

# Trade negotiations

- The WTO's 2013 Ministerial Conference concluded with ministers approving the "Bali Package", a series of issues from the broader Doha Round negotiations.

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- The Bali Package consists of a number of decisions designed to streamline trade, allow developing countries more options for providing food security and boost least-developed countries' trade.

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- A Preparatory Committee is tasked with ensuring the entry into force of the Trade Facilitation Agreement, one of the biggest reforms of the WTO since it was established in 1995.

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- Ministers have called for a clearly defined work programme on the remaining Doha Development Agenda issues to be concluded by the end of 2014.

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### Background on trade negotiations

Changes to the rules of trade require the agreement of all WTO members, who must reach consensus through rounds of negotiations. The most recent round began in 2001.

# Doha Development Agenda

**At the WTO's Fourth Ministerial Conference in Doha, Qatar, in November 2001, WTO members agreed to launch a new round of 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 regular councils and committees meeting in special session or specially created negotiating bodies. The negotiating bodies report to the TNC which coordinates their work. The TNC is chaired by the Director-General.**

## Doha Round negotiations in 2013

### Bali Package

The WTO's Ninth Ministerial Conference, held in Bali in December 2013, agreed a package of issues designed to streamline trade, allow developing countries more options for providing food security, boost least-developed countries' (LDCs) trade and help development more generally. The deal on the "Bali Package" was struck after intensive consultations almost round the clock from 4 December until the meeting closed on 7 December. The Bali Package has been described as the first major agreement among WTO members since it was formed in 1995.

The agreement on trade facilitation (see page 36) is about cutting "red tape" and speeding up port clearances. The rest of the Package focuses on various issues related to agriculture and development, including food security in developing countries, cotton (see pages 30 and 101) and a number of other provisions for LDCs. The Package also includes a political commitment to reduce export subsidies in agriculture and keep them at low levels, and to reduce obstacles to trade when agricultural products are imported through quotas.

### Role of the Trade Negotiations Committee

At the WTO's Eighth Ministerial Conference in December 2011, ministers acknowledged that the Doha Round negotiations were at an impasse but they committed to advancing the negotiations where progress could be achieved. This included focusing on elements of the Doha Declaration that would allow WTO members to reach agreements based on consensus earlier than the full conclusion of the Doha Round. Against this background, the Trade Negotiations Committee (TNC) played a key role in preparing the groundwork to advance and reach early agreement on a small package of issues on the Doha Development Agenda (DDA) that members had identified as achievable by the Ninth Ministerial Conference in Bali.

The potential deliverables that WTO members identified were trade facilitation, some agriculture issues and development, including issues of interest to LDCs. Several members stressed that delivering the selected DDA issues was not only important for the Ministerial Conference itself but also for preserving the credibility of the multilateral trading system and the WTO, particularly its negotiating function. Success in Bali was therefore perceived as crucial.

During 2013, an intensive consultative process took place, in relevant negotiating groups, in different formats and configurations, under the leadership of the three Chairs of the negotiating groups with deliverables, the four "Friends" of the Trade Facilitation Chair, and the Facilitator for LDC issues appointed at the request of the LDC Group in April. The TNC provided WTO members with the forum to assess progress and accordingly map the way ahead. To advance the identified potential Bali deliverables, several proposals were tabled by WTO members, both individually and as groups, in areas of interest.

July was considered a critical juncture in determining whether results could realistically be achieved in Bali. WTO members viewed the end of July as the "last petrol station on the Bali highway". At the July TNC meeting, the last chaired by former Director-General Pascal Lamy, he said that members were better placed than they had been two months before to deliver concrete outcomes in the three deliverables. At this meeting, a number of members started to caution against negotiating at the Ministerial Conference itself. They stressed that all negotiations should be concluded in Geneva.



In September, newly-appointed Director-General Roberto Azevêdo took over as Chair of the Trade Negotiations Committee.

In September, newly-appointed Director-General Roberto Azevêdo took over as Chair of the TNC. The negotiations on the Bali deliverables further intensified with the start of the so-called “horizontal process” – ensuring that all negotiating issues are considered together. All three Bali deliverables were discussed in a focused, precise and business-like manner. Delegations were in a solution-finding mode, with an encouraging new tenor to the discussions. Inclusiveness was a tenet in this process, with all regional and group coordinators and members most affected by different issues represented. Moreover, meetings were held covering all issues and involving all members.

#### Work intensifies

The Chair believed that the aim of WTO members had to be to conclude the main part of the negotiations in Geneva by the end of October. By that time, the “landing zones” for the Bali deliverables should have become visible. Work therefore intensified further, with the aim of making advances on the critical issues that required more attention. The Chairs, Friends and LDC Facilitator also continued their own processes aimed at finding convergence on outstanding issues in their respective areas. They reported on the progress made in their consultations to the TNC.

There was also a unanimous positive response from ministers in different regions as a result of the outreach activities undertaken by the Chair to work constructively towards a successful outcome in Bali as a first necessary step towards the goals of safeguarding and preserving the credibility of the WTO and advancing the DDA.

