

# CHAPTER 2

## THE ROLE OF THE MULTILATERAL TRADING SYSTEM IN GOVERNING INTERNATIONAL TRADE

### INTRODUCTION

As the global crisis deepened and affected Asia and the Pacific at the end of 2008 and beginning of 2009, various countries in the region showed a tendency to resort to protectionist measures (Gamberoni and Newfarmer, 2009).<sup>1</sup> This disturbing trend was described in part I of this report. Despite early signs of economic recovery in Asia, the risk that countries continue to resort to protectionism remains. In such an uncertain economic climate, trade governance must be a key element of the response to the crisis.

Trade governance takes place at three levels: at the multilateral level there is the multilateral trading system (MTS) as overseen by the World Trade Organization (WTO); at the regional level there is a network of regional trade agreements (RTAs), complemented at the bilateral level by bilateral trade agreements (BTAs). Repeated setbacks and delays in negotiations on the Doha Development Agenda (DDA)<sup>2</sup> at the multilateral level have led countries to seek cooperation through other mechanisms, in particular through RTAs and BTAs.<sup>3</sup>

This chapter discusses the MTS and seeks to evaluate its significance for developing countries and its role in managing international trade in times of crisis and beyond. An annex contains a more

detailed update of the state of play in the DDA in the areas of agriculture and non-agricultural market access (NAMA).

### A. ROLE AND IMPORTANCE OF THE MULTILATERAL TRADING SYSTEM

#### 1. The threat of rising protectionism in times of crisis

It was argued before that trade is a victim of the crisis, not its cause. As rapidly falling exports plunge countries into recession, the promotion of domestic demand can only partly compensate and it is therefore essential to revive trade. For that purpose, markets need to remain open in the interest of all. The argument in favour of open trade is recognized and emphasized by leaders from both developed and developing countries. For instance, the ASEAN Summit in Thailand in February 2009 reiterated its

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*Despite the rhetoric, protectionism is on the rise but this is ultimately a self-defeating course of action*

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commitment to free trade and the conclusion of the Doha Round as important mechanisms to mitigate the crisis.<sup>4</sup> These commitments were echoed by the APEC Trade Ministers Meeting in Singapore in July 2009, the G20 summits in London in April 2009 and in Pittsburgh in September 2009 and the East Asian

<sup>1</sup> See also WTO Director General Report to the Trade Policy Review Body, (JOB09/30), 27 March 2009.

<sup>2</sup> DDA and Doha Round refer to the same process and both terms are used in this report.

<sup>3</sup> Unless otherwise stated, the mention of RTAs is meant to incorporate BTAs as well.

<sup>4</sup> Chairman's statement of the 14<sup>th</sup> ASEAN Summit, "ASEAN Charter for ASEAN People's", Cha-am, Thailand, 28 February – 1 March 2009.

Summit in June 2009. However, the actions of leaders sometimes belie their words and some countries have pushed “buy-local” programmes as part of “murky” protectionism, (i.e. abuses of legitimate discretion under WTO rules which are used to discriminate against foreign goods, companies, workers and investors, including “green” policies and abuse of health and safety regulations) (Baldwin and Evenett, 2009). While protectionist policies in some developed countries have been widely condemned, some developing countries have also taken action to protect their industries. This may be harmful particularly to other developing countries considering that trade among developing countries has risen rapidly in recent years and may partially absorb the decrease in demand from the traditional developed country markets. Part I details some of the measures countries have taken, some of which can be labelled as protectionist.

The Great Depression of the 1930s revealed the devastating effects of protectionism and “beggar-thy-neighbour” policies which led to the collapse of global trade (Kindleberger, 1986). While the current crisis is not nearly as severe, the world is much more integrated today than it was in the 1930s. Many large companies today have complex supply chains scattered across the world. Disruptions in those supply chains because of protectionism would lead to increased failures of both large and small companies and, hence, increased unemployment (Yi, 2009). Recent research has revealed that the cost of protectionism could be as high as \$728 billion, in effect neutralizing the effects of the United States stimulus package (Bouët and Laborde, 2008). Therefore, the proper response to the crisis is more open trade rather than less.

## 2. The primacy of the multilateral trading system

Imagine a world without sovereign countries and, hence, without international borders. In such a world, trade would flow freely: neither tariffs nor non-tariff measures (NTMs) would hinder trade. Disregarding cultural considerations, a world without borders would be the most efficient in terms

of resource allocation, and the complexities of international trade as we know them would no longer exist.

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### *The primacy of the multilateral trading system in governing international trade cannot be overemphasized*

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In the absence of one world and truly free and stable trade, WTO and the MTS provide a much-needed system of rules and regulations which govern international trade.<sup>5</sup> In times of crisis, the MTS is the only functioning global system which can monitor and control protectionism. With multiple sovereign independent countries as members of WTO, this system is far from perfect and has in fact accounted for only a small share of total liberalization of trade. According to a World Bank study, unilateral or autonomous tariff reductions were much higher between 1983 and 2003 than those under the MTS, although the tariff-reducing effects of the Uruguay Round were higher than those under preferential trade agreements (World Bank, 2004). However, WTO is not just about liberalization. It provides the only universal set of rules which are stable, transparent and predictable. It is also the best mechanism to promote fair rather than free trade meaning that all countries should benefit from the MTS. The MTS has also allowed disadvantaged countries to participate more effectively in international trade and benefit from it.

The reason that liberalization under the MTS has been rather limited is due to the fact that under the various multilateral trade rounds commitments were made largely on the basis of bound tariff rates and other ceiling levels rather than on the basis of actually applied rates. Even the most positive result of a successful Doha Round conclusion would see reductions based on bound levels again without affecting actual tariff rates.

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<sup>5</sup> See, for instance the publications of Jagdish N. Bhagwati, who emphasizes this point, including his latest book, *Termites in the Trading System: How Preferential Agreements Undermine Free Trade*, 2008.

*The conclusion of the Doha Round would be a boost for international trade*

Nevertheless, an early conclusion of the Doha Round would send a positive message that the world is still open for business and would at least limit the flexibilities for countries to increase protectionism. In monetary terms, the expected benefits would be rather modest (for the same reasons as outlined above), certainly compared with the amounts involved in the bail-out packages for

financial institutions and other economic stimulus packages (see box 2.1). However, the benefits for developing countries are still significant and tangible and may be much higher in the long run. Stimulus packages, to the extent that they include protectionist measures, run the risk of violating WTO rules (in particular the ban on export subsidies in manufacturing and measures which may violate the WTO's non-discrimination principles) and hence may trigger a spate of litigation cases at WTO turning the organization from a negotiation platform to a trade litigation body.

**Box 2.1. Benefits from concluding the Doha Round**

Estimates of medium-term global welfare gains under various scenarios of a successful conclusion to the Doha Round range from \$180 billion to \$550 billion, with about one third going to developing countries (Anderson, Martin and van der Mensbrugghe, 2005). In 2003, the World Bank had forecast an \$832 billion-per-year boost to the global economy from the total elimination of trade barriers; the majority – \$539 billion – going to the developing world. In 2006, new projections estimated potential overall welfare gains at only \$287 billion – just one third the original forecast. Furthermore, developing country gains dropped to \$90 billion, a “loss” of more than 80%. According to the Carnegie Institute, any of the plausible trade scenarios will produce only modest gains in the order of a one-time increase in world income of \$40 billion to \$60 billion. This represents an increase of less than 0.2% of current global gross domestic product. Most recent World Bank analysis of “likely Doha scenarios” (which are more ambitious than the July 2008 package) revealed global gains by 2015 of \$96 billion, with only \$16 billion of that going to the entire developing world (Gallagher and Wise, 2008). WTO itself estimates welfare gains of about \$150 billion.

A more comprehensive study undertaken by the Carnegie Endowment for International Peace on Doha scenarios in the wake of the Sixth WTO Ministerial Conference in Hong Kong, China in 2005 estimated that maximum gains or losses are only about 1% of GDP. Among developing countries, about 90% of the gains from Doha scenarios would come from liberalization of trade in manufactured goods, while the gains from liberalization in agricultural trade would accrue mostly to the developed countries (Polaski, 2006).

These estimates pale in comparison with the \$787 billion stimulus programme of United States President Obama in early 2009 and the more than a trillion dollar bail-out of financial companies and banks. However, estimates are based on many assumptions. They also do not take into account the costs associated with implementing the results of the Doha Round such as revenue loss due to tariff reductions. Hence, the research is not without critics. The actual benefits from a successful conclusion of the Round depend on the actual final deal and also depend on whether the analysis includes dynamic and spill-over benefits. If the estimated results are limited, this is probably due to the limited offers on the table and the fact that commitments are made on the basis of bound levels. Not much recent research has been conducted on the benefits from the Doha Round as the proposals are in continual flux.

One recent study tried to estimate the costs of not completing Doha, and, in fact a return to protectionist measures within the allowed confines of existing rules and commitments. The study found that in a scenario where applied tariffs of major economies would go up all the way to currently bound tariff rates, world trade would decrease by 7.7% and world welfare would be reduced by \$353 billion. In a more modest scenario where countries would raise tariffs to maximum rates applied over the past 13 years, world trade would decrease by 3.2% and global welfare would be reduced by \$134 billion. Agricultural exports would be most affected. If world leaders failed to conclude the Doha Round and resorted to protectionism, there would be a potential loss of at least \$1 trillion. The failure of the DDA would prevent a \$336 billion increase in world trade coming from the reduction in tariffs and domestic support, while a worldwide resort to protectionism would contract world trade by \$728 billion (Bouët and Laborde, 2008).

