

### GENEVA MINI-MINISTERIAL: 'NOW OR NEVER' FOR REAL THIS TIME?

Trade ministers from some three dozen nations are gathering this week at WTO headquarters in Geneva in an attempt to strike breakthrough deals on liberalising agriculture and manufacturing trade that would make it possible to conclude the Doha Round negotiations in the foreseeable future.

Their prospects for success are far from assured. Substantial differences persist on cuts to farm subsidies and industrial tariffs, as well as on the expansion of agricultural market access in developed and developing countries. Countries prominent in services trade want "signals" that their objectives will be met. Also in need of resolution: brewing disagreements over banana trade, location-based food names, and biodiversity-related patent rules. Some of the WTO's smallest Members are anxious about the erosion of trade preferences they currently enjoy.

On the other hand, incremental progress on a wide range of low-profile technical issues in the agriculture talks has given Members greater clarity about how they stand to be affected by a deal. This, in theory, leaves them better equipped to actually agree on the issue that has been the linchpin of the negotiations.

Late last month, when summoning ministers to Geneva, Pascal Lamy, the WTO's director-general, put their chances of a deal at "above 50 percent." He has since said that the odds have improved, but only modestly.

Many obituaries have already been written for the trade talks, most recently during each of the past two summers, after pushes for a deal broke down in acrimony. But like a punch-drunk boxer, the negotiations have staggered on into their seventh year.

Yet several officials in Geneva report a palpable sense that this year is somehow different, that this meeting merits the 'make or break' moniker in a way that past 'moments of truth' did not. US elections in November will handcuff trade policymaking in autumn. In 2009, as an Obama or McCain administration gets on its feet in Washington, Indians will go to the polls amidst rising food and fuel prices, and the European Commission will be replaced.

A failure to put the Doha negotiations on a clear track towards conclusion, their thinking goes, would make it easy for political leaders, especially in the US, to leave the talks to languish for a couple of years – at a time when the ongoing food price crisis is already making some wonder whether the agenda is out of date.

"The institution will be totally discredited if nothing happens" this week, said one Geneva-based trade diplomat, suggesting that countries would look for alternatives to the WTO.

#### The search for 'modalities'

The framework agreements on agriculture and non-agricultural market access (NAMA) that ministers are aiming to reach this week would include formulae and figures that will determine countries' future subsidy and tariff levels. These 'modalities' are a prerequisite for countries to draw up the tariff and subsidy schedules that would become their post-Doha WTO obligations.

The 'mini-ministerial' will kick off on 21 July with a session of the Trade Negotiations Committee (TNC), the WTO body that oversees the Doha Round negotiations. The TNC, which is open to representatives from all WTO delegations, will meet at regular intervals throughout the week, with the final session tentatively scheduled for 26 July. But the real search for compromise is set to occur in a grueling series of 'green room' meetings convened by Lamy, to which he will invite officials from some 30-odd countries representing a cross-section of negotiating interests. The composition of this group will vary based on the issue under consideration. Despite its influence, the 'green room' is technically just a consultative forum: any compromise they reach would have to be brought before the entire TNC.

Discussions will proceed on the basis of draft deals put together by the trade diplomats who chair the agriculture and NAMA negotiating committees. Brazilian and Indian officials say that the search for compromise should not be limited to the ranges of figures in the two draft texts. Updated documents will presumably be circulated to negotiators during the week to reflect any narrowed differences.

Also, a 'signalling conference' on services trade has been scheduled for 24 July.

#### Ag vs. NAMA, Bound vs. Applied

The negotiations have long been marked by a sort of circular blame game, with each major player saying the onus was on others to make new concessions first.

The US and the EU think that India, Brazil, and some other developing countries are not doing enough to cut their industrial tariff ceilings. India, Brazil, and the rest of the G-20 group of

developing nations think that the US needs to further lower its cap on trade-distorting farm payments, and that the EU should expand agricultural market access. The US and some developing country farm exporters argue that India, Indonesia, and the rest of the G-33 alliance are seeking to shield an unfairly high proportion of the farm sector from liberalisation in the name of livelihood and food security concerns. India, the US, and the EU are unhappy with the services market-opening offers that have been tabled so far, but for different reasons.

In recent months, the US and the EU have by and large stopped sniping at each other on agricultural trade. Instead, they have turned their fire on developing countries like Brazil, India and China, blaming their resistance on industrial tariff cuts for the impasse in the negotiations.

