

# Trade negotiations

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- In May, WTO members recognized that the Doha Round could not be completed in its entirety by the end of 2011.

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- The Chair's concluding statement at the Ministerial Conference in December said that 'negotiations are at an impasse' but ministers remain 'committed to working towards a successful conclusion'.

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Did you know?

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Negotiations on the Government Procurement Agreement resulted in a historic deal that will expand market access coverage by approximately 80 to 100 billion dollars a year.

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# Doha Development Agenda

At the 4<sup>th</sup> Ministerial Conference in Doha, Qatar, in November 2001, WTO member governments agreed to launch new trade negotiations. They also agreed to work on other issues, in particular the implementation of the current WTO agreements. The entire package is called the Doha Development Agenda (DDA) or the Doha Round. The negotiations take place in the Trade Negotiations Committee (TNC) and its subsidiaries, which are usually regular councils and committees meeting in 'special session' or specially created negotiating groups. The chairs of the nine negotiating bodies report to the TNC, chaired by the WTO Director-General, which coordinates their work.

## Doha Round negotiations in 2011

**The Doha Development Agenda (DDA) negotiations are at an impasse. Despite numerous pronouncements and commitments, members failed to finalize the negotiations as they had envisaged by the end of 2011. However, 'Elements for Political Guidance' on the Doha negotiations were agreed by members at the November General Council and forwarded to ministers at the 8th WTO Ministerial Conference. The Conference Chair included these 'elements' in his concluding statement, which also contained a factual summary of the discussions on the DDA by ministers at the Conference.**

At the February 2011 meeting of the Trade Negotiations Committee (TNC), members welcomed a roadmap endorsed by some ministers meeting in Davos, Switzerland, aimed at further accelerating the negotiations to conclude the DDA in 2011. The roadmap envisaged draft texts in all areas by April, a comprehensive package by July and finalization by the end of 2011.

### 'Easter Package'

On 21 April 2011, the TNC Chair and the chairs of the negotiating groups unveiled the so-called 'Easter Package'. The document represented the product of work since the launch of the negotiations in 2001. For the first time, members had the opportunity to consider the entire Doha package in all market access and regulatory areas. It included texts in areas where there had been none. While the document showed significant progress in many areas, it also revealed issues that divided members and which put the successful conclusion of the Round at risk.

The area where the divide was most evident was in market access for industrial products (non-agricultural market access). Although there were other issues without which the Round could not be completed, the key differences that had blocked progress were in industrial products. From consultations with key members on the magnitude of the gaps and the prospects of bridging them, the TNC Chair reported to the membership that there were fundamentally different views on the level of ambition in three areas: the cuts to industrial tariffs provided by the Swiss formula (a mathematical formula for cutting and harmonizing duties); whether the contributions between different members were proportionate and balanced; and the contribution of 'sectorals' (areas in which deeper cuts might be made).

The Chair reported that members were confronted with a political gap, which from what he had heard in his consultations was not bridgeable at that time. Regarding the process ahead, the Chair identified three options that would not work: business as usual; stopping and starting from scratch; and drifting away by wishing the issues would disappear. Members agreed with this assessment.

### 'LDC plus' package

In May, members recognized that the Doha Round could not be completed in its entirety by the end of 2011. They therefore embarked on a process aimed at delivering a smaller package by the 8th Ministerial Conference in December. The understanding was that this was not going to be the final package but a step forward. In this context, a large number of members agreed that the guiding element should be development, with issues of the least-developed countries (LDCs) taking priority for delivery. However, others said that additional issues should also be explored.



As Chair of the Trade Negotiations Committee, Pascal Lamy made regular reports on progress in the Doha Round.

In order to facilitate an outcome on the LDC-specific issues of duty free, quota free market access and associated rules of origin, a step forward on cotton, and an LDC services waiver, the TNC Chair presented a non-exhaustive list of topics – known as ‘LDC plus’ – that could form the elements of a small package of DDA deliverables. These included trade facilitation, export competition, a monitoring mechanism of special and differential treatment for developing countries, a step forward on fisheries subsidies, and a step forward on environmental goods and services. It was stressed that this list did not preclude other issues from being worked upon and eventually delivered by the end of the year.

In July, the Chair reported that from his consultations, it had become clear that the ‘LDC plus’ package was not shaping up as members had wished. From September, the consultations turned to the question of what to do next during and after the 8th Ministerial Conference.

#### Elements of political guidance

In October, the Chair reported on his consultations regarding the status of, and next steps in, the DDA negotiations. The consultations had shown that, despite the intensified efforts by members, the DDA negotiations were at an impasse. As a consequence, it was unlikely that the negotiations could be concluded on all elements in the near future as originally intended. While no member was ready to give up on the Doha objectives, there was a collective sense that members needed to explore different approaches from the ones employed before.

In particular, members wished to advance the negotiations in areas where progress could be achieved, by reaching agreements on specific issues – whether provisionally or on a definitive basis – ahead of delivering on the full Doha ‘single

undertaking’ (nothing is agreed until everything is agreed). In addition, members believed that efforts needed to be intensified where substantial differences remained. There was also emerging consensus that work had to continue on the basis of progress achieved and that development should remain a central theme of any outcome.