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*The challenge of the multilateral trading system is to find a balance between fair and stable trade on the one hand and free and efficient trade on the other*

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The need to find a balance between stability and efficiency of all economic transactions, including trade, and the need to ensure that trade contributes to inclusive and sustainable development was discussed in chapter 1. Similarly, at WTO member countries need to find the balance between fair and stable trade on the one hand and free and efficient trade on the other, while ensuring that the commitments benefit the poor, or at least do not have a disproportionately negative effect on the poor, and contribute to sustainable development. This is exactly the purpose of the MTS and makes it indispensable, although in actual practice the negotiations are skewed towards the interests of developed countries. Nevertheless, developing countries constitute the largest number of WTO members and only through the MTS can WTO members set the rules to increase the transparency, predictability and stability of the world trading system and seek to dismantle barriers to trade to increase its efficiency. As this is not an easy task, it is hardly a surprise that the Doha Round has taken as long as it has, as the optimal balance will vary among different countries. This variation is not merely a North-South divide. More worrying, as long as countries are not sure where their own balance lies at the national level, it is very difficult to come to compromises at the international level.

Given the importance of WTO and the conclusion of a comprehensive Doha deal, it is opportune to review the main issues and obstacles in the negotiations, with a special focus on agriculture as, perhaps, the most controversial and sensitive area of negotiations.

## **B. SPECIAL FOCUS ISSUE IN THE DOHA NEGOTIATIONS: AGRICULTURE**

### **1. The WTO Agreement on Agriculture**

The Agreement on Agriculture (AoA), adopted as part of the Uruguay Round package, helped discipline the many arbitrary and non-tariff barriers preventing effective global agricultural trade which brought an increased level of predictability and transparency.

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*The WTO Agreement on Agriculture is a first attempt to establish an enforceable system of multilateral rules for international agricultural trade*

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However, the AoA did little in terms of actual trade liberalization (Orden, Kaukab and Diaz-Bonilla, 2002).<sup>6</sup> While it “bound” and reduced tariffs from the bound rates, it did not affect actually applied tariff rates but left room for countries to increase those applied rates up to the agreed bound rates. Thus, in practice there are instances when tariffs have gone up rather than down, in particular in the wake of the current global economic crisis and this practice, though perhaps regrettable, is perfectly in conformity with WTO rules. A Doha deal would reduce the flexibility of countries to increase their applied rates by further reducing the bound rates but would still not result in much actual liberalization. As a result, welfare gains also would remain limited though they are not insignificant (box 2.2). Developing countries proposed a Special Safeguard Mechanism (SSM) replacing the old Special Agricultural Safeguard,<sup>7</sup> but only for developing countries with flexible application provisions. They have also insisted on a certain number of “special products” (SPs) to be exempt from reductions or subject to smaller reductions

<sup>6</sup> The accompanying Agreement on Sanitary and Phyto-Sanitary Measures, meanwhile, enhanced transparency and predictability to the use of SPS measures. However, the abuse of those measures has emerged as a serious non-tariff barrier to imports from developing countries.

<sup>7</sup> The AoA allows for a Special Agricultural Safeguard which countries are permitted to use for products whose non-tariff restrictions have been converted to tariffs in case of sudden falling prices or surges in imports which could hurt their farmers. Only a limited number of countries have availed of this option. The Special Safeguard Mechanism was incorporated in the July Framework Agreement for use by developing countries only.

based on the criteria of food security, livelihood security and rural development. The principles of both SSM and SPs were accepted in the July 2004 Package of Framework Agreements. However, disagreements remain on their coverage, conditions for use, and modalities for implementation.

**Box 2.2. Welfare gains from Doha reforms in agriculture**

ESCAP estimates of the aggregate welfare gains under current Doha proposals show modest annual gains of \$4.6 billion globally in the short term, increasing to \$5.2 billion in the long run. Two thirds of the total gains would accrue to Asia, with Japan gaining the most. Developing countries in Asia would gain a modest \$365 million (8% of the total) in the short run, rising to \$640 million (12%) in the long run. India, Republic of Korea and Thailand appear to gain the most from agricultural trade liberalization under Doha, due mainly to gains in the terms of trade. China, which stands to gain the most in poverty reduction under Doha, appears to lose in overall absolute welfare gains. Others would also lose, though marginally, mainly due to a terms of trade shift. The small aggregate gains reflect the relatively small degree of reform anticipated. Similarly, in India Doha reforms would lead to rising income inequality. However, under more comprehensive agricultural trade reform, developing Asia and the Pacific could gain \$3.3-3.5 billion in welfare gains (see also chapter 1).

*Source: ESCAP, Economic and Social Survey of Asia and the Pacific 2008: Sustaining Growth and Sharing Prosperity (United Nations publication, Sales No. E.08.II.F.7, ST/ESCAP/2476), 2008.*

## 2. Recent developments in the Doha negotiations

Since the adoption of the July 2004 Package of Framework Agreements, no tangible commitments have been made in all Doha negotiation areas, including in agriculture. Revised texts have continued to circulate and negotiations have continued, ever postponing the deadline for concluding a deal. The last “make or break” mini-ministerial conference in Geneva in July 2008 also collapsed without an agreement, although

negotiators had come agonizingly close to clinching a deal. Revised texts on agriculture and non-agricultural market access (NAMA) continue to circulate but the global economic crisis put the Doha negotiations on hold until the talks were revived in September 2009 during a mini-ministerial conference hosted by India. WTO members, as well as WTO itself, continue to call for a conclusion of the negotiations as soon as possible. However, in most cases the only real commitments under the Doha Round still standing are those contained in the 2004 July framework agreement.

The agricultural negotiations revolve around three areas: (a) market access; (b) domestic support; and (c) export competition.

With regard to market access, tariffs account for about half of all protectionist measures in the agricultural sector. Although the AoA converted most non-tariff measures (NTMs) into tariffs, the result was often a specific tariff rather than the more transparent *ad-valorem* tariff. In addition, the tariffication process led to higher than average ceiling rates on some products, sometimes referred to as tariff peaks. The introduction of so-called tariff quotas raised new concerns on their implementation and transparency. Tariff escalation, where tariffs rise with the level of value-added, are also concerns for developing countries, along with the emergence of new NTMs in the form of overly strict sanitary and phyto-sanitary (SPS) measures and anti-dumping measures. However, NTMs are not part of the negotiations.

One of the sticking points has been the number of SPs and the nature of their treatment. The right of developing countries to designate a certain number of SPs has been recognized. However, depending on the interpretation of the criteria of food security, livelihood security and rural development, for some countries most agricultural products would be exempt. For instance, India is the world’s largest producer of milk, fruits, pulses, cashew nuts, coconuts, cotton, sugar, sugarcane, peanuts, jute, tea and an assortment of spices, and the second largest producer of rice and wheat. However, productivity is much lower than the world average. The Group of 33, of which India is a member,

argued for 20% of tariff lines to be designated as special products with 50% of these products exempt from tariff reductions. The United States proposed only 8%. In July 2008 agreement was reached on 12%.

Another issue with SPs is the extent to which they would be exempt from reductions or subject to smaller reductions than other agricultural products. In addition, developing and developed countries would be able to designate a certain portion of their agricultural tariff lines as “sensitive” products. Some developing countries have argued that there should not be a limit on the number of SPs and sensitive products but this has proved unacceptable to developed countries which fear that market access in developing countries will continue to be severely constrained. At the same time, five developing and two developed Asia-Pacific countries belong to the “Cairns Group”, a group of agricultural exporting countries with a commitment to reforming agricultural trade.<sup>8</sup> This includes four ASEAN countries. They want to limit the number of SPs and sensitive products while recognizing the need for “policy space”. All developing countries, however, agree on the need to enhance transparency in tariffs applied by developed countries (many tariffs are in the form of specific duties) and to reduce tariff peaks and tariff escalation.

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***Disagreements on the SSM were the principal reason for the collapse of the most recent Doha ministerial talks***

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During the mini-ministerial of July 2008, it appeared that countries had achieved some convergence on the issue of special and sensitive products. Those negotiations collapsed mainly (but not only) because of disagreement on proposals for using the SSM that would allow developing countries, under some scenarios, to raise duties above their previously agreed ceiling limit. This was

<sup>8</sup> The Cairns Group consists of the following countries: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand and Uruguay.

unacceptable to developed countries. This was too bad as the conference had led to basic agreements on other issues, such as the EC’s banana policy. The EC later withdrew on the basis that their agreement on the banana issue was subject to a comprehensive trade deal. It also put under threat the commitment made at the Sixth WTO Ministerial Conference that WTO developed country members and developing country members declaring themselves in a position to do so, would grant duty-free and quota-free market access for at least 97% of products, including agricultural products (such as tropical products) originating from the least developed countries by 2008, or no later than the start of the implementation period, in a manner that ensured stability, security and predictability.

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***Domestic subsidies account for major distortions in international prices for agricultural products***

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With regard to domestic support, the AoA had distinguished between allowed subsidies (“green” box) for scientific and development purposes (and which supposedly do not or minimally distort trade), subsidies contingent on limited production (“blue” box) and subsidies which were directly linked to the level of production (calculated as “aggregate measures of support” or AMS) and considered the most distorting. This third category would have to be reduced, again from ceiling levels (“amber” box) with the exception of a “*de minimis*” provision of 5% (of total agricultural production or of total production of a specific agricultural product) for developed countries and 10% for developing countries. Domestic subsidies are used mostly by developed countries and account for major distortions in international food prices. The most recent text contains proposals for the reducing overall trade-distorting support (OTDS) (see annex for details).

With regard to the third pillar, export competition, it is noteworthy that export subsidies are prohibited for industrial products (as long as they are “specific”) but are allowed for agricultural products under the AoA, subject to reduction commitments. At the Sixth WTO Ministerial Conference, countries

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***A Doha deal would eliminate  
export subsidies***

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finally agreed to eliminate agricultural export subsidies by 2013 and for cotton in 2006, but this was subject to a comprehensive Doha deal. Countries also agreed to review and strengthen the provisions for food aid, which is sometimes used as a guise for export subsidies.

## **C. OTHER IMPORTANT NEGOTIATION ISSUES**

Apart from agriculture, there are other important areas of negotiations, in particular NAMA, trade in services and rules. Within the context of development, issues related to trade-related aspects of intellectual property rights (TRIPS) and trade and environment also assume special importance. This section seeks to briefly highlight the most important issues in those areas. A more detailed overview of the state of play in NAMA is provided in the annex to this chapter.

