While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments by developed countries to provide such support are not open-ended." The nature and scope of application of dispute settlement rules to trade facilitation will be determined during the negotiations.

Infrastructure-related obligations could fall beyond the mandate of WTO technical assistance and into the realm of overseas development assistance agencies, international organisations,

and institutions such as the World Bank. Recognising the diverse nature of work related to trade facilitation, as well as the need to ensure coherent, effective and operational technical assistance, para. 8 of Annex D asks Members to invite collaborative efforts from the IMF, the OECD, the WTO, UNCTAD and the World Bank.

## Current State of Play

In post-July negotiations, WTO Members have agreed to deal first with the clarification and improvement of the three articles mentioned in the July Package. Some of the international organisations mentioned in the July Package mandate have already presented their work and findings on trade facilitation to Members, and they will be invited to attend future meetings on an ad hoc basis. The negotiating process has been described as 'flexible', 'evolutionary' and 'Member-driven'. Many Members believe that trade facilitation efforts will lead to improved transparency, certainty, legal security and efficiency in customs procedures. Landlocked developing countries in particular hope that the negotiations will address their concerns about border delays and higher transit costs for their goods.

## Other Singapore Issues

Paragraph 1(g) of the July Package declares that the other Singapore issues "will not form part of the Work Programme set out in [the Doha] Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round." And indeed, such clarification work has been suspended. In addition, the WTO's Technical Assistance Plan for 2005 states that the three remaining Singapore issues will not be covered in regional seminars, although assistance could be requested at the national level. They will also continue to feature in Geneva-based and Regional Trade Policy Courses (see Doha Round Briefing No.12).

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