Brazilian Foreign Minister Celso Amorim hit back at these allegations upon his arrival in Geneva, saying it was a “myth” that “agriculture is almost ready and all the problem now is NAMA. According to Reuters, he called it a “self-serving assertion of those who do not want to do their tasks in agriculture.”

Amorim said that even the draft agriculture text’s lower figure for the future cap on US trade-distorting farm spending, at \$13 billion, was two times higher than Washington’s current spending levels, since high food prices have pushed down subsidy payments.

He criticised industrialised countries for vaunting their deep – but largely theoretical – cuts to allowable farm subsidy spending, while focusing exclusively on prospective reductions to developing countries’ applied manufacturing tariffs (and ignoring the far higher bound ceilings).

Amorim noted that while developed countries were resisting a 100 percent tariff ceiling on agricultural products (and offering ‘pitiful’ import quota expansion in return for exceeding that threshold), the current draft NAMA text would require Brazil to make significant cuts to its applied manufacturing tariffs, and slash its highest industrial duties to 23-25 percent.

Meanwhile, Japan’s government insists that it is completely opposed to agricultural tariff caps. Several EU member states, led by France and Ireland, accuse the Commission of having yielded too much on agriculture without receiving comparable concessions in return.

The Brazilian foreign minister’s remarks served to highlight the starkly different views among Members on what constitutes a fair ‘exchange rate’ between concessions on agriculture and NAMA, especially since ‘bound’ theoretical maximum subsidy and tariff levels are the WTO’s negotiating currency.

In theory, the often-wide gaps between developing countries’ bound industrial tariff levels and their applied rates, like those between industrialised nations’ farm subsidy spending caps and their actual expenditures, should give both camps more wiggle room to negotiate. But even to reach a deal that has only modest effects on applied rates (“I’ll constrain my ability to raise tariffs or subsidies if you’ll constrain yours”), they would have to agree on a rate of exchange for their respective gaps between bound and applied levels, dubbed ‘water’ in WTO parlance.

## **Flexibilities at issue in Ag, NAMA**

Ministers are seeking to agree on the high-profile ‘headline’ numbers that will go into the agriculture and NAMA tariff reduction formulae. As contentious – and in agriculture, perhaps more so – will be the parameters governing the ‘flexibilities’ to shelter some products from standard market access obligations.

Key aspects of the agricultural tariff reduction formula remain to be finalised, such as the depth of cuts to the highest tariffs. But with many lucrative exports in major markets – say, beef to the EU – likely to be designated for gentler tariff cuts as ‘sensitive’, the likely expansion in import quotas for such products remains significant. Despite progress on calculating domestic consumption (the basis for calculating tariff rate quota expansion), the number of such products remains undetermined, and subject to disagreement from exporters.

Competitive exporters might also clash with import-sensitive developing countries in the G-33 bloc over the number of ‘special products’ eligible for complete or partial exemption from tariff cuts for food and livelihood security and rural development concerns. Another potential point of contention would be extent of remedies available under the proposed ‘special safeguard mechanism’ (SSM), which would allow developing countries to raise tariffs beyond bound ceiling levels in order to combat import surges.

According to a report in The Hindu newspaper, Indian Commerce Minister Kamal Nath told journalists in New Delhi last week that special products and the SSM were non-negotiable “make or break” issues essential to defending the livelihoods of subsistence farmers.

In the NAMA talks, Brazil, India, South Africa, and other members of the NAMA-11 complain that the draft text’s ‘coefficients’ for the formula that will determine countries’ future tariff levels require them to cut their bound tariffs by deeper margins than rich countries. They say this violates the Doha mandate for ‘less than full reciprocity’ in reduction commitments. Meanwhile, the US and the EU suggest that the coefficients, along with associated flexibilities allowing developing countries to shield a certain proportion of manufacturing trade either partially or wholly from tariff cuts, barely suffice, if at all, to open up the fast-growing developing country markets.

In addition to deep divisions over the coefficients and the flexibilities, the two sides have butted heads over the issue of ‘anti-concentration’ – proposed restraints on the ability of developing countries to concentrate flexibilities on particular categories of products, such as automobiles. China, India, and Argentina have expressed vehement opposition to the anti-concentration restraints proposed by the EU and the US. Differences over sector-specific liberalisation initiatives might also flare up.

## **Bananas threaten to slip up talks**

Older than the WTO itself, disagreements over banana trade have also reared their head in the run-up to the mini-ministerial. Since last November, Lamy has been trying to broker a solution

acceptable to the EU and two groups of banana producers vying for access to its market: Latin American banana exporters, and members of the African, Caribbean, and Pacific (ACP) group of former colonies.

