



**United Nations  
Conference  
on Trade and  
Development**

Distr.  
GENERAL

TD/B/49/12  
20 September 2002

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD  
Forty-ninth session  
Geneva, 7–18 October 2002  
Item 6 of the provisional agenda

**DEVELOPMENTS AND ISSUES IN THE POST-DOHA WORK PROGRAMME OF  
PARTICULAR CONCERN TO DEVELOPING COUNTRIES**

Background note by the UNCTAD secretariat

**Executive summary**

In accordance with the intergovernmental mandate of the Bangkok Plan of Action, the background note briefly describes the current status of the Doha work programme from the perspective of developing countries' interests and concerns. It focuses on major areas of negotiation, including agriculture, services, non-agricultural products, special and differential treatment and implementation-related issues. Some major developments which directly or indirectly affected the climate of the negotiations are also highlighted. It is argued that achieving an equitable balance in the "single undertaking" at the end of the negotiating process will be critical. Whether this happens will depend very much on efforts to accommodate the economic and trade interests of the developing countries, particularly in relation to special and differential treatment and policy spaces for their national development strategies, technical assistance, provision of social safety nets, and other support for countries and sectors that might be negatively affected by the negotiated outcomes. Much also depends on the resolution of outstanding matters related to the implementation of the existing WTO Agreements.

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## INTRODUCTION

1. In accordance with the Bangkok Plan of Action,<sup>1</sup> UNCTAD's major objectives in the area of international trade include the following:

- (a) To help developing countries integrate themselves more fully into, and derive benefits from, the international trading system. In this context, UNCTAD's work should focus on policy analysis and consensus-building to identify more clearly the parameters of the development dimensions of the multilateral trading system.
- (b) To support capacity-building in developing countries so as to progressively enable these countries to become effective players in the multilateral trading system in terms of benefitting fully from trade liberalization, enjoying their multilateral rights and complying with their multilateral obligations.
- (c) To identify, on the basis of research and empirical evidence and with assessment of the development impact, the implications of existing and emerging multilateral trade rules for the development prospects of developing countries.

2. Therefore, international trade issues (particularly their development dimensions), which are subject to multilateral negotiations in the World Trade Organization (WTO), have been addressed in UNCTAD's intergovernmental meetings. Intergovernmental expert meetings on various trade-related issues, including agriculture, commodities, traditional knowledge, environmentally preferable products, environmental requirements and market access, construction services, energy services, competition law and policy and consumer interests, and antidumping, as well as analytical work by the UNCTAD secretariat on several trade-related development topics, contributed to the elaboration of national positions on the issues involved and also contributed to a better understanding of the development dimensions of specific matters related to market access and multilateral trade rules, including those under scrutiny in the new negotiations. After the conclusion of the Doha Ministerial Conference, UNCTAD's Commission on Trade in Goods and Services, and Commodities recommended that "the Trade and Development Board review regularly developments and issues in the post-Doha Work Programme of particular concern to developing countries".<sup>2</sup> The Board endorsed this recommendation, and member States agreed that the first review as specified above would be carried out at the forty-ninth session (7–18 October 2002) of the Board.

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<sup>1</sup> The General Assembly in paragraph 18 of its resolution 55/183 also invited UNCTAD to continue to provide analytical support and technical assistance, including capacity-building activities, to developing countries to enable their effective participation in the multilateral trade negotiations.

<sup>2</sup> Report of the Commission on Trade in Goods and Services, and Commodities on its sixth session, TD/B/EX(28)/4, TD/B/COM.1/49.

3. This note endeavours to address major developments and issues of particular concern to developing countries which have emerged during the first year of negotiations under the Doha work programme, in order to facilitate deliberations under this agenda item.<sup>3</sup>

## I. MAJOR AREAS COVERED IN THE DOHA NEGOTIATIONS

4. The Doha Ministerial Declaration, in almost all of its mandates, attempted to focus new multilateral trade negotiations on issues of concern to developing countries. This included rather strong and clear provisions on strengthening special and differential treatment (SDT) in favour of developing countries to make the provisions more precise, effective and operational, as well as a strong emphasis on implementation-related issues faced by developing countries. Tight deadlines were also set in the Declaration and in the Decision on Implementation-Related Issues and Concerns so that agreements on these high-priority development-related issues could be reached at an early stage of the negotiations.

5. A broad overview of developments since the launch of the work programme at the Doha Ministerial Conference shows<sup>4</sup> that the divergent positions underlying compromises reached by Ministers have in many cases resurfaced. This has often led to time-consuming deliberations over procedural issues and the scope of the negotiating mandates, particularly on SDT and implementation-related issues. More importantly, the lack of consensus resulted in a failure to meet the deadlines, particularly for improving SDT for developing countries. On the other hand, the Doha negotiations have almost completed the necessary organizational stage and have established deadlines for the ongoing negotiations on agriculture, services, non-agricultural tariffs and other issues scheduled for 2002–2003.

6. Other major developments which directly or indirectly affected the climate of negotiations and tested mutual confidence among participants included the following:

- Granting to the President of the United States by the Congress of Trade Promotion Authority (in July 2002), giving the President greater flexibility to negotiate trade agreements under the Doha work programme and several regional free trade agreements (Free Trade Area of the Americas and bilateral agreements with Chile and Singapore), as well as extending the U.S. Generalized System of Preferences scheme;
- Signing into law of the U.S. Farm Security and Rural Investment Act 2002 (in May 2002), which provided for an increase in various agricultural subsidies to a total of US\$73.5 billion over the next 10 years;
- Plans announced by the European Union in May 2002 to undertake a further review of its Common Agricultural Policy (CAP);

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<sup>3</sup> The present note builds on the forthcoming Report of the Secretary-General of the United Nations on "International Trade and Development", which was prepared by the UNCTAD secretariat in accordance with General Assembly resolution 56/178.

