

Developments Since the Cancun Ministerial Conference

The International Centre for Trade and Sustainable Development (ICTSD) and the International Institute for Sustainable Development (IISD)

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Overview of the July Package

In the early hours of 1 August 2004, the General Council adopted a decision, informally known as the July Package, which put the Doha Round back on track, but left a substantial agenda for further negotiations on the central elements of the 'single undertaking'.

This overview provides a brief summary of the main elements of the deal that 'rescued the Doha Round'. Details on how it was struck and what has happened since, as well as other developments since the Cancun Ministerial Conference, can be found in the 13 issue-based Doha Round Briefings.

Background

The Cancun Ministerial Conference ended abruptly in September 2003 with no other official result than an instruction to trade officials to "continue working on outstanding issues". The main reasons for this collapse were an overcrowded agenda and a membership divided over too many crucial issues.

WTO negotiations eventually resumed in March/April 2004. They culminated in the adoption of the 1 August General Council Decision (WT/L/579), which provided negotiators with instructions on the work to complete either by the next Ministerial Conference or intermediate deadlines.

That work is now underway, with the aim of achieving something close enough to consensus for the Hong Kong Ministerial Conference to be in a position to adopt full negotiating modalities for agriculture and non-agricultural market access (i.e. industrial tariff cuts), as well as review progress in a number of other areas. Movement has been uneven, with a fair amount of specificity in addressing technical questions left open in the July framework text on agricultural modalities, but less so in other key areas such as industrial tariffs or services. The Hong Kong Ministerial Conference will take place from 13-18 December 2005.

The Main Elements of the July Package

The General Council Decision (WT/L/579) consists of an introductory text

and four specific annexes. The first of those lays out a framework for establishing negotiating modalities in agriculture, the second does the same – albeit in less detail – regarding non-agricultural market access. The brief

third annex contains recommendations for the services negotiations, and the fourth establishes modalities for negotiations on trade facilitation.

Cotton

Of particular importance to some of the WTO's poorest Members is the agreement to pursue sector-specific negotiations on cotton, although these are to take place within the larger agriculture negotiations (see page 4) and not as a stand-alone issue as proponents of the Cotton Initiative had requested. Benin, Burkina Faso, Mali and Chad launched the Cotton Initiative in June 2003 in hopes of resolving their difficulties in exporting cotton at a profit by addressing low international prices which have been brought down by the heavy subsidies of a handful of developed countries. The initiative thus seeks a level playing field undistorted by subsidies in which to sell their products.

While the introductory text recognises the importance of the Initiative's 'development aspects', it essentially relegates such concerns to either bilateral donors or to financial/development institutions such as the World Bank, the International Monetary Fund and the FAO. The WTO Director-General should consult with these institutions in order to "direct effectively existing programmes and any additional resources towards development of the economies where cotton has vital importance". The WTO's own work will be limited to the trade-related aspects of the Cotton Initiative.

Development Concerns

The introductory text reaffirms that "development concerns form an integral part of the Doha Ministerial Declaration", but the actual instructions to negotiators lack vigour and precision (except in the July Package annexes, which contain several explicit S&D provisions, many of which are subject to further negotiations).

Special and Differential Treatment

The Doha mandate to enhance the effectiveness of existing WTO rules on special and differential treatment (S&D) for developing countries is a key element of the Round's development

component. The General Council in the July Package gave the Committee on Trade and Development a July 2005 deadline for completing its review of all outstanding Agreement-specific proposals and reporting to the General Council "with clear recommendations for a decision". Four deadlines for that report have been missed since Doha, and the negotiations' Chair Faizel Ismail has recently suggested a new approach to the issues as a way out of the impasse. Other WTO bodies considering amendment proposals were also requested to hand in their recommendations for a General Council decision by July 2005.

More vaguely, the Committee on Trade and Development was instructed to report to the General Council 'as appropriate' on all other outstanding work, such as a mechanism to monitor the implementation of S&D obligations and the incorporation of S&D into the architecture of WTO rules.

See Doha Round Briefing No.13 on Special and Differential Treatment.

Implementation

In WTO parlance, implementation covers a host of concerns and proposals, almost exclusively tabled by develop-

ing countries aiming to re-balance general WTO rules towards development. Since Doha, these issues have been under consideration in different WTO bodies, but only three out of 99 issues have so far been resolved. All bodies concerned were exhorted to “redouble their efforts to find appropriate solutions as a priority”.

