



## The Doha Round: agreement or new postponement?

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### Abstract

The Doha Round is undergoing yet another uncertainty phase, which has been characteristic since the failure of the 2003 Cancun Ministerial Conference. What remains to be seen is whether it will be feasible to approve the negotiation modalities, which would make it possible to enter the final stage of exchange of concessions, preparation of new disciplines, and drafting of the legal texts. The WTO Director-General intends to hold a horizontal discussion at the level of high officials in the next few weeks, so as to address all issues, particularly Agriculture, Non-Agricultural Goods and Services. The purpose is to bridge as many as possible of the remaining differences so as to summon a ministerial meeting that can agree upon modalities. This approach to the process does not accurately tally with the political and economic reality of major trading countries, where the absence of negotiating authority, resistance to structural adjustment, and leadership issues favour uncertainty.

### 1. Introduction

The distribution of revised draft modalities on Agriculture and Non-Agricultural Products (NAMA), and of the preliminary texts on Rules and Services last February, gave rise to renewed negotiating activity at the WTO headquarters in Geneva. Apart from the frequent meetings held by the corresponding negotiating groups, bilateral and multilateral consultations have also shown greater dynamism, as has the multiplication of closed meetings (Green Room) summoned by the World Trade Organization (WTO) Director-General, Pascal Lamy. All these activities are characterised by informality, since even the meetings of the Trade Negotiations Committee, the authority that supervises and guides the Round, have been held in this modality since the beginning of last year.

The goal that encourages the WTO Secretariat and Members is to bring positions close enough to agree on modalities within a “horizontal process” where all issues are considered, in the first place, at the level of high officials, whose task would be to limit their points of disagreement to a few substantive matters and, then, at the ministerial level, where these pending questions would be bridged.

It is worth pointing out that modalities are a previous stage towards the preparation of a final negotiation text or framework which precedes the drafting of the legal texts corresponding to the different agreements. They include limited definitions and options on product coverage, formulae and tariff cuts, commitments on subsidies, flexibilities,

implementation periods, treatment of developing countries, and general as well as specific compliance disciplines, among others.

Modalities implementation deadlines have been postponed in several occasions, as has happened with virtually all stages of the Round. If the initial intention was to hold meetings of high-level officials and ministers by March 2008, these have been successively rescheduled for the present month of June, so as to conclude negotiations by the end of the year.

The problems underlying the foregoing situation relate to substance and process.

As for substance, convergence in Agriculture and NAMA is not enough to ensure a successful outcome of eventual meetings of high-level officials and ministers. After the failure of previous meetings held at that highest level (particularly Seattle and Cancun), none of the Members is willing to repeat the past negative experiences.

On the process, two key issues stand out:

i) The first arises from the lack of a negotiating authority (Trade Promotion Authority, TPA) by the United States Administration, with no possibility whatsoever that said authority be approved by the Congress before the new US president takes office in January 2009. The absence of a TPA and the decision adopted by the House of Representatives on 11 April 2008, by which treatment of the Free Trade Agreement with Colombia was indefinitely postponed, have made the fate of an eventual Doha Round package more uncertain.

ii) The second has to do with the sluggishness of negotiations and differences in positions, especially in Agriculture and NAMA, where the designation of sensitive products, the level of tariff reductions, the expansion of tariff-rate quotas and the flexibilities for developing countries have yet to be agreed. The hope is that, by mid June, differences will be bridgeable enough to summon high officials and then ministers.

The abovementioned obstacles, although negotiations are making some progress, raise doubts as regards the possibility of concluding the Round in the course of this year. Up to now, there are no signs of the necessary flexibility and political leadership to reach the middle ground leading to an agreement, in spite of developing country Members' contributions and commitment.

## 2. The new texts

The revised versions on Agriculture and NAMA dated 19 May have been slightly modified compared to the first revisions of the draft texts distributed in February 2008. However, the process of discussion generated by those first revisions makes it possible to discern a window of opportunity to substantially reduce the differences expressed so far.