In the period leading up to the Ministerial Conference, the TNC Chair and the Chair of the General Council conducted extensive consultations in preparation for the Conference. Elements under three broad themes were agreed by the General Council in November: the importance of the multilateral trading system and the WTO; trade and development; and, the Doha Development Agenda negotiations. These were subsequently forwarded to the Ministerial Conference for inclusion in the first part of the Conference Chair’s concluding statement, representing the points on which there was consensus among members.

In his concluding statement, the Conference Chair reiterated what the Chair of the General Council had stressed – nothing in the text re-interpreted or changed any WTO rules or agreements or prejudiced any member’s rights and obligations. In particular, the Doha mandate remained as formally agreed by members in its entirety and neither the consensus ‘Elements for Political Guidance’ nor the non-exhaustive summary changed or reinterpreted it.

## Agriculture

**In 2011, agriculture negotiators intensified efforts to bridge differences in order to achieve a shared understanding of the draft 'modalities' (blueprint) for further agricultural trade reform. In parallel, WTO members continued their technical work on data submission, verification and presentation, crucial for the development of future legally binding schedules (lists of commitments). Despite the activity over the past two years, members were unable to agree on concrete steps to move the negotiations forward in 2011.**

The work of the committee in 2011 focused on narrowing differences in members' positions on the draft 'modalities', the basic negotiating texts, issued by the Chair in December 2008. The draft modalities set out the broad outlines for final commitments on cutting tariffs and subsidies for farm goods and indicated a number of flexibilities for developing countries and specific situations. In a report dated 21 April 2011, Chairman David Walker of New Zealand detailed the results of the committee's work, capturing the progress made on individual topics.

In the first half of the year, the Chair continued his consultations with smaller groups of WTO members to develop and strengthen a common understanding of ways forward on those issues where agreement had not yet been reached, including the draft modalities on cotton.

In meetings in various formats, trade negotiators continued the work begun in 2009 on data requirements, including values of production for calculating domestic support commitments. To address the remaining information gaps, members submitted national data, participated in data verification meetings and, using an expanded electronic forum, raised questions and sought clarification on the details of these submissions. Negotiators worked on the development of formats for organization and presentation of data, with a view to ensuring that the future calculation of Doha Round commitments would be transparent and verifiable.



John Adank (centre) was elected as Chair of agriculture negotiations in 2011.

Members also gave some consideration to areas where technical clarification might be needed in the text of the draft modalities. The Chair consulted with members, and members met among themselves to discuss remaining ambiguities in order to reach a common understanding of the draft modalities.

A new Chair of the agriculture negotiations, Ambassador John Adank from New Zealand, was elected in November 2011. He undertook informal consultations on the cotton issue pursued by the 'Cotton-4' group (Benin, Burkina Faso, Chad and Mali) in preparation for the 8th Ministerial Conference in December 2011. The final statement by the Chair of the Conference confirmed the commitment by WTO members to progress the mandate in paragraph 11 of the Hong Kong Ministerial Declaration to address cotton 'ambitiously, expeditiously and specifically'.



### Background on agriculture

The agriculture negotiations began in 2000 under a commitment WTO members made in the 1986-94 Uruguay Round to continue farm trade reforms. They were brought into the Doha Round when it was launched in 2001. Broadly, the objective is to reduce distortions in agricultural trade caused by high tariffs and other barriers, export subsidies and domestic support. The negotiations, conducted by the WTO Committee on Agriculture meeting in special session, also take into account social and political sensitivities in the sector and the needs of developing countries.

## Market access for non-agricultural products

**During 2011, the Negotiating Group on Market Access for Non-Agricultural Products made significant progress on parts of the agenda to reduce or eliminate non-tariff barriers (NTBs) to trade. There was, however, little or no advance in the tariff negotiations. Chairman Luzius Wasescha considered that the main stumbling block remained differences on how ambitious the tariff-cutting agenda should be.**

Since the end of 2010, the negotiating group has embarked on a small-group process, with a view to making progress on NTBs. This process consisted of five groups composed of 15 to 20 representatives, each discussing a separate NTB proposal. The proposals addressed in these groups were the following: the so-called 'horizontal mechanism'; labelling of textiles, clothing, footwear and travel goods; transparency in the adoption of technical regulations; re-manufacturing; and international standards. The horizontal mechanism aims at achieving flexible and expeditious procedures, involving a facilitator, to assist WTO members to address concerns regarding non-tariff measures. It establishes step-by-step procedures and timetables and provides suggestions for the role of the facilitator and possible outcomes.

The small-group process intensified in the period leading up to April 2011, when the chairs of the Doha Development Agenda negotiating groups circulated documents representing the outcome of the work in their groups. Progress was such that Chairman Wasescha said that there was a significant potential NTB package within reach. His report contained working texts on three of the issues – the horizontal mechanism, textile labelling, and transparency.



### Background on market access for non-agricultural products

Non-agricultural products are products not covered by the Agreement on Agriculture. These range from manufactured goods to fuels and fisheries. Collectively, they represent more than 90 per cent of world merchandise trade. The negotiations aim to reduce or, as appropriate, eliminate tariffs, as well as non-tariff barriers (NTB) to trade, particularly on goods of export interest to developing countries. The negotiations are conducted in the Negotiating Group on Market Access for Non-Agricultural Products (NAMA).