<sup>4</sup> For a comprehensive discussion of issues under the Doha work programme, see UNCTAD (2002), *The Trade and Development Report, 2002*, Chapter 2, "The Multilateral Trading System after Doha." United Nations publications, sales no. E.02.II.D.2, New York and Geneva.

- Introduction by the United States of safeguard measures on steel products (in March 2002) and opening of the WTO dispute settlement procedures associated with these measures;
- The slow pace of elimination of restrictions on textiles and clothing in accordance with the WTO Agreement on Textiles and Clothing, which leaves the bulk of trade affected by quotas, to be liberalized on 31 December 2004;
- Several WTO dispute settlement cases, in particular the decision of the Arbitrator on *United States – Tax Treatment for “Foreign Sales Corporations”* (August 2002);
- High-level conferences of developing countries such as the Third Summit of the African, Caribbean and Pacific (ACP) Heads of State and Government (July 2002) in Nadi, Fiji, and the Ministerial Conference of Least Developed Countries (August 2002) in Cotonou, Benin; and
- The outcomes of major United Nations conferences such as Financing for Development in Monterrey (March 2002) and the World Summit on Sustainable Development in Johannesburg (August–September 2002).

7. The Doha work programme established a tight timetable for the conclusion of negotiations by 1 January 2005 as a “single undertaking” (whereby all parts of the outcome of negotiations form a single package binding on all WTO Members). It includes both negotiation and non-negotiation work, with the negotiations undertaken in special sessions in various bodies under the overall supervision of the Trade Negotiations Committee and the General Council. A “midterm review” will be undertaken by the Fifth Ministerial Conference in Cancún, Mexico, from 10 to 14 September 2003. This conference is also to decide on launching negotiations, upon explicit consensus regarding the modalities, on a multilateral framework for cross-border investment, a multilateral framework to enhance the contribution of competition policy to international trade and development, a multilateral agreement on transparency in government procurement, and negotiations on trade facilitation.

## **Agriculture**

8. The mandates adopted in Doha gave new impetus to the negotiations begun in March 2000, as provided by the “built-in agenda”. The Doha Declaration reiterates the long-term objective of the agricultural trade reform initiated with the Uruguay Round Agreement, and it commits Members to “comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support”.<sup>5</sup> It is important to note that the mandates reassert the need for SDT for developing countries, as an integral part of all elements of agricultural negotiations, to be mandatory (“shall be embodied in the schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated”), operationally effective and complementary to development needs.

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<sup>5</sup> Para. 13 of the Doha Ministerial Declaration.

9. After the Doha Ministerial Conference, and upon completion of the second phase of negotiations (April 2001–March 2002),<sup>6</sup> the negotiations entered the phase for establishing the “modalities” – the actual mechanisms of new concessions as well as commitments, including numerical targets – for further agricultural liberalization. Two informal meetings, one on export competition policies and another on market access, were held in June and September 2002 respectively. Four more meetings are scheduled from mid-September onwards, with a view to agreeing on the comprehensive modalities by 31 March 2003.

10. The main features of the negotiations in 2002 can be summarized as follows:

- (a) The in-depth discussions on 24 technical issues during the second phase showed more divergences than consensus – among developed countries, between developed and developing countries, and among developing countries. However, this process has been useful for enhancing the negotiating capacity of the developing countries and the least-developed countries (LDCs), including the capacity to analyze the issues and positions of their trading partners.
- (b) In June 2002, the first negotiation on modalities was held on export competition policies. The main focus was the time frame of possible phasing out of export subsidies, a process the majority of developing countries hope to complete within the implementation period of the Doha agenda. However, one area of concern to many developing countries, particularly LDCs, was the possible negative impact of new disciplines/guidelines for export competition policies (including export subsidies, export credits, food aid and export taxes) on their countries’ food security. The issue was addressed, but no specific modalities to meet such needs were proposed.
- (c) Market access issues, which were scheduled to be discussed in early September 2002, may cause more controversy among developing countries than between developed and developing countries. Substantial most-favoured-nation tariff cuts could, while improving global trading opportunities, lead to an immediate loss of market share for some developing countries because of the erosion of trade preferences.<sup>7</sup> Moreover, there is disagreement among developing countries regarding the optimal level for their own tariff liberalization. Some groups of developing countries may, for food security and rural development purposes, give priority to maintaining high bound tariffs in order to protect their vulnerable farmers from international competition. Others argue that limiting tariff cuts by developing countries would minimize gains from South-South trade, which has been the largest-growing area of agricultural trade in recent years.

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<sup>6</sup> Encompassing 24 technical issues for in-depth discussion.

<sup>7</sup> A similar problem will certainly appear in the tariff negotiations on non-agricultural products.

- (d) With regard to domestic support commitments, the focus of the negotiations is on the extent of reductions in trade-distorting domestic support. Since most developing countries use neither such domestic support nor export subsidies, the extent and timing of tariff concessions by developing countries may depend on the degree of reduction or elimination of subsidies to farmers in developed countries.
- (e) The scope of new SDT for developing countries, including the creation of a “development box”, is being intensely discussed in the negotiations for each of the three pillars of the Agreement. The common concern among developing countries is how to best address development needs, such as food security, rural development and product diversification, while achieving global agricultural liberalization. However, disparities in levels of economic development and agricultural production capacity among developing countries have made it difficult for them to reach agreement on actual elements to be included in the new SDT provisions. Countries with economies in transition, as well as those recently acceded to the WTO, are calling for special provisions that take into consideration the specific problems they face in their continuing agricultural liberalization.
- (f) One of the main implementation concerns in the area of agriculture stems from the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net-Food-Importing Developing Countries, which has been reflected in the Doha Ministerial Decision on Implementation-Related Issues and Concerns. In this regard, the report of the inter-agency panel of experts established by the Committee on Agriculture, which was submitted to the General Council on 31 July 2002, recommends improving the accessibility of the existing facilities provided by the International Monetary Fund to ease the cost of importing basic foodstuffs, and further examining the feasibility of establishing an ex ante borrowing facility for private-sector food importers in LDCs and net-food-importing developing countries (NFIDCs).