Regarding Services, the chairman of the Negotiating Group recently tabled a report that builds up on the previous texts from December 2007 and February 13, 2008. Both texts reiterate the guidelines established in Annex C to the Hong Kong Ministerial

Declaration, which consist in expressing willingness to greater concessions, improved disciplines, and special and differential treatment for developing countries, while the last report incorporates some controversial issues between brackets, meaning that there is not agreement on them. These issues refer to the binding of present market access, the equivalence in the level of ambition with Agriculture and NAMA, new market access and national treatment where significant trade impediments exists, and market access in mode 4, related to movement of persons.

As for Rules, the Chairman's text includes proposals on subsidies and countervailing measures, antidumping measures and fisheries subsidies, among others, reflecting the negotiating options that have been raised throughout the Round. These are not streamlined proposals, with minimum differences that would facilitate their use as a basis to prepare a framework or modality for the negotiations. Particularly, the antidumping one has given rise to a strong controversy, with the great majority of members arguing against the introduction of zeroing, i.e. the methodology by which negative dumping margins are not taken into account for the calculation of antidumping duties.

On the other hand, the discussion on Intellectual Property remains almost stagnant; with the European Union advocating the extension of the protection for geographical indications to products other than wines and spirits. At the same time, some developing countries are pushing for another change in the TRIPS agreement so as to incorporate the traditional knowledge as an obligation protected under the disciplines.

## 2.1. Agriculture

In the new draft modalities<sup>1</sup>, the bands and reductions proposed for distorting domestic support and import tariffs are similar to those contained in the draft text of July 2007 by the Chairman of the Committee on Agriculture (COASS) in Special Session, the way the Negotiating Group is called.

In **domestic support**, the revised version clearly states that commitments on overall trade distorting domestic support (OTDS) shall be included in the Members' schedules of concessions. Consequently, it is stated that the addition of the OTDS components shall not surpass the total value committed.

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<sup>1</sup> TN/AG/W/4/Rev.2.

**Table 1**  
**Reduction in overall trade distorting domestic support for developed countries <sup>1</sup>**

Bands (in billions of USD)	Reduction % Falconer's Proposal July 2007	Countries	Bound <sup>2</sup>		Applied	
			Uruguay Round	Falconer's Proposal	Average <sup>3</sup>	Last notification <sup>4</sup>
more than 60	75% - 85%	EU (in billion euros)	110.3	16.5 to 27.6	58.9	57.6
10 to 60	66% - 73%	United States	48.2	13.02 to 16.4	15.8	18.9
less than 10	50% - 60%	Japan <sup>5</sup>	50.6	13.6 to 17.2	6.6	6.6

1. Reduction of the addition of amber box, blue box and *de minimis* support.

2. The value of production in the base period 1995-2000 was taken for the bound level. For Japan, the currency rate of the year 2000 was used.

3. For Japan, 2001-2004 average notifications at 2001-2004 average currency rate; for the United States, 2002-2005 average notifications; for EU 2001-2003 average notifications.

4. For Japan, the last notification corresponds to 2004; for the United States, 2005; and for the EU, 2003.

5. Given that Japan has a level of overall distorting support higher than 40% of the average production value for 1995-2000, it shall make an additional effort that will be equal to half the difference between the reduction percentages of the first and second bands; that is to say, a cut between 70.5% and 79 % (10.6 to 14.9 billion USD).

Source: CEI based on WTO(2007), *Draft Modalities for Agriculture*, and notifications by WTO countries.

A controversial aspect of the revised version refers to the measures exempted from reduction commitments, which constitute the green box. The open possibility of updating the calculation bases of such measures of support, although it is stressed that a neutral impact on production should be preserved, and the lack of allusion to a cap in overall support (OTDS plus green box) that enables to set an indirect budgetary limit to said measures, have given rise to a strong discussion regarding whether a change in the pertinent disciplines of the Uruguay Round Agreement on Agriculture is justified.