On labelling of textiles, clothing, footwear and travel goods, the proposal seeks to provide clarity and definitions to labelling requirements under the present Agreement on Technical Barriers to Trade (TBT), particularly on what actions taken by members can constitute unnecessary obstacles to trade. On transparency in the adoption of technical regulations, the text proposes more clarity and transparency in the elaboration and implementation of technical regulations, so that members, traders and other stakeholders are properly informed of the measures and the consequences when failing to comply with them.

Regarding tariffs, the Chair said in his April review that there was nothing new to report and that divergences over the appropriate level of ambition continued to be the main impediment, as they had since mid-2008. The situation on tariffs remained unchanged for the remainder of the year and no work was done by the group on the subject.

After the publication of the report in April, members continued to meet in various configurations to make further progress on the NTB working texts and proposals. However, during the last two months of 2011, the attention of the membership focused on the 8th Ministerial Conference in December and the negotiating group held no formal session.



## Services

**In 2011, WTO members intensified their efforts to advance the negotiations on services. As in previous years, however, progress was hampered by a lack of movement in other areas of the Doha Round. Nonetheless, at the 8th Ministerial Conference, members were able to agree a waiver benefiting least-developed countries.**

In his report to the Trade Negotiations Committee in April, Chair Fernando de Mateo said that despite negotiators' efforts to narrow differences, gaps remained. Limited progress had been made in the market access negotiations since July 2008. On domestic regulation, recent intensification of negotiations had produced some progress, even if disagreement persisted on important and basic issues. On GATS rules, while technical work continued, there did not seem to be convergence regarding the expected outcome in any of the three negotiating subjects (safeguards, government procurement and subsidies).

### Market access

In the market access negotiations, the renewed energy was focused on three one-week negotiating clusters (held in February, March and April) that dealt with different services sectors and modes of supply. Despite these initiatives, little progress could be reported by the end of April. Later in the year, attempts to develop other negotiating strategies for the market access negotiations proved unsuccessful.

### Treatment of least-developed countries

The 8th Ministerial Conference agreed a waiver for least-developed countries (LDCs), allowing members to grant them preferential treatment as services suppliers. The accord followed intensive work throughout the year to narrow differences in the text. The waiver responds to guidance given by Ministers in Annex C of the 2005 Hong Kong Ministerial Declaration to develop appropriate mechanisms for according special priority to LDCs.



### Domestic regulation

In early 2011, the Working Party on Domestic Regulation intensified its work on the development of a draft text of regulatory disciplines in line with GATS Article VI:4. The mandate is to develop disciplines to ensure that licensing and qualification requirements and procedures and technical standards do not constitute unnecessary barriers to trade in services.

In the intensive drafting sessions, members undertook a detailed reading of the Chair's March 2009 draft text and related proposals, aiming to specify parts on which further work would be required. The number of language options was reduced, and efforts were made to isolate differences by putting them in brackets (showing no agreement). All language proposals, submitted either in writing or orally during the intensive phase of negotiations, were reflected in a Chair's Consultative Note.

Members had constructive and engaged discussions but were not able to agree on a revised text. During the meeting of the special session on 15 April, the Chair provided a progress report under his own responsibility on the overall situation. Views expressed by members were reflected in a subsequent report by the Chair of the Special Session to the Trade Negotiations Committee.

In addition, the working party held a workshop on regulatory practices to inform negotiators about practical experiences with services regulation, particularly with regard to transparency, licensing and qualification requirements and procedures, and the use of technical standards. National regulators and international organizations presented case studies. In subsequent meetings of the working party, members focused on how future work on domestic regulatory disciplines would be conducted as well as future topics for discussion.

### Background on services

Services are the most important economic activity in many countries when measured as a share of overall production, and they are the single largest source of employment. The General Agreement on Trade in Services (GATS) mandates WTO members to progressively liberalize trade in services through successive rounds of negotiations. At the Doha Ministerial Conference in November 2001, the services negotiations became part of the 'single undertaking' under the Doha Development Agenda. They are overseen by the Council for Trade in Services, meeting in special session, and its subsidiary bodies, in particular the Working Parties on Domestic Regulation and on GATS Rules.

### GATS rules

The Working Party on GATS Rules carries out the negotiating mandates contained in Articles X (emergency safeguard measures), XIII (government procurement) and XV (subsidies). Since members continued holding different views on what would constitute an acceptable outcome, text-based negotiations could not be envisaged for any of these topics for the time being.

Emergency safeguard measures, based on the principle of non-discrimination, would permit a member temporarily to suspend commitments in the event of an unforeseen surge in imports of services that caused, or threatened to cause, injury to a domestic services industry. In 2011, members further examined the statistics relevant for emergency safeguards, assisted by WTO Secretariat presentations. These concerned the availability of disaggregated statistics on international services flows that could be potentially relevant for safeguards, and the types of data used in safeguards investigations in the goods sector under the WTO Safeguards Agreement.

Regarding government procurement, the working party has pursued a series of dedicated discussions on the broader economic and developmental importance of government procurement in services, based on a proposal by the European Union. Members also explored the services aspects of the Plurilateral Agreement on Government Procurement and started sharing national experiences of reform and opening of domestic procurement systems as well as access to foreign procurement markets.