Brussels has maintained a complicated banana import regime involving quotas and tariffs in order to provide preferential access to ACP bananas as well as to protect producers in EU overseas possessions. Despite various reforms, the import regime – including the current tariff, equivalent to 176 euros/tonne – has been repeatedly ruled to violate WTO rules, in cases brought by Latin American banana exporters and the US since the early 1990s.

Last week, the EU announced that it could accept a compromise proposed by Lamy, which would have seen its banana tariff cut to 116 euros/tonne by 2015, with a 26 euro/tonne reduction in the first year. The proposal would have also exempted bananas from tariff cuts under the Doha Round.

However, several of the Latin American countries rejected the proposal as insufficient, including Costa Rica, Ecuador, Guatemala, and Honduras. Ecuador estimated that under the draft agriculture text's provisions, the EU's tariff on bananas would drop to 34 euros/tonne, albeit over a longer time period.

Sources say that the Latin American producers might be able to live with a final tariff in the neighbourhood of 116 euros/tonne, but want more of the reductions to be front-loaded as a 'down payment'.

Although the Latin Americans and the ACP group have managed to whittle down significantly the number of other products, such as sugar, on which the formers' demands for accelerated liberalisation conflict with the latter's requests for slower, gentler tariff cuts to protect their trade preferences, the issue remains unresolved.

#### **GI extension, TRIPS-CBD still unresolved**

Parma ham and patent rules for drugs based on traditional medicines may not seem like the most obvious threats to ministers' chances of reaching a compromise. Nevertheless, Lamy has repeatedly warned Members of the risk of a "big clash" over differences on whether to extend additional intellectual property protections to geographically-linked foods such as Darjeeling tea or Roquefort cheese, as well as on whether patent applicants should be obliged to disclose any biological resources or traditional knowledge used in their inventions.

A North-South coalition of a hundred-odd countries, led by Brazil, the EU, India, and Switzerland, has called on ministers to accept both as part of a modalities agreement. They also called for a modalities deal to launch negotiations to accordingly amend WTO intellectual property rules as part of a final Doha Round package.

These demands have been rejected by Australia, Canada, Chile, Mexico, New Zealand, South Korea, and Taiwan which argue that it would be inappropriate for ministers to make such detailed decisions on 'geographical indication (GI) extension' and a patent rules amendment when attempting to hammer out modalities.

The EU and Switzerland have suggested that increased price premiums for GI-protected products could help compensate their farmers for subsidy and tariff cuts resulting from the Doha Round.

#### **Taking exception to exceptions**

Since even a single unhappy country can block the consensus that WTO rules require for an agreement, the draft texts are peppered with different exceptions for individual Members or groups. By responding to the development needs of poor countries and the political sensitivities of rich ones, the exceptions aim to enable their acquiescence to an accord.

For instance, the EU is granted an accommodation for the way its farm subsidy programmes fall into WTO classifications. The United States is allowed to base some agricultural subsidy reforms against unusually high expenditures during a time period different from that used by other Members, resulting in a higher spending entitlement. In order to preserve the Mercosur trade bloc's common external tariff, Argentina, Paraguay, and Uruguay are permitted to shield a higher share of manufacturing imports from full tariff cuts than fellow group member Brazil or other developing countries.

Certain exceptions overlap, pitting one country's interests against another's, in some instances generating discontent that may have to be addressed as part of a modalities accord.

To take one notable example, the current NAMA text leaves open a possible scenario in which Asian LDCs would, at least for a time, face higher tariffs in the US market on a few key textile and clothing products than two non-LDC developing countries. This despite a widely accepted notion that LDCs should receive the most concessions in the 'development round', followed by developing countries, and finally the industrialised world.

Provisions in the NAMA text aimed at softening the blow of the erosion of trade preferences the EU and the US have long granted to some of the world's poorest countries (Paragraph 28) allow each of the two economic giants to take ten years instead of five to phase in Doha Round tariff cuts on some tariff lines, primarily textiles and clothing. This would at least slow the rate at which preference beneficiaries would have to confront potential displacement by more competitive exporters of the same products.

Not surprisingly, other exporters have misgivings about the longer implementation period. China recently put the value of commercial opportunities foregone as a result of the delay at \$100 billion.

Pakistan and Sri Lanka argued that they would be especially harmed by the extra-long implementation period, and were not much richer than LDCs anyway. As a result, the text includes a bracketed provision (Paragraph 30) under which the US would take only five years to lower tariffs on a subset of clothing tariff lines from disproportionately affected countries -- but take ten years to implement tariff cuts on the same exports from the rest of the world. Pakistan and Sri Lanka were the only two such disproportionately affected countries mentioned in a bracketed footnote. Each is slated to receive the faster liberalisation for five tariff lines, together accounting for seven of the 25 in the US'

preference erosion list. The products include cotton shirts, trousers, and sweaters.