In **market access**, the revised version incorporates the commitment on the part of developed country Members to reach a minimum average tariff cut of 54%, calculated considering the reduction corresponding to sensitive products. These countries shall make a reduction bigger than the one that is indicated for each tariff band, in case the respective cuts do not allow reaching the minimum average reduction.

Like in domestic support matters, there is agreement over reduction bands, while the definite tariff cut shall be negotiated for those exceeding 75% in *ad valorem* equivalent. The cut range proposed in this case remains between 66% and 73%. Conversely, the Chairman has determined the cuts for the first three tariff tiers ranging from 0% to 20%, from 20% to 50%, and from 50% to 75% expressed in *ad valorem* equivalents, fixing cuts at 50%, 57% and 64%, respectively.

Developing country Members shall make reductions equivalent to 2/3 of those made by developed country Members; in this case, with a maximum overall average cut of 36%.

In relation to **sensitive products**, the new revised version includes some changes with respect to the first draft modalities. The number of sensitive products that Members shall be entitled to designate does not vary, being placed between 4% and 6% of agricultural tariff lines, with the possibility of raising these figures to 6%–8% when agricultural lines are expressed or bound at a 6-digit level in the Harmonized System, or when tariffs placed in the last band surpass 30% of agricultural tariff lines.

In compensation for the designation of sensitive products, for which the application of tariff cuts is proposed to be 1/3, 1/2 or 2/3 lower than those finally agreed upon for each band, the developed country Members involved shall **create or expand specific tariff rate quotas** with reduced tariffs. The expansion of the quotas shall become higher, the higher the general cut deviation is. The ranges between which the expansion of the respective quotas shall be defined are between 3%–5%, 3.5%–5.5% and 4%–6% of domestic consumption, depending on the deviations. An additional expansion of the quotas by 0.5% is contemplated for those Members that use the additional flexibility in sensitive products up to 8%. In compensation, for those developed country Members having more than 4% of tariff lines with tariffs higher than 100% *ad valorem*, the obligation of applying an additional expansion of 0,5% of the quotas is also set.

For **in-quota tariffs**, different options to be negotiated are included: their elimination, the setting of a reduced ceiling (5% to 10%), and their reduction using the overall cut of the band to which the product that is object of the quota corresponds.

In the case of **developing countries**, the revised version defines the disciplines that will rule the **additional sensitivities** requested in access to markets: Special Products (SP) and Special Safeguard Mechanism (SSM).

**Special Products** shall be exempted from tariff reductions or subject to a lower reduction than the general one. Up to 8% of agricultural tariff lines shall be designated without conditions. This percentage can be increased up to 12%–20% as long as that designation is justified on the basis of food safety criteria, essential means of support or rural development. Developing country Members shall be able to transfer the number of sensitive products they do not make use of to SP. Tariff reductions will range between 12% and 25% for 6% of tariff lines; between 8% and 15% for another 6% of the lines; whereas the remaining 8% could be exempted from cuts.

Regarding the **SSM** that is triggered by increases in volumes or reductions in import prices, developing country Members shall be entitled to designate up to 4–8 Harmonized System six-digit tariff lines during a twelve-month period. Volume and price triggers shall not be simultaneously activated. On the other hand, the SSM shall not be applied when other safeguard measures or antidumping or countervailing measures have been implemented. It is contemplated that the additional rights derived from the application of the SSM shall not surpass the levels of bound tariffs previous to the Doha Round.

The number of special products and tariff lines of the SSM, the tariff reduction ranges and the volume and price triggers are being negotiated, with significant differences between Members.

A reduction to zero or, optionally, the application of tariff cuts higher than the general ones is proposed for a list of **tropical products** that is annexed to the revised version of the text. With that aim, it is proposed to use the percentage cut of the highest band or that of the immediately higher band to that of the pertinent tropical product. The designation of tropical products raises controversy with the request made by **countries that are beneficiaries of preferences**, for which a 10-year grace period is included before reductions are started.

In virtue of this situation, the COASS Chairman has stipulated that representatives of both groups of countries negotiate a solution to meet their interests.