In the area of subsidies, the working party held one dedicated discussion on the information provided by members, in line with a mandate in Article XV of GATS, on the subsidies they extend to their services suppliers. Discussions also continued on a proposal to create disciplines for export subsidies and on concrete examples of any trade-distortive effects that might be associated with subsidies in services.

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

**The Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS), meeting in special session, continued efforts to find common ground in negotiations on notifying and registering geographical indications (GIs) for wines and spirits. In April, the Chair circulated a draft text – the first time a single text reflecting members' proposals and positions has been produced in the negotiations. However, the text was far from signalling any agreement. The Director-General pursued consultations on extending the higher level of protection of GIs to products other than wines and spirits.**

### Negotiations on a GI register

The GI register for wines and spirits is intended to facilitate the protection of geographical indications. These are place names (or sometimes other terms or signs associated with a place) used to identify products as originating from a location that gives them particular qualities, reputation or other characteristics. Bordeaux and Tequila are well-known examples. The TRIPS Agreement mandates negotiations on establishing a register, and work has continued since 1996. In 2005 the Hong Kong Ministerial Declaration called for the talks to be 'intensified'.

There are currently three proposals under consideration by the TRIPS special session:

- a 2003 proposal by Hong Kong, China
- the so-called 'Joint Proposal' of 2005, revised in 2011, from a group of countries that want the register to be essentially a source of information about national protection of registered GIs
- the 'W/52' proposal, put forward in 2008 by a group of over 100 countries as part of a package also covering other TRIPS issues. This proposal is considered to create a stronger expectation of protection for GIs entered on the register.



### Background on TRIPS

The Doha Development Agenda mandates negotiations on a multilateral system for notifying and registering geographical indications (GIs) for wines and spirits. The negotiations are carried out by the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS), meeting in special session. The TRIPS Council, meeting in regular session, implements other relevant ministerial decisions, notably those relating to technology transfer and dispute settlement. Consultations on certain TRIPS-related implementation issues identified in the Doha Declaration were conducted by the Director-General.

The Chair of the TRIPS special session, Darlington Mwape of Zambia, held intensive negotiating sessions from January to April with a core drafting group of 19 members, subsequently enlarged to include 12 others. As with other parts of the Doha Round, TRIPS negotiators were encouraged to produce new texts in time for a review of the Round – the ‘Easter Package’ – in April. To ensure transparency, each series of sessions was followed by an informal meeting open to all. The drafting group worked on the basis of six elements for a register suggested by the Chair: notification, registration, legal effects/consequences of registration, fees and costs, special and differential treatment, and participation.

In April, the Chair issued a detailed report providing a comprehensive factual representation of the various phases of the negotiation, the concerns and interests at stake, the working methodologies used, and the issues that still divided members, together with the current draft of the composite negotiating text reflecting members’ proposals and positions. Nonetheless, it was clear that the key issues to resolve remained the legal effects or consequences of registration, and whether the register would apply to all WTO members or only those electing to take part. There was also the question of product coverage, namely whether, in line with the original negotiating mandate, it should be confined to wines and spirits, or whether the register should extend to other products.

### Incentives for technology transfer

In October 2011, the TRIPS Council, in regular session, undertook its ninth annual review of the incentives given to companies by developed countries to transfer technology to least-developed countries (LDCs). Developed countries provided detailed information on the incentives they make available. The LDC Group presented two papers, one with further questions in relation to 2010 reports and another containing a proposed format for future reports.

The TRIPS Agreement requires incentives for technology transfer to LDCs, and ministers agreed at Doha in 2001 that the TRIPS Council would ‘put in place a mechanism for ensuring the monitoring and full implementation of the obligations’. This mechanism was set up by a council decision in 2003, detailing the information to be supplied by developed countries on how their domestic technology transfer incentives are functioning in practice.

The WTO Secretariat organized a fourth workshop to discuss transfer of technology under the TRIPS Agreement. The objective of the workshop was to achieve a broad understanding of the operation of the incentives and to establish an effective dialogue between developed countries and LDCs.

### Disputes over intellectual property protection

In general, disputes can be brought under the WTO Dispute Settlement Mechanism not only if an agreement or commitment has been violated, but also if an expected benefit under an agreement has been nullified without violating the letter of the agreement. For disputes over intellectual property protection, the TRIPS Agreement prescribed a five-year moratorium on initiating such ‘non-violation and situation complaints’ and this moratorium has been extended by a series of Ministerial Conferences.

In 2011 the TRIPS Council continued to consider the scope and modalities for such complaints. Members disagree on whether these complaints should be allowed at all, or whether this could be the legitimate basis for a dispute. The 8th Ministerial Conference in December directed the council to continue examining the scope and modalities for these disputes and to make recommendations to the next Ministerial Conference in 2013. It also agreed that, in the meantime, members would not initiate such complaints under the TRIPS Agreement.

### Consultations on outstanding implementation issues

The Director-General continued to consult on GI extension and the relationship between TRIPS and the Convention on Biological Diversity (CBD), as called for by the 2005 Hong Kong Ministerial Declaration, which deals with these questions as ‘outstanding implementation issues’ in line with the 2001 Doha Declaration.

The first issue concerns the possible extension to other products of the ‘higher’ or ‘enhanced’ level of protection that is currently only required for GIs for wines and spirits. Members differ on whether such an extension would help their trade in such products, or whether increasing the level of protection would create an unnecessary legal and commercial burden.