### **1. Non-agricultural market access (NAMA)**

Trade in manufactured goods constitutes about 70% of world trade. Industrial tariffs are on average much lower than agricultural tariffs (see annex table 7) and NTMs seem to affect industrial trade more than tariffs. While in 2006 the average tariff worldwide on industrial goods was only 5%, it was 60% on agricultural products.<sup>9</sup> For developed countries the difference between applied and bound rates are on average negligible and often zero. However, there are some tariff peaks on products of importance to developing countries, such as textiles and garments, fish products and other labour-intensive industries. Industrial tariffs in developing countries are on average much higher with relatively high bound rates (on average 28.5%) which enable them to increase their applied rates.

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<sup>9</sup> According to WTO figures for 2006 as reported by the WTO Director-General, Mr. Pascal Lamy in an opening address at the Twelfth Session of the Steering Committee of the Parliamentary Conference on the WTO, 22 June 2006.

Developing countries often argue that lowering their tariffs would result in an influx of imports which their domestic industry is not yet capable of competing with. Tariff reductions would also lead to revenue loss for the government. Therefore, they need to base their negotiating positions on realistic expectations of how well they are able to improve their supply-side capacities, mature their “infant” industries to adulthood, and adjust their tax system within a reasonable time-frame. Aid for trade could play an important role in this regard (see section D below).

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***Industrial tariffs are generally already relatively low in developed countries but they are still high in developing countries while NTMs are a major obstacle in all countries***

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The traditional economic argument is that trade liberalization would lead to increased competition forcing domestic industry to upgrade in order to survive. The consumer would be the ultimate beneficiary. However, as was discussed in chapter 1, unbridled liberalization could affect the economy in the absence of supporting policies and the poor could suffer the most. Therefore, developing countries need a minimum degree of policy space to implement their industrial policy. In this regard, tariffs can be a useful tool to discourage the import of non-essential products and encourage the import of products that are essential and also critical for industrial development. Another concern is that tariffs account for only a small portion of trade protection in NAMA. As in agriculture, the incidence of NTMs seems to be on the rise in overly restrictive standards and certification requirements (i.e. technical barriers to trade) and anti-dumping measures which disproportionately affect developing countries. Unlike in agriculture, NTMs are part of the negotiations but progress is slow.

While there is a basic agreement to use the so-called “Swiss formula”<sup>10</sup> for tariff cuts in various

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<sup>10</sup> A Swiss formula would result in larger reductions of higher tariffs. A smaller coefficient would result in a larger cut.

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***Sectoral agreements have emerged as a major stumbling block to a successful Doha deal***

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bands, and a convergence emerged in July 2008 on the coefficients to be used, major disagreements remained on the participation of selected developing countries in so-called “sectoral agreements”, i.e. agreements in particular industrial sectors. Without substantive increases in market access in selected sectors, developed countries say there is little in it for them. On the other hand, developing countries stress the voluntary nature of the negotiations and have little appetite to make commitments in areas where they do not have to. In the end it is all about the perceived benefits of trade liberalization and the readiness and political willingness to make hard choices. As this differs among countries, a compromise is hard to achieve, though probably easier in NAMA than in agriculture.

## **2. Services**

Unlike agriculture and NAMA, the negotiations in services have taken a bit of a back seat. Services traditionally eluded multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT) but the Uruguay Round for the first time produced the General Agreement on Trade in Services (GATS). This probably results from the fact that services trade has expanded enormously in recent decades and, according to WTO, now accounts for almost one fifth of international trade and two thirds of global output. Before the crisis hit, in 2007 it grew at a higher rate than trade in manufactures for the first time in five years (18% versus 15%), with China and India leading the world together with the European Union, Japan and the United States (WTO, 2008). Various developing countries have developed a competitive advantage in selected services sectors, such as tourism and off-shore finance.

Liberalizing trade in services has the potential to help speed up a country’s development as other economic sectors, such as agriculture and manufacturing depend on services such as transportation

and communications and financial services. Even other services sectors depend on these services. Countries that successfully reformed their financial and telecommunications services sector have grown, on average, about 1.0 percentage point faster than other countries (Mattoo, 2003). Some research concludes that the increase in real income if protection of services was cut by half would be five times larger than that generated from comparable trade liberalization of goods (Robinson, Wang and Martin, 1999). On the other hand, it has also been argued that there is no “one size fits all” approach to liberalization of trade in services and that developing countries need to conduct a careful cost-benefit analysis before making commitments in this area. It is understood that liberalization of trade in services alone does not automatically lead to services growth and development in developing countries, and that there is a need for supporting policies and regulatory frameworks. In addition, liberalization should not result in reducing access to essential services by vulnerable segments of the population (UNCTAD, 2006b).

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***Services are the most promising trade sector for developing countries. Liberalization could speed up development as all economic sectors depend on services***

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The GATS covers all services except government services and air traffic rights. It identifies four modes of supply of a service: (1) cross-border supply; (2) consumption abroad; (3) commercial presence; and (4) presence (understood as movement) of natural persons. Mode 3 is generally understood to mean foreign direct investment (FDI) in services, the first time that investment is perceived as a form of trade. However, the least commitments and the highest demands from developing countries are in Mode 4 as this mode contributes to remittances to many developing countries which, for some countries, are a major source of foreign exchange. Mode 4 would also alleviate labour pressure in the home country. It has been estimated that liberalizing the movement of natural persons, for instance by introducing a temporary visa in developed countries permitting movement of up to 3% of the total labour

force, would increase world income by nearly \$160 billion (Walmsley and Winters, 2003).

Members' commitments on each services sector and on each mode are contained in their schedules. However, relatively little liberalization in services has resulted from the GATS (Adlung, 2009). Subsequent agreements were reached on financial services, basic telecommunications and movement of natural persons, which are attached as protocols to the GATS. The GATS has a "built-in" agenda committing members to a progressive liberalization through further rounds of negotiations (Article XIX) starting at the turn of the Millennium. These negotiations were incorporated into the Doha Round when it was launched in 2001.

In March 2001, WTO members agreed on the guidelines and procedures for the negotiations and, by so doing, set the objectives, scope and method for the negotiations in a clear and balanced manner. The current negotiations take place on the basis of request-offer and cover issues such as: emergency safeguards, allowances for autonomous liberalization, government procurement and subsidies, domestic regulations for foreign service suppliers, review of MFN exceptions, adjustments in response to an assessment of trade in services, special and differential treatment (SDT) for the least developed countries (modalities for which were agreed on in September 2003), and a review of air transport services, which are currently excluded from the GATS.

The negotiations on trade in services have also stalled in recent years. First, countries are wary to engage in multilateral negotiations on trade in services as it is difficult to make the deep legislative and regulatory changes needed to open services markets. Second, while the negotiations are dominated by demands from developed countries to open up services in developing countries, they are reluctant to reciprocate in areas where developing countries have a competitive advantage, i.e. in Mode 4. Third, many countries have not been able to identify their national sectoral interests in services, the barriers to their exports, or to properly evaluate the requests they have received and have therefore failed to table proposals. And lastly, many

are waiting for tangible progress first in the areas of agriculture and NAMA.

A positive final outcome in the services negotiations is therefore contingent on a final deal in other sectors, in particular agriculture and NAMA.

### 3. Trade-related aspects of intellectual property rights (TRIPS)

Intellectual property rights (IPR) are protected by a number of international agreements monitored by the World Intellectual Property Organization (WIPO), but it was the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), adopted as part of the Uruguay Round, that first made a strong link between trade and IPR, while also updating and strengthening the provisions on IPR in the WIPO agreements.

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*Intellectual property rights and their effective protection have emerged as a serious non-tariff barrier to international trade but are important in developing competitiveness*

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The TRIPS Agreement strives to strike a balance between the rights of IPR holders and promote innovation on the one hand and serving the needs of society on the other, for example, in areas such as affordable access to medicine. But the Agreement has been controversial from the start. It is often seen as running counter to developing countries' interests, particularly in areas such as public health, protection of plants and animals, biodiversity, and traditional knowledge. Leading economists such as Jagdish Bhagwati and Arvind Panagariya have argued that IPR is not a trade issue and does not belong in WTO.

On 30 November 2005, members agreed to extend the deadline for the least developed countries to implement most provisions of the TRIPS Agreement from 1 January 2006 to 1 July 2013. However, many developing countries complain that the provisions of TRIPS are too stringent and that they lack the capacity to implement the Agreement.

A major issue concerns TRIPS and public health. Article 31 of the TRIPS Agreement allows governments to issue compulsory licences under certain conditions, for instance, when efforts to obtain authorization from the right holder on reasonable commercial terms and conditions within a reasonable period of time have failed. However, this requirement may be waived by a member in the case of a national emergency or in other circumstances of extreme urgency, or in cases of public non-commercial use. Any such use shall be authorized predominantly for the supply of the domestic market of the member authorizing such use, and the rights holder shall be paid adequate remuneration.

When the Doha Round was launched in 2001, ministers adopted a Declaration on TRIPS and Public Health in which they reiterated a commitment to the TRIPS Agreement but affirmed that it can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to

medicines for all. The Declaration states that each member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted. It also says each member has the right to determine what constitutes "a national emergency or other circumstances of extreme urgency." Some countries have availed themselves of the option to grant compulsory licences (see box 2.3 for the case of Thailand).

