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**REVIEW OF DEVELOPMENTS AND ISSUES IN THE POST-DOHA WORK
PROGRAMME OF PARTICULAR CONCERN TO DEVELOPING COUNTRIES:
THE OUTCOME OF THE FIFTH WTO MINISTERIAL CONFERENCE ***

Note by the UNCTAD secretariat

Executive summary

The Doha Work Programme (DWP) launched negotiations to mainstream development into the multilateral trading system (MTS) while advancing trade liberalization. Two years of intense post-Doha negotiations have advanced the DWP mainly on the TRIPS Agreement and public health, the accession of Cambodia and Nepal, adoption of guidelines on accession of least developed countries (LDCs) and modalities on special treatment for LDCs in the negotiations on trade in services. Deliberations during the Fifth World Trade Organization (WTO) Ministerial Conference in Cancún were unsuccessful in building consensus on the other key DWP issues such as agriculture, non-agricultural market access, special and differential treatment, implementation-related issues and the so-called Singapore issues. Ministers agreed to continue working on the outstanding issues with a view to convening a meeting no later than 15 December 2003 to take the action necessary at that stage to enable Members to move towards a successful and timely conclusion of the negotiations. Efforts are now being made to resume the negotiations. Movement towards convergence will require renewed cooperation and constructive engagement that is in every country's interest. The Cancún conference saw the emergence of new dynamics of multilateral trade negotiations, such as issue-based coalitions of developing countries. This note reviews the state of play in the DWP negotiations and lessons learned, and it outlines a set of "benchmarks for development" against which progress in mainstreaming development into the WTO can be assessed. The UNCTAD XI process could contribute positively to balanced progress in the DWP and could reinvigorate the multilateral trading system.

* This document was submitted after the usual submission deadline in order to take account of the outcome of the Fifth WTO Ministerial Conference.

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INTRODUCTION

1. Item 5 of the agenda for the fiftieth session of the Trade and Development Board provides an opportunity for the Board to discuss progress attained in the DWP in areas of interest to developing countries, and to review the outcome of the Fifth WTO Ministerial Conference (MC-5) convened in Cancún, Mexico, from 10 to 14 September 2003. This note has been prepared by the UNCTAD secretariat to assist the Board in carrying out this mandate.

2. The Board may wish to take stock of the situation arising from the developments in Cancún, and of its implications for future negotiations under the DWP, for the development dimension and for the multilateral trading system. The examination could focus on both general and thematic aspects of the outcome of the Cancún conference and lessons for the future. UNCTAD's contribution to confidence building in the MTS and to providing analysis and technical assistance to developing countries for effective participation in trade negotiations could also be discussed.

I. THE CANCÚN OUTCOME

3. The DWP, mandated by the Doha Ministerial Declaration and adopted by the Fourth WTO Ministerial Conference (MC-4), included an extensive work programme spanning negotiations on agriculture, non-agricultural products and services; negotiations and/or examination by relevant WTO bodies of special and differential treatment (SDT), implementation issues, technical assistance, LDC-specific concerns and other matters; and Singapore issues on which negotiations could be launched after MC-5 if Members reached explicit consensus on the modalities of negotiations. The DWP set a number of deadlines for this work. By placing development issues at the heart of the DWP, the Doha Ministerial Declaration provided a major opportunity and challenge for all stakeholders to integrate these needs and interests into trade negotiations and their results. This raised the expectations of developing countries that the imbalances of the past would be corrected, and that reform and liberalization would take place in areas of export interest to them.

4. Against the background of a modest recovery in international trade in 2002, there were expectations that the results of MC-5 could build greater confidence in the future of the trading system and provide a fresh impetus to global trade. Despite an uninterrupted series of intensive negotiations in the two years following MC-4, in the Geneva process involving WTO Ambassadors and capital-based senior officials as well as in the four mini-Ministerial meetings, progress in advancing the DWP encountered a number of setbacks. WTO Members were unable to reach agreement on a number of issues of priority concern to developing countries. As the negotiating deadlines on these issues (which were designed to sequence progress to meet the target date for concluding the DWP) could not be met, developing countries found it difficult to make compromises in stalled negotiations on agricultural and non-agricultural products, and on the Singapore issues. These views emerged from a number of preparatory and Ministerial meetings of developing countries and their country groups (e.g. LDCs, the African Union (AU), the African, Caribbean and Pacific States (ACP), the

Arab States and the Caribbean States), which facilitated convergence of their views and understanding of the issues at stake, and strengthened their negotiating positions and their capacity to participate effectively in Cancún.

5. Efforts by the WTO General Council (GC) to prepare and agree on a draft Cancún Ministerial Text in Geneva proved difficult. Of the DWP items covered, agriculture, non-agricultural market access and the Singapore issues showed wide divergences. After protracted deliberations and a flurry of new proposals by both developed and developing countries, particularly the respective joint proposals on agriculture by the European Communities and the United States on the one hand and the group of 22 developing countries (G-22)¹ on the other, and the EC-Canada-US proposal on non-agricultural market access (NAMA), the Chairman of the GC issued the draft Cancún Ministerial Text (CMT Rev.1) on 24 August 2003 (Job(03)/150/Rev.1). On agriculture, the CMT Rev.1 sought to blend the approaches outlined in the EU-US proposal and the G-22 proposal for reform and liberalization of the three pillars – domestic support, export competition and market access – and presented frameworks for establishing modalities. On NAMA, it outlined approaches to tariff reform. On SDT, it provided for “a harvest” of 24 provisions out of the 88 provisions proposed by developing countries. On implementation issues, the CMT Rev.1 requested Members to “redouble their efforts to find appropriate solutions”. On the Singapore issues, it provided two sets of options: one to proceed to adopting modalities for negotiations, and the other to continue the clarification process. The GC Chairman, acting on his own responsibility, submitted the CMT Rev.1 to Ministers in Cancún with the understanding that it did not purport to be agreed in any part or as a whole and was being submitted without prejudice to the position of Members. It was expected that Ministers at MC-5 would not only engage in stocktaking but also ensure that political impetus be given to advancing negotiations on key aspects of the DWP.