The other issue concerns the relationship between the TRIPS Agreement and the CBD: whether – and, if so, how – TRIPS should do more to promote the CBD objective of equitably sharing the benefits that arise when genetic resources are used in research and industry. The main focus has been on proposals to amend the TRIPS Agreement to require patent applicants to disclose the source or the country providing genetic resources and associated traditional knowledge. A range of alternative proposals has also been submitted.

From March 2009, the Director-General has undertaken these consultations personally, with interested delegations and through open-ended information sessions. The consultations were regularly reported to the Trade Negotiations Committee and the General Council. They concentrated on technical questions, with a view to assisting members to understand more fully each other’s interests and concerns and shedding light on the technical aspects of the two issues. The consultations have not addressed the question of whether these matters should be linked to the broader negotiating agenda.

The Director-General presented a written report covering the period from March 2009 to April 2011. No further consultations were held in the course of the year.

## Trade and development

**In 2011 the Special Session of the Committee on Trade and Development worked on remaining proposals for ‘special and differential treatment’ for developing countries contained in specific WTO agreements. While discussion was constructive, it was not possible to bridge the gaps between members. Some progress was made, however, in negotiations on refining a mechanism for monitoring the implementation and use of the special rights. The 8th WTO Ministerial Conference in December took two decisions concerning least developed countries (LDCs) (see page 111).**

### Agreement-specific proposals

The Committee on Trade and Development (CTD) Special Session, which is chaired by Shahid Bashir of Pakistan, reviewed six of the remaining 16 proposals on how to enhance special and differential treatment provisions for developing countries in certain specific WTO agreements. Special provisions can include such elements as longer time periods for implementing agreements and commitments or measures to increase trading opportunities for developing countries.

Of the six proposals, three relate to the Agreement on Sanitary and Phytosanitary Measures and three to the Agreement on Import Licensing. Work was carried out on the basis of the last draft text circulated in May 2010.

The special session held three formal meetings and a large number of informal small-group and plurilateral consultations, which saw intensive negotiations and engagement up to Easter. This enabled members to achieve convergence in many areas. Thereafter, the negotiations gradually went into impasse.

Some members say the text fails fully to reflect earlier discussions. For them, the areas of divergence extend beyond the bracketed text (marking parts not agreed) and more work is required to develop convergence even on text that is not in brackets. But others feel that the draft text accurately captures the progress that had been achieved during and before 2010.



As for the 28 proposals annexed to the Draft Cancún Ministerial Declaration, members initially had a shared understanding that the draft decisions were agreed, in principle, on an ad referendum basis, even though they were never formally adopted. At the 8th Ministerial Conference in December, ministers agreed to take stock of the 28 Agreement-specific proposals, with a view to formal adoption of those agreed.

On so-called ‘Category II’ proposals, which are Agreement-specific proposals referred to other relevant WTO bodies for negotiation, the relevant chairs have, as in the past, reported little progress. This is largely due to the fact that the issues form an integral part of the work in the respective negotiating bodies and progress is thus linked to the conclusion of the round.

### Monitoring mechanism

In 2011 the special session aimed to further refine the monitoring mechanism on the implementation and use of provisions on special and differential treatment. After intensive consultations, the outgoing Chair – Thawatchai Sophastienphong – had circulated a revision of his ‘non-paper’ (unofficial document) on the mechanism at the end of 2010. He subsequently added an addendum in February 2011 containing fresh headings – scope, functions/terms of reference, operations and reappraisal – together with a preamble. All consultations thereafter were based on this addendum.

In April 2011 the Chair circulated another revision of his non-paper that captured progress made, highlighting the areas of convergence and divergence. This revised non-paper formed the basis of continued work on the monitoring mechanism over the course of the year. As a result of intensive work in the special session, there appears to be convergence on elements collected under the new headings. However, members continue to disagree on the wording of the preamble.



### Background on trade and development

Many WTO agreements contain provisions that give developing countries special rights and allow developed countries to treat them more favourably than other WTO members. As part of the Doha Round of negotiations, the special session of the Committee on Trade and Development (CTD) has been reviewing these ‘special and differential treatment’ provisions with a view to making them more precise, effective and operational.

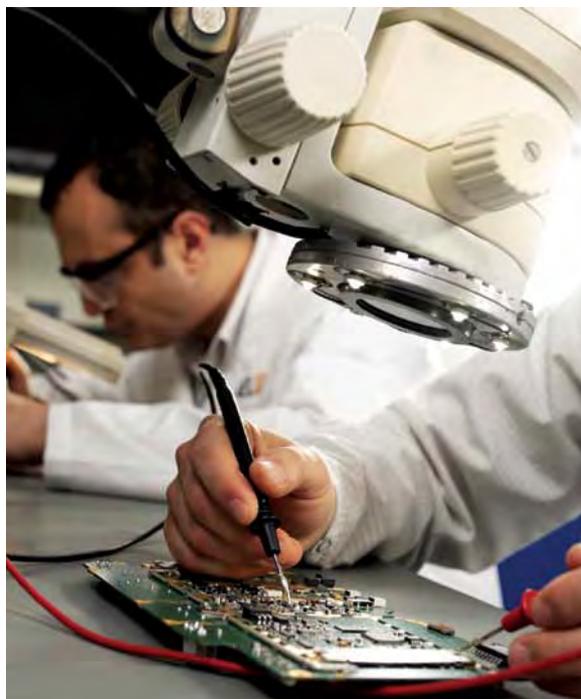
## Trade and transfer of technology

In 2011 the Working Group on Trade and Transfer of Technology continued the analysis of the relationship between trade and the transfer of technology, and ways to increase flows of technology to developing countries. Work was largely based on presentations by the Organisation for Economic Co-operation and Development (OECD) and the World Intellectual Property Organization (WIPO) on innovation and technology transfers.