Paragraph 6 of the Declaration recognizes that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. The Declaration also states that the least developed countries will not be obliged, with respect to pharmaceutical products, to provide protection of patents or test data or enforce patent rights until 1 January 2016. On 30 August 2003, the General Council of WTO adopted the Decision on the Implementation of Paragraph 6 of the Doha Declaration allowing parallel imports of generic

### **Box 2.3. TRIPS and public health: the case of Thailand**

Various Asian countries have availed themselves of compulsory licences for medicines. Malaysia and Indonesia have issued so-called "government use authorizations" for the importation and local production respectively of generic medicines overriding patents. However, perhaps the most conspicuous case highlighted by the media has been the issue of compulsory licences by the Thai Government. In 2006, the Ministry of Public Health issued a five-year compulsory licence (CL) for the anti-retroviral drug, Efavirenz, commonly used in first line treatment for HIV after failed attempts to obtain the drug from the patent holder, United States pharmaceutical company Merck, at more reasonable prices. The CL allows the Thai Government to import a generic version of Efavirenz from abroad until the national Government Pharmaceutical Organization is able to produce its own generic version saving the public health system millions of baht a year. After Thailand issued the CL, Merck offered to make its medicine available for half the price. In January 2007, Thailand issued a second CL on the medicine Kaletra, made by Abbott, a second line of HIV treatment. Abbott responded by announcing it would not register new medicines for sale in Thailand. A third CL was issued for Clopidogrel, a heart medication sold by Bristol Myers Squibb. Plans for the issuance of CLs for four cancer drugs were announced but postponed after deals were made with one of the original manufacturers of a drug. The United States Government has responded by putting Thailand on its priority watch list of IPR violations but did not launch an official complaint under the WTO Dispute Settlement Understanding (DSU). However, the United States can retaliate by withholding Generalized System of Preferences (GSP) privileges from Thai imports. Arguments have been forwarded both in favour and against the Government of Thailand's move.

It is generally understood that IPR is essential to compensate companies for the high costs involved in R&D and reap the rewards for those efforts. Without IPR, new medicines would not be found easily as most new medicines are found by transnational corporations (TNCs). However, a patent effectively grants a monopoly position to a TNC and may undermine competition. Secondly, the rights of the patent holder of essential goods such as life-saving medicines should be balanced by public interests. The TRIPS Agreement and related declarations and decisions have come a long way towards finding this balance. It is perhaps not perfect, but at least provides a system of rules which is enforceable and subject to interpretation by the DSU.

medicine under strict notification and other conditions to countries unable to manufacture generic medicines themselves. According to a 6 December 2005 General Council Decision, this 2003 Decision would become part of the TRIPS Agreement upon acceptance by two thirds of the WTO membership. Members have until 31 December 2009 to accept the amendment. So far, only 23 out of 153 countries have done so.

The Doha Declaration itself also opened negotiations on geographical indications for wines and spirits and beyond, the relation between TRIPS and the Convention on Biodiversity, traditional knowledge and folklore, and other new relevant developments raised by members pursuant to the relevant article in TRIPS.

#### **4. Other negotiation issues: rules, trade and environment, and trade facilitation**

##### *(a) Rules*

The Doha mandate includes negotiations on rules with the purpose of clarifying and improving existing disciplines and procedures in the areas of anti-dumping, subsidies and countervailing duties, in particular fisheries subsidies, and RTAs. Progress was made only in the area of RTAs with the adoption of a transparency mechanism.

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*The current crisis has witnessed a rise in the incidence of anti-dumping and subsidies while attention to issues related to trade and environment may wane*

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The issues related to fisheries subsidies are particularly important, highlighting the interlinkages between trade and environment. Fisheries are not considered an agricultural product but they provide the livelihood of millions in most coastal Asia-Pacific countries, in particular the Pacific islands. However, while specific export subsidies on goods are banned under the WTO Agreement on Subsidies and Countervailing Measures, subsidies on fisheries are allowed as they are not contingent on

export performance. Global fisheries subsidies amount to \$30 million to \$35 million per year, of which about \$20 million contributes to capacity-building and are considered harmful to healthy fish stocks (Sumaila and Pauly, 2006). The problem these subsidies highlight is that of overfishing and depletion of fisheries resources. According to the UN Food and Agriculture Organization (FAO), in 2004, 75% of global marine fisheries were either overexploited, fully exploited, significantly depleted or recovering from overexploitation and this figure is believed to be higher today (FAO, 2004). In addition, of course there is the issue of to what extent fisheries subsidies distort trade. However, fisheries subsidies are considered essential for the survival of many poor people who depend on fishing for their income.

On 19 December 2008, the Chair of the Negotiating Group on Rules issued a “roadmap” on fisheries subsidies. This roadmap identifies the key questions that the Negotiating Group will need to address to reconcile participants’ different approaches to disciplining subsidies that contribute to overcapacity and overfishing while formulating appropriate and effective special and differential treatment that addresses the interests and concerns of developing members. The Negotiating Group has discussed the roadmap at various meetings but so far has made no tangible progress.

##### *(b) Trade and environment*

Issues related to trade and environment are being discussed in WTO with specific issues subject to negotiations as part of the Doha Round. The issues are complex and are directly related to the negotiations in virtually all other areas, such as NAMA (environmental goods), services (environmental services), agriculture (many agricultural goods can be considered as environmental goods), TRIPS (related to preserving biodiversity and preventing biopiracy), and rules (fisheries subsidies). The issue is important, particularly in light of rising concerns related to climate change, food security and energy security. It is understood that trade has an environmental impact and that specific trade rules can contribute to protecting the environment, but some disciplines in multilateral

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***The trade and environment negotiations are important to ensure policy coherence and liberalize trade in environmental goods and services in which many developing countries have a comparative advantage***

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environmental agreements (MEAs) can also undermine market access for selected goods and services. However, there is a risk that in times of crisis, policymakers will pay less attention to environmental matters. That would be a mistake as these matters are urgent and will not disappear. This is the time to make trade part of the solution.

The Committee on Trade and Environment (CTE) is mandated to negotiate under its special sessions on three specific issues: (1) relationship between WTO rules and specific obligations under MEAs; (2) procedures for information exchange between MEAs and specific WTO committees; and (3) reduction, or elimination of tariffs and non-tariff barriers on environmental goods and services (EGS) (box 2.4). The following focused issues are for discussion only: (1) effects of environmental rules on market access and of trade rules on the environment; (2) clarification of certain provisions of the TRIPS Agreement; and (3) labelling requirements for environmental purposes. The Hong Kong Ministerial Declaration welcomes the progress and calls for negotiators to complete the work expeditiously. At the moment, all issues are still on the table and no consensus text has emerged. Among the outstanding issues are the precise definition and categorization of environmental goods and services which would enjoy higher levels of market access than other goods and services and the identification of “specific trade obligations” found in MEAs. The CTE has determined that among the 250 MEAs in force, only about 20 contain trade provisions.<sup>11</sup>

A successful deal would help strengthen the linkages between trade and environment and increase coherence between these two important areas for inclusive and sustainable development.

<sup>11</sup> WTO, [http://www.wto.org/english/tratop\\_e/envir\\_e/envir\\_neg\\_me\\_a\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/envir_neg_me_a_e.htm).

It would help contribute to environmental sustainability and stimulate trade in climate-friendly products and technologies.

**Box 2.4. Defining environmental goods**

A large part of the negotiations on the liberalization of trade in environmental goods deals with the question of what goods qualify as such. As a precise definition has been elusive, countries have adopted a “list approach,” with initial lists produced by APEC and OECD as a starting point. Liberalization would follow normal market access practices by reductions from bound rates. On 27 April 2007, Canada, the European Union, Japan, New Zealand, Norway, Republic of Korea, Taiwan Province of China, Switzerland and the United States (termed “Friends of Environmental Goods”) submitted a revised shorter “Potential Convergence Set” of 135 products. Environmental goods and services could be conceptualized in two ways. The first is the narrow, conventional conception that focuses on treating a specific environmental problem through the end-use of a particular good or service. This characterizes the traditional classification of EGS and includes goods and services such as wastewater treatment equipment or solid waste disposal services. The second is broader and involves environmentally preferable goods, which are defined by UNCTAD (1995) as products which cause significantly less “environmental harm” at some stage of their “life cycle” than alternative products that serve the same purpose, or goods that by their production and sale contribute significantly to preservation of the environment.

*Source:* ICTSD, “Trade in environmental goods and services and sustainable development: domestic considerations and strategies for WTO negotiations”, Policy Discussion Paper (Geneva, 2007).

**(c) Trade facilitation**

With falling international tariffs, trade facilitation has assumed centre stage in removing bottlenecks to international trade transactions. These bottlenecks include trade procedures which tend to be more cumbersome in developing countries than in developed countries and are therefore major obstacles to promoting South-South trade. These obstacles are also of much higher concern to

landlocked developing countries than tariffs. Trade facilitation was the only “Singapore” issue<sup>12</sup> to be formally included in the Doha negotiations in accordance with modalities set out in the July 2004 Package.

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*The Doha negotiations on trade facilitation are progressing but the coverage is limited*

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In the context of WTO, trade facilitation is generally defined as the simplification and harmonization of international trade procedures, where trade procedures are the activities, practices and formalities involved in collecting, presenting, communicating and processing data and other information required for the movement of goods in international trade. While many existing WTO provisions and agreements relate to trade facilitation (e.g. the Agreements on Technical Barriers to Trade and Application of Sanitary and Phyto-Sanitary Measures), the decision was made to narrow down the trade facilitation negotiations mainly to clarifying and improving relevant aspects of Articles V (freedom of transit), VIII (fees and formalities connected with importation and exportation) and X (publication and administration of trade regulations) of the GATT 1994. The aim was to further expedite the movement, release and clearance of goods, including goods in transit, as well as to enhance technical assistance and support for capacity-building in this area. The negotiations also aim to improve cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. The results of the negotiations are expected to take fully into account the principle of special and differential treatment for developing and least developed countries.

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<sup>12</sup> The original agreement adopted by the Second WTO Ministerial Conference in Singapore in 1996 was to explore the possibility of launching negotiations as part of the Doha Round in the areas of investment, competition policy, government procurement and trade facilitation.

Negotiations on trade facilitation have made good progress and provided an opportunity for many countries to assess their needs and priorities in this area. More than 150 proposals have been submitted since 2004, in many cases joint proposals by developed and developing countries. There is agreement that the extent and the timing of entering into commitments should be linked to the implementation capacities of developing and least developed countries. As a result, one implementation mechanism under consideration would allow developing countries, based on a capacity self-assessment, to classify trade facilitation measures in three different categories: (1) measures that are ready to implement from the date of entry into force of the agreement; (2) measures that will be implemented after a specified transition period; and (3) measures that will be implemented after technical assistance and capacity-building needs are fulfilled. Establishment of a Trade Facilitation and Capacity-building Support Unit has also been proposed.