In the final weeks leading up to the Ministerial Conference, the degree of engagement by members on the Bali deliverables was higher than ever. Members actively engaged in resolving text that had not been agreed in areas where work was at an advanced stage in order to move rapidly to final agreement. In areas where progress had been made in identifying “landing zones”, they engaged to translate these into texts.

All WTO members were engaged in a line-by-line review of the texts in the three Bali deliverables (covering trade facilitation, agriculture and development) that had emerged from negotiating groups and from the intensive consultative processes undertaken by the Chair and other relevant Chairs, the Friends of the Trade Facilitation Chair and the LDC Facilitator. Significant progress was made on all three areas.

#### Too close to fail

At the TNC meeting in November, the Chair cautioned members that because of certain existing “icebergs” that he highlighted, the risk of failure at the Ministerial Conference remained. However, in his assessment, success could still be achieved. He therefore urged members to continue their negotiations as they were too close to accept failure. The negotiations further intensified with the involvement of capital-based officials in trying to arrive at convergence on the few remaining difficult areas.

At the General Council meeting at the end of November, the Chair presented to members, as a package, ten texts representing the state of play in the negotiations at that point. These were four texts in the area of agriculture, a draft agreement on trade facilitation and five texts on development/LDC issues (including cotton).

In presenting the texts as a package, the Chair said that members had made compromises and showed flexibility, with the understanding that their contribution would be reciprocated in other areas of the negotiation. As not all work had been finished at that point in all areas, he said that none of the texts could be understood as fully agreed. The documents were a snapshot of where members were. He would use them to brief ministers in Bali on progress made in Geneva but not as texts agreed for adoption.

The Chair noted that members had been very close to fully agreed texts, with several texts being stable. He said that what had prevented members from crossing the finishing line in Geneva had been a lack of political will and political engagement to make the required tough political calls.

At the Ministerial Conference, ministers expressed their collective desire for successfully negotiated outcomes in all three areas. They therefore asked the Director-General to undertake a process of consultations in Bali with concerned members aimed at closing outstanding issues to pave the way for the adoption of the full package. The Director-General held intensive consultations with those concerned and agreement was reached on the outstanding issues. This led to the adoption by ministers at the end of the Ministerial Conference of the “Bali Package”.

Ministers noted that this package was an important stepping-stone towards the completion of the Doha Round. They instructed the TNC to prepare a clearly defined work programme by the end of 2014 on the remaining DDA issues, building on the decisions they had taken in Bali and on other issues under the Doha mandate that were central to the conclusion of the Round. They said the issues in the Bali Package where legally binding outcomes could not be achieved should be prioritized. They agreed that work on issues in the Package that had not been fully addressed at the Conference would resume in relevant committees and negotiating groups.

In addition, they agreed that the work programme should be developed in a way that is consistent with the guidance they had provided at the Eighth Ministerial Conference, including the need to look at ways that may allow members to overcome the most critical and fundamental stumbling blocks.

## Agriculture

**In 2013, the agriculture negotiations focused on issues proposed for agreement at the Bali Ministerial Conference. This followed a 2011 decision to concentrate on Doha Round topics where progress was most likely to be made. The subjects that would eventually be agreed in Bali in December came from groups of members. At the Conference, ministers issued four decisions and one declaration on agriculture. These were on subsidies used for rural development and poverty alleviation, public stockholding for food security, how to avoid turning a particular type of quota into a trade barrier, export subsidies in the broadest sense, and cotton.**

Negotiators began the year discussing technical issues and sharing information on the proposal on public stockholding. Over the weeks and months the negotiations under Chair John Adank drew on the information as delegations' differences in negotiating positions narrowed and the proposals evolved.

Towards the end of the year, Director-General Roberto Azevêdo held a series of consultations on the outstanding issues under each agricultural proposal, in parallel with talks on other topics for what would become the “Bali Package”. As a result, several difficult, sensitive points were settled. Draft agriculture texts were circulated on 25 November, a week before the Bali Ministerial Conference began. In Bali, discussions mainly focused on public stockholding for food security. Intensive consultations finally produced an agreement on all agricultural issues under discussion.

### Food security and subsidy limits

In late 2012, the G-33, a developing-country group of food importers seeking flexibility to support their farmers, had proposed that developing countries' governments should be able to buy food for stockholding from poor farmers – and for food security – at supported prices, without being constrained by subsidy limits.



### Background on agriculture

The agriculture negotiations began in 2000 under a commitment that 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 take place in the WTO Committee on Agriculture, meeting in special session. They also take into account social and political sensitivities in the sector and the needs of developing countries.

WTO members all agreed that food security is important, particularly in poorer countries. Those that had reservations about the proposal were concerned that without any disciplines the food that is stocked and later released under these programmes could depress prices and affect the farmers' incomes and food security in other countries. Much of the negotiation was about the disciplines that would be applied.