### Relationship between trade and transfer of technology

The OECD presentation highlighted the vital relevance of innovation, research and development (R&D), technology generation and its transfer for socio-economic policy within the OECD countries, as well as in the broader global context. The presentation – 'Innovation, Technology Transfer and STI [science, technology and industry] Cooperation to address Global Challenges' – found that the global map of R&D expenditure has undergone significant transformation, with new players fast emerging. Research and innovation activities are being outsourced more and more, reflecting increased international cooperation, in particular between OECD countries, but also between countries with linked value chains (chains of production) or close proximity.

The WIPO presentation concentrated on three areas of its work on technology transfer – access to static technologies, developing platforms for participating in dynamic technologies and technical assistance and capacity building. Static technologies are essentially old-style means of transmitting information, such as books, while dynamic technologies include online services such as video conferencing and blogs. A large part of WIPO's development agenda is devoted to training and improving the capacity of developing countries, and to ensuring that their R&D has commercial application. According to the presentation, WIPO is developing tools to carefully monitor various aspects of technology transfer and its effectiveness.



### Increasing the flow of technology to developing countries

During the year, WTO members continued their consideration of the submission entitled 'Facilitating Access to Information on Appropriate Technology Sourcing' tabled by India, Pakistan and the Philippines. Members also reiterated their view that experience-sharing by countries that had undergone rapid technological development, and sharing of important lessons drawn in the development process, could constitute an important aspect of work in the working group, which held four formal sessions during the year. Such experience-sharing would allow developing countries to make more informed choices without 're-inventing the wheel'. Some members renewed their demand for a WTO webpage to provide information on technology transfer.



### Background on trade and transfer of technology

The Working Group on Trade and Transfer of Technology was established by the Doha Ministerial Conference in 2001 to examine the relationship between trade and transfer of technology and to make recommendations on steps that might be taken, within the mandate of the WTO, to increase flows of technology to developing countries.

## Trade and environment

**In the first quarter of 2011, intensive negotiations took place in the Committee on Trade and Environment, in special session, to identify common ground. Some progress was made on the relationship between the WTO and multilateral environmental agreements as well as on the reduction and elimination of barriers to trade in environmental goods and services.**

### Multilateral environmental agreements

The Committee on Trade and Environment, in special session, continued to seek to reconcile ideas put forward by WTO members on the relationship between the WTO and multilateral environmental agreements (MEAs).

Drawn from members' proposals, discussions were based on five main clusters of issues: preamble language or general principles governing the WTO-MEAs relationship; the relevance of national coordination to ensure mutual supportiveness of trade and the environment, and the importance of sharing experience in this regard; the qualification of specific trade obligations set out in MEAs; dispute settlement and legal principles; and technical assistance and capacity-building to developing country members.

### Environmental goods and services

Additional progress was made with respect to the negotiations on the reduction or elimination of tariff and non-tariff barriers on environmental goods and services. Members continued to progress in the identification of environmental goods. The goods discussed so far fall within a broad range of environmental categories, such as air pollution control, renewable energy, waste management and water and waste-water treatment. Some of these products are also relevant to climate change mitigation. They include products generating renewable energy, such as wind and hydropower turbines or solar water heaters.



As of the end of 2011, six lists of environmental goods had been submitted by various members, covering 411 HS2002 tariff lines at the six-digit level. As part of the discussions on the modalities of the liberalization of environmental goods and in an effort to combine the various elements of the proposals already on the table, two new proposals were submitted. This generated further discussions on the structure of the outcome.

Unlike the discussion on the identification of environmental goods and definition of the structure of the outcome, the discussion on cross-cutting issues, such as non-tariff barriers, transfer of technology, technical assistance and environmental services, was limited to a new proposal on the issue of the transfer of technology between developed and developing countries. The negotiation on environmental services is being carried out under the Committee on Trade and Environment in special session.



### Background on trade and environment

Negotiations on trade and the environment aim to ensure that trade and environmental policies are mutually supporting. The negotiations, part of the Doha Development Agenda (DDA), address two main themes: the relationship between the WTO and multilateral environmental agreements (MEAs); and the elimination of barriers to trade in environmental goods and services. The negotiations take place in special sessions of the Committee on Trade and Environment.

## Trade facilitation

**The Trade Facilitation negotiations made good headway in 2011, streamlining some of the language of the draft consolidated negotiating text and sharply reducing the number of brackets that mark areas of disagreement.**

The formal negotiating group sessions, led by Chair Eduardo Sperisen-Yurt of Guatemala, met in a variety of formats, and these meetings were combined with a series of others facilitated by delegates. All meetings were carried out in a bottom-up, member-driven, inclusive and transparent manner.