Regardless of the final outcome, negotiations on trade facilitation have already broken new ground in linking commitments in multilateral negotiations to technical assistance and capacity-building (aid for trade) and taking into account developing countries needs and priorities. In addition, while the current scope of the trade facilitation negotiations may not cover all the priority issues identified by traders in the region (e.g. customs valuation), a first multilateral agreement on trade facilitation would certainly set the stage for closer cooperation on a wider array of trade facilitation issues. Substantive issues related to trade facilitation are further discussed in chapter 4.

*(d) Other issues*

Another negotiation issue is strengthening the Dispute Settlement Understanding mechanism. Other issues that are being examined and discussed but not negotiated in WTO include electronic commerce; small economies (with a view not to creating a sub-category of WTO members); trade, debt and finance; and trade and transfer of technology.

## D. THE MULTILATERAL TRADING SYSTEM AND DEVELOPMENT

### 1. General development concerns, including policy space

The MTS does not exist for its own sake. It exists because countries, developed and developing alike, realize that it is the most effective system in governing international trade relations. Coupled with the notion that trade is essential for the development of all countries, especially in the current context of increased globalization and interdependence of countries, the logical conclusion is that the MTS is good for development. While this link can be made theoretically, in practice, the contribution of the MTS to development is not very clear. WTO should be seen as an organization where needs and obligations are balanced and where both the stability and efficiency of the multilateral trading system are ensured. However,

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*Policy space has been restricted under WTO rules, but developing countries still have considerable flexibility to make trade work for development*

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many developing countries continue to harbour suspicions of WTO as a developed country driven organization which basically harms rather than promotes developing country concerns. These suspicions have been enhanced when developing countries discovered that the gains they expected in access to developed countries' markets upon acceptance of restrictions on "policy space" (i.e. their flexibility to implement policies and measures they consider important for their development process, e.g. in areas such as trade-related investment measures or TRIMs and TRIPS) did not materialize (UNCTAD, 2006a). On the positive side, developing countries have been able to vastly increase their bargaining power in the current Doha Round by building coalitions, a mechanism to which the MTS is open. However, it has also been pointed out with regard to the MTS as a mechanism to

integrate developing countries into the international trading system, that too rapid a rate of integration or integration in the wrong areas and in the wrong way can be harmful rather than helpful (Khor, 2003).

The current agreements impose many obligations and commitments on developing countries which they find difficult to implement given their current state of development. Developing countries routinely refer to burdensome restrictions imposed on their "policy space". Such limits are an inevitable consequence of international governance systems and are designed to prevent countries from resorting to trade-distorting measures for development purposes where other, more efficient measures would perhaps be more appropriate. However, some have argued that the major concern with the limitations on policy space is that the MTS constitutes a one-size-fits-all model which fits developed countries but is perhaps not suitable for all developing countries (UNDP, 2003). The concerns are perhaps most justified with regard to TRIMs and, even more so, TRIPS (UNCTAD, 2006a). Yet, many developing countries have signed RTAs with TRIPS- and TRIMs-"plus" commitments.

Commitments undertaken as part of the accession process are particularly burdensome and in most cases WTO-plus. Least developed countries have not been exempt from such obligations (see box 2.6). While some countries have embraced WTO accession to spur their own national development process and accept legally binding commitments to circumvent vested interests and embark on a road of no return, the problems and obstacles encountered in actual implementation of those commitments are not to be taken lightly.

Most important for developing countries is the continuing protectionism they face in their traditional export markets and this should be their core concern in the Doha negotiations. Agricultural subsidies, tariff peaks and escalation, and the rise of various forms of NTMs undermine their potential to use or develop comparative advantages. Where developing countries, including the least developed countries, have preferential access to the markets of developed countries under GSP schemes or

BTAs, they often encounter cumbersome rules of origin and NTMs which continue to effectively hinder their exports. In the meantime, there are concerns that continued reduction in MFN tariffs leads to the erosion of these preferences (see below).

As discussed above, another particular bone of contention relates to TRIPS. Many developing countries complain that the standards contained in TRIPS are too strict and prevent the kind of development process which others have followed before them (including the practice of reverse engineering). The issues are particularly sensitive in the area of TRIPS and public health and environment. Although developing countries have increased their access to generic medicine through compulsory licensing, the conditions for such practice are still considered too strict and cumbersome by many (see box 2.3).

It appears that developing countries may have concluded a Uruguay Round deal not entirely in their favour. This is because they expected market access gains which have not fully materialized. In addition, they lacked negotiation capacity and feared being left out of the MTS if they did not sign onto the deal (Garcia, 2004). Still, many developing countries have gained experience and considerable expertise. The Doha Round, therefore, should offer opportunities to rectify the imbalances, preferably not through reopening concluded agreements and reneging on earlier commitments (which would undermine the credibility of the MTS) but through the granting of meaningful market access and provision of aid for trade (AfT) by developed countries and more advanced developing countries to the less and least developed countries.

## 2. Special and differential treatment

While the existing multilateral trade agreements have ample provisions for SDT for developing countries, including no reduction commitments in most cases for the least developed countries, the implementation of these provisions is often lacking. Most of the 145 SDT provisions under the Uruguay Round agreements are in the form of “best endeavour” clauses but are not legally binding.

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*Special and differential treatment issues  
are at the core of a successful  
conclusion of the DDA*

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Indeed, the Doha Round was launched with the specific commitment to take development concerns into due account and hence is known under the formal name of Doha Development Agenda. As part of the negotiations, implementation issues related to the Uruguay Round agreements would be taken up (as contained in a separate Ministerial Declaration adopted at the Doha Ministerial Conference). While some issues could be solved immediately, most were integrated into the negotiation process. SDT provisions would be made more *precise, effective and operational*. Any new deal would integrate SDT provisions including less than full reciprocal commitments with longer time periods for implementation of commitments. Least developed countries would be mostly exempted from making any concessions at all.

The Committee on Trade and Development has received various proposals on implementation and SDT issues but is currently deadlocked. Developing countries are concerned that development issues are not adequately addressed and accuse developed countries from backtracking on their commitments. It is possible that growing mistrust on the part of the developing countries contributed to the collapse of the July 2008 mini-ministerial and the delay in forming a deal.

Yet putting too much insistence on expanding SDT can be counterproductive to developing countries. According to some, such insistence can lead to further marginalization of developing countries and least developed countries in a globalizing world (Srinivasan, 1999). Others argue that well-designed, effective, enforceable and time-bound SDT constitute an important aspect to ensure effective integration of these countries into the MTS (Adhikari, 2004). However, while SDT is important, its pursuit should not be the focus of negotiations for developing countries and should only be extended to those countries which really need it, while a proper graduation system should be put in place (Michalopoulos, 2000). The MTS and the

Doha negotiations are all about reforms deemed necessary to promote trade for development. In this regard, SDT should be used prudently to allow for a sustainable and inclusive reform process, rather than as an excuse not to implement necessary reforms (Matthews, 2004). The implementation of SDT should also be closely monitored.

### 3. Generalized system of preferences

Since the adoption of the 1971 Enabling Clause, many developing countries around the world, including in the Asia-Pacific region, have been recipient of various GSP schemes, in particular those granted by Canada, the European Union, Japan and the United States. Such schemes are not rights of developing countries and are completely at the discretion of the country granting them (see box 2.5 for the GSP schemes of the European Union). Under the auspices of UNCTAD there is also a Global System of Trade Preferences among Developing Countries (GSTP). However, the negotiations under the GSTP have made little progress so far. Least developed countries are beneficiaries of duty- and quota-free market access under various schemes implemented by a number of developed and developing countries, such as the European Union Everything But Arms (EBA) scheme. One of the outcomes of the Sixth WTO Ministerial Conference in Hong Kong, China was that developed countries and developing countries in a position to do so, would grant duty- and quota-free market access to 97% products from the least developed countries. All these schemes have their own conditions and graduation clauses. They also have rules of origin, which can sometimes be restrictive to the point of annulling the benefits of the preference.

On balance, GSP schemes seem to have benefited developing countries. With the reduction of MFN tariffs, the concern of developing countries is that their preferences are eroded. On the other hand, such as in the banana case, developing countries not part of a GSP scheme feel discriminated against. Of course, GSP schemes are by definition violating the most sacred of WTO principles, the MFN clause of non-discrimination, but it was felt that GSP

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*There is evidence that GSP schemes have on balance benefited developing countries. However, there are inherent problems associated with such schemes which need to be addressed*

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schemes could help developing countries boost exports and diversify their products and markets. In actual fact, however, the utilization of GSP schemes has been rather limited. Reasons include the emergence of NTMs in developed countries (notably standards and requirements, particularly those related to health, labour and environment), restrictive rules of origin and anti-dumping.

There are other concerns associated with GSP schemes. First of all, such schemes keep developing countries dependent on developed countries for exports. Second, GSP schemes may lead to inefficient production and export patterns which do not fit the recipient country's natural comparative advantages. Third, the non-reciprocal character of the schemes acts as a disincentive for recipient countries to upgrade their competitiveness, innovate and strengthen supply-side capacities. Fourth, GSP schemes may benefit some developing countries but discriminate against other developing countries which are not members of the scheme (ESCAP, 2001).

While developing countries have expressed concern over preference erosion, the reductions in MFN tariffs relate to bound tariffs, leaving applied rates more or less untouched. GSP schemes, however, cover applied rates. Therefore, the level of preference erosion may not be as high as feared. Furthermore, most least developed countries have already duty-free access to most developed markets (WTO, 2005).