The year 2013 began with a series of technical meetings in the "Special Session" of the Agriculture Committee – where the negotiations take place – based on replies to a questionnaire circulated by the Chair. The aim was for members to understand the challenges some developing countries face in staying within their farm subsidy limits under the Agriculture Agreement (strictly speaking, these are ceilings on "trade-distorting domestic support") when operating their public stockholding and food security programmes. It was also an opportunity to get to know how these programmes are constructed.

From the spring, the Chair moved on to explore and identify where members' views might converge on the proposal. Compromise was achieved by agreeing on two steps: members would focus on a possible interim mechanism, leaving until later negotiations on a permanent solution.

Therefore, in Bali, ministers agreed to protect the programmes temporarily. Provided other conditions are also met, members have promised not to challenge breaches of domestic support commitments resulting from developing countries' public stockholding programmes for food security. Any developing country using this decision must supply relevant information and avoid distorting trade or causing adverse effects on other countries' food security. The interim solution will remain in force until a permanent one is agreed. A work programme will aim to produce a permanent solution in four years.

#### Development and poverty reduction

The G-33 proposed clarifying the rules to ensure that government subsidies could be allowed without any limits when they are for land use, land reform, water management, rural livelihood security and other purposes related to development and reducing poverty. Originally initiated by the African Group – some of whose members are in the G-33 – the proposal would add these programmes to the list of "general services" as examples of support policies that are considered to cause little or no trade distortion ("Green Box" domestic support) and allowed without limits. This proposal was uncontroversial.

#### Export subsidies and related policies

The third issue was about export subsidies and a range of measures with equivalent effects – international food aid, export credits, export credit guarantees and insurance programmes and agricultural state trading enterprises (STEs). Together, they are described as "export competition" issues.



In the first half of the year, the WTO Secretariat circulated a background document on the subject, drawing on notifications by WTO members and information collected through a questionnaire. The Secretariat also circulated a document on export prohibitions and restrictions.

Subsequently, the G-20, a broad agricultural coalition of developing countries, circulated a proposal for ministers to agree in Bali. The proposal sought commitments to start cutting export subsidies as a first step towards the previously agreed objective of eliminating them eventually. It was also proposed to limit the maximum repayment term for export financing programmes. However, no consensus could be reached on the proposal in this form because some countries said they could only make legally binding commitments on export subsidies (and related policies) as part of a complete Doha Round package. The compromise agreed in Bali was a strong political statement that governments will ensure all forms of export subsidies are kept low and a commitment to enhance transparency and improve monitoring.

#### Tariff quota administration

WTO members continued to see the proposal on "tariff rate quota administration", circulated by the G-20 in October 2012, as another that could realistically be agreed in Bali. Under tariff rate quotas (TRQs or simply "tariff quotas"), imports within an agreed quota are charged lower duties than those outside, where the duties can be high.

Some countries are concerned that the methods governments use to share these quotas among traders ("TRQ administration") can become an additional trade barrier. Evidence of this, they say, is when parts or all of the quotas are not used (they are "under-filled"). On the other hand, importing countries often say the underfill is caused by supply and demand conditions in the market (for example, bad harvests in supplying countries or when cheaper local produce is available in the importing country).

The G-20 proposal described new steps for monitoring administration methods when tariff quotas are persistently under-filled. The Bali ministerial decision sets out a monitoring process within the Committee on Agriculture that combines consultations with the quick provision of information about under-filled quotas. The Bali decision says that if a quota is persistently under-filled – and information sharing and consultations prove fruitless – the importing government would have to apply one of a prescribed set of methods for administering quotas aimed at removing impediments.

### Cotton

In Bali, ministers agreed that twice a year, WTO members would discuss developments in cotton related to trade – particularly in market access, domestic support (subsidies) and export competition (subsidies and policies that are equivalent to subsidies). These dedicated discussions on cotton would take place in the context of the agriculture negotiations, with the aim of increasing transparency and strengthening monitoring.

The decision resulted from substantial preparatory work involving several key delegations, conducted by the agricultural negotiations' Chair who also presides over the Cotton Sub-Committee. It was based on a proposal presented by the co-sponsors of the Sectoral Initiative in Favour of Cotton – Burkina Faso, Benin, Mali and Chad (the Cotton Four or C-4).



## Market access for non-agricultural products

**Negotiations on non-agricultural market access (NAMA) were put on hold in 2013 as WTO members awaited the outcome of December's Ministerial Conference in Bali. The prevailing view was that any deepening of divisions over NAMA could harm the chances of a deal in Bali on trade facilitation. Negotiating Group Chair Remigi Winzap declared that, with success in Bali, NAMA "should again come to the forefront".**

Ambassador Winzap, who assumed chairmanship of the Negotiating Group in November 2012, spent his first few months consulting with WTO members to see if there was an appetite to re-launch the deadlocked NAMA negotiations. However, he concluded that it was still too soon. "The main message I got from my consultations was: 'Don't rock the boat to Bali!'" he said in a report circulated in April 2013. On tariffs, he observed: "The view of several members was that the situation which had led to the logjam in 2011 prevailed still today. There had been no fundamental shift in the position of the major players. Therefore, the report of the TNC [Trade Negotiations Committee] Chair, which was issued in 2011 reflecting that deadlock, remained valid today."