The Council also requested the Director-General to continue consultations on all outstanding implementation concerns and singled out the extension of protection for geographical indications to products other than wines and spirits. This highly divisive issue has practically monopolised the implementation debate, and some of its proponents are also trying to make it part of the agriculture negotiations. The Director-General was instructed to report to the General Council on this issue no later than May 2005, and the Council is to take “any appropriate action” by July 2005.

The dispute settlement moratorium on ‘non-violation complaints’, which are based on the loss of an expected benefit caused by another Member’s actions even if the actions do not violate WTO law, under the TRIPS Agreement was extended until the Hong Kong Ministerial.

See Doha Round Briefings No.1 on Implementation-related Issues and Concerns.

The Singapore Issues

The Decision launched ‘single undertaking’ negotiations on trade facilitation and set out the negotiating modalities in its Annex D (see page 5 for details).

With regard to the three more controversial Singapore issues (investment, competition policy and transparency in government procurement), the introductory text explicitly stated that “no work towards negotiations on any of these issues will take place within the WTO during the Doha Round”. However, certain opponents to WTO involvement in these issues have expressed concern that the language is vague enough to allow clarification work to continue on the sidelines, and does not exclude the possibility of launching negotiations some time in the future.

See Doha Round Briefing No.6 on Trade Facilitation.

Other Negotiating Bodies

The Decision also briefly reaffirmed Members’ commitment to progress on negotiations on the WTO rules (covering anti-dumping, subsidies, countervailing measures and regional trade agreements), the environment and a multilateral system of notification and

registration of geographical indications for wines and spirits (initially meant to be an ‘early harvest’ of the Doha Round), as well as changes to dispute settlement rules. This last area is not part of the single undertaking. After missing two post-Doha deadlines, the conclusion of the review currently has no fixed target date.

See Doha Round Briefings No.7 on Negotiations on WTO Rules;

No.9 on Trade and Environment;

No.5 on Intellectual Property Rights; and

No. 8 on the Review of the Dispute Settlement System.

Other Elements of the Work Programme

The introductory part concludes with a reaffirmation of the “high priority Ministers at Doha gave to those elements of the Work Programme which do not involve negotiations” and calls on the relevant WTO bodies to report to the Hong Kong Ministerial Conference.

See Doha Round Briefings No.10 on Trade, Debt and Finance;

No.11 on Trade and Technology Transfer ;

No.12 on Technical Assistance and Capacity-building; and

No. 8 on the Dispute Settlement System.

Annex A: Agriculture

The fate of the entire July Package hinged on agreement on agriculture, which was found only after marathon negotiations that some countries complained were too dominated by just five Members (Australia, Brazil, the EU, India and the US). The G-10 group of mainly industrialised net food-importing countries was particularly vocal about being sidelined in the talks, but ultimately prevailed in the inclusion of ‘sensitive products’ under the market access pillar (see page 3).

Annex A provides a framework for establishing modalities in agriculture on the three pillars of the negotiations: domestic support, export competition and market access.

Its main achievement was an agreement to establish “detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect by a credible end date”. While that date is likely to be agreed only at the end of the Round, negotiations before the Hong Kong Ministerial must address a large number of other open questions.

Domestic Support: Overall Cuts

Under the so-called ‘harmonising prin-

ciple’, higher levels of developed countries’ permitted trade-distorting domestic support will be subject to deeper cuts, which must result in a “substantial reduction in the overall level of its trade-distorting support from bound levels”. Each developed country Member must make a 20 percent reduction in this ‘overall’ support (contained in the Amber Box, the Blue Box and permitted *de minimis* support) during the first year of the implementation period, which is yet to be determined.

Further reductions will be calculated on the basis of each Member’s entire bound permitted trade-distorting support (rather than the 80 percent remaining after the first year cut) according to a ‘tiered formula to be negotiated’.

Amber Box

The Amber Box refers to the most trade-distorting subsidies, which are already capped and subject to reduction commitments. These subsidies must be ‘reduced substantially’. Members with higher Amber Box subsidies must make greater reductions. The meaning of ‘substantially’ and ‘greater reductions’ remains to be determined through further negotiations.

In a victory for developing countries, Annex A requires product-specific caps to be set for Amber Box support, but the method for doing this remains to be agreed through further negotiations, which in any case must result in reductions of only ‘some’ product-specific support.

De Minimis Support

WTO rules currently allow a developed country Member to extend trade-distorting support to 5 percent of its total value of agricultural production, while this *de minimis* limit is 10 percent for developing countries. These levels must be reduced, but developing countries that allocate almost all *de minimis* programmes for subsistence and resource-poor farmers will be exempt.