In the medium term a case can be made to strengthen the effectiveness of GSP schemes by ensuring their stability and expanding their coverage to all products with rules of origin and related administrative procedures that reflect the supply capacity and industrial development of the least developed countries (UNCTAD, 2004). Moreover, some richer developing countries would

be in a position to establish their own GSP schemes for less and least developed countries. Already China provides duty-free access to selected products from some least developed countries. India provides duty-free access to products from Nepal with some conditions and applies a Duty Free

Tariff Preference (DFTP) Scheme to 92.5% of global exports of all least developed countries (Ratna, 2009). Since 1 January 2008, the Republic of Korea has also provided duty- and quota-free market access to products from the least developed countries (see details in Khan and Farhad, 2009).

### **Box 2.5. The GSP schemes of the European Union**

Of all GSP schemes, those of the European Union are the most widely used and 176 countries benefit from them. There are three types of scheme. The standard GSP is a non-negotiated arrangement under which the European Union provides non-reciprocal preferential access. In the case of textiles and clothing, for instance, GSP duties amount to 80% of the full common customs tariff. There has been a significant increase in recent years in the value of preferential imports under GSP. Imports under the scheme totalled €51 billion in 2006 (an increase of 10% over 2005) and €57 billion in 2007 (an increase of 12% over 2006). GSP+ aims to encourage sustainable development and good governance in vulnerable developing countries. Beneficiaries must ratify and apply 27 core United Nations and International Labour Organization (ILO) conventions relating to such matters as human and labour rights, the environment, the fight against drug production and trafficking and corruption.

The Everything But Arms (EBA) GSP scheme offers duty-free and quota-free access to the least developed countries for all products except arms and armaments with a small adjustment for the full liberalization of sugar imports from the least developed countries which took place on 1 October 2009. Bangladesh and Cambodia's garment exports benefit from this scheme. Imports under the EBA cover 7,200 tariff lines and amounted to €4.3 billion in 2007. The GSP is governed by strict rules of origin – to ensure that the benefits go only to the countries intended. Products “originate” in a country if they are wholly obtained in the country or sufficiently worked upon or processed within it. However, “cumulation” rules enable production processes to take place in certain other locations without affecting the country's entitlement to GSP benefits.

Whenever an individual country's performance on the market of the European Union over a three-year period exceeds or falls below a set threshold, preferential tariffs are either suspended or re-established. Following the opinion of the European Parliament, the European Union General Affairs and External Relations Council adopted a regulation on 22 July 2008 applying a new GSP scheme for the period from 1 January 2009 to 31 December 2011. Under the new scheme, preferences were re-established for the following Asian countries: India (jewellery, pearls, precious metals and stones), Indonesia (wood and articles of wood), and Thailand (transport equipment). Myanmar remains temporarily withdrawn from the GSP. Viet Nam graduated with regard to footwear, headgear, umbrellas, sun umbrellas, artificial flowers and other products. India was the biggest beneficiary in 2007, accounting for almost 20% of total preferential trade. Other Asian beneficiaries are Bangladesh, Indonesia, Malaysia, Pakistan, Thailand and Viet Nam. Of the 16 future beneficiary countries offered the GSP+ incentive arrangement, five are from Asia: Armenia, Azerbaijan, Georgia, Mongolia and Sri Lanka. New rules of origin have been proposed but they do not cover agricultural and processed agricultural products.

A related scheme is the Cotonou Agreement between the European Union and the African, Caribbean and Pacific Group of States (ACP). Since the First Lomé Convention in 1975, the European Union has granted *non-reciprocal* trade preferences to their ACP partners. Under the Cotonou Agreement, signed in 2000, however, this system will be replaced by a new scheme which took effect in 2008: the Economic Partnership Agreements (EPAs). These new arrangements provide for *reciprocal* trade agreements to solve the dilemma of how to safeguard the development requirements of the ACP while respecting international rules. The European Union has either initialled or already signed interim or full EPAs with 36 countries of the 77 in the ACP. The other 41 are the least developed countries and therefore qualify for the EBA provisions. The European Union is currently negotiating with the Pacific ACP (PACP) countries. These include 14 states: Cook Islands, Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Another ACP (Timor-Leste) has observer status in EPA negotiations.

Source: [http://ec.europa.eu/trade/issues/global/gsp/index\\_en.htm](http://ec.europa.eu/trade/issues/global/gsp/index_en.htm).

In the longer run, it is probably advisable to fully integrate GSP schemes into the MFN schedules so as to avoid discrimination among developing countries themselves (UN Millennium Project, 2005). At best they should form a temporary system of measures which could be linked to AfT to help recipient countries develop genuine export competitiveness on a fair and equitable (i.e. non-discriminatory) basis.

#### 4. Aid for trade and its relevance for the Asia-Pacific region<sup>13</sup>

One way to address the concerns of developing countries is technical assistance, though all WTO members agree that this is not a substitute for meaningful market access. Nevertheless, the lack of effective supply-side capacities continues to undermine the benefits of the MTS, and trade in general, for developing countries. Promises under the Uruguay Round agreements for technical assistance have largely failed. These concerns have been partly addressed by introducing the aid for trade concept at the Hong Kong Ministerial Conference in addition to existing initiatives such as the Integrated Framework for Trade-Related Technical Assistance to the least developed countries which is ineffectual and lacks funding.<sup>14</sup>

AfT is important in addressing supply-side capacity constraints and deficits in trade-related infrastructure. It is also an important modality to enhance the net development gains from increased trade by forging coherence and consistency between mutually supportive trade, environment and development policies at the national level.

<sup>13</sup> The material for this section is taken from Marc Proksch and Noordin Azhari, "Aid for trade and public-private partnerships in the Asian and Pacific region", in Philippe de Lombaerde and Lakshmi Puri (2009), chapter 8. The chapter also appeared as a research article in ESCAP, *Asia-Pacific Trade and Investment Review*, vol. 3, December 2007 and formed a separate background paper for the Committee on Managing Globalization, fourth session, Part I, 12-14 September 2007.

<sup>14</sup> See, for instance, Frank J. Garcia, "Beyond special and differential treatment", *Boston College International and Comparative Law Review*, vol. 27, pp. 291-317, 2004; Boston College Law School Research Paper No. 86, available at SSRN: <http://ssrn.com/abstract=863904>.

Moreover, it helps to raise countries' capacity to integrate inclusive and sustainable development dimensions into trade policy and practices.

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*Effective aid for trade is an important modality to help developing countries benefit from trade but it should be needs-driven and clearly operationalized*

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A WTO Task Force defined AfT, identified challenges and gaps, and made recommendations concerning the operationalization of AfT, at the multilateral, regional and national levels.<sup>15</sup> With regard to the regional-level implementation of AfT, the report recognizes that "many countries require cross-border infrastructure and regional policy cooperation to trade more effectively. The ability to identify cross-border and regional needs should be strengthened at the country, regional and multilateral level." In particular, the Task Force recommends strengthening the following functions in relation to regional, subregional and cross-border issues: "diagnosis of needs; costing of projects; preparation of project proposals; and the coordination of donor response, including brokering and co-financing of needs that at present are difficult to finance through country-based processes, (e.g. cross-border infrastructure and policy-integration projects)". In this context, it recommends the establishment of a regional aid for trade committee, "comprising subregional and regional organizations and financial institutions, to oversee the implementation of the subregional and regional dimensions of aid for trade, to report on needs, responses and impacts, and to oversee monitoring and evaluation".

A recent WTO note<sup>16</sup> identifies three principles for future work on AfT: (a) AfT must be a complement to, not a substitute for, results from the DDA; (b) AfT must not have to compete for existing official development assistance (ODA) flows with other

<sup>15</sup> See "Recommendations of the Task Force on Aid for Trade," WTO, WT/AFT/1 of 27 July 2006.

<sup>16</sup> See "Aid for Trade: WTO Work Programme on Aid-for-trade", Background Note (WT/AFT/W/26), 29 May 2007.

development and poverty reduction priorities (this was a problem for the Integrated Framework); (c) the case for attracting AfT to implement WTO agreements and build trade-related capacity more broadly must have the commitment of trade, development and finance ministers in developed and developing countries, including the least developed countries, and the support of private business.

The Asia-Pacific region has been a major beneficiary of AfT but the perception is that, given its economic dynamics, other regions should perhaps receive priority. This is a misconception. Two thirds of the world's poor live in the region. While it hosts some of the world's richest countries, it also hosts some of the poorest, including 14 of the world's 49 least developed countries. These countries face severe capacity constraints, since they do not necessarily have access to finance from the capital-surplus countries. In addition, despite significant progress in reducing it, the incidence of poverty remains high in some of the high-growth countries.

Although some countries in the region have big foreign exchange reserves, such reserves are not necessarily easily available for investment purposes and as sources of finance for development. In particular, foreign reserves by themselves do not constitute investment capital and some countries actually experience huge capital outflows to developed countries (in particular to the United States) as a result of their investments in generally low-yielding (United States) Government bonds and other securities. Finally, the Asia-Pacific region also accounts for the largest number of economies of any region in the world that are not yet members of WTO (see below).

The region may have more advanced developing countries and developing countries with a greater potential than those in some other regions, but it could be argued that such countries merit increased AfT to ensure that they can take full advantage of the emerging opportunities for trade. In other words, countries which show promise for development should be actively supported to enable them to keep the development momentum. Not surprisingly,

middle-income countries have seen their share of total AfT grow significantly to almost 40% since 1995. There is also evidence that, of all regions, the impact of AfT has been the greatest in Asia.<sup>17</sup>

Furthermore, while the region is awash with capital, demand for investment capital tends to outstrip supply. The need for infrastructure financing already far surpasses available resources, both public and private. For that reason, there is a strong argument in favour of delivering AfT to those most in need in the Asia-Pacific region, in particular, because the region is the world's most dynamic and because opportunities for economic growth and development, as well as for economic integration through trade and investment, are abundant. It would be truly unfortunate if those opportunities were missed due to capacity constraints and inadequate AfT to address them. For instance, there are strong indications that sustained technical and financial assistance from multiple donors played a significant role in facilitating accession to WTO of the least developed countries such as Cambodia and Nepal. While Africa has the Joint Integrated Technical Assistance Programme (JITAP), Asia and the Pacific does not have such a programme. A convincing argument could be made that a similar programme should be developed for the Asia-Pacific region as well. Such a programme should have strong linkages with the Integrated Framework, and ESCAP and the Asian Development Bank (ADB) could take a leading role in its coordination.