On non-tariff barriers (NTBs), Mr Winzap noted that the position was more nuanced. While there was readiness in some quarters to discuss technical issues pertaining to NTBs, a view was also expressed that "unambiguous engagement on tariffs" was required before addressing NTBs.

Mr Winzap concluded his report by indicating that he would be "attentive to the Bali process" and would return to the membership when he felt that there was the "right momentum to work on integrating NAMA in a post-Bali agenda."



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

Non-agricultural products range from manufactured goods to fuels and fisheries. Comprising products not covered by the Agreement on Agriculture, 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 (NTBs), such as import licensing systems and technical barriers 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).

## Services

**The Council for Trade in Services held no special sessions in 2013 and no progress was made in overall negotiations to lower barriers to trade in services. The Working Party on Domestic Regulation exchanged information on how licensing and qualification requirements and procedures, and technical standards, are applied at national level. Regarding government procurement, the Working Party on GATS (General Agreement on Trade in Services) Rules further explored the relationship and complementary between the Government Procurement Agreement (GPA) and the GATS.**

### Domestic regulation

The mandate of the Working Party on Domestic Regulation 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 2013, based on information provided by WTO members, the Working Party completed its examination of over 90 questions on how such requirements, procedures and technical standards are implemented at the national level. The discussions covered, among other things, issues concerning transparency, the simplification of licensing and qualification regimes, the treatment of applications, recognition arrangements, universal service obligations and international standards as well as the use and role of regulatory impact assessments.

During the course of these technical discussions and at the request of members, the WTO Secretariat prepared two new background notes. The first of these notes examined how the term “measures of general application”, as found in WTO agreements, had been interpreted in dispute settlement cases. The second note discussed the role of technical standards in services and provided an explanation of the services standards-making process at national and international levels. Overall, the technical discussions have helped to improve the understanding of regulatory practices as well as to identify areas and issues requiring further attention in the development of disciplines on domestic regulation.

With the support of a Secretariat background note, delegations launched a separate set of discussions on “Regulatory issues in sectors and modes of supply”. The aim of these discussions is to help WTO members better understand the regulatory environment of services sectors and to identify, where relevant, issues that may have a particular bearing on trade in services.

### GATS rules

The Working Party on GATS Rules carries out the negotiating mandates contained in Article X (emergency safeguard measures), Article XIII (government procurement) and Article XV (subsidies) of the GATS. As in previous years, WTO members did not engage in text-based negotiations because there was no common vision of what could constitute an acceptable outcome in any of the three areas.



On emergency safeguard measures, after a period of reflection, delegations agreed in principle on holding a member-driven, dedicated discussion on safeguard measures in regional and bilateral trade agreements, to start in 2014.

On government procurement, based on WTO Secretariat presentations, the discussions regained some momentum addressing issues such as the significance of the revised Government Procurement Agreement (GPA) for trade in services, the economic and legal interface between the GATS and the GPA as well as the services procurement coverage in recent regional trade agreements.

Concerning subsidies in services, delegations' appetite to engage remained very limited. More empirical and conceptual work would be needed to better understand the role of subsidies in services trade and the trade-distortive effects they might have continued.



### Background on services

Services are the most important economic activity in most 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 Party on Domestic Regulation and the Working Party on GATS Rules.

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

**Negotiation positions remained deadlocked on a system for notifying and registering geographical indications for wines and spirits. The TRIPS Council Special Session met only once on a procedural matter and did not address substantive issues. The TRIPS Council, in regular session, undertook its eleventh annual review of the incentives given to companies by developed countries to transfer technology to least-developed countries. The WTO's Ministerial Conference confirmed the recommendation of the TRIPS Council to extend the moratorium on TRIPS non-violation and situation complaints.**

### Negotiations on a GI register

Disagreement continued over the legal effects of a geographical indications (GI) register and whether the effects would apply to all or only those WTO members who elected to participate. Positions also remained entrenched on product coverage and whether, as the negotiating mandate says, the register should be confined to GIs for wines and spirits or whether it could apply to other products, such as food and agricultural goods.

The register for wines and spirits is intended to facilitate the protection of GIs. These are place names (or sometimes other terms or signs associated with a place) used to identify products whose place of origin gives them particular qualities, reputation or other characteristics. Scotch, Champagne and Tequila are well-known examples. The TRIPS Agreement mandates negotiations on establishing a register and work has continued since 1996.

Since the circulation of the 2011 "draft composite text" that reflected WTO members' positions in draft treaty language, the chairs' efforts to find a common approach to advancing this



work have been unsuccessful. Further difficulties stem from the linkages made by some delegations to two TRIPS-related implementation issues, namely the extension of GI protection and the relationship between the TRIPS Agreement and the Convention on Biological Diversity (see below).