6. On the eve of MC-5, WTO Members reached agreements on some issues. The most important was the Decision on TRIPS and Public Health of 30 August 2003. The Decision is a step forward in efforts to ensure that countries with insufficient or no manufacturing capacities in the pharmaceutical sector have access to medicines at affordable cost. While welcoming the Decision, many developing countries also reiterated the need for expeditiously amending the TRIPS Agreement to ensure that the solution was simple to use, sustainable, predictable and legally secure. Another step forward was the conclusion of the accession process of Cambodia and Nepal (with the decision on their accession taken by MC-5). In addition, modalities for special treatment of LDCs in services negotiations were adopted and were added to the decision on guidelines on accession for LDCs adopted in December 2002.

7. At Cancún, WTO Members engaged in negotiations to achieve convergence on the CMT Rev.1, particularly on possible modalities on agriculture and NAMA, and on whether or not to proceed, by explicit consensus, with negotiations on modalities of some or all of the Singapore issues. There was an expectation that the cotton initiative launched by four West and Central African countries would be addressed favourably. The SDT package was seen by developing countries to be inadequate, and they sought to strengthen the package through the

¹ After the formation of the Cairns Group in the 1980s, the creation of the G-22 represents a major development.

addition of several commercially valuable SDT provisions. On implementation issues, an attempt was made by developing countries to bring them back as a negotiating priority, including through the establishment of a dedicated negotiating group. On other matters – such as environment; services; some aspects of the development agenda such as LDCs and technical cooperation; trade, debt and finance; trade and transfer of technology; and small economies – there was not much contention.

8. A revised draft Cancún Ministerial Text (Job(03)/150/Rev.2) was submitted on 13 September 2003, and on the basis of this text WTO Members continued consultations. Developing countries generally considered that the revised draft did not sufficiently reflect their interests and concerns. On agriculture, the CMT Rev.2 was found unacceptable by many developing countries (G-22 and others), those who sought stronger SDT, and an alliance of 33 developing countries (G-33) on SP (special products) and SSM (special safeguard mechanisms) in agriculture. Suggestions were made for amendments and improvements. The cotton initiative countries expressed disappointment with the response indicated in CMT Rev.2, which they considered had weakened the effectiveness of their original proposal, and they prepared a counterproposal. At the same time, a core group of developing countries, later supported by many countries including the AU, the ACP and the LDCs, opposed the commencement of negotiations on modalities on Singapore issues.

9. There has been much introspection about why MC-5 could not make the desired breakthroughs on a number of major issues of the DWP negotiations, and what implications this has for the future of the MTS and the WTO. The following factors may be relevant:

- (a) The complexity and diversity of the DWP on South-South, North-North, North-South, regional, sub-regional and individual country bases.
- (b) Difficulty in meeting the three criteria mentioned by the Chairman of the GC for determining the acceptability of any compromise package, namely (a) respecting the ambition of the Doha mandate, (b) respecting the development dimension and (c) seeking overall balance in the outcome of the negotiations.
- (c) Arrival of the moment for decisions with regard to detailed and specific policy commitments at Cancún, for which concerned Members did not seem ready.
- (d) Difficulty in finding a balance between the package tabled and the expectations and demands of the 146 WTO Member States.
- (e) The fact that, against the background of expectations on development deliverables in areas of core interest to developing countries, especially agriculture, many developing countries were not prepared to accept commitments in other areas.
- (f) The emergence of a number of issue-based alliances and coalitions among developing countries (G-22 on agriculture, G-33 on SP and SSM and the “Grand Alliance” of the AU, the ACP and the LDCs). This was a factor in the

negotiations, signalling that the concerns of these groupings had to be taken on board for a successful outcome.

- (g) The role and activism of civil society, parliamentarians and the media, both in the North and South, which added a new process-related and substantive dimension to the course of multilateral negotiations.
- (h) Problems in Cancún related to difficulty in establishing mutually agreeable linkages as well as balances within and among the key issues of negotiations involving considerations of pain and gain in the short and medium terms, sequencing, level of ambition, time line issues and payout and recompense.
- (i) Many process-related obstacles, including in relation to the timing of issues and their maturity for resolution.

10. The Ministerial Statement issued by the Chairman at the close of the conference stated, "We have, indeed, made considerable progress. However, more work needs to be done in some key areas...". Officials were instructed to continue working on outstanding issues with a renewed sense of urgency. The Chairman of the GC was requested to coordinate this process and to convene a meeting of the GC at the Senior Officials level no later than 15 December 2003 to take the action necessary at that stage to enable Ministers to move towards a successful and timely conclusion of the negotiations. In this new phase, the work where Ministers have reached convergence should be maintained, while working for an acceptable overall outcome.

11. While the Ministerial Statement is reassuring regarding the continuity of the process and Members' commitment to the Doha Declaration and its mandate, questions have been raised about MC-5's implications for the MTS, the DWP and WTO reform. There is concern that there may be difficulties in evolving an open, equitable, rule-based and predictable MTS that is sensitive to the trade, financial and development needs of developing countries. Many expressed concern that the stalemate could lead to a more vigorous pursuit of bilateral and regional trade agreements, whose numbers (over 200) grew rapidly during the 1990s, on a South-South, North-North and North-South basis. The cause of trade liberalization could be affected, and protectionist sentiments could gain ground. The galvanizing of developing countries into issue-based coalitions has led to conclusions about their latent empowerment on the one hand, and concerns about North-South polarization on the other. One view expressed is that the MTS needs to be manageable and to limit itself to trade liberalization.

12. Most developing countries, including those speaking on behalf of the G-22, the AU, the ACP and LDCs, indicated willingness to engage constructively to put the DWP back on track. As was affirmed in the Cancún Ministerial Statement, all concerned could build on whatever progress had been achieved so far through the Geneva and Cancún processes. It would be advisable to approach the agenda in a forward-looking and flexible manner. It is in the interest of developing countries, developed countries and the international trading system, as well as the world economy, to uphold the credibility of the MTS and the necessity and utility of multilateral approaches.

II. SPECIFIC AREAS OF NEGOTIATION IN THE DOHA WORK PROGRAMME

A. Implementation-related issues and concerns

13. Issues related to the implementation of the results of the Uruguay Round (UR) have been a concern of developing countries since 1995 and are a key factor in the attempts to address development issues in the DWP. Implementation issues were divided into two categories: (a) where there was a specific negotiating mandate in the Doha Ministerial Declaration, the relevant issues should be addressed under that mandate; and (b) the other outstanding implementation issues should be addressed as a matter of priority by the relevant WTO bodies, which should report to the Trade Negotiations Committee by the end of 2002 for appropriate action.