Regarding the other conditions affecting market access in Agriculture, the revised version presents the following situation:

**Tariff simplification:** all agricultural tariff lines are expected to be converted into *ad valorem* terms—paragraph subject to revision—and the remaining complex tariffs are expected to be simplified. The application of a higher cut rate for processed products is also contemplated, with the exception of sensitive products, so as to reduce tariff escalation.

**Special Safeguard of Article 5:** its elimination is contemplated for developed country Members, though the option of applying it for a reduced number of products remains still in the text.

**Tariff ceiling:** the setting of a maximum 100% *ad valorem* tariff limit has been excluded from the text for agricultural imports of developed country Members, as has a maximum 150% for developing country Members.

The evolution of agricultural negotiations, since last February, makes it possible to appreciate a general progress. However, such progress is far from being enough to agree on the modalities. To the differences that have been pointed out, two important aspects in market access have to be added, namely the **partial designation** in the expansion of tariff–rate quotas, and the **greater liberalization in tropical products *vis-à-vis* the preservation of long-standing preferences**, that benefit particularly ACP countries.

**Partial designation:** it is a method used to determine the expansion of tariff–rate quotas due to the designation of sensitive products. It has been object of strong advocacy on the part of the European Union, Canada and the United States. The European Union particularly argued that, while imports are classified at 8-digit tariff lines of the Harmonized Commodity Coding and Classification System, domestic consumption data over which quota expansion percentages must be calculated are expressed at four or—at the most—six-digit lines. Consequently, all of this and other countries constituting the group of friends of the Chairman (FOC) are laboriously trying to agree on a method that enables the transference of consumption volumes from a four-digit disaggregation to an eight-digit disaggregation.

In order to overcome said difficulty, for those cases where it is not decided to designate as sensitive all 8-digit tariff lines making up a product, the EU has proposed<sup>2</sup> a system to charge the consumption volume to the 8-digit lines, in two steps: The first one to assign the volume to the 6-digit lines—sub-items—and the second to assign the volume to the 8-digit lines. The first step implies resorting to a percentage distribution of world import value at six digits of the product thereof. By way of example, assuming a consumption of 1000 tonnes of product X and four sub-items at 6 digits of that product with a 40%, 30%, 20%, and 10% share of world respective imports in value, each of the sub-items shall be assigned the tonnage corresponding to their percentage participation in such import value. The second step is similar to the previous one, though it stems from the six-digit sub-items and each of their volumes is distributed among the eight-digit positions constituting each sub-item. The difference with the first step is that the percentage distribution of the trade value taken is that of the importing country. Consequently, assuming the six-digit sub-item to which 40% of the volume corresponds (400 tonnes) has two eight-digit positions that absorb 80% and 20% of the sub-item import value, 320 and 80 tonnes of quota expansion would correspond to these positions respectively.

The concern arising regarding the last step of this methodology is that the assignation, since it depends on the import value of the country that has to expand the quotas, can be distorted due to the little relevance imports have in those positions where the level of protection is higher. Following with the example, the position to which the 80-quota tonnes have been awarded might be under an almost unreasonable import duty that would determine a reduced level of imports and would, consequently, have a minimum weighing for the assignation of consumption volume. It is for that reason that the CAIRNS group has insisted on fixing a minimum consumption floor to assign to each tariff line that corrects such defect in the partial designation.

Moreover, this methodology stresses its negative impact when Processed Agricultural Products (PAPs) are included within the categories of products. PAPs have a trade weight higher than any commodity, and consequently, they have a bigger share in total consumption of the lines comprising the pertinent product, for which reason, in the calculation described, the lines corresponding to commodities would diminish their share in consumption value, favouring the selected PAPs. Another controversial aspect refers to the recent proposal<sup>3</sup> to offer, discretionally, weightings that are different from the lines of commodities with respect to the PAPs lines, and to be able to combine different lines of the same product so as to constitute two quotas for a product that should have had only one.<sup>4</sup>

The differences between **countries that are exporters of tropical products** and those that are **beneficiaries of preferences** stem from the fact that both are aimed at similar products. Whereas the former aim at the maximum level of liberalization, the latter wish to preserve the preference margin provided by very low or 0 import duties in **developed country Member markets**, particularly the European Union.

