

Midterm Review Reveals Development in Peril in Doha Round

DOHA ROUND BRIEFINGS

The International Centre for Trade and Sustainable Development in collaboration with the International Institute on Sustainable Development has prepared a 'midterm review' of the current WTO negotiations consisting of a series of 13 Doha Round Briefings on:

- Agriculture
- Services
- Special and Differential Treatment
- Implementation-related Issues and Concerns
- Intellectual Property Rights
- Market Access for Non Agricultural Products
- Negotiations on WTO Rules
- The Singapore Issues
- Trade and Environment
- Dispute Settlement Rules
- Technical Assistance
- Trade and Transfer of Technology
- Trade, Debt and Finance

The Briefings provide a comprehensive overview of the current status of the negotiations, as well as other mandates arising from the Doha Ministerial Conference. They are available on the ICTSD and IISD websites (www.ictsd.org and www.iisd.ca). Hard copies will be mailed to Bridges subscribers shortly.

This issue of Bridges complements the information in the Briefings with the latest updates in those areas where negotiations have resumed in the WTO.

IN THIS ISSUE

WTO News	3
Dispute Settlement	7
Why the Byrd Amendment Must Be Buried	8
The Byrd Amendment Ruling Needs Careful Review	9
AGOA Benefits Remain Uneven in Sub-Saharan Africa	10
US 'Dolphin Safe' Tuna Label Back in Court	11
Regional Trade & Sustainable Development News	12
Protecting Traditional Knowledge: Approaches and Proposals	13
Credit for Autonomous Liberalisation: Benefits and Pitfalls for Developing Countries	15
The Rise and Felling of Peruvian Mahogany	17
Differences Persist over Goal of Environmental Negotiations	19
Meeting Calendar and Resources	20

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The WTO ended the year 2002 with a sigh rather than a bang. The stocktaking of progress achieved during first of the three years allotted by ministers for concluding the Doha Round revealed an uneven picture consisting of unmet deadlines on key issues, persistent fundamental differences on others, as well as some headway in the less controversial areas. Developing countries' trust in the Round's ability to deliver a meaningful result was particularly shaken by Members' failure to agree by the December 31 deadline on how to proceed with strengthening special and differential treatment provision in existing WTO Agreements or to find a solution to the difficulties faced by countries with insufficient pharmaceutical manufacturing capacity in taking advantage of compulsory licensing.

TRIPs and Public Health

While the Doha Declaration on the TRIPs Agreement and Public Health confirms Members' right to issue compulsory licenses overriding patent rights in certain circumstances, many poor countries and small economies cannot take advantage of that flexibility due to insufficient capacity to manufacture copies of patented medicines. Their only solution is to import such drugs from other countries that have the necessary infrastructure and know-how. This possibility is compromised, however, by TRIPs Article 31(f), which requires production under compulsory licensing to be 'predominantly for the supply of the domestic market of the Member authorising such use'. It was to overcome this limitation that ministers instructed the TRIPs Council to "find an expeditious solution to this problem and to report to the General Council before the end of 2002" (para. 6 of the Declaration on the TRIPs Agreement and Public Health).

Intense discussions in the TRIPs Council broke down just before the General Council's last meeting of the year on 20 December. At that point, all Members except the United States, were ready – if not overly keen – to endorse the latest Chair's draft, which spelled out in considerable detail how the 'expeditious solution' would work. The US ultimately rejected the Chair's text as the scope of diseases that the solution would cover went too far beyond what its pharmaceutical sector was prepared to accept.

While debates in the TRIPs Council since then have shown no signs of a swift conclusion, the General Council agreed on 10 February to give Members another 10 days to break the deadlock (see article on page 3).

Special and Differential Treatment

Fundamental divisions between Members prevented the Committee on Trade and Development (CTD) from presenting 'clear recommendations for action' to the General Council on which special and differential treatment provisions in WTO Agreements should be made mandatory, as well as additional ways in which such provisions could be strengthened, as required by the Decision on Implementation-related Issues and Concerns adopted by ministers in Doha.

The Chair of the CTD negotiations made a short statement to the General Council's 20 December session explaining why the Committee was not in a position to submit a report. Ambassador Ransford Smith (Jamaica) noted that he had identified 22 Agreement-specific proposals on which

Continued on page 2

Development in Peril, continued from page 1

he considered it “possible to make immediate recommendations for a decision”. Out of these, Members had agreed on four and were “very close to agreement” on several others. However, despite intense consultations, they were not able to “go the extra yard”. Regarding the way forward, Ambassador Smith simply stated that Members could not agree “either on the referral of Agreement-specific proposals to other WTO bodies, or on the timelines for completion of the remaining work.” The General Council agreed that the Committee on Trade and Development should report to its 10-11 February session with the elusive ‘clear recommendations for action’ but this (third) deadline was missed as well due to differences among Members regarding the contents of the CTD’s report. In addition, negotiations on most other implementation-related issues have also reached an impasse (see page 6).

Agriculture

Most WTO Members consider liberalisation of agricultural trade as the ultimate yardstick of the Doha Round’s success. By the end of 2002, only marginal progress had been made in determining the parameters for the negotiations, which are to conclude by 1 January 2005 with “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” (Doha Ministerial Declaration para. 13).

Vast differences persist on all three ‘pillars’ of the negotiations, and the Agriculture Committee’s first session in 2003 revealed no substantial narrowing of the gaps despite the fact that the European Union – the key market targeted by the ‘liberalisers’ – at long last submitted a proposal outlining its negotiating goals and the ‘modalities’ it proposed to adopt to achieve them (see page 5).

To spur some life into the stagnating negotiations, the Chair of the Agriculture Committee’s special sessions was expected to issue a draft report on negotiating modalities outlining his ‘best assessment’ of possible avenues of convergence on 12 February. However, most Members doubt that the 31 March deadline for adopting the modalities can be met (see page 5).

Services

Negotiations on the further liberalisation of services have largely gone underground with the confidential bilateral consultations currently taking place between those (developed and advanced developing country) Members that have made market opening requests and the large number of countries that have received them. The requests cover nearly a dozen sectors ranging from construction and communications to environmental services, tourism and transport. Initial market opening offers are due on 31 March (see page 10).

In contrast, hardly any progress has been made on ‘horizontal’ issues, such as an assessment of trade in services, the establishment of an emergency safeguard mechanism and how to credit autonomous liberalisation (see page 15).

Singapore Issues

Singapore issues (so called after the WTO Ministerial Conference that launched a work programme on them) are probably the best bargaining chip up developing countries’ collective sleeve. They comprise investment, competition policy, transparency in government procurement and trade facilitation, all of which are largely perceived to be of most interest to developed countries. After six years of analysis in working groups and the Council for Trade in Goods, Members are to decide at the WTO’s next Ministerial Conference when to launch negotiations leading to binding multilateral disciplines on these issues. The trump card for developing countries is that the decision must be made by ‘explicit consensus’, and they have already warned that lack of progress in implementation-related concerns will have ‘negative consequences’ on the entire Doha Round. To avoid a point-blank refusal of new negotiations, the US has recently signalled considerable flexibility on transparency in government procurement (see page 10).



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