Working through all articles of the draft consolidated negotiating text, first issued in December 2009 and which had been revised 11 times by the end of 2011, delegations were able to refine the language and to reduce the number of brackets by almost 60 per cent.

During one meeting of the group, the WTO Secretariat conducted a symposium in order to provide WTO members with information on the implementation of the trade facilitation measures being negotiated, including costs, best practices and lessons learned. The symposium also included a session concerning the provision of technical assistance.

To allow all countries to fully engage in, and benefit from, the negotiations, several donor governments provided funding for the participation of officials based in developing and least-developed country capitals. A total of 137 officials from African, Caribbean, Pacific and least-developed countries participated in three meetings of the negotiating group in 2011, and donor governments have indicated their willingness to continue this programme in 2012.



### Background on trade facilitation

Negotiations on a new Trade Facilitation Agreement, formally launched in July 2004 as part of the Doha Development Agenda, are conducted in the Negotiating Group on Trade Facilitation. They aim to expedite the movement, release and clearance of goods, including goods in transit, as well as ensure effective cooperation between customs and other appropriate authorities. Particular attention is paid to developing and least-developed countries, which stand to benefit from far-reaching flexibilities and considerable technical assistance and capacity-building support.

## WTO rules

**In the spring of 2011, the Negotiating Group on Rules undertook intensive efforts to find convergence on the range of issues within its mandate – anti-dumping, subsidies and countervailing measures, fisheries subsidies and regional trade agreements. These efforts culminated in the release by Chairman Dennis Francis of a mix of 'bottom-up' texts (based on members' stated positions) and reports in late April, but it was not possible for the group to find consensus.**

On anti-dumping and subsidies and countervailing measures, the Negotiating Group on Rules pressed on with the decision of early 2010 to supplement its work through the use of contact groups and facilitators, who were tasked to examine specific issues and report back. While these mechanisms proved useful in clarifying views of delegations, and in some cases suggesting possible areas for further engagement, they did not reflect significant convergence on major 'political issues'. Accordingly, while the Chair on 21 April 2011 issued a new text on anti-dumping, that text contained the same 12 bracketed issues as its predecessor. On subsidies, the Chair saw no advantage to a new text and thus circulated a report.

The previous new draft texts of the Agreement on Anti-Dumping (see page 49) and the Agreement on Subsidies and Countervailing Measures (see page 48), as well as a 'road map' for further discussion of fisheries subsidies, date from December 2008. These texts reflected a bottom-up approach, providing draft legal language only in areas where some degree of convergence appeared to exist. In other areas, the texts contained brackets, indicating issues where no convergence of views had emerged and summarizing in general terms the range of views regarding those issues. The group completed its line-by-line review of the 2008 Chair's text in early 2010 and shifted its activities towards an intensive programme of plurilateral consultations.



### Background on WTO rules

WTO members agreed at the Doha Ministerial Conference to launch negotiations to clarify and improve WTO rules on anti-dumping, subsidies and countervailing measures, and regional trade agreements. In the context of the subsidies negotiations, there was specific mention of disciplines on fisheries subsidies, and at the Hong Kong Ministerial Conference in 2005 there was broad agreement on strengthening those disciplines, including through a prohibition of certain forms of fisheries subsidy that contribute to overcapacity and over-fishing.

On fisheries subsidies, the group had also opened the process for the receipt of new proposals and new ideas from members, and numerous proposals were received and considered. While these proposals were useful and constructive, they revealed widely divergent views on the nature and extent of the disciplines to be developed in this area. As in respect of anti-dumping and subsidies, the Chair in the fisheries area used contact groups and facilitators in order to try to achieve convergence texts by April 2011. Ultimately, however, the Chair concluded that there was too little convergence to justify new texts, and as a result issued a detailed analytical report.

On regional trade agreements (RTAs), the negotiations have already resulted in the 2006 General Council decision on a transparency mechanism for RTAs (see page 61). The mechanism, which has been applied provisionally since 2007, must be reviewed and if necessary modified as part of the overall results of the current round of trade negotiations before it is made permanent. In December 2010, the group agreed to begin the review. An intensive programme of informal and formal meetings took place during January-April 2011 to address the procedural review of the transparency mechanism.

The Chair released the current outcome of these negotiations in April 2011. Members have not yet commenced the review of the legal relationship between the mechanism and relevant WTO provisions on RTAs, also required by paragraph 23 of the mechanism. Members' views on systemic issues relating to RTAs remain divergent. In addition to previous submissions by members on systemic issues, a proposal was made in early 2011 for amending Article XXIV of the General Agreement on Tariffs and Trade for agreements in goods. Members also discussed a proposal for a forward-looking post-Doha work programme on all systemic issues.



## Dispute Settlement Understanding

**Work on the Dispute Settlement Understanding (DSU) negotiations continued in 2011 on the basis of the Chair's text of July 2008, with the objective of developing areas of convergence towards an agreement. Eight meetings were held over the course of the year. The Chair reported progress in a number of areas. Work was conducted in group meetings in various formats depending on the subject to be discussed.**

In April 2011, the Chair, Ambassador Ronald Saborío Soto of Costa Rica, reported to the Trade Negotiations Committee that members had made measurable progress in a number of areas, including 'sequencing' and 'post-retaliation', which relate to the procedure to be followed when the parties disagree whether compliance with dispute settlement rulings has been achieved, either before any authorization to retaliate has been granted (sequencing) or afterwards (post-retaliation). The Chair also reported constructive work on third-party rights (i.e. the conditions for members other than the disputing parties to take part in proceedings), time savings and various aspects of effective compliance (i.e. how to ensure that members comply with dispute settlement rulings in a timely manner).