11. As this note goes to press, there has not yet been major convergence in the positions of the various negotiating parties. However, WTO Members are, more than ever, actively engaged in bilateral consultations in order to work out a modality that would serve their varying interests. The intensity and technical nature of the negotiations on modalities are expected to increase after circulation of the Chairman’s overview of proposed modalities, due in December 2002. Technical and analytical support to developing countries, particularly LDCs, in the coming months needs to be country-specific and product-specific.

### **Non-agricultural products**

12. In Doha, Ministers agreed to begin negotiations on market access for non-agricultural goods to reduce or eliminate tariff peaks, tariff escalation and non-tariff measures affecting all products, particularly those of interest to developing countries. While overall applied

industrial tariffs are modest, tariff peaks and escalation are particularly prevalent in areas of export affecting developing countries and may be seen as hindering their efforts to expand and diversify their production and trade. Such high tariffs and escalation are especially important in labour-intensive sectors, including textiles and clothing, footwear, leather goods, a number of basic manufactures, fish and fish products and so on.

13. Some developing countries are concerned that having to make concessions in the new negotiations on industrial products could limit the scope of their industrial development programmes. However, the Doha Ministerial Declaration provides some leeway for these countries, noting the provisions of Article XXVIII *bis* of the GATT 1994 for less than full reciprocity by developing countries. Moreover, there is frequently a substantial gap between their applied and bound rates, which also provides protection against any significant new concessions developing countries might make in the negotiations.<sup>8</sup>

14. One issue of concern to a number of developing countries is the erosion of tariff preferences such as those granted under the GSP, other special arrangements and regional trade agreements. The negative effects of such moves are likely to fall more heavily on beneficiaries of more substantial preferences, such as ACP countries and LDCs. Therefore, provision might usefully be made for possible negative effects resulting from the implementation of the eventual results of the new negotiations

15. As of mid-2002, no decisions had been made in the WTO regarding the targets or modalities for negotiations on industrial products. The work will resume on the basis of negotiating modalities that are still undetermined.

16. Many developing countries and LDCs have only limited capacity to prepare adequately for these complex tariff negotiations, despite the significant implications that the tariff regime has for their industrial policies and the competitiveness of their non-agricultural products.

## Services

17. In Doha, the Ministers recognized the work already undertaken in the negotiations, initiated in January 2000 under Article XIX of the General Agreement on Trade in Services (GATS), and the large number of proposals submitted by members concerning a wide range of sectors and several horizontal issues, as well as concerning the movement of natural persons. They reaffirmed the Guidelines and Procedures for the Negotiations (S/L/93) adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations. The mandate in Paragraph 15 of the Doha Declaration provides for the negotiations on trade in services to be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries, as well as outlining key elements of the timetable for negotiations on services.

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<sup>8</sup> This gap results from cuts made in most-favoured-nation tariffs under unilateral (or autonomous) reforms by developing countries in the last 10 to 15 years.



Initial requests for specific commitments were to be submitted by 30 June 2002 and initial offers by 31 March 2003.

18. The negotiations are now entering a new phase where the focus will be on market access negotiations rather than general discussion of the proposals made at the Special Session of Council for Trade in Services. Bilateral consultations on the requests for market access began in July 2002. Few developing countries have identified their specific sectoral and modal interests, the barriers to their exports or the impact of requests by developed countries on their services sectors. Of particular concern to developing countries are the evaluation of requests and the formulation of their own requests and offers, which is a particularly complex task as they need to determine clearly their national policy objectives and the competitiveness of each sector or subsector and also determine, among other things, the optimal sequencing of the steps involved in liberalization, the capacity of domestic firms to provide the services in question and whether this capacity would be positively or negatively affected by further competition in the market. Other elements of such an evaluation relate to impact on investment, impact on employment and access to high-quality, more efficient imports. The most significant shortcoming in the negotiations process is the absence of data and statistics that countries need in order to rationally assess gains and losses, benefits and costs. The domestic consultation mechanism involving all stakeholders is an important element in identification of national policy objectives. The constraints on cross-border movement of service suppliers are among the most important asymmetries and need to be addressed by specific commitments from developed countries.

19. The negotiations on key infrastructural services pose an important challenge to developing countries in the new round of negotiations. The social dimension of services and the universal provision of essential services are of particular importance in relation to sectors such as health, education, transport and cultural and telecommunications services. The need to reconcile this complex set of objectives with those of economic efficiency and international competitiveness raises a dilemma for developing countries in the negotiations.

20. The continuing analysis and growing understanding of trade in services in the developing countries are facilitating identification of anticompetitive practices affecting the multilateral liberalization process and the interests of developing countries in particular.

21. Negotiations on an emergency safeguard mechanism were supposed to be completed by March 2002. Progress was not sufficient, and the deadline has now been moved to 2004. Developing countries have expressed disappointment at the lack of consensus in the negotiations on emergency safeguard measures, although the discussions on the issue have been more in-depth. These countries believe that without such a mechanism their ability and willingness to make concessions will be limited. Consensus regarding the definition of the domestic industry and treatment of foreign-owned enterprises is crucial to the acceptance of such a mechanism and treatment of "mode four".

