

12 The conduct of the Doha Round

Aye, and I saw Tantalus in violent torment, standing in a pool, and the water came nigh unto his chin. He seemed as one athirst, but could not take and drink; for as often as that old man stooped down, eager to drink, so often would the water be swallowed up and vanish away, and at his feet the black earth would appear, for some god made all dry. And trees, high and leafy, let stream their fruits above his head, pears, and pomegranates, and apple trees with their bright fruit, and sweet figs, and luxuriant olives. But as often as that old man would reach out toward these, to clutch them with his hands, the wind would toss them to the shadowy clouds.

Homer
The Odyssey (Book 11)
Translation by A.T. Murray (1919)

Introduction

The myth of Tantalus speaks to the trials of trade negotiators in the Doha Round, for whom the events since 2001 have been a long series of vexing temptations. The deal has seemed within reach more than once, only to be pulled away cruelly. And like the fruits that stretched out before Tantalus, forever alluring yet always beyond his grasp, nothing has tantalized and frustrated negotiators more than the prospects for liberalized trade in agriculture.

These negotiations have played out at more than one level. To shift to another watery metaphor, one might think of trade negotiations as being similar to the navigation of ships through a river or canal. Depending on the nature of the waterway, this process may involve either one or two levels of navigation. The entirety of the Suez Canal is at sea level, and a ship that enters it at one end can steam directly to the other without help or hindrance. In that same sense, a few of the issues that are taken up in Geneva have relatively low political profiles and can be handled almost entirely by the missions there without requiring more than routine guidance and clearance from capitals. By contrast, passages such as the Panama Canal that traverse more difficult landscapes require that ships pass through locks. Those locks lift or lower the ships so as to move them between sections of a waterway that are at different levels. In the same way, some trade negotiations require the periodic intervention of ministers, whose principal task is to get the talks past those major decision-points that stymie the ambassadors and other representatives in Geneva.¹ Ambassadors can take the talks only so far before they must ask ministers to break the logjams and raise or lower the ambitions of the negotiations. Like the Panama Canal, the main locks in a round are at

the start and the end of the journey; a round cannot be launched without the decision of the ministers on its overall shape, and it cannot be concluded without their agreement on its final terms. Negotiators might prefer that the involvement of ministers be limited to those two tasks, but a round will typically require additional intervention at various points throughout the process, whether in the biennial ministerials or in periodic mini-ministerials. The difficulty of a round might be measured by the number of times that ministers are called upon to do this heavy lifting. Any round that resembles the Mississippi River, which has 27 locks between its origins in Minnesota and its terminus in New Orleans, may demand too much of ministers and run the risk that their participation will become more a hazard than an aid to navigation.

This distinction between the levels is not absolute, as the lines between them can get blurred. The ambassadors are typically in attendance when the ministers gather, especially when those meetings are held in Geneva. In this age of modern communications, the ministers will be figuratively looking over the shoulders of the ambassadors much of the time. It would also be misleading to suggest that the only progress that the ambassadors can make is incremental. They can achieve breakthroughs on their own, both in the drafting of individual texts and in the bundling of multiple texts into a larger package. By the same token, ministers can sometimes deal with agreements at a granular level. As a general rule, however, the events discussed in Chapter 11 show why it is advisable to maintain a division of labour in which the ambassadors handle the details and the ministers are brought in only when there is a manageable number of judgment calls and trade-offs to be made.

A truly comprehensive history of the Doha Round would exhaustively cover all issues and events at both of these levels. That is not a practical goal for the present book. Doing true justice to the negotiations in Geneva would require that each of several topics on the table be given chapter-length reviews, covering the competing proposals and the evolving chairman's texts in detail. Space does not permit that kind of treatment. Nor does time: at the time of writing, the state of the round is uncertain, being neither very active nor certifiably dead, and only with the passage of more time will we have the perspective needed to identify the key events and issues that led to its final *denouement* – whatever that might be. For want of that perfect hindsight, the approach taken here is to seek a balance in coverage of the ambassadorial and ministerial levels.

The first half of the chapter reviews the development of the negotiating texts in Geneva. It offers some detail on the evolution of the texts for goods and services, but the rest of the presentation focuses more on the content of the texts from 2008 to 2012 than on the steps by which they reached that point. The second half turns to the ministerial level. Depending on the meetings that one wishes to count, trade ministers may have gathered as many as 32 times from 2001 to 2012.² This analysis focuses on two especially consequential points when ministers were asked to intervene. These include one ministerial that had been planned as a mid-term review but became a debacle (Cancún in 2003), and a mini-ministerial that Tantalus would recognize (Geneva in 2008), when the deal got maddeningly close to completion before it was once again yanked away. Ministers met on several other occasions throughout this period, including full-dress ministerials in Hong Kong, China (2005) and Geneva (2009 and 2011) and several other mini-ministerials of varying levels of formality and attendance, but for the sake of clarity those meetings are not reviewed at length here. The Hong Kong Ministerial Conference did make two very important

contributions, first by reviving the round post-Cancún and second by making further advances in the development of the texts. Much of what was accomplished in that second category represents a continuation and an elevation of the Geneva negotiations discussed in the first half of this chapter, however, and hence is not discussed at length separately. As for the other ministerial meetings, their accomplishments on other topics are discussed elsewhere in this book.

In addition to considering the conduct of the negotiations at the ambassadorial and ministerial levels, it is also important to situate these talks within the larger global picture. The Uruguay Round already demonstrated how developments in the high politics of war, peace and diplomacy can affect ambitions in the low politics of trade. Those negotiations started during the endgame of the Cold War and finished with China and the states of the former Soviet Union applying for membership in the new WTO. In the case of the Doha Round, however, the developments in the world at large seem to have complicated rather than facilitated the conduct of the round. The turning point for many of the events discussed below is 2003. While there had been considerable slippage in meeting deadlines during the first two years of the negotiations, those delays were not unusual for the trading system. The Cancún Ministerial Conference that September was a much larger setback from which negotiations have never fully recovered. It would go too far to suggest that the specific outcome in Cancún, or the course of the round thereafter, can be attributed to the larger issues affecting relations between the key players, but those issues clearly have not helped matters.

In contrast to the mood immediately following the 9/11 attacks, when the launch of the new round may (to a debatable degree) have been facilitated by a sense of global solidarity in opposition to terrorism, 2003 witnessed new divisions and the scrambling of once-rigid alliances. An important step in that direction came in the rancorous debate of the United Nations Security Council that preceded the invasion of Iraq in March. Among the 31 members of the US-led Coalition of the Willing, one found more former members of the Warsaw Pact than original members of the North Atlantic Treaty Organization, together with several Asian, African and Latin American countries. After Cancún, when the United States stepped up its negotiation of free trade agreements (FTAs), several of its new FTA negotiating partners were also members of that coalition. In June 2003, Brazil hosted a meeting with India and South Africa, a step towards the formation of the Group of Twenty (G20) in the WTO and, outside the confines of trade policy, also towards the creation of the BRICS (Brazil, the Russian Federation, India, China and South Africa). Although that latter group does not function in the WTO, its formation was emblematic of the new alignments emerging in the post-Cold War world. Like other leading members of the trading system, these countries have also shown at times a willingness to subordinate their interests in trade to their objectives in other areas.

One should also consider the changes in the leadership of the WTO and its member states over the course of the round. There were three WTO directors-general from 2001 through 2012, as well as four trade ministers each in Brazil, China and the United States; six EU trade commissioners; nine trade ministers in Japan; and many other changes of government in WTO members both large and small. Several of those positions, including the WTO director-general, will have changed hands once again in 2013. An optimist might point out that every churn in the composition of the key players offers the chance to reinvigorate talks, but a realist might note that some of the ministers who arrived after 2003 appeared to place a lower priority on the conclusion of the round than had those ministers who invested so much in its launch.

The Geneva negotiations

This section reviews the development of the principal negotiating texts in the Doha Round, which take the form of “chairman’s drafts”. For a few of the topics discussed below, we consider the evolution of the texts over time, especially in the case of the negotiations on non-agricultural market access (NAMA), the three pillars of agricultural trade and trade in services. WTO negotiations now encompass a far wider range of issues than market access, but the topics that drove the Uruguay Round still receive the closest attention at the ministerial level. The discussion of other texts focuses primarily on their content through the end of 2008. To the extent that these texts have been refined since then, most of the changes have been at the margins. Space does not permit a detailed examination of the steps by which those still-incomplete texts were developed in the years from 2001 to 2008.

The presentation in this section is thus more thematic than chronological. The principal events that helped to shape the content of these texts are summarized in Table 12.1, including the three ministerial events that are discussed at greater length in the second half of this chapter. The principal purpose of the presentation that follows is to set up that latter review, showing the main decisions that ministers were asked to make on these topics.³

Table 12.1. Key events in the Doha Round

14 November 2001	The round is launched by the Doha Ministerial Declaration.
1 February 2002	The Trade Negotiations Committee (TNC) agrees on how to organize the negotiations; chairs for the negotiating groups are chosen two weeks later.
31 March 2003	Members miss deadlines in the agricultural and services talks.
13 August 2003	The European Community and the United States release a joint agricultural text that is soon criticized sharply by other agricultural exporters.
August, 2003	The G20 forms in opposition to the joint EC–US agricultural proposal.
10-14 September 2003	The Fourth Ministerial Conference in Cancún ends in failure, with agriculture and the Singapore issues being the most controversial topics.
2 August 2004	The “July Package” creates a partial framework for the conclusion of the round.
1 January 2005	The original deadline for completing the round is missed.
13-18 December 2005	The Sixth Ministerial Conference in Hong Kong produces agreement to eliminate agricultural export subsidies but other agricultural issues are stalled.
30 April 2006	Negotiators miss the NAMA and agriculture deadlines set in Hong Kong.
24 July 2006	Director-General Pascal Lamy suspends the negotiations after a G6 fails to break an impasse on agriculture.
31 January 2007	Mr Lamy calls for a full resumption of negotiations at a meeting of the TNC.
12 April 2007	G4 talks begin in Delhi focusing on concrete priorities and sensitivities.
21 June 2007	The G4 process breaks down at a meeting in Potsdam.
8 February 2008	The chairs of the NAMA and agriculture negotiating groups issue revised drafts.
21-29 July 2008	A mini-ministerial in Geneva comes close to solving the round but fails when the Indian and US ministers disagree on an agricultural safeguard and other issues.
6 December 2008	The chairs of the negotiating groups issue revised drafts.
21 April 2011	The chairs of the negotiating groups issue status reports.