Among the latest developments regarding AfT in Asia is the preparation of an AfT roadmap for the member countries of the United Nations Special Programme for the Economies of Central Asia (SPECA) in which Azerbaijan has taken the lead. The objective is to articulate AfT national and regional priorities for the SPECA countries (Afghanistan, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) with special reference to the challenges and prospects during and after the global economic crisis.

<sup>17</sup> See, for instance, the Rapporteur's Report of the OECD Policy Dialogue with Non-members on Aid for Trade: from Policy to Practice, Doha, 6-7 November 2006, paragraph 57, <http://www.oecd.org/dataoecd/24/55/37819542.pdf>.

ADB is currently leading AfT efforts in the region in cooperation with ESCAP. In September 2007, ADB, WTO and the Government of the Philippines hosted the Asia and the Pacific Regional Aid for Trade Review in Manila. Among the major conclusions of the Review was that regional cooperation and integration, as well as infrastructure development, trade facilitation and trade finance matter most to increase trade; that public-private partnerships played an important role in delivering effective AfT; and that AfT should be interpreted as aid for trade for development (ADB and WTO, 2007). The Review also established a regional technical group to: (a) synthesize subregional/country needs and priorities; (b) identify ongoing assistance programmes; and (c) develop an integrated approach that will operationalize AfT for the medium term in Asia and the Pacific with ADB as coordinator (ESCAP is a member).

A high-level dialogue (“Global Financial Crisis, Export-led Growth and Aid for Trade: Focus on the ASEAN Experience”) organized by WTO and ADB in Siem Reap, Cambodia, on 29 May 2009 decided that Cambodia and Japan would lead the Asia-Pacific Regional Technical Group on Aid for Trade. The group was tasked with preparing plans for stepping up AfT in Asia and the Pacific which were reported at the Second Global Review Meeting on Aid for Trade, held in Geneva, Switzerland, on 6 and 7 July 2009. Among the main conclusions of that meeting were the need: (a) for trade to be mainstreamed in development plans; (b) to strengthen the regional dimension of AfT; (c) to strengthen the role and contribution of the private sector; (d) to continue careful evaluation of the impact of AfT; and (e) to continue mobilizing additional resources beyond 2010.<sup>18</sup>

## 5. Accession

Finally, there is the issue of accession. Accession negotiations are important for many developing countries. However, accession involves a cumbersome process which often results in commitments for many developing countries and least developed countries that go beyond commitments of existing members (see box 2.6 for the case of Cambodia and Nepal). The ESCAP region is home to 21 economies not yet member of WTO – 12 of which are in the process of accession

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*The Asia-Pacific region has the highest number of countries not yet a member of WTO*

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– making it the region with the highest number of economies not yet a member of WTO. Countries in the region that recently completed accession are China (2001), Armenia (2003), Cambodia (2004), Nepal (2004), Tonga (2007) and Viet Nam (2007). These countries are known in WTO as Recently Acceded Members (RAM) and are subject to lower or no commitments depending on the area of negotiation. Efforts to simplify the accession process, especially for the least developed countries, have so far failed. The main compensation for accession is expected to be in the form of technical assistance such as AfT as many countries, in particular the least developed countries, will have difficulty in implementing their commitments, including some that recently acceded (e.g. Cambodia, Nepal) and some that are completing accession negotiations (e.g. Afghanistan, Bhutan, Lao People’s Democratic Republic and Vanuatu and most countries in Central Asia).

<sup>18</sup> Closing speech of WTO Director-General Pascal Lamy at the Second Global Review Meeting on Aid for Trade, Geneva, 7 July 2009.

**Box 2.6. Accession to WTO of the least developed countries:  
the experiences of Cambodia and Nepal**

Cambodia and Nepal were the first least developed countries to accede to WTO. Despite attempts to streamline and simplify the accession of the least developed countries to WTO, the process remains an arduous and costly affair. Both completed their accession in 2004 after a more than 10-year accession process. Both were anxious to become WTO members in order to integrate in the international trading system and to diversify markets and products. They also expected to benefit from more predictable market access, access to technical assistance and SDT and from locking in domestic reforms.

By all accounts, both Cambodia and Nepal agreed to much deeper commitments than any founding least developed country member. Nepal's average bound rate is only 42% for agricultural products (31% in Cambodia and 188% in Bangladesh) and 26% for non-agricultural products (compared with Bangladesh's average bound rate of 163.6%). Cambodia agreed to significantly deeper commitments than Nepal. However, the costs of accession have been large for both countries and have mounted during implementation.

According to some assessments, Nepal appeared to be more prepared for implementation than Cambodia: it had stronger institutions and the number of laws and regulations it had to adopt or change was much lower than in the case of Cambodia. In Nepal, most required laws and regulations are already in place. Cambodia, as of end 2007, had enacted 25 out of 47 to which it committed under its accession package. Yet it can be argued that Cambodia has done better since accession than Nepal, probably due to Nepal's political instability.

In both cases, the expected trade gains have not materialized, probably due to the fact that both countries already had relatively liberal trade regimes before they joined and because of severe supply constraints. But there is also no compelling evidence that WTO membership has negatively affected trade of either country or worsened poverty. It appears that both countries are severely lagging in implementing their commitments, but other WTO members have not pressed the matter and it is unlikely that any least developed country will ever be sued for negligence.

At the same time both countries are fully integrated into the MTS and enjoy the benefits such as MFN access to all other 153 members. Cambodia in particular has enjoyed a six-fold increase in FDI since joining WTO. WTO membership has also increased the predictability of non-preferential tariffs and other border measures, including assurance that no quotas would be imposed on their garment exports following the phase-out of the Textiles and Clothing Agreement in 2005. And both countries have joined coalitions to pursue their trade interests in the Doha Round, such as duty- and quota-free access to all exports from the least developed countries.

The lesson from both countries' accession is the need for consultation with stakeholders, not only with the private sector but also with civil society groups, to ensure broad legitimacy and acceptance of WTO accession. Moreover, such consultations need to continue after the accession process is completed, which did not happen in either country. The lack of coordination among involved ministries in both countries has been a major stumbling block to an efficient and effective accession. Other obstacles were the lack of sufficient human skills and experience and financial resources. These obstacles also probably played a part in the two countries' weak implementation of commitments. Technical assistance played an important role in both countries completing the accession process and will continue to play an important role long afterwards. ESCAP is currently assisting Nepal in its implementation process under an European Commission-funded project (under a similar project, ESCAP is also assisting another least developed country, Bhutan, in its accession to WTO). Activities include assistance in notifications, training, and the strengthening of WTO reference centres. The need for effective donor coordination taking into account the countries' absorption capacity has emerged as an important issue in providing meaningful technical assistance.

Sources: [http://www.tradeknowledgenetwork.net/pdf/bridges12\\_5.pdf](http://www.tradeknowledgenetwork.net/pdf/bridges12_5.pdf).  
<https://www.gtz.de/de/dokumente/en-wto-accession-of-cambodia-and-nepal-2008.pdf>.  
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## **E. THE WAY AHEAD: PRESERVING AND STRENGTHENING THE MULTILATERAL TRADING SYSTEM**

The continuing failure of WTO members to conclude the Doha negotiations coupled with a perception by many that the MTS has failed developing countries and favours the rich, has led to calls to review the role of WTO and the modalities of negotiations. WTO, and the MTS it oversees, is certainly flawed but it is probably as good as it gets when one bears in mind that it is merely a group of 153 economies, with often widely diverging interests and ranging from large, rich and therefore powerful members to small, least developed and poor members. It is certainly better than no multilateral system at all. After all, the MTS comprises a system of non-discriminatory rules which apply to all, small and big, rich and poor. It allows for coalitions among weaker states to increase their influence and there is no doubt that developing countries have become increasingly vocal in the negotiations and are less prone to yield to pressure from developed countries in the Doha Round than under previous rounds. No such influence can be wielded in bilateral negotiations with a powerful developed country.

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*Balancing the needs and demands of 153 sovereign states makes no perfect multilateral trading system but there is simply no better alternative*

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The MTS is therefore the best option and should be nurtured and strengthened. There is room for improvement, particularly with regard to decision-making and representation of developing countries in the “green room” of consultations during the negotiations.<sup>19</sup> Major developing countries are already included in “green room” consultations but many other developing countries still feel that they are not duly consulted when major decisions are made there. This threatens consensus without

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<sup>19</sup> The “green room” consultations became a synonym for informal small group consultations among key players in the WTO negotiations, dominated by Western countries and large developing countries.

which a deal cannot be reached. It is therefore in everybody’s interest to work towards the establishment of a decision-making and negotiating process which is efficient, effective and inclusive, while taking a realistic view towards imbalances in size, wealth and power among the sovereign WTO members that are not likely to ever disappear.

The risk is that after many delays in the negotiations, the MTS may become increasingly marginalized in favour of the proliferation of RTAs. Worse, as pointed out before, the current crisis tempts countries to resort to protectionist measures which may violate WTO rules and, even when they do not, still undermine the system which is geared towards the promotion of free and fair trade. Protectionism, by definition, is neither free nor fair. On the other hand, any Doha deal should not unduly restrict the policy space of countries to take measures necessary to mitigate the impacts of economic crisis. The WTO secretariat has no supranational powers to coerce countries to stay the course towards free trade. It does offer a dispute settlement mechanism which can be used by countries to sue others but proceedings take a long time. But in the absence of a speedy conclusion of the Doha Round, WTO may well end up as an organization for litigation rather than negotiation.

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*WTO needs a strengthened mandate and capacity to undertake surveillance and monitoring of its members’ trade policies and measures which affect trade*

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There are ways, however, in which WTO can exert its influence in times of crisis. In other words, WTO can grasp the crisis as an opportunity to reassert itself. In particular, WTO’s existing mandate to conduct regular trade policy reviews could be extended to include strengthened monitoring of its members’ stimulus packages and measures for protectionist content and possible violation of WTO rules (Birckbeck and others, 2009). In fact, WTO already has taken such measures and issues periodical reports. There is a need, however, to increase the transparency of reporting of violations

and to ensure that such violations should not be allowed without repercussions (Gosh, 2009).