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<sup>2</sup> Job (07)/117 dated 29 June 2007.

<sup>3</sup> *Possible partial designation modalities for sensitive products*, distributed last 30 April by the group *Friends of the Chair* (FOC), constituted by the EU, the US, Canada, Japan, Australia and Brazil.

<sup>4</sup> This line combination process is referred to as “sub-allocation”.

Representatives of both groups of countries are negotiating with a view to reach and agreement to submit to the COASS Chairman, on the assumption that the solution reached will be acceptable for the rest of the Members.

These last two issues, partial designation and tropical products *vis-à-vis* the preferences are the main pending topics in the present agricultural negotiation. Their solution will make it possible for the Chairman to write a new revision of the draft modalities, narrowing the differences to a reduced number of options to be discussed by high officials and, subsequently, by ministers. Otherwise, the new revision, expected by the mid of June, would present little progress with relation to the Revision 2 that has been commented.

Finally, the pillar of **export competition** is the one showing more coincidences. The new revised version of the Chairman reiterates that export subsidies shall be eliminated by 2013, pursuant to what is expressed in the Hong Kong Ministerial Declaration. It leaves the negotiation on volume reduction disciplines that supplement those of gradual reduction in budgetary expenditures open.

## 2.2. NAMA

The revised version of the Chairman of the Negotiating Group<sup>5</sup> insists on the application of a simple Swiss formula with different coefficients for developed country Members (7–9) and for developing ones (19-26).

The main characteristic of the Swiss formula is that it reduces higher tariffs to a greater extent, thus tending to harmonize the tariff structure. The coefficient used in the formula indicates the resulting maximum tariff. Likewise, if the coefficient is equal to the initial tariff, it will be reduced by half. Consequently, in the case of developed countries, for example, a coefficient of 8 results in a maximum *ad valorem* tariff at 8%, no matter what the current tariff is; while a current 8% tariff shall be reduced to 4% after applying the formula.

In addition to the formula, the revised version proposes flexibilities for developing country Members, in a percentage of NAMA tariff lines that can be exempted from reduction commitments or be cut by half. The percentage of tariff lines in the second case varies from 10% to 14% with a limitation on import value from 10% to 19% of total NAMA imports. The present version of the draft Modalities propose that said flexibilities shall only applied for Swiss Formula coefficients between 19 to 21 (12 to 14% of tariff lines and 12 to 19% of trade value) and between 21 to 23 (10% of tariff lines and 10% of trade value). For coefficients over 23 to 26 no flexibility is being contemplated.

The revised version presents more flexibilities than those of the previous text for **small and vulnerable economies, Members with low binding levels** and **WTO recently acceded Members**; those flexibilities have been improved though they still do not satisfy those groups of countries. For those Members that have a percentage of bound lines lower than 35%, the Chairman proposes bound levels to be increased to 70%–

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<sup>5</sup> TN/MA/W/103.

90% with a 28.5% *ad valorem* average tariff. Regarding small and vulnerable economies, which are defined as those that do not reach 0.1% of world NAMA imports in value, three tiers are contemplated, in accordance with the simple average of their bound tariffs: if the current average tariff surpasses 50% *ad valorem*, all their tariff lines must be bound at 22%–32% average; if the current average tariff is between 30% and 50% *ad valorem*, all their tariff lines shall be bound at an average 18%–28%, and 14%–20%, when the average bound tariff is lower than 30%. Recently acceded developing country Members shall comply with the general formula and flexibilities for developing country Members or, in case of being in any of the two previous categories of small and vulnerable economies or developing members with low level of bindings, shall be entitled to apply the corresponding binding and be given a 2–3-year grace period and a 2-5-year extension of the implementation period.