In view of these substantive and procedural complications, WTO members did not give priority to work on the GI register in the run-up to the Bali Ministerial Conference.

### Outstanding implementation issues

WTO members continue to differ on whether extending GI protection to other products would help their trade in such products or whether increasing the level of protection would create an unnecessary legal and commercial burden. The possible extension to other products of the "higher" or "enhanced" level of GI protection that is currently only required for wines and spirits is one of the so-called "implementation issues". The 2005 Hong Kong Ministerial Declaration called for consultations by the Director-General on TRIPS-related "outstanding implementation issues", the first of which was the question of the possible extension.

The second of these issues concerns the relationship between the TRIPS Agreement and the Convention on Biological Diversity (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. No further consultations have been held since the then Director-General Pascal Lamy presented a written report covering the period from March 2009 to April 2011. This issue was raised by several members in the TRIPS Council in 2013 but no significant progress was made.



### Background on TRIPS

The Doha Development Agenda mandates negotiations on a multilateral system for notifying and registering geographical indications for wines and spirits. The Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) carries out the negotiations in special session. In its regular sessions, the TRIPS Council implements other relevant ministerial decisions, notably those relating to technology transfer and dispute settlement. The Hong Kong Ministerial Declaration mandates the Director-General to consult on certain TRIPS-related implementation issues identified in the Doha Declaration.

### Incentives for technology transfer

In October 2013, the TRIPS Council, in regular session, undertook its 11th annual review of the reports provided by developed countries on the incentives they give to companies to transfer technology to least-developed countries (LDCs). The TRIPS Agreement requires developed countries to provide such incentives, and in 2003 the Council gave effect to a directive by the Doha Ministerial Conference to establish a review mechanism to monitor this obligation.

The WTO Secretariat organized a sixth annual workshop for LDC and developed-country delegations to discuss in more depth the operation of these incentives. Based on an LDC proposal, delegations continued exploring the possibility of a harmonized reporting format to assist analysis and understanding of the reported measures. The discussions also covered the Secretariat's efforts to improve the accessibility of the vast amounts of useful information available, and how improved information tools could better respond to LDCs' needs.

### Disputes over intellectual property protection

In 2013, the TRIPS Council continued its consideration of whether so-called "non-violation" complaints over intellectual property rights can be brought under the WTO Dispute Settlement Mechanism. Members differ on whether these cases should be allowed or whether this could be a legitimate basis for a dispute.

In general, WTO disputes can be brought 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. However, 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.

The Chair told the Council's meeting in October that WTO members had indicated readiness to engage in early 2014 in intensified work on the examination of the scope and modalities for such complaints, with the intent of finding a way out of the current cycle of extending the non-violation moratorium from one ministerial conference to another.

In its turn, the WTO's Ninth Ministerial Conference directed the Council to continue examining the scope and modalities for these disputes, and to make recommendations to the next ministerial conference to be held in 2015. It also agreed that, in the meantime, members would not initiate such complaints under the TRIPS Agreement.

## Trade and development

**The Committee on Trade and Development focused on developing the elements of a monitoring mechanism on special and differential treatment for developing countries, as mandated by the WTO's Eighth Ministerial Conference, and on a stocktaking of the 28 Agreement-specific proposals agreed to in principle at Cancún, Mexico, in 2003. Sufficient progress was made on the Monitoring Mechanism during the year for ministers to adopt it formally at the Ninth Ministerial Conference in December in Bali.**

The Monitoring Mechanism provides an important opportunity to analyse and review all aspects of the implementation of special and differential treatment (S&D) provisions contained in multilateral WTO agreements, ministerial decisions and General Council decisions.

The proposal to establish a monitoring mechanism was initially submitted by the African Group to the Special Session of the Committee on Trade and Development in 2002. The General Council agreed that same year to establish a mechanism and instructed the Special Session of the Committee to agree the functions, structure and terms of reference.

At the 2011 Ministerial Conference, ministers reaffirmed that S&D provisions for developing countries were integral to WTO agreements. They also restated their determination to fulfil the Doha mandate to review the provisions, with a view to strengthening them and making them more precise, effective and operational. They agreed to expedite work towards finalizing the monitoring mechanism for special and differential treatment and also agreed to take stock of the 28 Agreement-specific proposals in Annex C of the draft Cancún ministerial text, with a view to formal adoption of those agreed.



### Background on trade and development

Many WTO agreements contain provisions that give developing countries special rights and that 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 is reviewing these "special and differential treatment" provisions, with a view to making them more precise, effective and operational.



### Ministerial decision on the Monitoring Mechanism

Ministerial approval of the Monitoring Mechanism at the Bali Ministerial Conference represents an important step in the multilateral trading system's responsiveness to the concerns of developing countries over the implementation and utilization of S&D provisions. Recipients of S&D treatment are to benefit from the mechanism in many ways. It will add value to what the system already has on at least three levels.