14. Of the approximately 100 issues put forth by developing countries, some 40 were made the subject of immediate action through direct reference in the Decision on Implementation-Related Issues and Concerns, while the majority of the remaining issues were made subject to the negotiations pursuant to Paragraph 13 of the Decision and Paragraph 12 of the Doha Ministerial Declaration. However, developing countries consider that most of the Decision's "resolved" issues have been addressed through "best endeavour" clauses, and the deliverables of the Decision relate mostly to extended time frames and simplified administrative procedures for developing countries' implementation of commitments.

15. Some of the main outstanding implementation issues under negotiation include simplifying rules of origin and expanding import quotas for textiles; expanding the scope of non-actionable subsidies and, for example, extending the transition period for developing countries under the TRIMs Agreement; reducing developed countries' application of anti-dumping measures on imports from developing countries; increasing market access for specific goods in which developing countries have a substantial export interest; effectively implementing incentives for the transfer of technology (Article 66.2 of the TRIPS Agreement); facilitating developing countries' management of balance-of-payment difficulties; and helping developing countries to comply with product standards. Implementation issues are also central to the DWP negotiations on improvements in and clarification of the Dispute Settlement Understanding, which many developing countries have difficulty using effectively. An increasing concern has been the high resource costs associated with implementation of an increasingly wide set of WTO Agreements, which can frustrate the development aspirations of developing countries, particularly the smaller and poorer ones, for whom rising costs threaten to outweigh benefits, absorb scarce development financing and crowd out development priorities.

16. The deadline for achieving results by the end of 2002 was not met, and limited progress has taken place on the implementation issues, despite various proposals made by developing countries. The CMT Rev.2 notes that some progress has been made, and it calls for a "redoubling" of efforts by relevant WTO bodies to find solutions to outstanding issues, with no time frame given for appropriate action. It also endorses the WTO Director-General's

ongoing consultations undertaken on certain issues, including issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits. As was noted earlier, developing countries have emphasized implementation issues as a negotiating priority that needs to be addressed, including via the establishment of a dedicated negotiating group on this subject.

B. Special and differential treatment

17. SDT is an established principle in WTO to accommodate developing countries' needs and limited capacities within the MTS. However, an array of WTO Agreements, like TRIPS and TRIMs, have extended the influence of WTO from traditional border measures to "behind-the-border" measures, which increasingly points to the need for SDT and development policy flexibility.

18. The Doha Ministerial Declaration reaffirmed that "provisions for special and differential treatment are an integral part of the WTO Agreements" and mandated the Committee on Trade and Development (CTD) to perform a review of "all special and differential treatment provisions...with a view to strengthening them and making them more precise, effective and operational". Under the DWP, the CTD was to consider the legal and practical implications for WTO Members of converting SDT measures into mandatory provisions, to identify those that Members considered should be made mandatory, and to report its results to the GC with clear recommendations by July 2002. In addition, the CTD was to consider how SDT might be incorporated into the architecture of WTO rules. Three deadlines passed without results.

19. To advance consideration of SDT, the Chairman of the GC in April 2003 produced a categorization of 88 "agreement-specific" SDT proposals as a basis for further consideration by the GC. The Chairman included 24 of these proposals for adoption in the CMT Rev.1. At Cancún, in the CMT Rev.2, a package of 27 SDT decisions was proposed. The CMT Rev.2 does not specifically identify concrete actions to be taken by WTO negotiating groups and bodies on the other issues, but it defines monitoring and reporting arrangements to the GC. The CMT Rev.2 also provided that the CTD in Special Session was instructed to pursue expeditiously, within the parameters of the Doha mandate, the work on remaining agreement-specific proposals and other outstanding issues, and to report with recommendations, as appropriate, to the GC. The CMT Rev.2 did not establish a time frame for the completion of the overall work, but it directed that a report on the issues be submitted to the next Ministerial Conference. The lack of progress on commercially meaningful SDT was cited as a source of dissatisfaction by developing countries at Cancún.

C. Agricultural negotiations

20. Some 75 per cent of the world's poor live in rural areas of developing countries and depend mainly on agriculture and related activities for their livelihood.² Many developing

² Secretary-General of the United Nations, general statement to ECOSOC in June 2003.

countries specialize in the production of agricultural commodities and depend on farming for their food security, rural livelihood, subsistence and export revenue. They have experienced continuously deteriorating terms of trade and mounting trade deficits. Over the past two decades, world agricultural commodity prices have fallen by some 50 per cent,³ which currently translates into lost agricultural export earnings of over US\$60 billion annually for developing countries. In most developed countries, high levels of support to agriculture, exceeding US\$330 billion,⁴ encourage overproduction and cause world price levels to fall close to, and even undercut, producer costs in developing countries.

21. Negotiations to liberalize agricultural trade could bring about important gains for developing countries by eliminating the high levels of agricultural support in developed countries, and by reducing tariff barriers to agricultural trade. Estimates, including by UNCTAD, point to the great potential for agricultural trade liberalization to contribute to economic development and poverty alleviation in developing countries.⁵

22. The Doha Ministerial Declaration (paragraph 13) sets the objective for the current round of Agreement on Agriculture negotiations to achieve “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” while agreeing that SDT for developing countries shall be an integral part of all elements of the negotiations to enable developing countries to effectively address their development needs, including food security and rural development. Negotiations concentrated on the three pillars of market access, export competition and domestic support.

23. The DWP agriculture negotiations focused on considerations of which approach should be used for reductions of bound tariff rates, how deep reductions should be, how long the phase-in period should be, and which formulas would apply differently, and in what ways, to developed and developing countries. In discussions of export subsidies – used almost exclusively by developed countries – many countries are pressing for an elimination of such subsidies, while they also seek to identify safety net measures to alleviate possible transitory impacts on some developing countries from the elimination of export subsidies. Major issues surrounding negotiations on domestic support include modalities for reductions in domestic support; criteria for permitted support; and lower support reductions over longer implementation periods for developing countries. The domestic support discussions are the most contentious.