Blue Box

There are two main changes to the Blue Box as it currently stands (i.e. unlimited support to allow measures designed to limit production). The first, strongly advocated by developing countries, is that Blue Box support will be capped at five percent of a Member’s average total value of agricultural production during a historical period (no further reductions required). The historical period will be established in the negotiations. However, Members (such as the EU) that have placed ‘an exceptionally large percentage’ of their trade-distorting support in the

Blue Box, will be provided “some flexibility on a basis to be agreed” to ensure that they are not required to make a ‘wholly disproportionate’ cut.

The second change is the creation of an entirely new category of Blue Box measures, called ‘direct payments that do not require production’. This would cover counter-cyclical payments under the US Farm Act. Despite being delinked from production, these payments do not qualify for the Green Box, which requires measures to be decoupled from prices, as well as production. Without the new category, US counter-cyclical payments, which do provide price support, would have been included in the Amber Box and thus subject to ‘substantive reductions’. Additional criteria will be negotiated to ensure that Blue Box payments are less trade-distorting than those in the Amber Box.

Green Box

The Green Box covers a variety of support measures – including direct payments decoupled from production levels and prices – that are considered to be at the most ‘minimally trade-distorting’. Support for Green Box measures will remain unlimited and free of reduction commitments, but the criteria for measures will be reviewed to ensure that the support really has at most minimally distorting effects on trade or production. However, the review must not affect the basic concepts, principles and effectiveness of the Green Box. It must also take ‘due account’ of non-trade concerns.

Special and Differential Treatment

The modalities will provide longer implementation periods and lower reduction co-efficients for all types of trade-distorting domestic support for developing countries. Developing countries can continue exempting investment and input subsidies and support for diversification from growing illicit crops from reduction commitments (Article 6.2 of the Agreement on Agriculture).

Export Competition

The decision to establish a ‘credible end date’ to all forms of export support was more than seemed possible in Cancun. Annex A calls for the establishment of “detailed modalities ensuring the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect.” Scheduled export subsidies, as well as export credits, export credit guarantees and insurance programmes with a repayment period beyond 180 days will be eliminated. However, it is likely to be difficult to find agreement on the extent to which vari-

ous export credit programmes with a less than 180-day repayment period actually have an ‘equivalent effect’ to export subsidies.

New disciplines will be negotiated on the ‘trade-distorting practices’ of exporting state trading enterprises (STEs), “including eliminating export subsidies provided to or by them, government financing, and the underwriting of losses”. As an S&D measure, STEs in developing countries “which enjoy special privileges to preserve domestic consumer price stability and to ensure food security will receive special consideration for maintaining monopoly status.”

Food aid was included in the export competition chapter because agricultural surplus stocks accumulated through domestic subsidisation are frequently exported to developing countries facing food shortages. This practice displaces commercial shipments, including food from neighbouring countries. The negotiations are to address the role of international organisations “as regards the provision of food aid by Members, including related humanitarian and developmental issues”, as well as the “question of providing food aid exclusively in fully grant form”.

The export competition commitments and disciplines will be implemented by annual installments “according to a schedule and modalities to be agreed. [...] Their phasing will take into account the need for some coherence with internal reform steps of Members.”

Special and Differential Treatment

Developing countries will be granted longer phase-out periods for all forms of export subsidies, and the negotiations must ensure that any new disciplines “make appropriate provision for differential treatment in favour of least-developed and net food-importing developing countries”. Developing countries will be able to retain marketing and transport subsidies, currently exempted under Article 9.4, for a to-be-negotiated ‘reasonable period of time’ after the general elimination is complete.

Market Access: A Single Tiered Formula Approach

Market access rather than subsidies was the area where a compromise was the hardest to achieve, and Annex A only vaguely outlines the framework for further negotiations.

The text decrees a ‘single approach’ for both developed and developing countries, but tariff reductions will be made through a “tiered formula that

takes into account their different tariff structures”. The details of the formula are left wide open, with the text mentioning only that “the number of bands, the thresholds for defining the bands and the type of tariff reduction in each band remain under negotiation. The role of a tariff cap in a tiered formula with distinct treatment for sensitive products will be further evaluated.”

A few guiding principles are laid out for further negotiations, including that:

- tariff reductions will be made from bound rates;
- all Members other than LDCs will make a contribution;
- special and differential provisions for developing country Members will be an integral part of all elements; and
- progressivity will be achieved through deeper cuts in higher tariffs with flexibilities for ‘sensitive products’.

