

No Consensus on New Round Despite Release of Pre-Doha Drafts

Trade ministers meeting in Qatar on 9-13 November for the fourth WTO Ministerial Conference face a wide range of tough tradeoffs and decisions, as three draft texts issued on 27 October spell out a variety of unresolved issues among WTO Members.

The three draft texts consist of (i) the Ministerial Declaration, (ii) a Decision on Implementation, and (iii) a Decision on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and Access to Medicines / Public Health. Together, they represent the culmination of WTO General Council Chair Stuart Harbinson's efforts to draw convergence between Members' views on a host of areas that could be up for negotiation or review at the conclusion of the Doha Ministerial. Not surprisingly, the more contentious items on the agenda are also those over which agreement has eluded Members in the past, including at the 1999 Ministerial Conference in Seattle.

Traditional fault lines have emerged over TRIPs and health/medicines (see page 6); implementation and special and differential treatment (see page 4); agriculture; environment; and the so-called new issues, including investment and competition policy. Nevertheless, Mr Harbinson and WTO Director-General Mike Moore hope the new drafts present enough of a middle for Members to reach consensus to undertake what the Declaration calls a 'broad and balanced work programme' that would include an 'expanded negotiating agenda'. These have been widely interpreted as codewords for launching a new round.

Initial reactions to the documents have been less than supportive: while one developed country Member saw them as a 'solid basis' for agreement, an EU representative expressed doubts. Developing countries – as well as civil society groups – have for the most part condemned the texts. Nigeria on 29 October sent a blistering letter to Chair Harbinson claiming that the draft Declaration was one-sided and 'generally accommodated in total the interests of developed countries while disregarding the issues of interest to developing countries.' The letter stressed Nigeria's continued opposition to 'new issues' or tariff negotiations and invited the Chair to include 'alternative views' in a revised draft text so as to give ministers 'the other side of the story'.

Delicate Balance on Agriculture

The text on agriculture in the draft Declaration is unchanged from an initial wording released by Mr Harbinson on 12 October. No WTO Member is completely satisfied with language – described by one trade official as a 'balance of unhappiness' – but most have said it could serve as a 'basis' for

discussions. For many countries, particularly the EU, the issue remains a 'make-or-break' concern for the Ministerial.

Inter alia, the text would commit Members to negotiations aimed at 'substantial improvements in market access' and 'reductions of, with a view to phasing out, all forms of export subsidies, and substantial reductions in trade-distorting domestic support.' This language has been criticised by both the free market-oriented Cairns Group of agriculture-exporting countries and by the EU, Japan, South Korea, Norway and Switzerland, which make generous use of export subsidies. Some Cairns Group members want to see the language strengthened from 'trade-distorting' to include 'production-distorting' domestic support. European Commission representative Carlo Trojan called the export subsidies text 'unacceptable' to EU countries. In prior negotiations the EU has strongly resisted any commitment to eliminate export subsidies, as well as insisted that negotiations cover all forms of export support, including export credits.

A number of developing countries warned that language on special and differential treatment contained in the agriculture text should not be weakened. The text currently stipulates that 'special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated'.

India and Zimbabwe (speaking on behalf of African Members) said they would withhold consensus on agriculture and on other parts of the Declaration if the special and differential treatment language were changed in any subsequent revisions. In spite of reservations from practically all quarters, the 'balance of unhappiness' is not likely change, at least until ministers tackle the agriculture negotiating mandate in Doha.

IN THIS ISSUE

TRIPs and Public Health, Opportunities for Doha	3
Dispute Settlement News	6
TRIPs and the CBD: What Language to Take to Doha?	7
China's WTO Membership: Trade and Environmental Challenges	9
India's Plant Variety Protection Act	11
Sustainable Development – An Ethical Construct in Search of Multilateral Expression	13
Civil Society Views	14
Investment and the WTO: What Next?	17
Sustainable Use of Natural Resources, the WTO and MEAs	19
Is WTO Law Becoming More Sustainable?	21
Meeting Calendar/Publications	24

Published by the International Centre for Trade and Sustainable Development.

Environment

Also deemed by many as a 'make-or-break' issue for the Ministerial talks, environment has emerged as a major area of contention between the EU – supported to varying degrees by Norway, Switzerland and Eastern European countries – on one side, and most other Members on the other. The EU group is pushing for negotiations that would clarify a range of environmental issues, including the use of precaution, the relationship between WTO rules and those of multilateral environmental agreements, and ecolabelling to be initiated at Doha, while the rest of the Membership remains opposed to these.