First, the mechanism will conduct regular reviews of all existing and future S&D provisions in multilateral WTO agreements, giving visibility to S&D-related concerns. Secondly, its ability to make recommendations if a problem is detected will be an important departure from the mere discussion that often characterizes WTO members' engagement in regular committees of the WTO. Thirdly, recommendations coming out of it can lead to negotiations in the relevant WTO technical body. This will provide developing countries with an opportunity to address any challenges they may face in utilizing S&D provisions as well as keep the S&D issues under the political lens of the membership.

### Ministerial decisions on least-developed countries

Ministers at the Bali Conference adopted several decisions in favour of least-developed countries (LDCs) to further assist their integration into the multilateral trading system. The decisions include multilateral guidelines on preferential rules of origin to facilitate market access for LDC products, a decision on duty-free and quota-free (DFQF) market access for LDCs, calling upon members to improve their existing DFQF coverage, and a decision in the area of trade in services initiating a process to help LDCs secure preferential market access for their services and service suppliers.

In addition, a decision on cotton was adopted which aims at enhancing transparency and monitoring of trade-related as well as development assistance aspects of cotton. This was based on a proposal presented by the "Cotton 4" LDCs: Burkina Faso, Benin, Mali and Chad. Further information on these decisions is provided on page 101.

### Agreement-specific proposals

In 2013, the Committee held many formal and informal meetings at which some progress was made on the Cancún Agreement-specific proposals relating to special and differential treatment for developing countries. However, consensus proved difficult and WTO members opted to revisit them in 2014.

The proposals essentially identify existing S&D provisions in WTO agreements and suggest new wording or interpretation to make the provisions more precise, effective and operational. They are thus referred to as "Agreement-specific proposals". Special and differential treatment provides favourable treatment, flexibilities or assistance for WTO members which are developing countries or LDCs, recognizing that these countries do not have the capacity to take on commitments and obligations in the same manner as developed countries.

The African Group and other LDC members had hoped to have the 28 proposals adopted as a package in Bali but some other members stated that they could not accept all 28 proposals. Work is set to continue.



## Trade and transfer of technology

**In 2013, the Working Group on Trade and Transfer of Technology continued, at its three formal sessions, to analyse the relationship between trade and technology transfer as well as ways to increase the flow of technology to developing countries. Work continued largely on the basis of UNCTAD's 2012 presentation on technology transfer, on Pakistan's experience in its financial services and data management, and on a WTO Secretariat presentation on the main elements to emerge from a workshop on "Environmental technology dissemination".**

### Relationship between trade and transfer of technology

The Working Group discussed how governments could maximize development benefits from non-equity modes (NEM) of transfer and how they could embed NEM policies in overall development strategies through coherent trade, investment and technology policies. Non-equity modes of transfer usually take the form of contractual relationships, licensing arrangements, franchising or contract manufacturing between local business and transnational corporations.

The presentation by the United Nations Conference on Trade and Development (UNCTAD) found that NEMs are a middle ground between foreign direct investment (FDI), where the transnational corporation keeps control of assets, and trade, where the international trading partner has no control over assets. NEMs are commonly found in the pharmaceuticals, automotive component, IT services and electronics sectors.

Pakistan presented its experiences in the use of technology to improve financial services, data management and information technology and emphasized the positive impact such services have had on peoples' lives. Information technology can boost the financial sector by providing mobile financial services through the Internet or mobile phones. These developments benefit people directly by, for example, extending financial services to rural areas or aiding women to become entrepreneurs.

Concerning the relationship between trade and transfer of technology, WTO members heard a presentation from the WTO's Trade and Environment Division on the main findings of a workshop on "Environmental technology dissemination; challenges and opportunities related to environmental



technology dissemination". The discussion focused on barriers to the dissemination of environmental technologies and on the extent to which their elimination would contribute to sustainable development.

Three specific environmental technologies were addressed: carbon capture and storage technologies, low emission technologies, and waste management and water treatment technologies. Carbon capture involves trapping the carbon dioxide, a greenhouse gas, produced by burning fossil fuels or other chemical or biological processes and storing it in such a way that it does not escape into the atmosphere. The participation of developing countries in international standard setting and trade and investment were considered key elements in promoting innovation and supporting the development of developing country markets.

### Future work

WTO members continued their discussion of an earlier submission by a group of members entitled "Facilitating access to information on appropriate technology sourcing – steps to increase flows of technology to developing countries". The proponents hoped to make a revised submission in the near future. Members also agreed in principle to hold a workshop on trade and transfer of technology in 2014.

### Bali decision

Ministers at the Bali Ministerial Conference in December decided that more work remained to be done by the Working Group on Trade and Transfer of Technology to achieve the mandate of the Doha Ministerial Declaration, particularly on enhancing understanding of the complex issues surrounding trade and the transfer of technology.

### 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 part of 2013, the Committee on Trade and Environment in Special Session (CTESS) continued to discuss ways to advance the work of the CTESS, in particular on the reduction and elimination of barriers to trade in environmental goods.**

In the first part of 2013, discussions with delegations in the CTESS were dedicated to the environmental goods part of the negotiation mandate. Relative progress had already been achieved on the relationship between WTO rules and multilateral environmental agreements (MEAs) and collaboration between the WTO and MEA secretariats, which are the other two strands of the negotiation. No further meetings took place in the second half of 2013.