For Argentina the general formula and flexibilities for developing countries would mean, in any of its options, an average reduction in bound tariffs between 53.3% and 58.2%; this would cut into applied tariffs between 36.1% and 47.4% of tariff lines, which imply between 50.7% and 58.2% of import value. It has a similar impact on MERCOSUR and the remaining developing countries that comprise the NAMA-11<sup>6</sup>, which have opposed the proposed coefficients and flexibilities on the grounds that they do not lead to a balance outcome in the negotiations.

The revised version of tariff-cut proposals for developing countries in NAMA bears no similarity to the one tabled in Agriculture, which contemplates that developed country Members should reach a minimum average cut of 54%, but enjoy numerous flexibilities in domestic support and market access. These conditions are non-existent in NAMA, a sector subject to the disciplines of the Agreement on Subsidies and Countervailing Measures, where tariffs are expressed in *ad valorem* terms, and no tariff-rate quotas are applied to restrict imports.

Another important aspect is that the coefficients proposed for developed country Members in NAMA result in a tariff cut that is substantially lower in percentage than that for developing country Members, due to the lower average tariff level they are bound to. For example tariff reductions for the United States, the European Union and Japan, with Swiss formula coefficients ranging from 7 to 9 will be 37,3 to 49,9% on average.

The comparison between Agriculture and NAMA stems from the commitment made in Paragraph 24 of the Hong Kong Ministerial Declaration of December 2005, which establishes that a comparably high level of ambition should be reached in market access in Agriculture and NAMA. Tariff percentage reductions between developed and developing country Members in NAMA are linked, instead, to the principle of less than full reciprocity which leads negotiations and is reflected in the Doha Mandate, the July 2004 Framework, and Article XXVIII bis of GATT. Said principle stipulates that developing countries shall reduce their tariffs less than developed country Members.

Of the options recently discussed in the Negotiating Group, Argentina has expressed its endorsement of the idea that Swiss formula coefficients for developing countries in NAMA be fixed according to the average cut applied by developed countries in

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<sup>6</sup> Argentina, Brazil, South Africa, India, Venezuela, Egypt, Tunisia, the Philippines, Indonesia, and Namibia.

Agriculture minus a certain percentage in compliance with the principle of less than full reciprocity. A similar solution has been proposed by the NAMA-11 in the document submitted to the Negotiating Group in June 2007<sup>7</sup>. It is worth pointing that the NAMA-11 has persistently insisted that developing countries should apply a coefficient at least 25 percentage points higher than the eventually decided coefficient for developed countries.

### 2.3. Services

The Chairman of the Negotiating Group tabled, in late December 2007, a guidance text for further negotiations, followed by a first draft on modalities tabled on 13 February this year<sup>8</sup> and a report on elements for the completion of the services negotiations. The three of them are based on what was established in Annex C to the Hong Kong Ministerial Declaration, which promotes bilateral and multilateral negotiations on market access, the presentation of offers in specific timetables—unfulfilled so far—and the negotiation of new disciplines relating to safeguards, subsidies, government procurement, and domestic regulations.

Specifically, the draft tabled last February comprises three parts: the first is the promotion of the consultation process, the second relates to convergences between members, and the last is on divergences. Regarding the report it goes a bit further by including between brackets some controversial issues where developed and developing countries are in disagreement. These issues refer to the binding of present market access, the equivalence in the level of ambition with Agriculture and NAMA, new market access and national treatment where significant trade impediments exists, and market access in mode 4, related to movement of persons.

It is worth pointing out that developed and developing country Members' positions remain distant. The former prioritise the request and offer mechanism to advance in the negotiations, the obtainment of significant concessions in mode 4 of movement of service providers among countries, the flexibility to open fewer sectors and liberalise fewer types of transactions, and the negotiation of disciplines. The latter seek the consolidation of current market access, domestic treatment, and the regulation framework, putting the level of ambition in services on a level with that in Agriculture and NAMA.