Non-agricultural market access

The market access negotiations in a round, whether they focus on NAMA, agricultural goods or services, can be reduced to a three-stage process. The first stage is the preparation and launch of the round. As was examined in Chapter 11, the ministerial declaration that emerges from that process will identify the issues that are to be negotiated and will define in very broad strokes what the negotiations will aim to achieve, how members will go about reaching these goals and when the results (and some interim steps) are expected. The second stage is the development of modalities, or the main formulas or principles by which (for example) tariffs on specific products will be reduced or eliminated. As was discussed in Chapter 9, for goods these modalities will typically revolve around mathematical formulas that are modified with various types of exceptions or flexibilities. The third stage is scheduling, in which the modalities are then applied line-by-line and member-by-member to develop the precise schedules of commitments on goods and services. Scheduling is partly a technical exercise and partly a continuation of the negotiations. The entirety of the Doha Round market access negotiations through 2012 have been stuck in that middle part of the process, coming close to agreeing on the modalities but never making the transition from that stage to the scheduling of commitments.

Tariffs on goods, and especially on the non-agricultural variety, are the original issue around which the multilateral trading system was built. This is an area where one might perceive Zeno's paradox to be at work. Zeno of Elea pointed out in the fifth century BCE that before something can travel from point A to point B it must first travel half of that distance (let us say to point A_1), and before it can get from point A to point A_1 , it must travel half of that distance.⁴ That kind of salami-slicing can go on forever, there being an infinite number of half-way points that must be crossed before one can get to the final destination, and if Zeno was right that point may never be reached. Although Zeno's paradox was perhaps presented in philosophical jest, even its modest cuts of ever-diminishing magnitude exceeded the achievements in the successive rounds of tariff-reduction negotiations. The percentages by which the GATT negotiators cut tariffs in any round never rose as high as 50 per cent. Each of these cuts were made not to the original wall but to what the negotiators received from the round that came before them, such that a cut of any given percentage made in the Uruguay Round would, all things equal, be a far smaller accomplishment than a cut at that same percentage in the Geneva Round of 1947. The underlying cause for these modest gains is not philosophical geometry but political economy, with nearly every country having entrenched interests that demand protection from the results of market access negotiations. Each round cut or eliminated tariffs on many other goods, but it was the exceptional items that remained protected, sometimes with peak tariffs that are far above a country's average. Peaks are often concentrated in agricultural sectors, but they can also be found in labour-intensive, industrial products in developed countries, and in the infant industries of developing countries.

The challenge for the Doha Round NAMA negotiations was to do better than failing once more to halve the distance between the remaining tariffs and zero. That goal is difficult to reach when several of the participants in these negotiations – perhaps the great majority of them – prize the defensive objective of avoiding significant reductions in their own applied

tariffs more highly than the offensive interest of obtaining reductions in the applied tariffs of their trading partners. The NAMA talks picked up from the tariff bindings that the WTO inherited from the Uruguay Round, as adjusted by a few post-1995 sectoral negotiations, with the ministerial declaration mandating negotiations “by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries.” The declaration further specified that “[p]roduct coverage shall be comprehensive and without *a priori* exclusions,” and that the “negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments.” Unlike agriculture and services, where the ministerial declaration set a matched pair of target dates for initial steps (see below), in Doha the ministers did not specify when the NAMA modalities were due. With the ministers having decided that the entire round should be completed by the start of 2005, however, the talks would have had to reach the scheduling stage no later than early 2004.

The proposed modalities

The negotiations over modalities started in 2002, when members proposed various formulas that might be used. The only members to present clearly defined formulas early in the negotiations were China, the European Community, India, Japan, the Republic of Korea and the United States. While they differed significantly in the details, these proposals shared certain characteristics. As summarized by a WTO Secretariat review:⁵

- All proposals reduce higher rates by proportionately more than lower rates. Some proposals include continuous increases in reduction rates, others provide for threshold levels after which higher reduction rates apply. This is accomplished through different specifications;
- All proposals have similar effects at higher levels of tariffs, although with different absolute impacts due to different parameters;
- Some proposals take into account the diversity of the members’ profiles via an explicit provision in the functional design of the formula for the current level of base rates and;
- The treatment of the lower tariff rates differs significantly among the proposals.

Based on Laird et al.’s (2003) projections of the effects that these different proposals would have on applied tariffs, the US approach was the most ambitious for both developed and developing countries, while the least ambitious were the Korean proposal (for developed countries) and the Indian proposal (for developing countries). The proposals can be classified in three pairs of roughly comparable types.

China and the European Community each proposed variations on the Swiss formula, the principal difference being that the Chinese proposal would diminish the ambition of this formula (allowing for a differentiated application according to countries’ existing average tariffs) while the EC proposal⁶ was more ambitious (providing a “compression mechanism” for

peak tariffs). The Indian and Korean proposals were each based on linear reductions, again with differing levels of ambition: under the Indian proposal developing countries' cuts would be at two thirds the level of the developed countries' cuts, while the Korean proposal combined linear cuts with minimum cuts per tariff line. The latter approach would aim for a 40 per cent reduction of the trade-weighted average tariff rate, with all bound tariffs being cut by at least 20 per cent.

The Japanese and US proposals were each eclectic. Japan's "hybrid approach" provided for a target average tariff rate that varied according to each WTO member's level of development. The US proposal⁷ was a very ambitious scheme that would take a two-phase approach to eliminating all tariffs on all products imported by all parties. In the first phase (which was then proposed to be 2005 to 2010), tariffs would be eliminated on all products that were then subject to rates of 5 per cent *ad valorem* or less. A Swiss formula with a coefficient of eight would be applied to all other products; as was explained in Chapter 9, this means that a maximum tariff of 8 per cent would be imposed by the end of the period, and most products would be subject to tariffs that are substantially less than 8 per cent. The proposal would also eliminate tariffs on several specific sectors during this first phase (not including textiles and apparel). In the second phase (2010-2015), all remaining tariffs would be completely eliminated through linear cuts.

Chairman Pierre-Louis Girard (Switzerland) of the Negotiating Group on Market Access put forward a proposal of his own that would be applied differently depending on countries' characteristics.⁸ The chief element of this proposal was a Swiss formula in which the maximum coefficient would be equal to a country's simple average tariff multiplied by a common factor that was to be negotiated. Like the Chinese and Japanese proposals, this approach would tend to produce less ambitious cuts for countries that were less developed or had higher average tariffs (often the same thing).

Coalitions of developing countries made NAMA proposals that were based not on formulas but on the flexibilities that might modify the application of these formulas. The composition of three such coalitions was summarized in Table 3.3. Members of the NAMA-11 group such as Brazil, India and South Africa were concerned that if ambitious coefficients were plugged into the formulas they would be required to cut their bound tariffs by deeper margins than rich countries, thus violating the Doha mandate for "less than full reciprocity" in reduction commitments. Other developing countries joined either the Small, Vulnerable Economies (SVEs) group or the coalition of Paragraph 6 countries, both of which sought further flexibilities for poorer countries.

The members began bargaining over an agreed approach once these modalities were on the table. An important step in that direction came in a joint proposal that Canada, the European Community and the United States made for the NAMA negotiations just prior to the Cancún Ministerial Conference. These three members proposed what they termed "a simple, ambitious, harmonisation formula applied on a line-by-line basis (e.g. Swiss Formula), with a single coefficient." This proposal did not specify what the coefficient would be. The joint paper

also proposed “sectoral initiatives ... in particular for products of export interest to developing countries.” As an example, it suggested “harmonisation or elimination for textiles and apparel.”⁹ Several elements of this proposal anticipated the draft modalities that would be developed over the coming years.

Despite all the debate over sometimes exotic variations on formula cuts, the NAMA negotiations slowly gravitated towards a consensus that the principal modality would be the familiar Swiss formula. The texts moved to that position from the unadopted Cancún Ministerial Declaration of 2003 to the July Package of 2004, and then to the Hong Kong framework of 2005. There then followed three major questions, as well as several subsidiary ones.¹⁰ First, what coefficient of reduction (i.e. the *a* coefficient, as explained in Chapter 9) would be plugged into the formula? Second, would that *a* coefficient and other aspects of the formula differ for developed and developing countries, and if so to what degree? Third, what kinds of products or members might be subject either to less ambitious reductions (e.g. by providing exemptions or other flexibilities) or to more ambitious reductions (e.g. by being treated in separate zero-for-zero negotiations)?

The Rev.3 document

It took two more years for the answers to these questions to become solid enough to take the shape of an evolving series of chairman’s drafts. Following an earlier modalities paper of 17 July 2007, Chairman Don Stephenson of Canada issued a 60-page document on 8 February 2008 (WTO document TN/MA/W/103), which – three revisions later – became the 126-page version of 6 December 2008 (WTO document TN/MA/W/103/Rev.3). Each new iteration in this series represented an advance towards greater specificity from the one that came before it, but even in that last version one may find up to three brackets on a page. For the sake of simplicity, we may skip past each of the earlier versions of the deal to review the main outlines of what is commonly called Rev.3. That version includes some refinements that came in or after the crucial mini-ministerial of July 2008, which is discussed later in this chapter, but its basic contours reflect what was under negotiation in that high-level meeting.