22. Effective implementation of Articles IV and XIX.2 would require two operational elements, namely facilitation of exports (i.e. enhanced, non-reciprocal access to developed-country markets for developing-country exports) and flexibility and policy discretion

regarding developing countries' approach to their own markets (i.e. the right to regulate and pursue developmental objectives, maintain some trade barriers and provide appropriate support to domestic services providers). Developing countries and LDCs are aware of the need to attach specific conditions to their offers in terms of new investment and technology transfer that may improve the supply capacity and competitiveness of their services. These countries require national studies and a solid negotiating capacity in order to formulate appropriate conditions that could be attached to their new schedules of commitments. It has also been suggested that the Council for Trade in Services regularly monitor the implementation of all the actions and measures required to effectively implement Article IV and suggest remedial action as necessary.

23. The discussions on assessment of trade in services which have been taking place since 1999 have not yet led to adoption by the Council of conclusions, including with respect to the contribution of GATS to increasing participation by developing countries. The Guidelines clearly indicate that the objective of assessment is to adjust the negotiations in the light of the results of the assessment with reference to the objectives of Article IV. Following are some themes that have emerged from developing countries' submissions: (a) The unique situation in each country will dictate the pace and path of liberalization most suitable to the circumstances; (b) on certain occasions, Governments will need to be flexible in redressing problems they did not anticipate when undertaking liberalization commitments; (c) lack of meaningful concessions, critical barriers to exports and supply constraints prevent developing countries from reaping benefits; (d) benefits from privatization and liberalization do not accrue automatically but require certain preconditions, including an appropriate regulatory framework, entrepreneurial and technological capacity-building and complementary policies; and (e) liberalization entails adjustment costs, and ensuring access to universal and essential services needs to be treated as a high priority.

24. Another important area of work relates to Article VI.4 involving disciplines on domestic regulation, particularly the right of members to regulate, and to introduce new regulations governing the supply of services within their territories in order to meet national policy objectives. Given existing asymmetries with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right has been recognized in the preamble of the GATS. Moreover, the Doha Ministerial Declaration, in paragraph 7, reaffirms the right to regulate and to introduce new regulations governing the supply of services. Regulatory reform is of key importance to developing countries, and they have emphasized that a country's planned pace of liberalization needs to be adjusted so that its supervisory and regulatory capability is not compromised. Difficulties in this area stem from several factors, including the difficulty of applying the concepts of necessity and proportionality to the services sector, the reluctance of regulators to let trade negotiators determine disciplines pertaining to domestic regulations, and pressure from civil society, which is concerned with the social impact of such disciplines, particularly on public goods and provision of universal services. There is also a need to develop clear SDT provisions in any future disciplines on domestic regulation. Of concern to developing countries are issues relating to flexibility to undertake policy/regulatory reform, pursuit of public policy objectives and universal services.

25. The negotiations provide an opportunity for developing countries to achieve commercially meaningful market access commitments in sectors and modes of interest to them, particularly labour-intensive services, and to devise effective benchmarks for the implementation of Article IV. However, for them, priority areas remain the proper sequencing of services sector reform, tackling supply constraints, identification of their national policy objectives, and capacity-building rather than market access. Actions by developed countries to grant market access and support investment and technology flows in key services sectors of developing countries will play a determining role in ensuring a pro-development outcome. A key concern for developing countries is not only whether the flow of trade is maximized but also the developmental aspects of such trade, including its contribution to building a competitive goods and services sector and maximizing the overall level of development at the national level.

### **WTO rules**

26. The agenda of the Negotiating Group on Rules has been structured, in accordance with the Doha Ministerial Declaration, around the following topics: Anti-Dumping; Subsidies and Countervailing Measures, including Fisheries Subsidies; and Regional Trade Agreements. Both developed and developing countries have tabled many proposals since March 2002.

27. A number of proposals, including by several developing countries, set out both specific improvements to these two agreements and, more broadly, areas where clarification or improvement could be sought. In particular, some proposals reflect work on implementation issues raised in the lead-up to the Doha Ministerial meeting in November 2001. Several developing countries raised concerns about the lack of transparency and predictability of certain provisions within the Anti-Dumping and Subsidies Agreements. Another concern relates to perceived imbalances in both Agreements between the obligations of developed and developing countries. For example, there are calls for changes in the prohibited subsidies obligations applying to developing countries and the provisions relating to export finance and export credits.

28. Article XXIV of GATT 1994 on regional trade agreements will probably become a key issue in 2004, when some ongoing regional negotiations (e.g. concerning the Free Trade Area of the Americas and the enlargement of the European Union) will be further along, so that their compatibility with the WTO will be raised in concrete terms. The status of many arrangements between developing countries within the legal framework of the WTO will also depend on that review and on the kinds of SDT provisions that may be considered in a new Article XXIV.

### **Trade-Related Intellectual Property Rights (TRIPS)**

29. The TRIPS Council met in March 2002 to start work on a list of issues that Ministers assigned to it in Doha. These included specific aspects of TRIPS and public health,

geographical indications, the patentability of plants and animals, biodiversity, traditional knowledge, a general review of the TRIPS Agreement, and technology transfer. Among the key substantive issues discussed were (a) compulsory licensing of drug manufacturing where a country in need of certain drugs has no domestic production capabilities; and (b) the possible application of geographical indications to products other than wine and spirits. Discussions are ongoing, with recommendations to be made to the Trade Negotiations Committee before the end of 2002.