Much discussion has occurred through the years on the identification of environmental goods and the approaches to tariff treatment of the environmental goods identified. A number of WTO members have put forward a total of 409 different tariff lines of goods they consider environmental. These goods fall within a broad range of environmental categories, such as environmental technologies, air pollution control, waste management and water treatment, renewable energy and carbon capture and storage.

The work on environmental goods identification has shown that a number of technical difficulties remain. These include the verification of the Harmonized System description and the determination of sub-classifications relevant for submitted environmental goods. The consultations and meeting organized by the Chair of the CTESS focused on identifying ways to carry on this technical work and move the discussion forward.



### Background on trade and environment

The negotiations on trade and environment, part of the Doha Development Agenda, address two main themes: the relationship between the WTO and multilateral environmental agreements, 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. The negotiations aim to ensure that trade and environmental policies are mutually supportive.



## Trade facilitation

**After years of negotiations, trade ministers approved a new Trade Facilitation Agreement at the WTO's Ninth Ministerial Conference in December 2013 in Bali. The Agreement will simplify customs procedures and could provide significant benefit to the global economy – with estimates of the benefits ranging up to US\$ 1 trillion a year. A key part of the deal involves assistance to developing and least-developed countries.**

Both developing and developed countries have long pointed to the vast amount of "red tape" that still exists in moving goods across borders. Documentation requirements often lack transparency and are duplicated in many places, a problem often compounded by a lack of cooperation between traders and official agencies. Despite advances in information technology, automatic data submission is still not commonplace.

The Trade Facilitation Agreement (TFA) will simplify customs procedures by reducing costs and improving their speed and efficiency. It will be a legally binding agreement and is one of the biggest reforms of the WTO since its establishment in 1995.



The objectives of the trade facilitation accord are: to speed up customs procedures; make trade easier, faster and cheaper; provide clarity, efficiency and transparency; reduce bureaucracy and corruption; and use technological advances. It also has provisions on goods in transit, an issue particularly of interest to landlocked countries seeking to trade through ports in neighbouring countries. Part of the deal involves assistance for developing and least-developed countries to update their infrastructure, train customs officials, or for any other cost associated with implementing the Agreement.

The benefits of the TFA to the world economy are calculated to be between US\$ 400 billion and US\$ 1 trillion, resulting from an increase in trade flows. It has also been estimated that the TFA could reduce the costs of trade by 10-15 per cent. The text adopted in Bali is not final, although the substance will not change. It will be checked and corrected to ensure the language is legally correct, aiming for the General Council to adopt it by 31 July 2014.

The Agreement has two sections: Section I contains provisions for expediting the movement, release and clearance of goods. It clarifies and improves the relevant articles (V, VIII and X) of the General Agreement on Tariffs and Trade (GATT) 1994. Section II contains special and differential treatment provisions for developing and least-developed countries aimed at helping them implement the provisions of the Agreement.

The Negotiating Group on Trade Facilitation, led by Chair Eduardo Ernesto Sperisen-Yurt and four "Friends of the TF Chair" (Ambassador Frederick Agah, Ambassador Mario Matus, Permanent Representative Michael Stone and Ambassador Remigi Winzap), engaged in intensive work during 2013.



Director-General Azevêdo also conducted intense negotiations on draft texts following his taking office on 1 September. While the exchanges took place in various forms and configurations, emphasis was placed on transparency and inclusiveness as well as on a "bottom-up" approach, meaning there was no attempt by a small group of members to impose a deal on the others. Developing and least-developed countries were supportive of the Agreement and through negotiations secured significant changes to the text. These countries were supported throughout the negotiating process through various assistance initiatives, such as funded participation of capital-based experts.

The outcome of the work was captured in various revisions of the draft consolidated negotiating text in the run-up to Bali. At the Bali Ministerial Conference, WTO members were able to agree on language for the few outstanding issues and ministers were able to approve the accord. Ministers instructed a preparatory committee to carry out the legal review of the text; any rectifications, as noted, will be of a purely formal character and will not affect the substance of the Agreement.



#### Background on trade facilitation

Negotiations on a new Trade Facilitation Agreement were launched in July 2004 as part of the Doha Development Agenda. They aimed to expedite the movement, release and clearance of goods, including goods in transit, as well as to ensure effective cooperation between customs and other appropriate authorities. Particular attention was paid to developing and least-developed countries, which stand to benefit from far-reaching flexibilities and considerable technical assistance and capacity-building support. After nearly ten years, the negotiations were successfully concluded in December 2013 at the WTO's Ninth Ministerial Conference in Bali.