Flexibilities Offered under Market Access

The framework agreement contains three flexibility instruments to offset the impact of formula tariff cuts:

- All countries may designate ‘an appropriate number’ (to be negotiated) of sensitive products to which the formula will not apply. While this provision responds mainly to the concerns of the G-10 group of net food-importing industrialised countries, it will also benefit highly protected sectors, such as sugar, in other countries. Tariff cuts will still be required, and market access must be improved through quota expansion. Negotiations on the details are expected to be difficult.
- As a special and differential treatment measure, developing countries may designate ‘an appropriate number’ of Special Products, based on criteria of food security, livelihood security and rural development needs. The criteria and treatment of these products will be specified through further negotiations, likely to centre on the number of products (which the G-33 group of developing countries says should be self-selected) and whether any tariff cuts will be required.
- A Special Safeguard Mechanism (SSM) will be established for use by developing country Members, and the question of the existing special agricultural safeguard (SSG) for developed countries remains under negotiation.

The tariff negotiations will also address the erosion of trade preferences due to general liberalisation, as well as liberalisation of trade in tropical agricultural products and “products of particular importance to the diversification of produc-

tion from the growing of illicit narcotic crops." This may prove a tough circle to square: Costa Rica and ten other Latin American countries have already proposed that liberalising trade in tropical/drug substitution products should only be done at the most-favoured-nation level, which would mean de facto eliminating preferential tariffs and quotas in products such as bananas. On the other hand, a large number of the countries that worry about the erosion of preferential margins trade in the very tropical goods that are to be subject to the 'fullest liberalisation'.

Cotton

Annex A confirms that the negotiations will address trade-related aspects of cotton "ambitiously, expeditiously and specifically", and appropriately prioritise the issue "independently from other sectoral initiatives". This falls short of the Cotton Initiative's central aim: the rapid elimination of all domestic and export subsidies to the sector, and the establishment of a transitional financial mechanism that would compensate LDCs for export losses during the subsidy phase-out. The challenge now is to translate the substance of the Initiative into a negotiating mandate for the Sub-committee on Cotton established on 19 November 2004 to address "all trade-distorting policies affecting the sector in all three pillars of market access, domestic support, and export competition".

Sectoral initiatives, differential export taxes and geographical indications are mentioned under Other Issues as "issues of interest but not agreed". How – and whether – to treat these topics in the negotiations is another difficult twist on the road to Hong Kong.

[See Doha Round Briefing No.2 on Agriculture](#)

Annex B: NAMA

Annex B on non-agricultural market access (NAMA) is much shorter and less precise than the agriculture text. Leaving all of the most difficult issues to further negotiations, the NAMA text acknowledges that it merely outlines "initial elements for future work on modalities".

The NAMA framework reaffirms the key principles already agreed in the Doha Declaration, including the overall objective to "reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries". It also confirms that there will be no *a priori* exclusions from

the scope of the negotiations, and that the modalities will take fully into account special and differential treatment (S&D) for developing countries, which will involve not only longer implementation periods for tariff reductions but also "less than full reciprocity in reduction commitments".

Among the most bitterly contested questions before – and after, for that matter – July 2004 were:

- what tariff reduction formula to use and whether the same formula should apply to developed and developing countries;
- how to reflect special and differential treatment; and
- how to deal with the sector-specific zero-for zero negotiations pushed by developed countries.

Annex B provides little guidance to negotiators on these issues, and sluggish post-July 2004 negotiations have reflected the indecisive text.

The Formula

The most difficult issue remains how to structure the tariff cuts. Pre-Cancun and pre-July 2004, India and many other developing countries fought hard for a linear approach, which would commit Members to a minimum percentage reduction on different tariff lines, while industrialised countries insisted on applying a formula that would reduce high tariffs more radically than lower ones. One of developing countries' chief arguments was that – because of their generally higher tariffs on industrial products – they would be disproportionately affected by non-linear cuts.

On the face of it, industrialised countries won the battle: Annex B states that WTO Members should continue to work on a 'non-linear formula applied on a line-by-line basis'. However, its emphasis on taking into account the 'special needs and interests' of developing countries, including through less than full reciprocity in reduction commitments, leaves developing countries some leeway to insist on only linear cuts for certain tariffs lines and perhaps none for others. The Annex also specifies that flexibilities for developing countries will include applying 'less than formula cuts' to up to a certain percentage of tariff lines, or keeping "as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports". The bracketed figures are open to negotiations.