The United States and the European Union have recently insisted on the organization of a Ministerial Conference, exclusively devoted to Services, which, in principle, would be held at the same time as the horizontal process intended to agree on modalities for Agriculture and NAMA. Said Conference, called the "Signalling Conference", would aim at showing the commitment of Members to the negotiations on services prior to the presentation of the revised offers. Developed country ministers responsible for negotiations have submitted letters to their developing country counterparts, stressing the importance of the conference to liberalize services and promote understanding in the other areas of the Round.

The main interests of developed Members' delegations are centred in the sectors of insurance, banking and finance, energy, engineering, consulting, maritime transport,

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<sup>7</sup> Job (07)/81 dated 7 June 2007.

<sup>8</sup> Job (08)/5.

telecommunications (satellite services), postal (express shipping) services, environmental services, and wholesale and retail trade.

Argentina received 14 multilateral requests in service market access,<sup>9</sup> and co-sponsored requests on Mode 4 and services related to Agriculture.

The different positions assumed by developed and developing country Members do not seem easily reconcilable due to their different approaches to negotiations. On the one hand, most developing country Members advocate a progressive liberalization through different rounds, as contemplated in the Agreement on Trade in Services. On the other hand, developed Members seek unilateral liberalization and the spreading out of bindings to most service sectors.

This negotiating area does not appear as crucial as Agriculture and NAMA. It is clear that, should differences in these two negotiation areas be bridged, there would be no substantial impediment to advance and reach an agreement on services via bilateral negotiations, as happened in the Uruguay Round.

#### 2.4. Rules

The discussion on this matter is taking place on the basis of a new draft tabled during the last week of May by the Chairman of the Negotiating Group. This draft includes proposals on antidumping measures, subsidies and countervailing duties and fisheries subsidies. The proposals, original and consolidated as appropriate, are transcribed in columns with the positions of members on the matter included in a separated column.

In the first two areas, the intention is to clearly define and improve disciplines, so as to enhance transparency and limit the room for discretion, in terms of both research activities and implementation of measures.

The most controversial issue is now the one referred to the exclusion of **negative dumping margins (zeroing)** in the calculation of **antidumping duties**, a practice followed by the United States and which has given rise to the establishment of several panels within the framework of the WTO Dispute Settlement System. While the United States seeks changes in antidumping rules so as to enable zeroing, the rest of the members oppose this on the grounds that the panels' reports have been clear as regards the inconsistency of said practice with the Antidumping Agreement provisions. Introducing the possibility of negotiating on the admissibility of this practice, as contemplated in the Chairman's text, has been rejected by almost all members.

As regards **subsidies**, the main issues under discussion are the illustrative list of export subsidies, the differential treatment of OECD Members in terms of interest rates, the calculation of benefits and financing below costs. Generally speaking, the proposed disciplines do not alter the current balance of the Agreement on subsidies and countervailing Measures, but tend to clarify and specifically define the text.

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<sup>9</sup> Namely, construction, logistics, computing, telecommunications, postal and courier, maritime transport, financial, environmental, energy-related, cross-border, architecture, engineering and integrated engineering, audiovisual, distribution, and teaching services.

As for **fisheries subsidies**, the proposal incorporates future disciplines as an Annex to the Agreement on Subsidies and Countervailing Measures (ASCM). Disciplines refer to prohibited subsidies, exemptions, and special and differential treatment for developing countries. Prohibitions include the use of subsidies to construct fishing vessels and the financing of operating costs. The chairman text is designed with three columns, one dedicated to the proposal, a second one to comparison with the pertinent provisions of the ASCM and a last one to comments by members.

### 3. Other issues

#### 3.1. Intellectual Property

After the approval before the Hong Kong Ministerial of the text on Public Health that makes the recourse to the procedure of compulsory licences to produce and commercialise medicines more flexible so as to deal with serious public health problems, the negotiation has focused on **Geographical Indications**, and the **Relationship between the Convention on Biological Diversity and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**.