## WTO rules

**In the absence of active negotiations, the Negotiating Group on Rules continued with its technical activities, most notably in the context of the Technical Group, which exchanges information about the anti-dumping practices of WTO members.**

After informal consultations in October 2012, the Chair of the Negotiating Group, Ambassador Wayne McCook, concluded that delegations were not yet prepared to resume active negotiations until the broader direction of the Doha Round was clarified. That situation did not change in 2013. The Chair did note, however, an interest in continuing some technical work. One area where such work has continued is in the Technical Group, a forum in which delegations exchange information about their anti-dumping practices.

The Technical Group met in April and October 2013 and exchanged information about WTO members' practices in such areas as domestic industry definition, data collection, period of investigation, duty imposition, duty assessment systems, and interim and new shipper reviews.



### Background on WTO rules

WTO members agreed at the Doha Ministerial Conference in 2001 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 over-capacity and over-fishing. With regard to regional trade agreements, the General Council established a transparency mechanism on a provisional basis in December 2006.

## Dispute Settlement Understanding

**WTO members focused on key outstanding issues under the Dispute Settlement Understanding negotiations. Although there were no concrete outcomes, participants reported constructive work on a broad range of issues and saw a general willingness to find solutions.**

In June 2013, based on consultations with interested members, the Chair of the Dispute Settlement Body Special Session, Ronald Saborío Soto, presented a general assessment of the state of play of the negotiations and key outstanding issues. He invited proponents and other interested participants to follow up with a focused exercise among themselves to explore solutions in all outstanding areas.

This work was undertaken in the second half of the year. The Chair assisted this exercise and ensured its transparency for all delegations. Stocktaking meetings were held in July, October and November, at which participants reported constructive work on a broad range of issues.

Although there were no concrete outcomes to report by the end of 2013, progress has stabilized in some areas, and there have been encouraging signs of engagement in a number of outstanding areas. There has also been willingness to move towards solutions that go beyond initial positions in the interest of a successful outcome.

### Some outstanding issues

On the question of remand, or referring disputes back to the original panel if a factual issue arises at the appellate stage, there is significant convergence on some essential features expected of a referral mechanism. Similarly on post-retaliation, there is convergence at a conceptual level on a broad sequence of steps to address post-retaliation situations. These are important building blocks for further work.

Convergence exists on the question of third-party rights in consultations but more work is needed when it comes to third-party participation in panels and appeals. With respect to transparency and amicus curiae briefs, work is needed to address the concerns of those participants who are not persuaded that a systematic opening of proceedings is appropriate.

There is generally comfort with the key objectives underlying proposals on timeframes, i.e. streamlining the process where possible and ensuring that sufficient time is available for all WTO members, including developing country members facing resource constraints.

On effective compliance, the broad question to be addressed is how the Dispute Settlement Understanding might be improved so that all WTO members have access to as effective a remedy as possible. Proponents of developing country interests have identified third-party rights, timeframes and effective compliance as areas of concern to them as well as access to the dispute settlement system. Meaningful progress in these areas could therefore contribute to addressing developing country concerns overall.

Further work is also ongoing on flexibility and member-control, where there is convergence on some but not all aspects.



### 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 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 3 December 2013, ministers of the parties to the WTO's Government Procurement Agreement (GPA), meeting in Bali during the WTO's Ninth Ministerial Conference, expressed satisfaction at the progress achieved towards bringing into force the revised GPA. Following ratification by 10 of the parties, the agreement finally came into force on 6 April 2014.**

Adopted in March 2012, the revised Agreement currently consists of 15 parties (counting the European Union and its 28 member states as one). As of March 2014, 10 parties had provided their acceptances. These parties are (in the order in which their acceptances were provided) Liechtenstein, Norway, Canada, Chinese Taipei, the United States, Hong Kong (China), the European Union (also covering its member states), Iceland, Singapore and Israel. On the basis of two-thirds of the parties having ratified it, the revised Agreement came into force.

The revised GPA encompasses both a new and improved text and a significant expansion of the parties' market access commitments. At the same time, it provides important flexibilities for developing countries that join the Agreement to manage their transition to a more internationally competitive government

procurement regime. The new text recognizes and facilitates the use of e-procurement tools, while strengthening the GPA's role in promoting good governance and battling corruption. The expansion of the parties' market access commitments under the Agreement is valued at USD 80 billion to USD 100 billion or more annually. Additional market access commitments include the extension of coverage to approximately 500 other procurement entities, among them local government and sub-central entities, and additional coverage of services procurement.

The coming into force of the revised GPA has triggered work on several agreed new work programmes of the Committee on Government Procurement. These represent a separate outcome of the negotiations and deal with such topical issues as facilitating participation by small and medium-sized enterprises in government procurement, promoting sustainable procurement practices and improving the statistical data available on operations pursuant to the Agreement.



At a meeting of the parties to the WTO's Government Procurement Agreement held in Bali during the Conference, ministers anticipated that the revised Agreement would come into force in the first quarter of 2014.



## 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 government procurement opportunities that are opened to foreign competition. It sets minimum standards for the transparency of procurement, which are based on internationally recognized best practices. 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 WTO Committee on Government Procurement administers the Agreement.