30. In June 2002, the TRIPS Council extended until 2016 the transition period during which LDCs do not have to provide patent protection for pharmaceuticals, thereby formalizing paragraph 7 of the Doha Ministerial Declaration on the TRIPS Agreement and Public Health.

### **Implementation-related issues and special and differential treatment (SDT)**

31. Since 1999 and the preparatory process of the Seattle Ministerial Conference, a number of issues and concerns have been raised by developing countries regarding implementation of the Uruguay Round Agreements. A majority of these concerns were compiled in the “Decision on the Implementation-Related Issues and Concerns” adopted at Doha.<sup>9</sup> This Decision contains mandatory interpretations of some existing WTO rules as well as negotiating mandates (and deadlines) in order to solve the pending implementation issues.

32. At this stage, it is difficult to assess the progress made regarding implementation issues because (a) the Decision encompasses 11 agreements (in addition to the work done on SDT, which is commented on below), each one including several pending “issues and concerns”; and (b) many of these issues are being treated by the relevant WTO bodies in a fragmented and still ongoing process, according to different deadlines.

33. However, partial comments may be made, for instance, on the following issues that have been examined since the Doha Conference:

- (a) Regarding implementation of the *Agreement on Textiles and Clothing*: At the end of July 2002, several developing countries expressed their concern about the lack of progress on all the proposals contained in the Decision. These proposals aim to accelerate and intensify the liberalization of international trade in a sector where many developing countries and LDCs have a clear competitive advantage and where some industrialized countries have benefited from protection or a lengthy transition period since the GATT 1947. The Trade Promotion Authority Act recently passed in the United States contains specific provisions to ensure protection of the U.S. textile sector (particularly in case of imports benefiting from preferential U.S. regimes, whose rules of origin are

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<sup>9</sup> Other issues and concerns were compiled in document Job(01)/152/Rev.1, distributed by the WTO Secretariat as “Outstanding Implementation Issues”, incorporated into the Doha Work Programme in accordance with para. 12 of the Doha Ministerial Declaration. The relevant WTO bodies are mandated to address these issues and report to the Trade Negotiations Committee by the end of 2002.

made more precise). The Trade Promotion Authority Act provides for an assessment of the tariffs on textiles bound at the WTO by the United States' trading partners as compared to the U.S. bound rates before agreeing on further reductions. On the other hand, the European Union's position appears to aim at making significant progress towards liberalizing trade in textiles through the elimination of quotas by 2005, while nevertheless maintaining rigid rules of origin and invoking antidumping measures.

- (b) Regarding the TRIPS Agreement, the Decision on the Implementation Issues includes a mandate on the formulation of a *monitoring mechanism on the transfer of technology to the LDCs*<sup>10</sup> that is still to be agreed on. This has been one of the main implementation concerns raised by the LDCs since the Seattle Conference.
- (c) Another implementation issue having wide practical implications for exporters in developing countries is harmonization of the non-preferential *rules of origin*, which was to be concluded by the end of 2001 according to the mandate of the Decision. This work has not been completed.
- (d) Some implementation issues concern the provisions of the Agreements that require *specific technical assistance for helping LDCs implement their obligations* – for instance, in the area of technical barriers to trade. These implementation issues will probably be assessed by the General Council in December 2002 in the broader framework of an overall assessment of the mandates on technical cooperation and capacity-building contained in the Doha Declaration.
- (e) The main implementation issue concerning agriculture refers to the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net-Food-Importing Developing Countries. This issue is described in paragraphs 8–11 above together with the current status of agriculture negotiations.

34. The Decision on Implementation contains several mandates on SDT (in paragraph 12 on “Cross-Cutting Issues”). The Special Sessions of the Committee on Trade and Development initiated their work in April 2002, in view of the deadline of 31 July 2002 to submit recommendations to the General Council. This deadline had to be extended to December 2002. The main technical and political complexities of the debate on the operationalization of the SDT provisions can be summarized as follows:

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<sup>10</sup> Para. 11.2 of the Decision: “Reaffirming that the provisions of Article 6.2 of the TRIPS Agreement are mandatory, it is agreed that the TRIPS Council shall put in place a mechanism for ensuring the monitoring and full implementation of the obligations in question. To this end, developed-country Members shall submit prior to the end of 2002 detailed reports on the functioning in practice of the incentives provided to their enterprises for the transfer of technology in pursuance of their commitments under Article 66.2. These submissions shall be subject to a review in the TRIPS Council and information shall be updated by Members annually.”

- (a) Some developed countries argue that the SDT provisions have to be treated by the relevant WTO bodies, while many developing countries attach intrinsic importance to the fact that one single negotiating body (i.e. the Special Session of the Committee of Trade and Development) is in charge of this “cross-cutting” implementation issue.
- (b) Identification of the SDT provisions that are “mandatory” and those that are “non-binding” was complicated by lack of agreement regarding the criteria for classifying them as provided by the WTO Secretariat. Therefore, no real progress was made in identifying the SDT provisions whose mandatory nature was debatable or in “operationalizing” the existing SDT provisions.
- (c) Some developed countries introduced into the debate the notion of “graduation” among developing countries and LDCs in the implementation of these provisions.
- (d) Some developing countries proposed a “monitoring mechanism” to assess the utilization and development impact of these provisions, but no specific development benchmarks have been discussed to date.
- (e) The proposal to adopt a “Framework Agreement on Special and Differential Treatment”<sup>11</sup> has thus far not been discussed.