Other issues with regard to the formula

include that tariff reductions/elimination will be based on the bound rates; that credit must be given for developing countries' autonomous liberalisation; and that non-*ad valorem* duties must be converted to *ad valorem* equivalents on the basis of a methodology to be agreed. In addition, countries with a low coverage (less than [35] percent) of bound tariff lines will be exempt from making tariff reductions through the formula, but will be required to "bind them at an average level that does not exceed the overall average of bound tariffs for all developing countries after full implementation of current concessions".

Sectoral Tariff Elimination

The NAMA Group was instructed to pursue its discussions on a sectoral component with a view to defining product coverage, participation and adequate provisions of flexibility for developing countries. This is one of the major sticking points between developed and developing countries, and the mere exhortation to continue talks is not particularly helpful to push the negotiations forward. Post-July NAMA discussions on the issue have already shown that the divisions have not subsided.

While developing countries' main objective is to ensure that participation in any sectoral zero-for zero initiative -- whereby the tariffs in key sectors are reduced to zero -- remains entirely voluntary, the US and many other industrial countries are trying to drum up support for a 'critical mass' approach that would enable negotiations if a large percentage of countries trading in given product were willing to participate (this would likely include at least the largest developing economies, such as Brazil, China and India). So far, there have been no takers.

Provisions for LDCs and Newly-acceded Members

Least-developed countries will not be required to apply the formula nor to participate in any sectoral initiatives. They are, however, expected to "substantially increase their level of binding commitments". Annex B also calls on developed countries and "other participants who so decide" to grant on an autonomous basis duty- and quota-free market access to LDC industrial products by a year to be agreed. Special provisions are to be agreed for newly-acceded WTO Members' tariff reduction commitments in order to take into account the extensive market access commitments undertaken during their accession negotiations.

Non-tariff Barriers and Preference Erosion

All participants were 'encouraged' to notify their non-tariff barriers (NTBs) by 31 October 2004 and to proceed with the identification, examination, categorisation and, ultimately, negotiations on NTBs. The negotiations must fully take into account the principle of S&D for developing countries and LDCs.

Annex B also recognised "the challenges that may be faced by non-reciprocal preference beneficiary Members and those Members that are at present highly dependent on tariff revenue as a result of these negotiations", and instructed the Negotiating Group to take into consideration the particular needs that might arise for the Members concerned.

All of these initial elements – including the crucially important tariff reduction formula – remain to be negotiated before modalities can be agreed for non-agricultural market access.

See Doha Round Briefing No.4 Market Access for Non-agricultural Products.

Annex C: Services

The recommendations contained in Annex C are unlikely to have a significant impact on the services negotiations which have been underway since the year 2000 and incorporated in the single undertaking in Doha. The negotiations have made scant progress on rules-related issues over the past five

years, and most initial market opening offers tabled so far have lacked ambition.

Annex C exhorts Members who have not yet submitted their initial offers to do so "as soon as possible" and says a date for the submission of revised offers "should be established as soon as feasible". Members should strive to "ensure a high quality of offers, particularly in sectors and modes of supply of export interest to developing countries, with special attention to be given to least-developed countries". It further instructs Members to "give special attention to sectors and modes of supply of export interest to developing countries", singling out Mode 4, the cross-border movement of service providers, as of particular interest.

Efforts to conclude rule-making negotiations must be 'intensified', and 'targeted technical assistance' provided to enable developing countries to participate effectively in the services negotiations.

These instructions notwithstanding, negotiations since July have not shown any signs of picking up speed.

Before the Hong Kong Ministerial Conference, the Council for Trade in Services must provide a full report to the Trade Negotiations Committee, including possible recommendations for action.

See Doha Round Briefing No.3 on Trade in Services.

Annex D: Trade Facilitation

The Decision launches negotiations on trade facilitation "with a view to further expediting the movement, release and clearance of goods, including goods in transit".

Trade facilitation was the only one of the four controversial Singapore issues to achieve the 'explicit consensus' required for negotiations to start under the Doha Round. Reflecting the Doha Declaration's insistence on technical assistance and capacity-building as prerequisites for launching negotiations, the modalities set out in Annex D clearly spell out the need for special and differential treatment, and – for the first time in WTO history – explicitly link developing countries' compliance with the new rules with adequate 'support and assistance' for the implementation of commitments, including an understanding that "in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required."

Least-developed countries will only be required to "undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities".

See Doha Round Briefing No.6 on the Singapore Issues.

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