As regards the first question, it is worth highlighting that the TRIPS Agreement grants special protection to geographical indications of wines and spirits (Article 23). In this regard, in paragraph 18 of the Doha Ministerial Declaration, it is agreed to negotiate the establishment of a multilateral system of notification and registration of geographical indications for said products.

The proposals tabled so far reveal a different approach. Argentina, the United States, Australia, Canada, Chile, Ecuador, Mexico and New Zealand, which make up the group of New World wine-producing countries, propose the establishment of an optional registration system. On the other hand, the European Union endorses the approval of a binding mechanism that generates obligations to all Members. It is understood that differences relating to the voluntary or binding character of registrations can be overcome as far as the long-standing use of trademarks or traditional names is acknowledged whenever these become general names as a consequence of their prolonged use at the international level.

It is in the proposal to extend geographical indications to products other than wines and spirits that differences are substantive. The European countries insist it should be part of the negotiations while others refuse to do so arguing there is no mandate from Doha on the matter.

As for the **Convention on Biological Diversity (CBD) and Intellectual Property**, Brazil, India, Peru, and other developing countries have proposed to include an additional article to the TRIPS Agreement (29 bis). The objective is to make the disclosure of the origin of the genetic resource and the traditional knowledge being used for an invention compulsory for patent rights application. Since late 2007, this proposal has been linked in the negotiations, as a way of trading off, with the former related to the extension of geographical indications for products other than wines and spirits. The existence of a specific negotiating mandate in the Doha Round has been also objected in this case.

### 3.2. Trade facilitation

As its name suggests, the aim of these negotiations is to simplify formal and administrative procedures affecting imports and exports of goods. In particular, there are discussions on goods in transit (Article V of GATT), formalities (Article VIII of GATT), and publication and administration of trade regulations (Article X of GATT).

Negotiations are carried out on the basis of “legal text” drafts or projects stating the obligations entailed in a future agreement. Some aspects under discussion are noteworthy, namely the single counter for imports and exports procedures, the elimination of consular tariffs, the freedom to choose traffic routes for goods in transit and the publication of domestic import and export regulations on the Internet.

### 3.3. Environmental goods and services

The negotiation on this matter concerns to the relationship between multilateral environmental agreements and the WTO and to the exchange of information between the corresponding secretariats. Furthermore, the Doha Declaration instructs negotiations leading to the widest possible liberalization of trade in environmental goods.

The differences arisen so far have to do with the interpretation of the scope of trade negotiations in environmental goods. While the United States, the European Union, and other Members have argued it is a NAMA negotiation, developing countries have demanded that these take place within the Committee on Trade and Environment, that agricultural products be included as well, and that the liberalization of trade in environmental goods and services be related to concrete environmental projects.

## 4. Conclusion

The present situation of the Doha negotiations makes it possible to envisage a point of convergence or possible agreement which depends on the flexibility with which the final discussion on Agriculture and NAMA modalities is approached. Assuming a positive evolution, and taking modalities as a starting point, it would not be complicated to advance in the definition of the schedules of concessions in goods, to conclude the presentation of offers in services, to discuss the final disciplines on rules, and to start drafting the legal texts of the Round. However, the necessary political decision that leads to said outcome has not been palpable to date.

This time, unlike what happened in previous rounds, developing countries have become important players not only because of their contribution and offers, their arguments to defend their interests, and the technical work that supports their presentations, but also because of their efforts in search of consensus. Their offers in the case of the NAMA 11 go to an average tariff cut close to 45%, which exceeds the commitments for tariff cuts made by developed countries in previous rounds.

The resistance to a moderate structural adjustment in Agriculture by countries which have maintained highly protective and distorting policies in that area for a long time, and the excessive demands posed to developing countries in industrial goods

jeopardise negotiations. The lack of some more flexibility to bridge the present gaps, considering the current international political and economic conditions, could result in a new postponement of the round. This is not on WTO interests neither on its Members, who require a strong and sustainable multilateral trading system to promote international development and welfare.

Buenos Aires, June 3, 2008.