35. Therefore, the overall work done by the end of July 2002 on the implementation issues (in particular regarding textiles) and the SDT cannot be considered satisfactory in view of the goals of the developing countries and the substantive mandates of the Doha work programme. As was mentioned above, in this area the assessment of “development value” is complicated by the parcelling out of the work on implementation among several negotiating bodies and regular WTO bodies. There is also a visible trend towards focusing on SDT rules that represent exceptions and transition periods (i.e. a “negative” approach) rather than SDT rules that target the development of supply capacity through “positive” commitments on technology and investments.

### **Least-developed countries**

36. The Doha Ministerial Declaration established a range of generic and specific mandates relating to halting the marginalization of LDCs and improving their participation in the multilateral trading system. To that effect, in February 2002, the WTO Sub-Committee on LDCs adopted a special work programme<sup>12</sup> grouped around the following systemic issues: (a) market access for LDCs; (b) trade-related technical assistance and capacity-building initiatives for LDCs; (c) provision, as appropriate, of support to agencies assisting with the diversification of LDCs’ production and export base; (d) mainstreaming into the WTO’s work, as appropriate and as relevant to the WTO’s mandate, of the trade-related elements of

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<sup>11</sup> Para. 44 of the Doha Ministerial Declaration.

<sup>12</sup> Doc. WT/COMTD/LDC/11, 13 February 2002.

the LDC-III Programme of Action; (e) the participation of LDCs in the multilateral trading system; (f) the accession of LDCs to the WTO; and (g) follow-up to the WTO Ministerial Decisions and Declarations. The discussion in the Sub-Committee has not yet produced any substantive results.

### **Small economies**

37. In accordance with the Doha mandate, the WTO General Council in March 2002 adopted a work programme on small economies. The work programme is being pursued in dedicated sessions on small economies under the Committee on Trade and Development. Initial submissions on this topic focused on identifying trade-related issues relevant to small economies under various WTO agreements.

### **Trade and investment**

38. In Doha, the Ministers recognized the need for strengthened technical assistance in pursuit of that mandate and explicitly referred to UNCTAD in this regard. In response to this mandate, the WTO Working Group on the Relationship between Trade and Investment (WGTI) has met to discuss scope and definition, transparency, development provisions, non-discrimination, and pre-establishment commitments on a GATS-type positive list approach. During its next meetings the WGTI is to discuss exceptions and balance-of-payments safeguards as well as procedures for consultations about and settlement of investment disputes. The Working Group is also expected to begin tackling related issues such as balancing the interests of home and host countries; the right to regulate in the public interest; the special development, trade and financial needs of developing and least-developed countries; and links to other relevant WTO provisions and existing bilateral and regional arrangements on investment. The discussions of the Working Group should form an input into a possible decision on investment scheduled for the next WTO Ministerial Meeting in 2003.

39. In response to the Doha mandate, UNCTAD has developed a new technical assistance project to help implement the Doha mandate in close collaboration with the WTO. The project involves three areas of activities stemming from the elements identified in the Doha Declaration. These areas are, in order of priority, (a) policy analysis and development, (b) human resources capacity-building and (c) institutional capacity-building. A number of national and regional training courses, seminars and symposia have been held jointly with the WTO.

### **Trade and competition policy**

40. The Doha Ministerial Declaration recognized the case for a possible multilateral framework to enhance the contribution of competition policy to international trade and development. The Ministers agreed that negotiations would take place after the Fifth Ministerial Conference on the basis of a decision to be taken, by explicit consensus, regarding

the modalities of the negotiations. The need for enhanced technical assistance was recognized. To this end, Ministers decided to work in cooperation with other relevant intergovernmental organizations, including UNCTAD. It was requested that during the period leading up to the Fifth Ministerial Conference, the WTO Working Group on the Interaction between Trade and Competition Policy work to further clarify core principles, including transparency, non-discrimination and procedural fairness, and provisions regarding hard-core cartels, as well as modalities for voluntary cooperation and support for progressive reinforcement of competition institutions in developing countries through capacity-building. It was foreseen that full account is to be taken of the needs of developing and least-developed countries and appropriate flexibility provided to address them.

41. There is thus a need to clarify the main issues and concerns of developing countries with the objective of helping them better evaluate the implications and to safeguard their interests in possible negotiations concerning a multilateral competition framework. In this regard, UNCTAD is collaborating closely with the WTO in providing technical support to the developing countries. For the fifth session of the Intergovernmental Group of Experts on Competition Law and Policy (in 2003), the UNCTAD secretariat will be preparing reports on, *inter alia*, (a) international cooperation on competition law and policy and the mechanisms used; (b) ways in which possible international agreements on competition might apply to developing countries, including through preferential or differential treatment, with a view to enabling these countries to introduce and enforce competition law and policy; and (c) the roles of possible dispute mediation mechanisms and alternative arrangements, including voluntary peer reviews, in competition law and policy. The UNCTAD secretariat also implements (in addition to its regular technical assistance and capacity-building activities) an ongoing programme of technical support in this area for developing countries, in close collaboration with the WTO secretariat.

### **Trade and environment**

42. The Doha work programme provides for negotiations on certain trade and environment issues, as well as the continuation of the work of the Committee on Trade and Environment (CTE), including the identification of any need to clarify relevant WTO rules. Negotiations have started on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements and liberalization of trade in environmental goods and services.

43. The Doha work programme includes other trade and environment issues of particular concern to developing countries, in particular the effects of environmental measures on market access and the interface between TRIPS and the Convention on Biodiversity (CBD), including with respect to traditional knowledge. Discussions in the TRIPS Council concerning paragraph 19 of the Ministerial Declaration are also relevant in this context. The CTE is expected to issue a report to the Fifth Ministerial Conference (Mexico, September 2003) and “make recommendations, where appropriate, with respect to future action,



including the desirability of negotiations”<sup>13</sup> on these and other issues contained in paragraph 32 of the Ministerial Declaration.