Rev.3 is based on a Swiss formula with separate coefficients for developed and developing countries. The *a* coefficient for developed members would be 8, as the United States had proposed, and developing members would have a menu of options under which the coefficient might be 20, 22 or 25. Developing countries would be permitted to choose among these coefficients, and would be granted greater flexibilities if they opted for the lower numbers.¹¹ The tariff reductions would be implemented gradually over a period of five years for developed members and 10 years for developing members. Rev.3 includes an anti-concentration clause that would prevent members from excluding entire sectors from tariff cuts. It provides that the full formula tariff reduction must apply to at least 20 per cent of the tariff lines, or 9 per cent of the value of imports, in each tariff chapter. This provision answers concerns of the European Community and the United States, and was put in against the opposition of developing countries such as Argentina, China and India.

Many members would receive special treatment under Rev.3, ranging from marginal adjustments in the standard flexibilities to outright exemptions. Some of these provisions relate to broad categories of members, while others enumerate one or more specific members that would receive that treatment. Least-developed countries (LDCs) would be entirely exempt from tariff reductions, and the draft also includes special provisions for the SVEs and for a dozen developing countries with low levels of binding. The poorer developing economies (other than LDCs) would, however, be required to increase the number of bindings and reduce the water in their tariff schedules. Rev.3's treatment of tariff erosion is especially delicate. On the one hand, it aims to ameliorate preference erosion by slowing the phase-down of tariffs on certain products of interest to countries that benefit from preferential access to developed markets. On the other hand, these adjustments are themselves adjusted by accelerating on a preferential basis the reduction of tariffs on the same products when imported from five countries that are disproportionately affected by the preferences extended to other developing countries.¹² These five "disproportionately affected countries" are all in Asia, including three LDCs (Bangladesh, Cambodia and Nepal) and two others (Pakistan and Sri Lanka). Recently Acceded Members (RAMs) sought provisions reflecting the fact that they made tariff commitments more recently than did the original WTO members. Rev.3 would exempt 11 RAMs from new tariff reductions.¹³ It would also give China, Croatia and Chinese Taipei another three years to phase in their NAMA commitments, and Oman would not be required to reduce any bound tariff below 5 per cent after applying the modalities. Other provisions in the draft would either offer or (pending the adoption of bracketed language) might offer one form or another of special treatment to Argentina, the Plurinational State of Bolivia, Botswana, Brazil, Fiji, Gabon, Lesotho, Namibia, Paraguay, South Africa, members of the Southern African Customs Union, Swaziland, Uruguay and the Bolivarian Republic of Venezuela.

Rev.3 observed that further work was required in sectoral negotiations, where some members envisaged deeper reductions or even zero-for-zero deals. The 14 sectors under consideration for these deeper cuts included automotive and related parts; bicycles and related parts; chemicals; electronics/electrical products; fish and fish products; forestry products; gems and jewellery products; raw materials; sports equipment; health care, pharmaceutical and medical devices; hand tools; toys; textiles, clothing and footwear; and industrial machinery. Participation in the sectoral initiative would be voluntary, but some members wanted others to participate in order to achieve a balance in the overall level of ambition. Sectorals require a "critical mass" of members to be adopted.

The draft also included an annex that compiled, but did not choose among, a series of proposals for dealing with non-tariff barriers.

Environmental goods and services

The ministerial declaration of 2001 also provided for special attention to an undefined category that it entitled "environmental goods and services". Without further specifying what types of goods and services fall within this rubric, paragraph 31 (iii) provided for the "reduction or, as appropriate, elimination of tariff and non-tariff barriers" on them.

The WTO Committee on Trade and Environment in Special Session (CTESS) has not, at the time of writing, agreed what should be included within the definition of “environmental goods.” Several members submitted proposals to the CTESS proposing candidates for the list, naming a total of 480 products. The goods proposed for inclusion 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. The coalition of mostly developed members known as the Friends of Environmental Goods¹⁴ negotiated among themselves to produce a consolidated, joint proposal¹⁵ in early 2007. It constituted a much-reduced list of 153 items. Members submitted six lists of environmental goods by the end of 2011, covering 411 tariff lines at the six-digit level. That year the chairman of the negotiations reported that “a number of technical difficulties remain,” with further work needed by delegations and their experts.¹⁶

This is an area where, like trade in services, the failure to reach a multilateral consensus leads some members to consider alternative approaches to the negotiation. At the Seventh Ministerial Conference in 2009, Australia, the European Union, Japan, New Zealand, Qatar and the United States proposed negotiations to liberalize trade in “green” goods and services outside the framework of the Doha Round. The issue is also under consideration in the Asia-Pacific Economic Cooperation forum.

Agriculture: the three pillars

The agricultural negotiations are more complicated than the NAMA talks for two reasons. One is the greater political and social sensitivity of agriculture in most member states. This leads negotiators to adopt a more cautious approach, to devise formulas that are less likely to result in significant reforms, and to seek a greater range and number of exceptions or special treatment. The other way in which agriculture differs from NAMA is that three distinct types of commitments are at issue here, usually called the “pillars”. Members agreed in the Doha Ministerial Declaration to comprehensive negotiations dealing with each of the three pillars: “substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.” These three topics are dealt with in sequence below.

Members did not make much progress in translating the broad principles of the Doha Ministerial Declaration into actual modalities until well past the deadline. Paragraph 14 of that declaration specified that modalities “shall be established no later than 31 March 2003.” Stuart Harbinson, who was to chair the agriculture negotiations first as the permanent representative from Hong Kong, China in 2002 and then as Director-General Supachai Panitchpakdi’s *chef de cabinet* in 2003, circulated draft modalities in February and March 2003, but these were not adopted. The period between the Cancún and Hong Kong Ministerial Conferences then intervened, with three years passing before the new chairman, Crawford Falconer of New Zealand, circulated a series of reference papers and then produced

a new modalities paper in July 2006. Five revisions followed, four of them in 2008 alone. The 6 December 2008 version of that text (Rev.4) is discussed below.

One of the main causes for the failure in Cancún was the sharp disagreement that arose over a joint paper that the European Community and the United States issued on agriculture just before that ministerial. Some aspects of that 13 August 2003 text¹⁷ would later make their way into the successive drafts of the (unadopted) Cancún Ministerial Declaration, the work programme approved in Hong Kong, and ultimately the Rev.4 draft of 2008, while others would not survive the process. The proposal as a whole was heartily condemned by other agricultural exporters immediately after it was released. It is also credited with exacerbating the divisions between the developed and developing members of the Cairns Group and the resulting creation of the G20.¹⁸ The G20's first act was to issue a counter-proposal to the EC-US paper just a week after that draft's release. In a sign of the group's desire to engage in negotiations, the G20 framework proposal tracked the format of the chairman's proposal on agriculture. Where the draft ministerial text largely reflected the EC-US positions, the G20 paper called for much more ambitious cuts in agricultural subsidies. The reaction that the EC-US paper provoked on the part of the G20 developing countries then inspired a counter-reaction from another group of developing countries, with the African, Caribbean and Pacific (ACP) countries joining with the least-developed countries to form the G90 (see Chapter 3). Where the G20 thought that the transatlantic proposal did not go far enough in the reduction of domestic support, the G90 members believed that it went too far in the reduction of MFN tariffs and, therefore, in the margins of preference that they enjoyed in the developed country markets.

Market access and safeguards

Although they are usually dealt with as distinct subjects, the issues of market access (i.e. tariff concessions) and safeguards (i.e. temporary restrictions on injurious imports) were eventually blended together in agricultural negotiations at the ministerial level (see Table 12.2).

Market access for agricultural products is handled separately from NAMA negotiations in the WTO because many members have higher and more complex tariffs on agricultural goods,¹⁹ as well as far greater sensitivities in this sector. Members with import sensitivities in agriculture would generally prefer that any formulas used to reduce tariffs be less aggressive in their structure (e.g. favouring a linear over a Swiss formula), have less ambitious coefficients of reduction, and be modified with more generous flexibilities; members with offensive interests in this sector have just the opposite set of preferences. The Rev.4 draft splits some of the differences between the objectives of these contending factions.

Table 12.2. Proposed modalities for agricultural market access and safeguards in the Doha Round

	Developed members	Developing members
Tiered formula for tariff cuts	Tiered reductions in four tiers that start at a 50 per cent cut for tariffs in the 0-20 per cent range and rise to 70 per cent cuts for those ≥ 75 per cent	Tiered reductions in four tiers that start at a 33.3 per cent cut for tariffs in the 0-30 per cent range and rise to 46.7 per cent cuts for those ≥ 130 per cent
Average cut	Minimum of 54 per cent	Maximum of 36 per cent
Phase-in period	Six steps over five years	Eleven steps over ten years
Tariff quotas	New access opportunities as a percentage of domestic consumption	Two thirds of what the developed countries must do
Sensitive products (deviations of one to two thirds from the formula)	Up to 4 per cent of tariff lines	Up to 5.3 per cent of tariff lines
Special products	None	Up to 12 per cent of lines may be self-selected, of which 5 per cent will not be cut; overall cut of 11 per cent
Special Agricultural Safeguard (SSG)	1 per cent of tariff lines, eliminated in seven years	2.5 per cent of lines; for SVEs this is reduced to 5 per cent over 12 years
Special Safeguard Mechanism (SSM)	None	Higher tariffs may be imposed when either the specified volume or price triggers are exceeded

Source: WTO document TN/AG/W/4/Rev.4, 6 December 2008.