The US grants preferential duty-free market access to African LDCs like Lesotho and Madagascar, but not to Asian LDCs. Therefore, if Members were to adopt the special clause for Pakistan and Sri Lanka as is, the two developing countries would potentially be able to export cotton T-shirts to the US at post-Doha tariff rates within five years of the start of the implementation period. In contrast, countries such as Bangladesh, Cambodia, the Maldives, and Nepal could find themselves waiting a decade to receive the same duty levels for products that are among their key exports, especially for Bangladesh.

This situation is possible because of a different exception. In principle, Bangladesh and the others should have nothing to worry about, since all LDCs are set to receive duty- and quota-free access to industrialised country markets as part of a Doha deal. But when the US and other countries agreed at the WTO's 2005 Hong Kong ministerial meeting to grant unrestricted market access to LDC exports, they insisted on being able to exclude up to 3 percent of tariff lines.

The US might grant all LDCs duty- and quota-free access for the seven tariff lines in question – but it might not. Governments have not yet had to indicate which tariff lines they will place under the 3 percent exception.

The real crux of the problem is the lack of clarity about which products would receive duty- and quota-free access, said one Nepali trade official, a view shared by Bangladesh and Cambodia. Ending up with worse access to the US market than non-LDCs would be a “very awkward position,” the source said.

These countries want a prospective NAMA modalities agreement to set an early deadline for governments to notify precisely how they will implement duty- and quota-free access for LDCs: specific details on which products will fall within the 97 percent, and indications about how the remaining 3 percent might be progressively implemented. One potential deadline would be when Members submit their draft tariff schedules outlining product-specific liberalisation commitments, some months after modalities are agreed.

They also want assurances in the modalities agreement that governments will not focus the 3 percent exception on the small handful of products that LDCs produce competitively. Bangladesh has raised the notion of an ‘anti-concentration’ measure that would require countries to spread the 3 percent evenly across the different chapters and sections of the HS system used to classify merchandise for tariff purposes. This would mirror the restrictions on developing country flexibilities that the US and the EU have been pushing in the NAMA negotiations.

If the US is unwilling to assure access for key exports, representatives from the Asian LDCs say that they should at the very least receive the same quicker tariff cuts as Pakistan and Sri Lanka, as a “third-best” solution that would enable them to cut their losses.

### **Come back in 2012?**

Even if WTO Members do manage to strike a modalities agreement this week, it would hardly guarantee the rapid conclusion of the Doha Round. Well before they even need to confront the challenge of getting a multilateral trade accord approved by the US Congress, officials would have to agree on thorny issues such as reforming anti-dumping rules, future disciplines on fisheries subsidies, and market-opening offers in services trade. In a recent note to delegations, the chair of the rules talks, looking beyond the establishment of agriculture and NAMA modalities to plan for intensive work in September, pointed to the lack of progress on anti-dumping in particular.

Governments insist they are committed to concluding the round in 2008 (as they once said about 2007, 2006, and even 2004). This would be virtually impossible without a modalities agreement before the WTO's August holiday.

As ministers prepare to start their deliberations in Geneva, some have taken the unusual step of downplaying the importance of reaching an accord this week. Amorim said that Brazil was prepared to wait four years in order to “obtain a better agreement” than the deal currently on the table, according to Agence France Presse.

AFP reported that US Trade Representative Susan Schwab also shrugged off suggestions that she felt pressure to compromise, saying “this is a round that will come together when it's ready to come together. With 152 Members there is no good time or bad time to close a multilateral deal.”

A contrasting view on the upcoming discussions came from The Economist magazine, which recently editorialised that by the week's end, “the Doha Round of trade talks could be ready to serve or left to rot.”

ICTSD reporting; “Brazil says big effort still needed in WTO farm talks,” REUTERS, 19 July 2008; “Trade powers tackle agric issue ahead of WTO talks,” REUTERS, 20 July 2008; “US optimistic on WTO talks if China leads concessions,” AGENCE FRANCE PRESSE, 19 July 2008; “Brazil prepared to wait four years for better WTO deal,” AGENCE FRANCE PRESSE, 19 July 2008; “Defrosting Doha,” THE ECONOMIST, 17 July 2008; “Farmers' concerns will be decisive at WTO,” THE HINDU, 17 July 2008.

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