44. The Doha Ministerial Declaration recognized the need for capacity-building in the area of trade and the environment in favour of developing countries, in particular the LDCs. UNCTAD, in cooperation with the WTO and the United Nations Environment Programme (UNEP), has launched a series of new projects aimed at enhancing the capacity of developing countries for policy making and negotiations on key issues related to trade and the environment.

### **Trade, debt and finance**

45. The Doha Ministerial Declaration called for the establishment of a Working Group on Trade, Debt, and Finance (paragraph 36), which, at its first meeting on 12 April 2002, decided to start its work in an educational mode. The Working Group met in July 2002 to discuss linkages between trade and finance. UNCTAD, the Asian Development Bank and the Organisation for Economic Co-operation and Development (OECD) were invited to make presentations on this theme. The Working Group was scheduled to meet on 30 September to discuss links between trade and external debt.<sup>14</sup>

### **Transfer of technology**

46. Pursuant to paragraph 37 of the Doha Ministerial Declaration, the Working Group on Transfer of Technology has been established under the auspices of the WTO General Council. The Working Group is to examine the relationship between trade and transfer of technology and make recommendations for steps that might be taken to increase flows of technology to developing countries. The Working Group met twice before the end of July 2002.

47. The Ministerial Declaration emphasizes two central issues: (a) the relationship between trade and transfer of technology; and (b) possible measures that might be taken, within the mandate of the WTO, to increase flows of technology to developing countries. Concerning the work programme of the Working Group, two proposals have been submitted so far. One, submitted by 15 developing countries, referred to as terms of reference for the Working Group, intends to examine the issues of transfer of technology under five broad subheadings: provisions of the WTO Agreements related to transfer of technology; analytical work; identification of areas of possible technical cooperation; areas where consensus-building could be sought; and cooperation with other organizations. The other, presented by the European Union as a work programme aimed at contributing to a discussion on the approach to be adopted, involves, as a first step, preparation of an overview by the WTO secretariat of (i) related work of relevant WTO committees and working groups and (ii)

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<sup>13</sup> Para. 32 of the Doha Ministerial Declaration.

<sup>14</sup> In response to General Assembly resolution 56/184, a report by the Secretary-General entitled “The External Debt Crisis and Development” (A/57/...) has been prepared for submission to the Assembly at its 57th session.

existing international agreements, conventions and understandings or other relevant documentation, including relevant materials prepared by other international organizations such as UNCTAD. UNCTAD was subsequently invited to give a presentation about its work on technology transfer.

### **Dispute settlement**

48. The Special Session of the Dispute Settlement Body was established in order to conduct negotiations on clarifications and improvements to the DSU in accordance with the Doha Ministerial Declaration. The work of this body is proceeding on the basis of a “two-track” approach: a general discussion of the issues and objectives for the negotiation takes place under Track 1, and a parallel discussion of specific proposals by members is conducted under Track 2. (10 proposals were submitted before the summer break.) The focus of the Special Session’s work is expected to gradually shift towards discussion of specific proposals under Track 2, and it is expected that a more focused discussion of issues proposed for negotiation can be undertaken in late 2002.

### **Government procurement**

49. In Doha, WTO Ministers recognized the case for a possible multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity-building in this area. Negotiations in this area may take place after the next Ministerial Conference on the basis of a decision to be taken, by explicit consensus, on modalities of negotiations. Pursuant to the Ministerial Declaration, the Working Group on Transparency in Government Procurement met in May 2002 to discuss a number of elements that might form part of a multilateral agreement, in part to inform new Members. It will meet again in October 2002 to further discuss remaining elements of the work programme.

### **Electronic commerce**

50. The Doha mandate continues the work programme on e-commerce established at the Second Ministerial Conference in 1998. It was also agreed to maintain the current practice of not imposing customs duties on electronic transmissions. In 2002, the Committee on Trade and Development held a seminar on the revenue implications of e-commerce, and a dedicated discussion on e-commerce was held under the auspices of the General Council, where e-commerce is a standing item. The main issue that continues to be debated relates to classification of e-commerce. A further meeting is planned for late 2002.

### **Trade facilitation**

51. In the Doha Ministerial Declaration, Ministers agreed to begin negotiations on trade facilitation after the 2003 Ministerial Conference on the basis of a decision to be taken at that conference, by explicit consensus, on modalities. In the meantime, the WTO Council for

Trade in Goods was to 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. Discussion focused on a range of national submissions on country experiences as well as submissions by international organizations and the WTO secretariat. Publication and administration of trade regulations (GATT Article X) and fees and formalities (GATT Article VIII) are among the topics covered so far.

### **Technical cooperation and capacity-building**

52. The Doha Ministerial Declaration provided a mandate on technical assistance and capacity-building and endorsed the New Strategy for WTO Technical Cooperation: Technical Cooperation for Capacity-Building, Growth and Integration. On the basis of this strategy, the “Coordinated WTO Secretariat Annual Technical Assistance Plan 2002” was elaborated and endorsed by Members for implementation. The Coordinated Plan clustered technical assistance activities into eight categories within which technical assistance is being delivered. These areas are (a) mainstreaming and integrated framework, (b) implementation, (c) enhancing negotiating capacity, (d) trade policy capacity-building, (e) accessions, (f) non-residents, (g) information technology tools and (h) modernization of technical assistance tools. Financing for the Plan was secured with approval by members of the Doha Development Agenda Global Trust Fund in December 2001, followed by mobilization of the required funding at a pledging conference in March 2002.