Notes: LDCs are exempt from making these cuts.

In their pre-Cancún joint paper, the European Community and the United States proposed a bracket-filled “blended formula” in which tariff lines would be subject to three different types of cuts. The proposal suggested that certain percentages of tariff lines could be designated to these three types of cuts, but left those percentages in empty brackets. The most import-sensitive lines would face a minimum cut, others would be reduced by a Swiss formula and still others would be made duty-free. In those first two categories, the text left blank the spaces that would specify the coefficients of reduction. The text also provided that: “For the tariff lines that exceed a maximum of []% Members shall either reduce them to that maximum, or ensure effective additional market access through a request:offer process.”²⁰ It would thus set a cap that no tariffs could exceed, but once more left the specific number in brackets. The G20 alternative was no more specific than was the EC–US paper. It closely matched the structure of that earlier paper, with the same three categories of cuts and the same empty brackets, although it did include a few innovations such as additional (if unspecified) cuts in the case of tariff escalation and a requirement that “developed countries ... provide duty-free access to all tropical products.”²¹

The Rev.4 option strikes a compromise between the peak-killing Swiss formula and less ambitious modalities by providing instead for a tiered cut, and further modifies the deal to account for special and sensitive products. As discussed in Chapter 9, tiered cuts are structured like a linear formula, but can operate something like a restricted version of the Swiss formula by specifying higher cuts for higher tariffs. As summarized in Table 12.2, the

Rev.4 cuts would rise from 50 per cent to 70 per cent for developed countries as one moves up the tiers, and from 33.3 per cent to 46.7 per cent for developing members. These cuts would have to result in a minimum average reduction of 54 per cent for developed members; developing members would not be required to exceed a maximum average of 36 per cent.

The modalities would also provide flexibilities for sensitive and special products. These provisions, which were developed in what Blustein (2009: 252) termed an “orgy of loophole creation”, would permit some products to be protected from full cuts or, in some cases, from any cuts at all. Members could deviate from the formula for sensitive products, a category that was created at the insistence of developed countries with restricted agricultural markets (e.g. the European Community, Japan and Switzerland). Rev.4 gives no definition of what constitutes a sensitive product, leaving it up to the members to decide which products they will designate and on what basis. Members would have to provide tariff quotas for these items in order to ensure at least some access to the market. The cuts on goods that are so designated would deviate from the formula by one third, one half or two thirds of the cut, with the tariff quota adjusted in relation to the deviation. Developed members could specify up to 4 per cent of their tariff lines for this treatment (half of the 8 per cent that the European Community had demanded), and the developing countries could do so for 5.3 per cent.

While the sensitive product flexibility is available to both developed and developing members, only the latter would have the right to designate an additional category known as special products. These come in response to demands from the Friends of Special Products, or more simply the G33, a group that sought the right to exclude certain products from liberalization. In 2005, the G33 made a proposal based on concerns over food and livelihood security. These include –

the importance of particular products for the subsistence strategies of the rural poor and small and vulnerable farmers; the importance that a product may represent a source of livelihood for the population of a disadvantaged region; the significance of a crop or product for the consumption profile of a country; the potential structural effects of an import substitute in the consumption profile of the country and the contribution of a product to the economy as a whole.²²

The G33 did not propose a precise definition as to what constitutes a special product. Like sensitive products, these are left to the member in question to designate. Rev.4 would permit developing countries to designate up to 12 per cent of their tariff lines in this category, with up to 5 per cent of the tariff lines being exempt from cuts altogether.

Another issue that became a key point of contention in 2008 was special safeguards for agricultural products. The negotiations on this point in the Doha Round came to differ in two fundamental respects from one of the original purposes of safeguards, which is to serve as a confidence-building measure for negotiators. As first developed in a 1942 agreement between Mexico and the United States and later incorporated in GATT Article XIX, the underlying aim of a safeguard (or “escape clause”) was to give negotiators in the importing country the confidence to make substantial tariff cuts. It did so by assuring them that, in

exceptional cases in which liberalization led to an injurious surge of imports, they could temporarily suspend those concessions. In the Doha Round, however, the agricultural safeguard had just the opposite effect on negotiators: it made exporting countries worry that their counterparts might utilize this option to the maximum extent possible, treating it more like a form of contingent flexibility in the market access commitments than as a mechanism reserved for exceptional cases, perhaps to the point that their markets would be more restricted after the negotiations than they had been before. Far from building confidence, in this instance the safeguards became a point of suspicion and mistrust – especially between the United States and China.

Rev.4 provides for two types of agricultural safeguard. Both of these differ from the traditional safeguard insofar as they do not require a showing that a domestic industry has been injured by rising imports; each of these safeguards could instead be imposed on the basis of “triggers” (i.e. higher import volumes or reductions in market prices that are taken as *prima facie* evidence of sharply rising imports). The less controversial of these is the Special Agricultural Safeguard (SSG), with Rev.4 modifying provisions in the existing Agreement on Agriculture. Under Article 5 of that agreement safeguard duties can be triggered automatically when import volumes rise above a certain level or if prices fall below a certain level; it is not necessary to demonstrate that serious injury is being caused to domestic producers. The SSG can be used only on products that were tariffied (i.e. their quotas were converted to tariffs) in the Uruguay Round, and even then only on products that members designated for this treatment. Thirty-nine WTO members reserved the right in that previous round to use a combined total of 6,156 special safeguards on agricultural products, ranging from as few as two products (Uruguay) to as many as 961 (Switzerland–Liechtenstein).²³ Rev.4 would revise Article 5 to require that developed members reduce to 1 per cent of scheduled tariff lines the number of items eligible for this treatment, and eliminate them altogether within seven years. For developing members the coverage would be reduced to 2.5 per cent of tariff lines, and to 5 per cent for SVEs.

The Special Safeguard Mechanism (SSM) is much more controversial. It differs from the SSG in three respects: it is an innovation that had not been in the Uruguay Round agreement, it would be available only to developing countries, and it would cover all agricultural products. The safeguard could be triggered by either high volumes or low prices. The volume-based SSM in Rev.4 would be applied on the basis of a rolling average of imports in the preceding three-year period. The additional duties applied would rise according to the level by which this base volume is exceeded. When the volume of imports in any year is 110 per cent to 115 per cent of the base imports, the maximum additional duty that could be imposed on applied tariffs may be up to 25 per cent of the current bound tariff or 25 percentage points, whichever is higher. Note that this may be much larger than a 25 per cent increase over the applied tariff, especially if – as is the case for the agricultural tariffs of many developing countries – the bound rates are well above the applied rates. The additional duties would be higher for imports in the 115 per cent to 135 per cent range (40 per cent or 40 percentage points) or above 135 per cent (50 per cent or 50 percentage points). A price-based SSM would apply when the import price of the shipment entering the customs territory of a developing member falls below a trigger price equal to 85 per cent of the average monthly MFN-sourced price for that product for the most recent three-year period.

This remedy would apply on a shipment-by-shipment basis, with the additional duty not exceeding 85 per cent of the difference between the import price and the trigger price.

The SSM was a key point of contention in the July 2008 negotiations, as discussed later in this chapter. When the chair incorporated a revised SSM into the Rev.4 paper five months later he characterized the proposal as “uneven” and “fragile”, and not “ready for inclusion in the text per se because it is utterly untested.”²⁴

Export subsidies

In what may be the clearest and most important concession made in the round by a single WTO member, the European Community agreed to the elimination of agricultural export subsidies. The commitment covers not just outright subsidies but other programmes such as export credits, state trading enterprises and food aid that can have the equivalent result. That concession did not come immediately. Although the Doha Ministerial Declaration provided for the elimination of these subsidies the EC–US agricultural proposal of 2003 would have walked back from that commitment. The proposal called for the elimination of export subsidies only for an unspecified group of “products of particular interest to developing countries,” while for the remaining products members would “commit to reduce budgetary and quantity allowance for export subsidies”²⁵ and agree to other disciplines that appeared to limit but not eliminate these subsidies. This proposed retreat produced sharp protests and contributed to the formation of the G20 in opposition to the EC–US proposals. The G20 instead urged in its paper that members “commit to eliminate over a [x] year period export subsidies for the products of particular interest to developing countries” and “eliminate over a [y] year period export subsidies for the remaining products.”²⁶

After Cancún, the issue moved back towards the position in the Doha Ministerial Declaration. In the July 2004 framework agreement, the European Community accepted a commitment to eliminate these subsidies by a date to be agreed. The issue was fully back on track by the Hong Kong Ministerial Conference (December 2005), with the European Community agreeing to end all subsidies by 2013. The 2008 draft would eliminate half of all export subsidies by the end of 2010, and the rest by the end of 2013. It also included revised provisions on export credit, guarantees and insurance, international food aid (with a “safe box” for emergencies), and exporting state trading enterprises.

Domestic support

The level of production subsidies offered by key WTO members has declined in the years since the Uruguay Round negotiators created the “semaphore” system of colour-coding and reductions, as was discussed in Chapter 9, but it does not necessarily follow that it was the WTO disciplines that led to the reductions. It is more plausible to argue that higher prices for agricultural commodities have reduced the perceived need to provide support to farmers. Critics also suggest that some of that reduction may represent box-shifting (i.e. changes in the composition and labelling of subsidies) and thus exaggerate the degree to which members

have actually reformed their practices. Both of these concerns inspired plans to devise a new way to quantify and limit subsidies. The main conceptual change in the Doha Round has been to shift the focus from the four-colour semaphore system of the Uruguay Round, in which only the amber-box subsidies were subject to real restrictions,²⁷ to a targeting of the trade-distorting subsidies. These subsidies include, but are not limited to, those in the amber box.