In September, a formal meeting of the Dispute Settlement Body (DSB) in special session was held. The Chair noted that since the April report, further discussions had taken place on other issues addressed in the July 2008 text, including flexibility and member-control, panel composition, strictly confidential information, transparency and amicus curiae briefs (when someone not party to a case provides an unsolicited brief) and mutually agreed solutions. Further consultations were also initiated on remand, effective compliance and developing country interests, including special and differential treatment. The Chair also reported that substantial progress had been made in respect of mutually agreed solutions, suspension of panel proceedings and the notification of retaliation measures.

At the same meeting, the Chair observed that this constructive work reflected the continued commitment of members to this negotiation. He also emphasized that much work remained to be done to complete the consideration of all issues and reach agreement.

The Chair of the 8th Ministerial Conference in December noted in his concluding remarks that ministers 'recognize the important asset that the WTO Dispute Settlement system represents and commit themselves to strengthen it, including through concluding the DSU review negotiations'.



### Background on Dispute Settlement Understanding

In November 2001, at the Doha Ministerial Conference, WTO members agreed to negotiate to improve and clarify the Dispute Settlement Understanding (DSU) – the rules and procedures governing the settlement of WTO disputes. These negotiations, which take place in special sessions of the Dispute Settlement Body (DSB), are part of the Doha Development Agenda but are not formally part of the 'single undertaking'. This means they are not legally tied to the success or failure of the other Doha negotiations.

## Government Procurement Agreement

**On 15 December 2011, ministers from parties to the plurilateral Government Procurement Agreement (GPA) reached a historic deal to improve disciplines for this key sector of the economy and to expand market access coverage by approximately 80 to 100 billion dollars a year. Participants began negotiating the revision of the 1994 agreement ten years ago and the conclusion came hours before the official opening of the 8th WTO Ministerial Conference.**

The market access gains from this expanded agreement will come from the addition of new government entities, including local governments and sub-central entities, services and other areas of the public procurement activities to the current agreement. The new rules, in addition to expanded market access, mean better disciplines for awarding government contracts in sectors such as the supply of infrastructure, public transport, hospital equipment and many other government services.

The revised Government Procurement Agreement (GPA) is also intended to facilitate the accession of new members, to add to the current 42 participants. China, as well as eight other WTO members, is currently negotiating accession to the plurilateral agreement, which WTO members can join on a voluntary basis. The new transparency provisions also aim at fighting corruption. Parties have agreed to work on further improvements in the administration of the agreement by adopting future work programmes.

Among the improvements is coverage – for the first time – by some parties of build-operate-transfer contracts. These are contracts under which a firm builds an infrastructure project, for example, and runs it for an agreed time before transferring ownership to the government. There will also be coverage of additional services by most of the parties – for example, in the area of telecommunications. For the first time, all parties will include procurement in the full range of construction services. The revised agreement will see coverage by the parties of (at a minimum) more than 200 additional central, local and other government agencies.



### Background on Government Procurement Agreement

The Government Procurement Agreement (GPA), adopted in 1994, ensures that signatories do not discriminate against the products, services or suppliers of other parties to the Agreement with respect to the procurement agencies, goods and services that they have agreed to open to foreign competition. It lays out minimum standards on the transparency of procurement. The GPA is a 'plurilateral' agreement, which means that it applies only to those WTO members that have agreed to be bound by it. The Committee on Government Procurement administers it.



Nicholas Niggli chaired the successful conclusion of the negotiations on the Government Procurement Agreement in 2011.

An important additional element of the package is an agreement that a previously negotiated revised GPA text can now come into effect. Negotiators reached agreement in principle on most elements of the revised text five years ago. However, adoption of the text was subject to a mutually satisfactory outcome in parallel negotiations to extend the coverage of the agreement. Since this requirement has now been fulfilled, the Committee on Government Procurement is expected to formally adopt the revised text and other elements of the package no later than 31 March 2012, following a technical verification process. Furthermore, the GPA parties' ministers have pledged to seek prompt acceptance and implementation of the revised agreement within their respective jurisdictions.

The revised GPA text is based on the same principles as the existing agreement. Nonetheless, the text has been completely rewritten and makes various important improvements. For example, it updates the agreement to take into account developments in current government procurement practice, notably the use of electronic tools. In a key additional change, the transitional measures that are available to developing countries that accede to the agreement have been clarified and improved. Another important element of the revised GPA text is a specific new requirement for participating governments and their relevant procuring entities to avoid conflicts of interest and prevent corrupt practices. This provision shows clearly the relevance of the agreement to the global struggle for good governance – an aspect that is receiving increasing attention.

A further significant element of the package agreed by GPA ministers concerns future work programmes of the committee. These will include work on best practices in supporting the participation of small and medium-sized enterprises in government procurement, improving the collection and reporting of statistical data and promoting sustainable procurement practices.