Continued on page 2

Pre-Doha Drafts, continued from page 1

Aiming at a middle ground, the latest draft Declaration proposes that Members initiate a two-stage process at Doha. In the first stage, which would last until the fifth Ministerial Conference in 2003, the WTO's Committee on Trade and Environment (CTE) would identify any need to clarify relevant WTO rules. In the second stage, the CTE would report to the fifth Ministerial and make recommendations on the possibility of launching negotiations on areas previously studied. This could be seen as providing political capital to the CTE, which has so far not produced any tangible results or recommendations.

Also under environment, the draft Ministerial Declaration would urge the CTE to give particular attention to environment-trade-development 'win-win-win' scenarios; to the relationship between the multilateral trading system and MEAs; to the relevant provisions of the TRIPs Agreement, and to 'ecolabelling', though the latter is not elaborated upon in any way.

The draft Declaration has kept reference in the preambular section both to sustainable development and the right of Members, under WTO rules, to take measures to uphold and enforce the levels of health, safety, and environmental protection they deem appropriate. Language committing the Committees on Trade and Environment, as well as Trade and Development, to act as forums to identify and debate environmental and developmental aspects of the (potential) negotiations has also been left in from the earlier draft.

New Issues Antagonise Developing Country Interests

The so-called 'new' or 'Singapore' issues (brought forward at the 1996 Ministerial in Singapore) of investment, competition policy, transparency in government procurement, and trade facilitation have all emerged as areas for eventual negotiation under the revised draft.

The new issues are supported mainly by the European Union, Japan and other developed countries who want to launch negotiations in these areas soon as possible, presumably in order to provide tradeoffs for agricultural and other concessions they may be required to make under a new round. Most developing countries, and in particular the Like-Minded Group including India, Pakistan and Malaysia, oppose the adoption of any of these areas as negotiating items, arguing that developing countries are simply not ready to engage in talks that could bring new commitments when previous imbalances (i.e. implementation) remain unaddressed.

'We have been clearly pointing out that we are not in a position to commence negotiations in any one of these four areas, said Indian Ambassador Srinivasan Narayanan at a General Council session in October. 'My minister was asked to accept a non-prejudicial study programme with a clear stipulation that negotiations will commence in these areas only when there is explicit consensus,' he said.

The September draft Declaration had put forward two options for both investment and competition: either countries could choose to enter negotiations in each or to undertake further analytical work. The revised draft now would commit Members to negotiations on possible multilateral frameworks, i.e. on rules rather than market access, on investment and competition after the fifth Ministerial Conference, with the proviso that Members could opt out of negotiations, or opt in to the new agreements at a later time.

It remains unclear what a number of participants would constitute the necessary 'critical mass' to engage in negotiations. However, one source indicated that benefits gained by a country in the negotiating process could then be revisited by others if that country were to pull out of the talks at a later date. This could mean that a country wanting to opt into an investment or competition agreement in future may not have access to benefits it negotiated in the leadup process. While the texts on investment and competition are less than what the EU and Japan had originally been seeking, the two Members have indicated they could live with the formulation.

Continued on page 23



BRIDGES

Between Trade and
Sustainable Development

Published by the International Centre for
Trade and Sustainable Development.

Director: Ricardo Meléndez-Ortiz
Editor: Anja Halle
Address: 13 chemin des Anémones
1219 Geneva, Switzerland
Tel: (41-22) 917-8492
Fax: (41-22) 917-8093
E-mail: ictsd@ictsd.ch
Web: <http://www.ictsd.org>

The opinions expressed in signed contributions to *BRIDGES* are the authors' and do not necessarily reflect the views of ICTSD. Manuscripts offered for publication are expected to respect good journalistic practice and be compatible with ICTSD's mission. Guidelines for contributors are available on request, as well as on ICTSD's website.

Material from *BRIDGES* can be used in other publications with full academic citation.

© ICTSD and contributors of signed articles.
ISSN 1562-9996

Annual subscription:

US\$225 for OECD country addresses
US\$75 for other countries
Courtesy subscriptions are possible thanks to the support of ICTSD's funders.

The International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit organisation that aims to contribute to a better understanding of development and environmental concerns in the context of international trade. It upholds sustainable development as the goal of international trade and promotes participatory decision-making in the design of trade policy.

The *BRIDGES* series of publications is possible in 2000-2001 through the generous support of: the Governments of Switzerland (SECO) and the United Kingdom (DFID), the John D. and Catherine T. MacArthur Foundation and the Rockefeller Foundation.

It also benefits from contributions from ICTSD's core funders: the Governments of Finland, Denmark, the Netherlands and Sweden; Christian Aid (UK), IUCN The World Conservation Union, MISEREOR, NOVIB (NL), Oxfam (UK) and the Swiss Coalition of Development Organisations (Switzerland).