The EC–US Joint Text of 2003 implied that trade-distorting subsidies should be treated differently than others, but did so in a way that sparked criticism from the G20 countries. It called for a deal that would “[r]educe the most trade-distorting domestic support measures in the range of []% - []%,”²⁸ but the empty brackets left doubt as to just how ambitious these cuts might be. The doubts were further encouraged by the draft’s suggestion that “Members may have recourse to less trade distorting domestic support,” setting conditions that would allow the use of these subsidies:

- (i) for direct payments if:
 - such payments are based on fixed areas and yields; or
 - such payments are made on 85% or less of the base level of production; or
 - livestock payments are made on a fixed number of head.

- (ii) support under 1.2.(i) shall not exceed 5% of the total value of agriculture production by the end of the implementation period.

- (iii) the sum of allowed support under the AMS, support under 1.2.(i) and de minimis shall be reduced so that it is significantly less than the sum of de minimis, payments under Article 6.5, and the final bound AMS level, in 2004.²⁹

This proposal left some members with the impression that the European Community and the United States were more interested in devising a deal that would allow them to retain the domestic-support programmes that they already had in place than in negotiating a deal that would impose real disciplines on production subsidies.

The G20 proposed a more aggressive approach to the issue. It sought elimination of the blue box altogether, a cap and strict criteria for the green box, and timelines for reducing amber box subsidies. It also proposed that “products benefiting from domestic support which are exported and which have accounted ... for more than [%] of world exports of that product the domestic support measures shall be subjected to the upper levels of reduction, with a view to elimination.”³⁰

In the negotiations that followed the failed Cancún Ministerial Conference, the focus on trade-distorting subsidies eventually produced a concept known as Overall Trade-Distorting Domestic Support (OTDS). This approach emerged in July Package of 2004, which provided for separate and complementary reduction formulas in overall support and its components. This measurement builds upon the existing system of colour-coded subsidies and uses the AMS as its foundation, but covers a wider range of subsidies. The base value for any member’s OTDS is calculated by adding three components: (1) the Final Bound Total AMS specified in a

member's schedule; (2) a share of their total agricultural production (10 per cent for developed using 1995 to 2000 as the base, 20 per cent for developing from 1995 to 2000 or from 1995 to 2004); and (3) the higher of average blue box payments as notified to the Committee on Agriculture, or 5 per cent of the average total value of agricultural production, in the 1995 to 2000 base period. This provides a base value that is then subject to cuts.

The Rev.4 draft provides for tiered cuts in OTDS, with higher cuts for those members with higher levels of subsidies. The European Union would cut by 80 per cent, the United States and Japan by 70 per cent and all others by 55 per cent. Cuts would be made over five years for developed countries or eight years for developing countries, and a down-payment of 33 per cent for the European Union, Japan and the United States, and 25 per cent for all others. Within these cuts, members would have to reduce their AMS levels by 70 per cent for the European Union, 60 per cent for Japan and the United States and 45 per cent by all others. The per-product amber box support would be capped at the average notified support from 1995 to 2000, with some variations allowed. For *de minimis* supports, developed countries would cut to 2.5 per cent of production immediately and developing countries would make two thirds of the cut over three years to 6.7 per cent of production (with exceptions for programmes mainly for subsistence or resource-poor farmers). Blue box supports would be limited to 2.5 per cent of production for developed and 5 per cent for developing countries, with caps per product and modified flexibilities for more vulnerable countries. As for the green box, reforms would seek to ensure that these payments truly are decoupled from production levels, and with tighter monitoring and surveillance on developing countries' food stockpiling.

Cotton

The inclusion of an issue in the Doha Ministerial Declaration did not guarantee that the topic would remain on the table, as was shown by the experience of three of the four Singapore issues, nor did the exclusion of an issue from that declaration prevent it from becoming part of the round. That is what happened in the case of cotton subsidies, which the Cotton-Four members (Benin, Burkina Faso, Chad and Mali) succeeded in bringing to the table.³¹ The process by which this was done is discussed in the ministerial section of this chapter; here we review the provisions of Rev.4 that deal with cotton.

Cotton has appeared in draft modalities in all three pillars since July 2004, with a formula that results in deeper subsidy cuts for this commodity than for other products. The Rev.4 draft would require that AMS support for cotton be reduced by the following formula:

$$R_c = R_g + \frac{(100 - R_g) \times 100}{3 \times R_g}$$

R_c = Specific reduction applicable to cotton as a percentage.

R_g = General reduction in AMS as a percentage.

The formula would be applied to the base value of average support that members notified for cotton from 1995 to 2000. While the formula might appear arcane, it actually has a very simple result: it virtually guarantees that AMS support for cotton would be reduced by more than 80 per cent. The construction of the formula is such that no number above zero that is “plugged into” R_g will yield a reduction of less than 82 per cent, and any value for R_g that is between 41 per cent and 83 per cent will reduce cotton subsidies in the 80 per cent to 90 per cent range. The draft provides that the blue box limit for cotton will be one third of the product-specific limit that would otherwise have resulted from this methodology.

The draft further requires that the development aspects of cotton be addressed as provided for in paragraph 12 of the Hong Kong Ministerial Declaration. That paragraph endorsed the efforts of the director-general to secure support for cotton producers from bilateral donors and multilateral and regional institutions, and “urge[d] the development community to further scale up its cotton-specific assistance.”

Geographical indications for wine and spirits

The issue of geographical indications (GIs) for wine and spirits falls under the rubric of intellectual property rights, but merits discussion in close proximity to the agricultural negotiations because the products at issue fit within the WTO definition of agriculture. This topic is a carry-over from the Uruguay Round. Article 23.4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) had mandated that:

In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

Members committed in paragraph 18 of the Doha Ministerial Declaration to complete these negotiations. While that TRIPS provision set no deadline for completing these negotiations the ministerial declaration called for them to be finished by the Fifth Ministerial Conference in 2003. The negotiators missed that deadline and there is little reason to expect that they will make up for that oversight in the foreseeable future. As was reviewed in Chapter 3, this is an issue on which there are large and opposing coalitions that take sharply different positions. The divisions here are best seen not as North–South but as Old World (and allies) versus New World, with wine-producing countries outside of Europe generally opposing a registry with mandatory effects. The divisions are apparent in a Draft Composite Text of April 2011, which is replete with square brackets from the title through the last paragraph.³²

Paragraph 18 of the Doha Ministerial Declaration also provided less specifically for discussion to address “issues related to the extension of the protection of geographical indications ... to products other than wines and spirits.” These discussions, which could affect other products such as cheese, similarly tend to divide Old World from New World interests.

Services

The Uruguay Round negotiators left a great deal of unfinished business on services, as was reviewed in Chapter 10, and the political landscape for completing this work did not become easier in the early years of the WTO period. The General Agreement on Trade in Services (GATS) agreement instead became one of the principal targets of anti-globalization activists in the late 1990s of the WTO, some of whom charged that liberalization of social services sectors would lead to the forced privatization of such sectors as education and health care and thereby endanger universal access to these services.³³ This became a theme in the French press at the turn of the century,³⁴ for example, and in the medical and education communities of some countries. As quickly as the spotlight turned to the GATS, however, it moved on almost as quickly thereafter. By the time that the Doha Round was fully under way one rarely heard much criticism of this agreement from that quarter. The focus may nonetheless have affected the ambition that some GATS negotiators showed during the period when the contours of the coming negotiations were being determined, especially with respect to politically sensitive sectors such as social services.

During the time when members were not certain whether new services negotiations would be conducted on their own (dubbed the GATS 2000 negotiations) or as part of a new round they set a schedule and developed guidelines that could be used in either format. By setting up three pre-Doha negotiating sessions and two post-Doha sessions (December 2001 and March 2002), negotiators were prepared to treat the latter two meetings as a fall-back in the event that the round was not launched. The Special Session of the Council for Trade in Services issued in March 2001 its "Guidelines and Procedures for the Negotiations on Trade in Services." These guidelines provided for progressive liberalization, flexibility for individual developing-country members and special priority for LDCs, no *a priori* exclusion of any service sector or mode of supply and negotiation by request-offer.³⁵ The same guidelines could form the basis for either GATS 2000 or Doha Round negotiations.

Members ultimately did launch the round, with GATS negotiations forming an integral part of the package. Paragraph 15 of the Doha Ministerial Declaration confirmed the guidelines and provided that the negotiations "shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries." The ministers called for initial requests for specific commitments by 30 June 2002 and, after a nine-month gestation period, initial offers by 31 March 2003.

One may only speculate on what may have happened with the GATS negotiations if the Doha Round had not been launched. On the one hand, the fate of these negotiations would not be directly tied to the rest of the round. A recurring theme in the discussion below is that at several points when the services negotiations were doing well they were stymied by problems in other topics. On the other hand, the level of ambition for services negotiations might be higher in a successful round that allows for trade-offs across topics than in negotiations that are devoted solely to services. Even in the absence of a larger round, however, the fate of the services negotiations may have depended on the progress in negotiations on agriculture. The built-in agenda inherited from the Uruguay Round had linked future negotiations on service to agriculture by setting matching schedules for the start of new negotiations in 2000.

The sectoral scope of the GATS negotiations was shaped in the first instance by the negotiating proposals that members tabled during that period between the rounds and later by the requests that members made of one another. The guidelines repeated the basic principle that there are no *a priori* exclusions, but as a practical matter a sector would be subject to negotiations only if a member pursued it. Ten WTO members tabled proposals in the first phase of the negotiations, as summarized in Table 12.3. The Quad (Canada, the European Union, Japan and the United States) plus Australia collectively accounted for the great majority of the papers, with Norway and four developing countries submitting the rest. The two sectors with the largest numbers of submissions were financial and telecommunications services, even though these had just recently been the subject of GATS protocols (see Chapter 10). Other high-visibility sectors included tourism, energy and distribution.