24. In the CMT Rev.2, both the level of liberalization by developed countries and the development flexibility for developing countries were left to negotiations after Cancún. On **market access**, the proposal was, for developed countries, to apply the blended formula proposed by the European Community and the United States (UR, Swiss formula, duty-free access up to a certain percentage, maximum tariff) with a minimum level of overall tariff reductions across all agricultural products; and, for developing countries, to apply a blended

³ UNCTAD, *Handbook of Statistics*.

⁴ OECD (2002), *Agricultural Policies in OECD Countries: Monitoring and Evaluation*, Paris, OECD.

⁵ Simulations completed by UNCTAD show that agricultural trade liberalization could result in static gains to developing countries of about US\$10 billion annually.

formula with a longer implementation period and without an overall target. It might be noted that the CMT Rev.1 provided for developing countries a slightly changed UR formula or the blended formula, which would have provided developing countries with more flexibility. In the CMT Rev.2 tariff capping for developing countries remained under negotiation. Although numbers are not specified, the G-22 expressed concern that the formula for developed countries provided flexibility to not reduce high tariffs by a substantial amount. Moreover, the proposed formula provided for import-sensitive tariff lines. The G-22 has proposed reinforcement of SDT provisions.

25. On **export competition**, with respect to both export subsidies and export credits, the proposal was to reduce them, but with no specific target numbers or time frame. The proposal for elimination of export subsidies refers only to products of particular interest to developing countries and calls for a list of such products to be established. For the remaining products, it was provided that export subsidies be reduced with a view to phasing out budgetary and quantity allowances. Most developing countries have expressed concern that there was no unequivocal commitment to eliminate export subsidies.

26. On **domestic support**, the proposal was that the most trade-distorting payments by developed countries be reduced. The framework contains a commitment to review “green box” criteria in order to ensure that “green box” measures have no, or at most minimal, trade-distorting effects on production (without reference to capping these measures). Regarding the “blue box”, a new extended category of “direct payments” support was proposed, which is capped and subject to linear reductions. Many developing countries have called for capping the “green box” and eliminating the “blue box”. There was more flexibility for developing countries for domestic support reductions.

27. The **special safeguard mechanism** remained under negotiation, although developing countries proposed that its use be discontinued for developed countries. The special safeguard mechanism for developing countries was included. The **special products category**, for which tariff reductions would be limited, was also included, but the products, the conditions and the selection rule remained undefined. The proposal to exempt LDCs from any reduction commitments was welcomed by them. Also, the particular concerns of recently acceded Members were proposed to be addressed through provisions that could include longer implementation time frames or lower tariff reductions. It was provided that the **peace clause** be extended, whereas developing countries have pointed out that no such mandate was provided in the Doha Ministerial Declaration and have called for its discontinuance. There was recognition of the key issue of **trade preferences** and compensation for their erosion as result of market access liberalization in agriculture. There is a presumption that this erosion, as well as losses that may arise from NAMA liberalization and overall trade liberalization undertaken as part of the DWP, will be addressed through the initiatives presented by the International Monetary Fund (IMF) and the World Bank in their statements at Cancún.

D. Negotiations on market access for non-agricultural products

28. As is set forth in the Doha Ministerial Declaration (paragraph 16), negotiations on NAMA aim to “reduce or as appropriate eliminate tariffs, including the reduction or

elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries". The negotiating mandate further states that "product coverage shall be comprehensive and without a priori exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-developed countries, including through less than full reciprocity in reduction commitments...".

29. The main focus of NAMA negotiations has been to find a formula approach to tariff reduction that reduces substantial tariffs on non-agricultural products while taking into account the needs of developing countries. Members have made various proposals for reductions in countries' tariff rates, with the most ambitious proposing global free trade by 2015. Other approaches include linear cuts and approaches that more significantly cut all of a country's rates to a harmonized international rate. The NAMA Chair proposed a modified Swiss formula requiring countries to make greater reductions in tariffs above their average rates and smaller reductions in tariffs below their average rates. This proposal also envisaged free trade in a number of sectors said to be of export interest to developing countries, supplemented by further cuts based on request-and-offer, sectoral and zero-for-zero negotiations. The NAMA Chair also proposed that all countries be required to increase their coverage of tariff bindings to 95 per cent of tariff lines and 95 per cent of imports.

30. Relative to tariffs, there has been little discussion on non-tariff barriers (NTBs) and how to reduce or eliminate them. These NTBs include market entry barriers such as rules of origin, technical standards, and health and environmental requirements. Consideration is being given to a four-stage process to identify, examine, categorize and, finally, address non-tariff barriers through negotiations in NAMA or other relevant WTO bodies.

31. A number of SDT provisions have been proposed, and many remain under consideration. In addition to the provision permitting flexibility to shelter a percentage of tariff lines from reductions, other proposed provisions include longer time periods for tariff reductions; derogations from reduction commitments for LDCs; best-endeavour clauses for developed countries to grant duty- and quota-free market access for non-agricultural products originating in LDCs; provisions for preference erosion resulting from tariff reductions; and provisions for developing countries with high tariff revenue dependency.

32. At Cancún, the CMT Rev.2 included a Framework for Establishing Modalities in Market Access (Annex B) that essentially followed the NAMA Chair's proposals in placing the emphasis on a non-linear formula applied on a line-by-line basis to tariff cutting, to be supplemented by sectoral tariff elimination on products of export interest to developing countries, and possibly also by zero-for zero sectoral elimination and request-and-offer negotiations. Many developing countries and their groups have expressed a number of concerns about various aspects of this approach, apart from its complexity. In particular, they are concerned that the non-linear formula approach would require them to make the greater tariff cuts, contrary to the Doha provision for less than full reciprocity, and that this would also entail substantial adjustments in their nascent industrial sectors. They also consider that the sectoral negotiations should be explicitly voluntary for developing countries. Some developing countries (mainly in Africa) that have relatively low binding coverage are

concerned that the proposals would mean forgoing the use of tariffs for industrial development purposes and as a significant source of government revenue.