Please see inside back cover for information on other publications in the *BRIDGES* series.

Pre-Doha Drafts, continued from page 2

Under the new draft, and unchanged from the first text, negotiations on transparency in government procurement and trade facilitation would begin right away.

Also unchanged is language mandating 'examination' of the relationship between trade, debt and finance, as well as the relationship between trade and transfer of technology. In proposals submitted to the WTO on 18 September by the Like-Minded Group, developing countries had requested that working groups be established on trade and debt, trade and finance, and trade and transfer of technology. They also proposed that Members negotiate a Framework Agreement on Special and Differential Treatment (see Bridges Year 5 No.7, page 7 for more details on these proposals), but the draft Declaration only mentions the proposal in passing while endorsing with the work programme on special and differential treatment set out in the Decision on Implementation-related Issues and Concerns (see page 4).

Industrial Tariffs, LDCs and TRIPs Issues

One notable area of concern to developing countries is paragraph 16, on market access for non-agricultural products. This section would mandate Members to engage in reductions in tariff peaks, tariff escalation, and non-tariff barriers, primarily in industrial goods. The original formulation provided developing countries with an out, saying that their commitments could be based on 'less than full reciprocity'. The new text seems to have weakened this latter provision, referring the 'special needs and interests of developing and least-developed countries' to other text on special and differential treatment both in the GATT and in the new draft Declaration. It is unclear whether readings of these S&D provisions could be interpreted as strongly as granting developing countries 'less than full reciprocity,' however.

This despite a proposal circulated on 19 October by Kenya, Mozambique, Nigeria, Tanzania, Uganda, Zimbabwe and Zambia, which said that liberalisation of industrial tariffs under structural adjustment schemes had previously led to serious problems of de-industrialisation and loss of value-added jobs. The proposal advocated a study process – rather than negotiations – to determine the implications of reductions in tariffs and non-tariff barriers on developing country economies.

On other issues, the latest draft has included a new paragraph (35) on least-developed countries (LDCs), which *inter alia* would commit Members to the objective of duty- and quota-free market access for products originating from LDCs. It has also kept intact language that would 'clarify and improve' WTO rules on anti-dumping, an issue that has been resisted vehemently by the United States (anti-dumping is also addressed in the Implementation Decision, see related article on page 4).

Geographical indications, ministers would mandate the TRIPs Council to address the 'extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits'. This paragraph seems tied to the launch of some sort of 'new round', as the Council would be requested to report, by 2002, to the Trade Negotiations Committee established to oversee negotiations. A large number of both developed and developing countries have been pushing for extending TRIPs protection to food items and other products characterised by their geographical origin.

Ministers would also request the TRIPs Council to pursue its work on the mandated reviews of Article 27.3(b) and the implementation of the Agreement itself under Article 71.1, as well as examine – under the implementation concerns mandate – the relationship between the TRIPs and the Convention on Biological Diversity. In undertaking this work, the Council should 'take fully into account the development dimension'.

Copies of key documents relevant to the Ministerial process are accessible on the ICTSD website at: <http://www.ictsd.org>.

The International Centre for Trade and Sustainable Development (ICTSD) implements its programme of information, dialogues and research through partnerships with institutions around the globe.

The *BRIDGES* series of publications includes:



BRIDGES
Weekly Trade News Digest

Available by e-mail and on the ICTSD web-site
<http://www.ictsd.org>

An indispensable electronic weekly source of trade news tailored for the environment and development communities.

To subscribe to this service please send e-mail to: listserv@iatp.org. Leave the subject line blank. In the body of the message write: subscribe bridges

Editor: Hugo Cameron
Tel: (41-22) 917-8492
Fax: (41-22) 917-8093
E-mail: hcameron@ictsd.ch

PUENTES

Entre el Comercio y el Desarrollo Sostenible



Co-publisher: Fundación
Futuro Latinoamericano
Quito, Ecuador

Co-ordinator: Nicolas Lucas
Tel. and fax: (593-2) 920-635/920-636/463-503
E-mail: ffla@interactive.net.ec

PASSERELLES

entre le commerce et le développement durable



Co-publisher:
ENDA-Tiers Monde
Dakar, Senegal

Co-ordinator: Taoufik Ben Abdallah
Tel: (221) 821-7037
Fax: (221) 822-2695
E-mail: syspro2@enda.sn
Web: www.enda.sn

BRÜCKEN

Zwischen Handel und Zukunftsfähiger Entwicklung



Co-publisher:
Germanwatch
Bonn, Germany

Co-ordinator: Rainer Engels
Tel: (49-228) 60492-0
Fax: (49-228) 60492-19
E-mail: tradewatch@germanwatch.org
Web: www.germanwatch.org