53. WTO technical assistance is also provided through joint programmes with other international organizations, such as the International Trade Centre and UNCTAD, through the Joint Integrated Technical Assistance Programme (JITAP) and the six agencies implementing the Integrated Framework (IF).<sup>15</sup> The Doha Ministerial Conference instructed the WTO Director-General to consult widely on ways of enhancing and rationalizing the IF and the JITAP.

## **II. THE WORK OF UNCTAD**

54. UNCTAD’s “positive agenda” programme was developed after the First WTO Ministerial Meeting in Singapore in December 1996 to assist developing countries in trade negotiations. These efforts stepped up in the lead-up to the Third Ministerial Meeting in Seattle in November–December 1999 as well as in the preparations for Doha. These activities expanded in accordance with the mandate under the Bangkok Plan of Action. In particular, the Commercial Diplomacy Programme was launched by the Secretary-General of UNCTAD in June 1999 as a programme for all developing countries and all trade topics, supplemented by specific programmes on specific issues topics (e.g. JITAP) and for subgroups of countries (e.g. ACP). Similarly, work in other areas such as trade information and analysis; competition policy; trade, environment and development; and commodities has been strengthened to better respond to the needs of developing countries. Since the Doha Ministerial Conference,

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<sup>15</sup> The agencies are WTO, UNCTAD, the World Bank, the IMF, the ITC and UNDP.

UNCTAD's technical assistance has been provided to developing countries, in particular LDCs, to help them assess the results of the Doha work programme and develop appropriate institutional capacity and technical knowledge to enhance their trade development and economic well-being. UNCTAD also supports developing countries in trade negotiations at the regional and interregional levels, and in ensuring coherency between such negotiations and the WTO Doha work programme. These activities are supplemented by the UNCTAD secretariat's analysis of issues of particular interest to developing countries in the Doha negotiations, especially in the areas of agriculture, services and market access for non-agricultural products.

55. On 4 February 2002, the Secretary-General of UNCTAD presented to the Commission on Trade in Goods and Services, and Commodities, at its sixth session, the UNCTAD Post-Doha Technical Assistance and Capacity-Building Plan. The Plan was formulated on the basis of consultations with a number of countries and is now being implemented with extra-budgetary resources.

56. The supporting role of UNCTAD could be substantially enhanced if the organization, along with other relevant international institutions such as the IMF and the World Bank, were granted observer status in the WTO negotiating bodies.

### **III. CONCLUSIONS**

57. Developing countries have so far managed to participate actively in the Doha negotiations. They have presented numerous proposals and other submissions to all negotiating bodies. Many of these proposals are technically sound and reflect the individual and/or collective interests and concerns of developing countries. However, following the negotiations, the tasks of analyzing positions put forth by others, developing ideas and formulating them in appropriate negotiating language, and coordinating national positions inside the countries are putting a huge strain on developing countries, despite the technical cooperation efforts of a number of agencies.

58. At this stage of the negotiations, a great deal of technical work is being undertaken. Positive but intermediate progress is visible in some areas, particularly in services and agriculture, where negotiations began in 2000 under the "built-in" agenda agreed to at the end of the Uruguay Round. Elsewhere, progress is slow or absent – partly because of technical difficulties, including a crammed meeting agenda, and partly because of the difficulty of reconciling sometimes quite divergent positions. As always, there is also a tactical dimension in that negotiators are unwilling to reveal their positions until the cross-sector/cross-theme balance becomes clearer. Recent policy measures undertaken by some developed countries may have negatively affected the atmosphere of the negotiations, but the current weak economic environment makes a successful outcome imperative.

59. Whether or not the current WTO work programme agreed at Doha will achieve its development objectives remains to be seen. Achieving an equitable balance in the "single undertaking" will be critical. Whether this happens will depend very much on efforts to

accommodate the economic and trade interests of the developing countries, particularly in relation to SDT, transition periods, technical assistance and provision of social safety nets and other support for countries and sectors that might be negatively affected by the negotiated outcomes. Much also depends on the resolution of outstanding matters related to implementation of the existing WTO agreements.

60. Dr. Supachai Panitchpakdi, the new Director-General of the WTO, identified four main areas of responsibility that he hopes to treat as priorities, in addition to moving the Doha negotiations into a substantive phase. The four areas involve changes to help members resolve trade disputes, increase technical assistance to developing countries, reform internal decision-making procedures, and increase cooperation with other international organizations, including UNCTAD.<sup>16</sup>

61. In this context, it may be also recalled that the Secretary-General of the United Nations, in the report "Roadmap towards the implementation of the United Nations Millennium Declaration" which he presented to the 56<sup>th</sup> Session of the General Assembly, outlined a six-point strategy for the multilateral trade negotiations: "(i) ensuring that developed nations fully comply with the commitments they made under the Uruguay Round of multilateral trade negotiations to improve market access for products from developing countries; (ii) ensuring significant improvement in market access in developed countries for agricultural products from developing countries; (iii) eliminating the remaining trade barriers in manufacturing, especially on textiles and clothing; (iv) providing for limited, time-bound protection of new industries by countries that are in the early stages of development; (v) capacity-building and technical assistance for trade negotiations and dispute settlements; and (vi) ensuring that the next round of trade negotiations is truly a development round."<sup>17</sup>

62. The UNCTAD secretariat continues to be fully committed to these goals and is prepared to implement any additional orientations that may be formulated by the Trade and Development Board in this regard.

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<sup>16</sup> See [www.wto.org/english/news\\_e/news02\\_e/dgtranscript\\_03sep02\\_e.htm](http://www.wto.org/english/news_e/news02_e/dgtranscript_03sep02_e.htm).

<sup>17</sup> Doc. A/56/326, 6 September 2001, p. 27.