E. Services negotiations

33. Services, which account for over 20 per cent of total world trade, are an important component of trade for both developed and developing countries. The social dimension of services and universal provision of essential services is of particular importance in relation to access to sensitive sectors such as health, education, utilities, transport, and cultural and telecommunications services. Policies affecting these sectors have been influenced by considerations of national security, development objectives, and ensuring the widest possible infrastructure for various economic activities and consumer protection.

34. The negotiations on services have proceeded in accordance with Article XIX (Negotiation of Specific Commitments) of the General Agreement on Trade in Services (GATS) since 2000, and were subsequently incorporated into the DWP. The Doha Ministerial Declaration (paragraph 15) provides for 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. It reaffirms the Guidelines and Procedures for the Negotiations (S/L/93) as the basis for continuing the negotiations with a view to achieving the objectives of the GATS, as stipulated in its Preamble, Article IV (Increasing Participation of Developing Countries) and Article XIX (Progressive Liberalization).

35. The DWP provides for initial requests for specific commitments, which were to be submitted by 30 June 2002, and initial offers by 31 March 2003. Bilateral consultations on requests for market access began in July 2002. Some 37 offers have been submitted so far. Developed countries were leading the process, and developing countries have also made some requests and offers. However, most developing countries are still in the process of identifying their specific sectoral and modal interests, the barriers to their services exports, the impact of requests by developed countries on their services sectors, and ways and means of overcoming supply constraints through implementation of GATS Article IV.

36. The liberalization of Mode 4 has been identified by developing countries as crucial to the expansion of their exports and to poverty reduction. Some have submitted requests on Mode 4 to their trading partners, and the latter have made some offers. Most of the initial offers so far submitted, according to developing countries, do not include substantial commercially meaningful improvements to existing specific commitments in Mode 4. The constraints on cross-border movement of service suppliers are one of the most important asymmetries, and need to be addressed by specific commitments from developed countries.

37. The *Modalities for the Treatment of Autonomous Liberalization* adopted in March 2003 were a step forward, although these do not create any legal obligations or establish any automatic right to credit or recognition. The modalities provide that an autonomous liberalization measure of a Member eligible for credit should, *inter alia*, have been undertaken by the Member unilaterally since previous negotiations. A positive factor is that

this includes liberalization undertaken as part of structural adjustment programmes under the aegis of the IMF and the World Bank.

38. WTO Members agreed on modalities for special treatment for LDCs in accordance with the provisions of Article XIX.3. It provides, *inter alia*, that developed countries shall exercise restraint in seeking commitments from LDCs; LDCs shall not be expected to offer full national treatment, nor are they expected to undertake additional commitments under Article XVIII of the GATS on regulatory issues that may go beyond their institutional, regulatory and administrative capacities; LDCs may make commitments that are limited in terms of sectors, modes of supply and scope; and WTO Members shall, to the extent possible, and consistently with Article XIX of the GATS, consider undertaking commitments to provide access in Mode 4, taking into account all categories of natural persons identified by LDCs.

39. Another important area of work relates to Article VI.4 disciplines on domestic regulation, on which limited progress has been achieved. Developing countries have asserted that regulatory reform is of key importance to them and have stressed that the pace of liberalization that a country plans to implement needs to be adjusted so that its supervisory and regulatory capability is not compromised.

40. The deadline for negotiations on emergency safeguard mechanisms (ESM) was extended to March 2004 owing to insufficient progress. Some developing countries consider that without such a mechanism, their ability or willingness to make concessions would be limited, given the weakness of their service suppliers. However, some of them do have concerns that such a mechanism, in view of its complexity, may be more amenable to use by developed countries against developing countries. In the area of subsidies and government procurement, work has also not advanced.

41. Services are particularly important given (a) their role in the growth and development of the whole economy, (b) their linkages with other market access negotiations, and (c) the overall balance of negotiations. The CMT Rev.2 on services incorporates some of the issues raised by developing countries during consultations, such as the emphasis on improving the quality of offers particularly in sectors and modes of supply of interest to developing countries. It provides added value to the DWP with the reference to taking note of the interests of developing countries, as well as other Members, in Mode 4. However, developing countries have expressed regret that there is no specific proposal for liberalizing this Mode in a commercially meaningful manner. The CMT Rev.2 provided that the Special Session of the Council for Trade in Services should review progress in the negotiations by 31 March 2004. It also provided for intensifying efforts to conclude the negotiations on rule making under GATS. It furthermore provided that there be due respect for the right of Members to regulate and to introduce new regulations in pursuance of national policy objectives. Some developing countries have stressed that there is no reference in the CMT Rev.2 to the Guidelines and Procedures for the Negotiations and GATS Articles IV and XIX.2, and that, in their view, some issues have not been adequately addressed – for example, assessment of trade in services, and review and evaluation of progress in negotiations as provided for in paragraph 15 of the Guidelines.

F. The Singapore issues

42. The relationship between trade and investment, the interaction between trade and competition policy, transparency in government procurement and trade facilitation were introduced into the WTO work programme during the First WTO Ministerial Conference, held in Singapore in 1996. Under the Doha Ministerial Declaration (paragraphs 20–27), these four issues are given a similar mandate, which provides that “negotiation will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations”. Proponents of the Singapore issues have highlighted the need to begin negotiations on modalities in order to promote greater investment flows, fairer competition, more transparent public procurement and efficient trade-related infrastructure.

43. Many developing countries have indicated the value of transparency in government procurement, more efficient trade facilitation infrastructure, and adoption of competition policy and control of anti-competitive practices in international trade, as well as the need to have investment policy frameworks that are conducive to attracting investment and promoting development. They have also adopted national laws and policies with regard to some of these issues, and have entered into bilateral or regional arrangements. There has, however, been hesitation to have binding multilateral agreements on these issues lodged in the WTO. Many perceive that multilateral agreements on these “behind-the-border” issues will extend the frontiers of the MTS further into national policy space and to issues not directly affecting trade. At the same time, most developing countries point out that financial and institutional constraints already limit their ability to negotiate and implement any WTO Agreements. Also, to a certain degree, the attitude of developing countries to the Singapore issues has been conditioned by the progress on implementation-related issues, SDT and agriculture. Furthermore, they would like to see further clarification of the substance of the issues in order to fully understand the implications, including costs and benefits for them.