Table 12.3. Sectoral coverage of proposals for the GATS 2000 negotiations

	Canada	European Community	Japan	United States	Australia	Others
Financial	◆	◆	◆	◆	◆	◆
Telecommunications	◆	◆	◆	◆	◆	◆
Tourism	◆	◆	◆	◆		◆
Energy/oil and gas	◆	◆		◆		◆◆
Distribution	◆	◆	◆	◆		
Other business	◆	◆	◆			◆
Environmental	◆	◆		◆		
Other professional	◆	◆	◆			
Computer	◆	◆	◆			
Construction		◆	◆		◆	
Maritime transport			◆			◆◆
Postal/courier	◆			◆		
Legal				◆	◆	
Accounting				◆	◆	
Audiovisual			◆	◆		
Air transport			◆			◆
Architectural					◆	
Engineering					◆	
Education				◆		
Land transport			◆			
Transport (general)		◆				
<i>Other topics:</i>						
Mode 4 issues	◆	◆		◆		◆
Regulatory transparency	◆					
Small/medium enterprises	◆					
	13	12	12	12	7	8

Source: Adapted from a 29 March 2001 checklist prepared by the WTO Secretariat.

Notes: Listed in declining order of sectoral frequency. "Others" includes Norway (six proposals), Dominican Republic (one proposal), India (one proposal), Hong Kong, China (one proposal) and the Bolivarian Republic of Venezuela (one proposal).

Trade negotiations in the WTO are generally conducted in an open fashion, but that general rule does not apply to the first half of the request–offer negotiations for services. While members' offers are lodged with the WTO and (after a period of restriction) are eventually made public, the requests that precede these offers are delivered directly to one another; they neither pass through the WTO nor are typically made public. The only insight into what types of requests that the members make, and what those requests look like, thus come by way of leaks. The Polaris Institute is an NGO based in Canada that obtained copies of the 109 EC requests in 2003 and shared them with the Netherlands-based GATSwatch. The latter group then posted all of these requests to its website.³⁶ The commitments that the European Community sought from the larger developing countries and the developed countries were generally similar. Its requests to Brazil, Canada, India, Japan and the United States, for example, were each in the range of 32 to 35 pages and covered 11 to 12 sectors, although the composition of the sectoral lists varied from one partner to another. Among the sectors in which the European Community sought new or improved commitments were business services, construction and related engineering services, distribution services, educational services, energy services, environmental services, financial services, postal and courier services, professional services, telecommunication services, tourism and travel related services and transport services. Its requests to smaller developing countries or LDCs, however, were generally shorter. In its request to Antigua and Barbuda, for example, the European Community sought commitments in nine sectors, but from Zambia it sought only four. For want of similar leaks from the requests that other *demandeurs* made, we can only speculate on what the others looked like.

The request-offer process was informally suspended after the Cancún Ministerial Conference. There then followed a series of efforts to reinvigorate negotiations, with mixed success. The July Package adopted in mid-2004 set a May 2005 target for the submission of revised offers and adopted a set of recommendations by which members that had not yet submitted initial offers would do so as soon as possible. It also called for targeted technical assistance to developing countries to assist them in participating effectively. The revised offers came in 2005, but by this time only a fraction of the developing members were actively engaged in the negotiations. A total of 71 members made initial offers (counting the European Community as one), of which 31 followed up with revised offers. As can be seen from the data in Table 12.4, only 21 developing members did so.

The quality of members' offers matter at least as much as the sheer quantity. In 2005, the chair of the services negotiating group characterized the quality of initial and revised offers as "poor," noting that for "most sector categories, a majority of the offers do not propose any improvement" in the existing schedules.

If the current offers were to enter into force, the average number of sub-sectors committed by Members would increase only from 51 to 57. Likewise, less than half of the schedules would contain commitments of any kind in sectors such as distribution, postal-courier or road transport. There is thus no significant change to the pre-existing patterns of sectoral bindings. As well, less than half of the offers envisage improvements to horizontal commitments on mode 4.³⁷

Table 12.4. WTO members making revised offers in the Doha Round services negotiations

Developed	Developing	
Australia	Bahrain, Kingdom of	Korea, Republic of
Canada	Belize	Macao, China
European Communities	Brazil	Malaysia
Iceland	Chile	Mexico
Japan	China	Peru
Liechtenstein	Colombia	Singapore
New Zealand	Egypt	Suriname
Norway	Honduras	Chinese Taipei
Switzerland	Hong Kong, China	Thailand
United States	India	Turkey
		Uruguay

Source: Data provided by the WTO Services Division.

Notes: All offers were received in 2005 except for that of Belize, which came in 2008. One offer not shown is that of the Plurinational State of Bolivia, which was withdrawn in 2006.

By that time the members had developed numerous “friends” groups built around specific sectors, comprised in each case of members that had export interests in the sector in question. Groups such as the Friends of Financial Services and the Friends of Legal Services, among others, began to define the levels of ambition that they would collectively seek from other members in the negotiations.

The Hong Kong Ministerial Declaration of December 2005 reaffirmed key principles and objectives of the services negotiations and called on members to intensify the request-offer process and conclude the rule-making negotiations. Annex C of that declaration established a framework for offering new or improved commitments under each mode of supply, treating MFN exemptions, and the scheduling and classification of commitments. That same annex also set out common market access objectives for each mode of supply and introduced plurilateral negotiations as a new process to complement bilateral bargaining. That approach is based on collective requests in which the friends groups seek commitments from other members. Members conducted two rounds of plurilateral negotiations in early 2006, based on 21 collective requests that were primarily sectoral. The results of these plurilateral and bilateral negotiations were expected to produce a second round of revised offers, but these hopes were frustrated when the Doha Round as a whole was suspended that July as a result of stalemates in the NAMA and agricultural negotiations. The round resumed again in early 2007, but another year passed before there was significant progress in the services negotiations.

Based on consultations conducted with members, the chair of the Council for Trade in Services in Special Session issued a report on 26 May 2008 with a draft services text. This formed the basis for a “signaling conference” that members held in conjunction with the mini-ministerial of July 2008. The event was something like the functional equivalent of eliciting revised offers, with the ministers participating in the conference indicating how their services

offers might be improved in response to the requests they had received. These signals were not intended to represent the final outcome of the negotiations, but to enable members to assess the state of the request–offer negotiations while preparing new draft schedules. While some of the participants in this exercise considered it to be a useful step forward, others saw the signals that members made as vague and general pronouncements that did not yet indicate a real willingness to move into a more serious phase of bargaining. Once again the opportunity to capitalize on the advances was held back by stalled talks on other topics. The mini-ministerial failed, as discussed later in this chapter.

Members renewed the services negotiations once more on 15 April 2011, holding a round of plurilateral request-offer talks in the Special Session of the Council for Trade in Services. The sectors in which members explored plurilateral options included accounting services; air transport services; architecture, engineering and integrated engineering services; audiovisual services; computer-related services; construction services; distribution services; energy services; environmental services; financial services; legal services; logistics and related services; maritime transport services; postal and courier services, including express delivery; private education services; services related to agriculture; telecommunication services; and tourism services.

The Doha Round negotiations also aimed to fill in some blanks left in the GATS itself. On GATS rules, the Council for Trade in Services adopted a decision in 2000 setting a target of 15 March 2002 to complete the negotiations on safeguards under GATS Article X, and the guidelines adopted in 2001 aimed to finish the negotiations under articles VI:4 (Domestic Regulation), XIII (Government Procurement) and XV (Subsidies) “prior to the conclusion of negotiations on specific commitments.”³⁸ Members missed all of those deadlines, and the chairman reported in 2011 his “general assessment ... that the proponents had found it difficult to convince the Membership of the need for new disciplines” in government procurement, subsidies, or safeguards.³⁹ He did, however, observe “notable progress” on domestic regulation, “even if disagreement persists on important and basic issues.”⁴⁰

One area where members did reach agreement is in providing special and differential treatment to the LDCs, both for these members’ commitments and their access to developed markets. The Hong Kong Ministerial Declaration provided that these members are not expected to undertake new GATS commitments in the Doha Round. At the Geneva Ministerial Conference in December 2011, the members adopted a waiver allowing them to deviate from their MFN obligations in order to extend preferential treatment to services and service suppliers from LDCs. As of early 2013, there were no concessions extended to LDCs by way of this preference, for the simple reason that none of the LDCs actually made requests of the other members.

Trade facilitation

Paragraph 27 of the Doha Ministerial Declaration mandated the negotiations on trade facilitation. As was the case for the other three Singapore issues, this paragraph stated

that negotiations would take place only after the adoption of a decision “by explicit consensus ... on modalities.” The work that Geneva ambassadors had done on those other three issues in 2002 and 2003 was later rendered moot when no such decision was made, as discussed later in this chapter. Trade facilitation was the sole survivor among these Singapore issues.

The ministerial declaration recognized “the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area.” It directed the Council for Trade in Goods to “review and as appropriate, clarify and improve relevant aspects” of GATT articles V (Freedom of Transit), VIII (Fees and Formalities Connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations), and to “identify the trade facilitation needs and priorities of members, in particular developing and least-developed countries.” It also provided for “adequate technical assistance and support for capacity building in this area.”