It is very likely that WTO has helped control the mayhem caused by the crisis. A greater role for WTO to monitor its members' trade and trade-related policies is certainly welcome and could help in naming and shaming countries which have implemented measures that violate WTO rules or undermine its principles and mission. However, such a role could also backfire as the more powerful countries will not be pleased with an international organization that snoops in and exposes their affairs beyond a level they are comfortable with. Again, as long as the world consists of sovereign states, with some of them larger, richer and more powerful than others, asymmetries will continue to prevail in any multilateral system and the MTS is no exception. One can only strive to make it as fair as possible

and demonstrate that it yields net benefits to all its members in an interdependent and trade-linked world. To preserve and strengthen the credibility of the MTS and WTO, the benefits for developing countries need to be enhanced and made more tangible. This is the responsibility of all WTO members.

At their summit in L'Aquila in July 2009, G8 leaders and leaders of major emerging countries agreed to "an ambitious and balanced conclusion" of the Doha negotiations in 2010. A mini-ministerial meeting hosted by India in New Delhi in early September 2009 seems to have given new momentum to the negotiations. The Seventh WTO Ministerial Conference is scheduled to take place from 30 November to 2 December 2009 in Geneva. One can only hope that this time the commitment to conclude the Round will go beyond the rhetoric.

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## Annex

### Doha Round: state of play in agriculture and NAMA

#### 1. Agriculture

The negotiations in agriculture are traditionally divided into three areas, known as the three pillars: (a) market access (tariffs and NTMs); (b) domestic support (subsidies); and (c) export competition (mainly export subsidies and export credits). The Doha Declaration commits to comprehensive negotiations aimed at:

- Substantive improvement in market access;
- Substantive reductions in trade-distorting domestic support;
- Reductions of, *with a view to phasing out*, all forms of export subsidies
- Strengthening special and differential treatment (SDT).

The state of play in these three pillars as of mid-2009 was as follows:

##### (a) Market access

The July 2004 Package of Framework Agreements (1 August Decision) stipulates that different formulas for tariff reduction will be used for four bands of tariffs. Higher tariffs would face steeper cuts than lower tariffs. All countries could designate a limited number of products as “sensitive products” for which commitments could be delayed, while only developing countries could designate a limited number of products as “special products” based on the criteria of (i) food security, (ii) livelihood security, and (iii) rural development. Such products would receive more flexible treatment. Developing countries would also have recourse to a Special Safeguard Mechanism (SSM) based on import quantity and price triggers. Tariff quotas would be expanded and their administration improved. Least developed countries would be exempt from reduction commitments. Market access negotiations would address full implementation of the long-standing commitment to achieve the fullest

liberalization of trade in tropical agricultural products as well as issues related to preference erosion. Prior to the Sixth WTO Ministerial Conference, countries agreed in May 2005 on a formula to convert specific duties into equivalent *ad-valorem* duties (except sugar). This conversion is necessary before negotiations can start on the actual reduction formulas.

The latest revision of the 6 December 2008 Chairman’s draft text on the modalities (previous versions were circulated on 10 July, 19 May and 8 February 2008) proposes, *inter alia*, that for developed countries agricultural tariffs above 75% would be subject to a 70% cut, with an average reduction in import tariffs from 15% to 11%. Developing countries would have to reduce import duties exceeding 130% by 46.7%. As agreed in July 2008, developing countries would be allowed to select 12% of tariff lines as “special” products which would have special treatment. Up to 5% of those products could keep existing tariffs and for the rest an average tariff cut of 11% would be required. Import tariffs on tropical products with rates less than 20% would be reduced to zero while rates over 20% would be reduced by 80% over five years. The text also allows for more flexible options for the use of the SSM and proposes a maximum of 4% of tariff lines to be designated as “sensitive” with expanded import quotas for these products. The text limits the number of new quotas to 1% of tariff lines. Some developed countries have called for a higher number of sensitive products and this issue may well prove another deal breaker in future agricultural trade talks. Other exceptions also apply, especially for the net-food importing developed countries.

##### (b) Domestic support

As a result of the July 2004 Package, WTO members agreed, *inter alia*, to “substantial reductions” from bound levels of AMS through a “tiered” formula with different levels of cuts for different tariff bands but cutting higher levels of AMS

deeper than lower levels. At the Sixth WTO Ministerial Conference, it was agreed that there should be three bands. Product-specific AMS would be capped (i.e. a maximum allowed level would be agreed to) to prevent circumvention. The “blue” box criteria would be reviewed but total “blue” box support will not exceed 5% of a member’s average total value of agricultural production during an historical period (i.e. blue box outlays will be “capped”). WTO members agreed to a down payment (minimum commitment): in the first year and during the implementation period, the sum of all trade distorting support will not exceed 80% of total of final bound total AMS + *de minimis* + “blue” box at capped level. And finally, “green” box criteria would be reviewed. Reductions in *de minimis* will be negotiated taking into account the principle of SDT. Developing countries that allocate almost all *de minimis* support for subsistence and resource-poor farmers will be exempt. Least developed countries are exempt from making any reduction commitments. The European Union, Japan and the United States are the biggest users of domestic support.

The December 2008 text proposes cuts in overall trade-distorting support (OTDS) by 70% for the United States to roughly \$14.4 billion, 80% for the European Union to around \$22 billion, and 70% for Japan. However, the use of “green” box subsidies is unlimited with no cap or reduction commitment. Some developing countries have argued that developed countries are merely shifting subsidies from one box to another and that “green” box subsidies actually do distort trade. Developing countries would cut their OTDS by a third less than developed countries.

### (c) *Export competition*

In the July 2004 Package of Framework Agreement on Agriculture, countries agreed to phase out all export subsidies but could not agree on a date. At the Sixth WTO Ministerial Conference, countries finally agreed to eliminate export subsidies by 2013 and for cotton in 2006. Countries have also agreed to review and strengthen the provisions for food aid, which is sometimes used as a guise for export subsidies.

## 2. NAMA

Unlike in the case of agriculture, the July 2004 Framework Agreement on NAMA is short on detail. The Agreement was reached that, inter alia, product coverage shall be comprehensive without a priori exclusions; tariff reductions or elimination shall commence from the bound rates after full implementation of current concessions; credit shall be given for autonomous liberalization by developing countries provided that the tariff lines were bound on an MFN basis in WTO since the conclusion of the Uruguay Round; all non-*ad valorem* duties shall be converted to *ad valorem* equivalents on the basis of a methodology to be determined and bound in *ad valorem* terms.

The Fifth WTO Ministerial Conference in Hong Kong, China in its Declaration, inter alia, adopted the Swiss formula with coefficients at levels which shall, inter alia, reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, in particular on products of export interest to developing countries; and take fully into account the special needs and interests of developing countries, including through less than full reciprocity in reduction commitments. Since that Conference, revised texts were circulated on 22 June 2006, 17 July 2007, 8 February 2008, 19 May 2008 and 10 July 2008, 12 August 2008 and 6 December 2008.

The Chair’s July 2008 text refined the July 2004 Framework Agreement on NAMA by including concrete modalities. The July 2008 text stipulated one coefficient for developed countries and three for developing countries based on various levels of flexibilities though the proposed numbers were not agreed on. Special provisions would be made for 31 Small and Vulnerable Economies (SVEs), 4 Recently Acceded Members (RAMs) and 12 developing countries with low levels of bindings. The 32 least developed country members would be exempt from tariff reductions. An agreement on preference erosion would be part of the final outcome. Depending on the level of coefficient, countries could select a certain number of products

as “sensitive” on which lower reduction commitments would be made. The Agreement contains other flexibilities for various groups of countries. An anti-concentration mechanisms would be negotiated which restricts the concentration of flexibilities that would shelter entire sectors from cuts. Approximately 40 members, accounting for close to 90% of world industrial trade would apply the Swiss formula, while other countries would have special provisions. NTMs would also be addressed but no specific commitments were made. The Agreement also contains a reference to the ongoing negotiations in selected industrial sectors where tariff cuts would be deeper with SDT for developing countries. Participation in these negotiations is voluntary. However, a push by Canada, Japan and the United States to force the three big developing countries, i.e. Brazil, China and India, to participate in at least two of these “sectorals” is widely seen to have contributed to the collapse of the July 2008 conference.

The December text contains actual numbers rather than ranges and contains the following numbers for coefficients of the Swiss formula: 8 for developed members and 20, 22 and 25 for developing members. The use of the different coefficients would depend on three options with implications on the number and level of cuts in sensitive products and required level of bindings. A member choosing to apply the highest coefficient, 25, would have to apply it on all its products without exceptions. According to the text, the maximum tariff in

developed countries would be below 8%. This would mean that developed countries would have bound tariffs at an average of well below 3%, and tariff peaks below 8% even on their most sensitive products to be implemented over five years. Developing countries can choose to reduce their maximum tariff rates to 20%, 22% or 25% with varying flexibility (rates will average 11-12% with a limited number of products above 15%) to be implemented over 10 years. Numbers are also provided to prevent concentration of flexibilities.

All other issues remain open. The voluntary participation in sectoral agreements is underscored. Tariffs in 14 selected sectors would be reduced or even brought down to zero but a critical mass of participating members is required for the agreements to take off. Among the Asian RAMs, Kyrgyzstan, Mongolia, Tonga and Viet Nam would not have to make additional commitments to those they made under their accession package while China would have an additional three years (13 instead of 10) to implement their Doha commitments. The issue of preference erosion is tackled by granting the European Union and the United States a longer time period for reducing tariffs on selected products though Pakistan and Sri Lanka managed a reduction at a regular pace for their exports. Bangladesh, Cambodia and Nepal secured an accelerated phase-out of United States tariffs on their exports in the text. The text also contains special flexibilities for SVEs such as Mongolia and Papua New Guinea.