44. Given the lack of consensus on whether and, if so, how to take the Singapore issues forward, the proposal on Singapore issues in the CMT Rev.1 (including in Annexes D–G on modalities) provided the option of either beginning negotiations on modalities or continuing the process of studying and clarifying the issues. Regarding the latter, some elements for clarification were proposed by a group of developing countries.⁶ There were no suggestions on any intermediate solutions.

45. At Cancún, the CMT Rev.2 provided a differentiated approach to the four Singapore issues, with negotiations to commence on transparency in government procurement and trade facilitation on the basis of annexed modalities. On investment, it proposed that the clarification process be intensified on the basis of the Doha Ministerial Declaration as well as other elements cited by Members, including the elements identified by a group of developing countries (WT/MIN(03)/W/4); that the Working Group in Special Session be convened to elaborate procedural and substantive modalities, taking into account SDT for developing countries as an integral part of any framework, which should enable Members to undertake obligations and commitments commensurate with their individual needs and circumstances;

⁶ See WTO documents WT/GC/W/513 and WT/GC/W/514 and Corr.1.

that consideration be given to the relationship of the negotiations to the Single Undertaking; and that modalities allowing negotiations on a multilateral investment framework to start be adopted by the GC by a specific date that would coincide with the date for agreeing on modalities on agriculture and NAMA.

46. On competition, the CMT Rev.2 proposed that further clarification be undertaken in the Working Group, including consideration of possible modalities for negotiations based on the Doha Ministerial Declaration. The Working Group would provide a progress report to the GC by a specific date that would coincide with the dates for agreeing on modalities on agriculture and NAMA.

47. The absence of any explicit consensus on commencing negotiations on the Singapore issues may imply continuation of the clarification work. Given the Cancún experience, the future of the Singapore issues in the DWP and the WTO agenda may need to be reviewed in the light of the discussion in Cancún.

G. Trade and environment

48. The Doha Ministerial Declaration (paragraph 31) calls for immediate negotiations on (a) the relationship between specific trade obligations (STOs) in multilateral environmental agreements (MEAs) and existing WTO rules; (b) information exchange between MEA secretariats and relevant WTO committees; and (c) and the reduction and/or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services. The CMT Rev.2 takes note of progress made by the Special Session of the Committee on Trade and Environment Progress (CTESS) and reaffirms commitment to these negotiations. The most progress has been made on the issue of regular information exchange between MEA secretariats and relevant WTO committees.⁷

49. Negotiations on trade liberalization in environmental goods are taking place in the NAMA, with the CTESS playing a role in clarifying concepts. From a policy perspective, relevant questions are (a) whether to grant special treatment to such goods and, if so, in what form; and (b) which goods should be granted special treatment. So far, negotiations in the NAMA have focused on finding agreement on modalities. Environmental goods may eventually be included among sectors identified for further liberalization. Developing countries are net importers of products included in lists of environmental goods circulated so far.⁸ The CMT Rev.2 encourages the NAMA Group to work closely with the CTESS. This could provide an opportunity to help identify products of interest to developing countries.

⁷ The CTESS has been inviting the secretariats of certain multilateral environmental agreements, the UN Environment Programme and UNCTAD to participate in its meetings as observers. In CMT Rev.2 this invitation would be “for the duration of the negotiations”, rather than on an ad hoc basis.

⁸ To work towards a more balanced outcome, at an UNCTAD recent expert meeting, proposals were made to (a) include specific products of export interest to developing countries; (b) exclude certain “multiple-use” products that may have little environmental application; and (c) address technology and capacity-building needs.

50. The reference in the CMT Rev.2 to paragraph 19 of the Doha Ministerial Declaration, which deals with issues related to the review of Article 27.3(b), biodiversity and traditional knowledge, is also relevant for the trade and environment debate.

H. Least developed countries

51. The CMT Rev.2 acknowledges the seriousness of the concerns of LDCs as expressed in the Dhaka Declaration, and it addresses a number of issues of interest to LDCs. Key issues of concern to them include (a) binding duty-free quota-free market access for all products (agricultural and non-agricultural) originating from LDCs; (b) measures to address preference erosion; (c) agriculture, where they are demanding exemption from all reduction commitments in the three pillars; and (d) SDT, where they feel proposals with greater developmental value have yet to be considered. The CMT Rev.2 recognized the need to adopt and implement rules of origin so as to facilitate exports from LDCs. In addition, it noted under coherence the initiative announced by the IMF and the World Bank at the Cancún conference to work with the WTO to address the problems faced by some developing-country Members in adjusting to a more liberal trade environment. In services negotiations, the CMT Rev.2 provided for Members to give priority to sectors and modes of supply of interest to LDCs, particularly movement of service providers under Mode 4. Furthermore, LDCs had obtained the endorsement of modalities for the special treatment of LDCs in the negotiations on trade in services on 4 September 2003.

I. Other issues

52. The DWP seeks to address a number of issues in other areas, including through negotiations on TRIPS, Dispute Settlement Understanding (DSU) and WTO rules. Furthermore, focused discussions by working groups are underway to examine several trade-related development issues, including small economies. Small economies have called for the mandated work under the DWP to proceed beyond examination of the particular structural disadvantages and vulnerabilities affecting their participation in the MTS, to proposing and adopting specific recommendations and measures for their beneficial participation in the MTS.

53. The negotiations on TRIPS focused on four key issues: improving developing countries' access to medicines; establishment of a multilateral system of notification and registration of geographical indications (GI) for wines and spirits and extension of GI to other products; the relationship between TRIPS and the Convention on Biological Diversity; and the protection of traditional knowledge and folklore. The CMT Rev.2 noted the progress made in the negotiations on the GI multilateral system and instructed the special session of the TRIPS Council to continue work as mandated in paragraph 18 of the Doha Ministerial Declaration, and it provided that negotiations be completed by a date to be set. As part of implementation issues, it also provided for review of progress by the GC on the extension of GIs and for taking appropriate action. As regards TRIPS and biodiversity, the CMT Rev.2 called for work to be pursued in accordance with paragraph 19 of the Doha Ministerial Declaration.

54. Four West and Central African cotton-producing countries had raised the cotton subsidies issue in the run-up to the Cancún conference and at the conference itself. There was a strong expectation that this issue would be addressed favourably.