While trade facilitation was considered to be the least controversial of the Singapore issues, and also an area that can deliver real benefits to countries at all levels of economic development, that does not mean that it is one in which consensus is widespread and easily secured. The Draft Consolidated Negotiating Text on trade facilitation issued on 21 April 2011 has more than 800 square brackets,⁴¹ averaging over 20 per page and with at least one bracket – and usually a great deal more – in each of its 15 articles. One extreme, but not unique, example is found in the proposed language for Article 7.2, which concerns rules governing the determination and payment of customs duties, taxes, fees and charges:

[Each Member [shall] [is encouraged to] adopt or maintain procedures [providing][allowing] an importer [or its agent] [the opportunity] to obtain the release of goods prior to final determination and payment of customs duties, taxes, fees and charges, upon provision of sufficient guarantee [as determined by the Member itself] [where these are not determined at or prior to arrival] [where there is delay in the final determination of customs duties, taxes, fees and charges].]

The entire paragraph is within brackets, indicating that there is no agreement that any part of it should be adopted, and at four different points in the paragraph there are either two or three alternate texts or phrases.

Not every item in the draft is riddled with brackets. Among the uncluttered provisions are those providing that: “Members are encouraged to make available further trade-related information through the internet,” “Each Member shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders within its territory,” and “Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.”⁴²

The intent behind some of these brackets may be as much tactical as substantive. It is in the interest of some members to ensure that the Doha Round is conducted strictly as a single undertaking, as only then can they maintain maximum pressure for concessions on issues of interest to them, and to that end it may be inconvenient to their negotiating strategy if any of the other topics under negotiation were to appear ripe for an early harvest or be eligible for treatment outside the scope of the single undertaking. That calculation may lead some of these members to find more fault, or raise more questions, than would be the case for a subject that might otherwise be seen in a more technical and non-controversial light. In the view of Anthony Mothae Maruping (2011: 6), the ambassador of the Kingdom of Lesotho, trade facilitation offers an example of how the dynamics of the single undertaking may lead to “useful and agreeable elements” of a Doha Round deal being “held hostage” in order to produce leverage on other topics.

Rules: trade-remedy laws and fishery subsidies

The broad category of rules negotiations in the Doha Round covers two subjects that bear at least a distant relationship to one another and a third that does not. Fishery subsidies and the trade-remedy laws are related in the sense that subsidies are addressed by one of the three principal instruments that fall within that category (i.e. countervailing duty laws), but the topic of regional trade arrangements was grouped with these others simply for the sake of convenience. That subject has not loomed large in the rules negotiations of the Doha Round but, as is discussed in Chapter 13, RTAs are an important part of the larger policy-making environment in which the round is conducted.

Ambassador Guillermo Valles Galmés of Uruguay became chair of the Negotiating Group on Rules in mid-2004 and led these discussions for the next six years.⁴³ He circulated on 19 December 2008 new negotiating texts on anti-dumping and horizontal subsidies disciplines, together with a conceptual “roadmap” on fisheries subsidies.⁴⁴ The anti-dumping section of the text had 12 brackets, covering such subjects as the causation of injury, material retardation of an industry in establishment, sunset reviews and a public-interest clause. One especially controversial topic in these negotiations was subsequently resolved through the dispute settlement process. In *United States – Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”)*, first a panel (in 2005) and then the Appellate Body (in 2006) ruled that “zeroing”, or excluding from the calculation of dumping margins those sales that were not below fair value, violates WTO anti-dumping rules. The United States agreed to do away with this practice in 2012 (see Chapter 7), thus rendering the negotiations on this issue moot.

Consensus has been elusive for other issues covered by this negotiating group. Chairman Dennis Francis of Trinidad and Tobago stated somewhat euphemistically in 2011 that “the amount of un-bracketed text in the area of subsidies and countervailing measures is limited,” and on fisheries subsidies “there is too little convergence on even the technical issues, and indeed virtually none on the core substantive issues, for there to be anything to put into a bottom-up, convergence legal text.”⁴⁵

The horizontal issues of S&D treatment and implementation

All of the issues discussed above relate to specific sectors or subjects, but special and differential (S&D) treatment and implementation have a horizontal coverage across subjects in the WTO. As was already discussed in Chapter 10, members managed to resolve some of the concerns over implementation during the period of the built-in agenda. They did so principally by adopting a decision on implementation measures in late 2000.⁴⁶ That decision still left a large number of matters that needed ministerial direction, as provided by paragraph 12 of the Doha Ministerial Declaration. It stated that ministers “attach[ed] the utmost importance to the implementation-related issues and concerns raised by members and are determined to find appropriate solutions to them,” and adopted the Decision on Implementation-Related Issues and Concerns⁴⁷ in order to address a number of implementation problems faced by members. This paragraph set out the following plan to address these issues in further negotiations:

- (a) where we provide a specific negotiating mandate in this declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee ... by the end of 2002 for appropriate action.

The paragraph also specified that the results of these negotiations would be subject to the round’s single undertaking, but also fell within the early harvest principle in paragraph 47 by which “agreements reached at an early stage may be implemented on a provisional or a definitive basis” and such “[e]arly agreements shall be taken into account in assessing the overall balance of the negotiations.”

The general breakdown in negotiations at Cancún prevented progress on these issues, but they returned to the forefront in the 2004 to 2005 efforts to rescue the round. In paragraph 1(d) of the July Package, the General Council “instruct[ed] the Committee on Trade and Development in Special Session to expeditiously complete the review of all the outstanding Agreement-specific proposals and report to the General Council, with clear recommendations for a decision, by July 2005,” while also “instruct[ing] all WTO bodies to which proposals in Category II^[48] have been referred to expeditiously complete the consideration of these proposals and report to the General Council, with clear recommendations for a decision, as soon as possible and no later than July 2005.” The Council also “welcome[d] and further encourage[d] the improved coordination with other agencies, including under the Integrated Framework for [trade-related technical assistance] for the LDCs (IF) and the Joint Integrated Technical Assistance Programme (JITAP)”, and “reaffirm[ed] the mandates Ministers gave in paragraph 12 of the Doha Ministerial Declaration and the Doha Decision on Implementation-Related Issues and Concerns, and renew[ed] Members’ determination to find appropriate solutions to outstanding issues.”

Progress on these issues is largely tied to the fate of the round as a whole, though members have also considered an additional element. A monitoring mechanism for S&D treatment

has been under consideration since the General Council approved a decision in July 2002 on the subject. The purposes of the proposed mechanism are to evaluate the utilization and effectiveness of these provisions and to propose actions to strengthen and improve them. The mechanism would apply to all S&D provisions in WTO agreements as well as ministerial and General Council decisions. According to a draft text issued in 2011, the mechanism would not be “a negotiating body” but “this does not preclude recommendations or proposals for initiating negotiations in other WTO Bodies on S&D provisions reviewed in the Mechanism.”⁴⁹ After more than a decade of negotiations on the matter, however, members had yet to come to agreement on the actual establishment of this mechanism.

Implementation is an issue that attracted less attention over time. Some of the demands that were being made upon countries in the early implementation period of the Uruguay Round commitments, which coincided in part with the launch and initial conduct of the Doha Round, seemed less onerous as members gained more experience with the agreements and took advantage of capacity-building assistance. It remained a matter of importance to members, but for many of them it increasingly came to be seen as more of a technical than a political matter.

The 2003 Cancún Ministerial Conference

The texts discussed above developed in Geneva at varying degrees of intensity during 2001 to 2012. This was mostly the work of ambassadors and experts in Geneva, but their negotiations were punctuated throughout by numerous ministerial meetings. In this second half of the chapter we review the two most important points of ministerial involvement, the Cancún Ministerial Conference of 2003 and the mini-ministerial of 2008. The first of these was intended to serve as the mid-term review of the round, which would then be concluded two years later, but these talks collapsed. The second of these meetings had higher ambitions, aiming to bring the round to a successful completion, but it too ended in defeat.

In one sense, the Cancún Ministerial Conference of 10–14 September 2003 might be considered a bigger setback than the Seattle Ministerial Conference was four years earlier, for while the outside protestors may get some of the blame for the collapse in Seattle the failure in Cancún was entirely the product of the members themselves. The conference got hung up on three sets of issues, each of which divided countries along North–South lines. The first set consisted of the three pillars of agricultural trade. Although the European Community and the United States attempted to narrow their own differences on this make-or-break topic, in so doing they provoked opposition from a diverse array of developing countries; some protested that the reforms were too modest, and others said they went too far. A second and related issue was cotton, especially production subsidies for US producers and their impact of developing countries in Africa. This issue had not originally been on the Doha Round agenda but became an increasingly important concern for African countries and another source of North–South friction. The third topic, which provided the proximate cause for the final breakdown, consisted of the four, now-familiar Singapore issues.

Several of the key players in this ministerial had participated in the previous one. Luis Ernesto Derbez, who had served as facilitator for intellectual property issues at Doha, had since become Mexican Foreign Secretary. Now the conference chairman, he faced the daunting task of closing the gaps that had widened over the previous two years. The ministers representing Canada, Egypt, the European Community, the Republic of Korea, Malaysia, New Zealand, Norway, Singapore, South Africa, Thailand and the United States, among others, were the same ones in Cancún as in Doha. The only newcomer with a prominent role was Director-General Supachai Panitchpakdi. This would be the only ministerial held during his tenure. Unlike his predecessor and his successor, each of whom had little time to prepare for their first ministerial after taking office, Mr Supachai took office more than a year before the ministers convened in Cancún. Mr Supachai did not play as prominent a role in the overall management of this ministerial as Director-General Mike Moore had in his two, but he did take on the difficult task of managing the cotton issue. Mr Supachai did not second-guess the decisions of the conference chairman, and did not step in to persuade Mr Derbez to reconsider or reverse his decision to end the conference early.

The negotiations were organized in five working groups, each of them led by a facilitator working closely with the chair and holding confessionals with ministers. These included agriculture (George Yeo Yong-Bon, Singapore), non-agricultural market access (Henry Tang Ying-yen, Hong Kong, China), development (Mukhisa Kituyi, Kenya), Singapore issues (Pierre Pettigrew, Canada) and miscellaneous issues (Clement Rohee, Guyana). The working groups held open-ended meetings in which all members were free to participate, each represented by a minister with a maximum of two support staff.