55. Developing countries noted improvements in the transparency and inclusiveness of the WTO processes, including at Cancún. However, they have tabled proposals for further improvements both in the Geneva process and at Ministerial Conferences. Since Cancún, some developed countries have stressed the need for a more efficient decision-making process, given the difficulties they perceive in reaching consensus among such a large and growing WTO membership.

III. DEVELOPMENT BENCHMARKS

56. All countries have shared interests in the success of the DWP and the realization of its core development agenda. If effectively pursued and implemented, the DWP could put in place important elements for achieving the Millennium Declaration goals of “an open, equitable, rule-based, predictable and non-discriminatory multilateral trading ... system”. It is clear that a systematic effort and considerable political will are needed to deliver on the “Development Agenda” of Doha. In this light, some critical development indicators can be identified against which an assessment of progress can be undertaken. In this process, UNCTAD can play an important role in contributing to awareness and consensus building on MTS issues and the development implications.

A. Openness and liberalization

57. Liberalization can remove distortions and generate efficiency and welfare gains in the immediate, medium and long terms for all countries. However, liberalization has to be looked at in a holistic manner. The pace and sequencing, as well as the relative ability of countries to absorb the costs and dislocation arising from liberalization, have to be factored in to effectively realize development gains. For developing countries to capture the benefits of liberalization, support mechanisms need to be in place that go beyond traditional technical cooperation directed at implementing WTO Agreements and encompass social safety nets, adjustment support, infrastructure investment, institution building, and the like, to help these countries lift their supply capacity and cope with adjustment difficulties and costs.

B. Harvesting the gains

58. The MTS, through trade liberalization, can generate many gains for all countries. Harvesting these gains will give developing countries and their peoples much-needed confidence in the ability of the MTS to deliver development. A firm commitment to carry forward the Doha mandate through expeditious and time-bound reduction, capping, disciplining and elimination of trade-distorting domestic support, export subsidies and tariff and non-tariff market access barriers in agriculture alone is expected to deliver production, export, income and welfare gains for developing countries of US\$10 billion to \$40 billion yearly. The latter sum is almost equal to the total development assistance provided to them at present.⁹ UNCTAD estimates also indicate that the welfare gains from liberalization of all sectors for developed countries themselves could be as high as \$140 billion a year.¹⁰

59. It has been estimated that the potential gains to developing countries in NAMA negotiations are similar to those in agriculture, if the bias of tariff protection against developing-country products and tariff peaks and escalation are removed and various market entry barriers and non-tariff barriers, such as standards and regulations (SPS, TBT and environmental – both government and voluntary), complex rules of origin criteria, and anti-

⁹ UNCTAD estimates and Kym Anderson, “How Can Agricultural Trade Reform Reduce Poverty?” (forthcoming UNCTAD report).

¹⁰ Anderson, *op. cit.*

competitive market structures and practices are also addressed. Development-oriented market access negotiations would promote and support successful diversification, especially by commodity-dependent developing countries and LDCs. However, attention also needs to be paid to the needs of LDCs and other developing countries that, facing the important loss of preferences and tariff revenue, would experience difficulties in adjusting to most-favoured-nation (MFN) liberalization.

60. A key to the gains in non-agricultural market access is freeing textile trade under the Agreement on Textiles and Clothing in 2005 as mandated; for developing countries this could generate income gains of \$24 billion a year, export revenue gains of \$40 billion and employment of about 27 million jobs.¹¹ The efficiency and welfare gains to the importing developed countries themselves could be as high, for example, as US\$18 billion a year in the United States¹² and ECU 25 billion a year in the European Union.¹³ In services, progressive liberalization and increasing participation by developing countries in international trade in services, particularly in the form of temporary movement of natural persons to supply services (Mode 4) to Organisation for Economic Co-operation and Development markets, will bring overall benefits to all countries. An increase in developed countries' quotas on the inward movement of both skilled and unskilled temporary workers equivalent to 3 per cent of their workforces would result in estimated annual welfare gains for all countries to the tune of \$150 billion.¹⁴

C. Equal opportunity for unequal partners

61. Equitable rules and their fair application are the ultimate protection for the weaker trading nations. This is a key purpose of the MTS. From this standpoint, the principle of SDT is meant to factor in structural and emerging asymmetries between developed and developing countries, which justifies more favourable treatment to developing countries if they are to be given an equal opportunity to compete in international markets. These disparities include those in per capita income; supply capacities; size, market power and scope of industries and enterprises; capital and technological edge; ability to subsidize agriculture, industry, services and R&D; and availability and costs of economic, trade-related and financial infrastructures. These asymmetries need to be addressed in all existing agreements, and any new agreements envisaged need to be pegged so that the rules fully accommodate the "developmental, financial and trade needs" of developing countries and provide them sufficient policy space. Traditional means of developmental flexibility, such as transition periods and permitted derogations, need to be combined with special considerations and meaningful preferential treatment by developed countries.

¹¹ International Monetary Fund and World Bank (2002), "Market Access for Developing Country Exports: Selected Issues", 26 September: 42-43.

¹² World Bank (1987), *World Development Report 1987*, p. 150.

¹³ Joseph F. François, Hans H. Glismann and Dean Spinanger (2000), *The Cost of EU Trade Protection in Textiles and Clothing*, working paper no. 997, Kiel Institute of World Economics, p. 67.

¹⁴ L. Alan Winters, Terrie L. Walmsley, Zhen Kun Wang and Roman Grynberg (2002), *Negotiating the Liberalisation of the Temporary Movement of Natural Persons*. Commonwealth Secretariat.

D. Striving for a better balance

62. The DWP is also about balance – balance between the legacy of rights and obligations, costs and benefits from the previous round and those from the DWP; balance between losses and gains in each area and in overall terms; balance in the processes, the selection of issues, the sequencing and timelines, and the levels of ambition and outcome. In one respect, rebalancing would involve dealing purposefully with implementation issues. Care also needs to be taken not to create new imbalances even as the previous ones are in the process of being rectified.

63. Balance requires that trade-offs lead to positive-sum outcomes for all parties, particularly developing countries. Transparency and increased participation by developing countries in the complex decision-making processes is another imperative. Accelerated and facilitated accession of developing countries on terms commensurate with their level of development continues to be a key priority. The accession to the WTO of Cambodia and Nepal, the first two LDCs to do so, is an important step forward for the universality of the organization. For other LDCs in the process of accession, faithful implementation of the decision on guidelines for LDCs' accession is called for.

E. Serving the public interest

64. The UN Millennium Declaration commits the international community to making the right to development a reality for everyone, and it resolves to create an environment at the national and global levels that is conducive to development and to the elimination of poverty. The common good, the public interest and the welfare of the poor should be the guiding lights of a development-oriented MTS. Efforts must be made to ensure that the MTS is sensitive and responsive to the key issues facing developing countries, including eradication of poverty, fighting infectious diseases and epidemics, and ensuring provision of basic social services to the poor and the underprivileged. The TRIPS and Public Health Declaration at Doha and the recently adopted Decision were a breakthrough in recognizing that trade is not value neutral and that the public interest must be a priority.

F. Revitalizing the commodities sector

65. Raising the profile of commodities in the multilateral and wider international trade and development cooperation agenda and developing a supportive international environment for commodity-dependent developing countries is long overdue. Some 50 countries depend on just two or three commodity exports, 39 of them on exports of single commodities. In order to reach the Millennium Development Goals on poverty reduction, these countries need to revive their commodity sectors and realize higher value from their exports.

G. Coherence

66. Crucial to the development orientation of the DWP is the degree of coherence that can be achieved between the different areas of negotiations and disciplines, between the different

multilateral institutions and policies, and between these and regional and national processes and strategies. Three aspects command special attention, and they need to be constantly monitored and complementarities ensured: (a) the need for synergy and proper sequencing between the capacities of the developing countries, the level of obligations imposed, the cost of implementation and the adequacy of financial and technical resources made available to them; (b) positive linkages between trade, the financial, monetary and technology policies of developed countries, and the success of developing countries' trade liberalization and their reaping of development gains; and (c) the implications of the multilateral trade negotiations and the MTS for a number of issues that occupy a crucial rôle in development – namely, poverty elimination, employment, food security and rural development, environment, health, culture, gender, migration, competition, technology and enterprise development.

H. Technical assistance and capacity building

67. Trade-related technical assistance and capacity building for developing countries are a critical aspect of the development dimension of the MTS. They are essential for ensuring effective and high-quality participation by developing countries in the trade negotiations. They are also important in meeting capacity-building requirements for institutional and legislative changes arising from the implementation of WTO Agreements, and for policy adjustments to take advantage of the opportunities created. In this light, there is greater need for the international community to provide to UNCTAD and other agencies the necessary financial support to effectively meet, on a sustained basis, the growing needs of developing countries for need-based, targeted and demand-driven technical assistance.

IV. UNCTAD'S ROLE

68. UNCTAD is the focal point within the United Nations for the integrated treatment of trade and development and interrelated issues in the areas of finance, technology, investment and sustainable development.¹⁵ As such, UNCTAD acts as a facilitator for the beneficial and fuller integration of developing countries into the multilateral and wider international trading system. UNCTAD provides a forum for developing and developed countries to meet, discuss and evolve, on a regular basis, an integrated and strategic view of trade and development issues in all their dimensions and within the context of the larger international trading system – be it multilateral, regional or bilateral. UNCTAD helps in clarifying issues and building consensus with its research, policy analysis and intergovernmental deliberations in such areas as services, market access, commodities, WTO accession, trade preferences, trade and environment, the special situation and concerns of LDCs and small economies, trade and investment, trade and competition policy, and trade facilitation (including enhancing the capacity of developing countries to build efficient trade and transport facilitation programmes).

¹⁵ See also "Preparations for UNCTAD XI" (TD(XI)/PC/1).

69. Examples in this regard are the expert meetings on services sectors (air transport, audiovisual, construction, health, environment, tourism, energy) and on Mode 4 to analyse and identify export opportunities for developing countries, supply constraints, and ways and means to address barriers to their exports. UNCTAD has also been working actively on competition law and policy, and the Intergovernmental Group of Experts on Competition Law and Policy will hold consultations, at its sixth session in 2004, *inter alia* on strengths and weaknesses of peer review related to competition policy and cooperation and dispute mediation in regional integration mechanisms. Equally importantly, UNCTAD has been working with developing countries and their development partners to help them deal with the major national and international commodity issues. As regards the interface between trade, environment and development, UNCTAD's work focuses on enabling policies to promote mutual supportiveness of trade and environment for sustainable development, including in the context of multilateral trade negotiations.

70. UNCTAD has, over many years and with financial support from bilateral donors and the UN Development Programme (UNDP), delivered technical assistance and capacity-building activities to strengthen the domestic policy and institutional and human resources capacities of developing countries to develop trade policies, engage in trade negotiations, use the dispute settlement mechanism, and accede to the WTO, as was done for Cambodia and Nepal. UNCTAD has developed a number of analytical tools in key areas such as the World Integrated Trade Solution (WITS), the Trade Analysis and Information System (TRAINS) and the Agricultural Trade Policy Simulation Model (ATPSM) that have been used by trade negotiators. At the request of countries or groups of countries concerned, UNCTAD assisted them in their preparatory processes for the Cancún Ministerial Conference. UNCTAD cooperates closely with WTO in delivering trade-related technical assistance as per the Doha mandate, and under a recent Memorandum of Understanding. Also, UNCTAD, together with the International Trade Centre (ITC) and WTO, implements the second phase of JITAP.¹⁶ UNCTAD is also an active partner with other five agencies (the IMF, the World Bank, ITC, WTO and UNDP) in the implementation of the Integrated Framework for Trade-Related Technical Assistance to LDCs. UNCTAD cooperates with regional commissions and other international organizations in delivering technical assistance and capacity building.

71. The upcoming UNCTAD XI Conference in São Paulo, Brazil, in June 2004 and the preparations for it could contribute to reinforcing confidence in the MTS and among different trading partners and member States. The agenda that has been adopted for UNCTAD XI seeks to bring about a synergy between the productive sector, competitiveness and how developing countries can be assured development gains from international trade and the MTS. The UNCTAD XI process could contribute positively to balanced progress in the DWP.

¹⁶ Joint Integrated Technical Assistance Programme to Selected Least Developed and African Countries.