The US–EU agricultural proposal and emergence of the G20

The transatlantic disputes over agricultural trade give new meaning to the adage that generals are always prepared to fight the last war. The negotiators on both sides of the Atlantic thought they had come up with the best solution in 2003, when they devised a deal that would make modest reductions in both EC and US subsidies, but that plan did not replicate the Blair House dynamic of the Uruguay Round. That is the title given to the November 1992 agreement between the European Community and the United States by which they settled the major agricultural issues in the Uruguay Round, and that marked the beginning of the endgame of those negotiations. While that accord is remembered fondly in Brussels and Washington, it has much less happy connotations for agricultural exporting countries that wanted deeper reforms out of the round. It is also, like the term “green room”, sometimes used as a way of describing a negotiating style that leaves little room for players other than this G2.

Just before Cancún, the European Community and the United States produced a joint agricultural draft at the request of the other members, having been asked to do so at a July mini-ministerial meeting in Montreal. “You work together and you provide us with an US–EU agreement,” Pascal Lamy would later recall the others having requested, “and then we will build from that because there is no way we can build anything without that.”⁵⁰ Brussels and

Washington had considerable difficulty in reconciling their own differences but eventually succeeded. They unveiled a three-page paper on 13 August, the terms of which were discussed earlier in this chapter, “[a]nd of course when we tabled the thing people started screaming.”⁵¹ While several aspects of this proposal would be reflected in the modalities that were developed from 2004 to 2008, when it first came out other agricultural exporters viewed the paper in a much more negative light. Far from seeing the joint proposal as a necessary step towards true agricultural liberalization, for the G20 it confirmed that the two largest subsidizers were collaborating to maintain the status quo. The step back from the elimination of export subsidies was especially unpopular, as was its attempt to preserve the US countercyclical payments by placing them in the blue box and thus beyond the reach of reduction commitments.

The EC–US Joint Text had a galvanizing effect on the countries that would now form the G20. Brazil took the leadership of this coalition, persuading other developing countries in the Cairns Group to join the new grouping. These included six other Latin American countries (Argentina, the Plurinational State of Bolivia, Chile, Guatemala, Paraguay and Peru)⁵² together with four Asian members of Cairns (Indonesia, Pakistan, Philippines and Thailand) as well as South Africa. India had heretofore been more aligned with the defensive posture of the European Community than with the offensive position of Brazil, but was persuaded to join this southern alliance in opposition to the transatlantic position. Nine other developing countries that had not been in the Cairns Group also joined the G20, notably including China. Together they made a formidable coalition. The group became known as the G21 when Egypt joined. Still other countries later entered its ranks, even as some of the original members dropped out. By the end of the ministerial, it was variously referred to as the G20, G21 or the G20-Plus.⁵³

The emergence of the G20 represented the confluence of two trends at different levels of Brazilian statecraft. The narrow explanation can be found in rising frustration within the Cairns Group over Australia's leadership. Where Canberra was disposed to treat the EC-US paper as a starting point for negotiations, Brazilian negotiators favoured a more confrontational response. Minister Celso Amorim (see Biographical Appendix, p. 572) would later explain that he set out to ensure that the “[a]ttempts by major trading powers to dilute the Doha mandate on agriculture did not prosper,” arguing that:

The question here is not whether a modest outcome would have been better than the absence of results. The real dilemma that many of us had to face was whether it was sensible to accept an agreement that would essentially consolidate the policies of the two subsidizing superpowers – with very modest gains and even some steps backward (the new, broader definition of “blue box” subsidies to accommodate the U.S. for instance) – and then have to wait for another 15 or 18 years to launch a new round, after having spent precious bargaining chips (Amorim, 2003).

At the level of high politics, this issue came at a time when Brazil began asserting greater leadership among developing countries on a wider range of issues. That had already been

demonstrated in a meeting of foreign ministers in which Mr Amorim hosted his counterparts from India (Yashwant Sinha) and South Africa (Nkosazana Dlamini-Zuma). The Brasilia Declaration of 6 June 2003 stated joint positions on numerous political, social and economic issues. In addition to addressing such matters as terrorism and other forms of armed conflict, the need to strengthen the United Nations and Security Council, and global warming, the ministers decried the protectionism of major trading partners and stressed –

the need to fully carry out the Doha Development Program and emphasized how important it is that the results of the current round of trade negotiations provide especially for the reversal of protectionist policies and trade-distorting practices, by improving the rules of the multilateral trade system.⁵⁴

Brazilian policy-makers so valued the creation of an alliance with other developing countries, and hence a strong counterbalance to the transatlantic oligopoly that had hitherto dominated multilateral negotiations, that they were willing to make compromises with other countries for whom defensive objectives were more important than offensive. If it was necessary to lower Brazilian ambitions in order to find common ground with the new partners, then this was a concession they were prepared to make, out of concerns that pressing too hard on market access demands “could isolate Brazil in the negotiations, jeopardize efforts to build a coalition around the Brazilian paper, and compromise the objective – most valued by the Brasilia authorities – of attracting some of the most important developing countries to this new coalition” (Da Motta Veiga, 2005: 112).

Robert Zoellick and Pascal Lamy reacted very differently to the formation of the G20. While Mr Zoellick dismissed it as an unnatural alliance that could not survive its internal contradictions, Mr Lamy treated the new coalition as a player. “The G20,” he would later observe, “was born from BRICS and emerging countries being invited to the G8 and sitting in the waiting room before having their tea session with the big guys.”⁵⁵ He demonstrated this conviction by participating in the G20’s December 2003 ministerial meeting in Brasilia, just months after it had so forcefully rejected the EC–US deal. For his part, Mr Zoellick’s chief objective was to break this bloc apart. The United States used a variety of incentives to persuade countries not to associate themselves with either the G20 or the other developing country coalition in opposition to the deal (see below), including the initiation of FTA negotiations with countries that agreed to leave the G20.

The secretary-general of the United Nations Conference on Trade and Development (UNCTAD), Rubens Ricupero, observed at the start of the Cancún Ministerial Conference that failure to address the G20 countries’ concerns would doom the meeting. Mr Ricupero, who had been a leader among developing countries when he was Brazil’s ambassador to GATT, stressed that this new group differed in two fundamental respects from earlier “die-hard” groups such as the G10 of the early Uruguay Round. First, it represented a far more diverse array of countries. Where the G10 might be characterized as the left wing of GATT, with its members generally committed to state-centric approaches to economic development, the

G20 countries represented a wide spectrum of political philosophies and development strategies. Second, Mr Ricupero stressed that the aims and approaches of the G20 were vastly different from the old G10. Where the G10 attempted simply to block the initiation of a new round, the G20 instead pursued what was then called a “positive agenda” based upon offensive objectives for which it was willing to negotiate.⁵⁶ On this latter point, however, the members of the G20 – and especially Brazil and India – were to experience some rough patches in the future when their shared offensive interests came into conflict with India’s defensive interests.

Cotton and the ACP

If the G20 thought that the EC–US proposals did not go far enough, several of the African, Caribbean and Pacific (ACP) countries believed that they might go too far in reducing MFN tariffs and thus eroding their margins of preference. Those concerns, coupled with the transatlantic interest in maintaining agricultural subsidies – especially the US subsidies on cotton – angered and frustrated many of the poorest WTO members.

The cotton issue was the highest-profile subject for several of these countries, and its inclusion on the agenda was a victory for them. An Oxfam study had found that US cotton farmers received more subsidies than the entire gross domestic product (GDP) of Burkina Faso, where more than two million people depend on cotton production, and that these subsidies cost Burkina Faso 1 per cent of its GDP and 12 per cent of its export earnings. Oxfam urged that “[n]orthern governments ... agree to major reforms of their agricultural policy during the current WTO round” (Oxfam, 2002: 4), but this topic had not originally been a part of the Doha Round. That changed after Burkina Faso approached Mr Supachai in advance of Cancún, saying that “they wanted to single out cotton away from agriculture,” to which the director-general initially replied that they “should have done this at the Doha meeting.”⁵⁷ But when President Blaise Compaoré of Burkina Faso called and offered to make a personal appeal in Geneva, Mr Supachai thought it was “a noble idea to have a leader of a country come and talk about trade negotiations and to propose something which is not demanding more subsidies. He was just coming here and he gave a long lecture demanding elimination of subsidies.”⁵⁸ Mr Compaoré spoke to the Trade Negotiations Committee on 10 June 2003. In response to the president’s pleas, the members gave unanimous support to incorporating this issue in the round.

The problem was, who would manage this issue in Cancún? When the friends of the chair were being selected, “[t]here was no one that would accept to do cotton,” Mr Supachai would later recall, and so “automatically I had to accept it because there was no one to do cotton. And I was by some countries blamed for having cotton in the round.”⁵⁹ Mr Supachai soon found himself in an untenable position. US officials were especially unhappy with this decision, and criticized the director-general for accepting a responsibility that put his impartiality in question, but the Cotton-Four countries and their supporters were displeased with Mr Supachai for advancing a text on cotton that was (in their estimation) too close to the US position.

Mr Zoellick was disinclined even to meet with the Cotton-Four countries at Cancún, but finally relented and held a meeting with them on 9 September. The discussion did not go well, with the African countries objecting to the US proposal that they diversify their production away from cotton and towards textiles. The United States stressed that textile products enjoyed preferential market access under the African Growth and Opportunity Act. Australia and Canada each supported the US initiative, but other ACP countries took this proposal as evidence that the United States did not take their concerns seriously.

The Singapore issues

The Singapore issues drove a wedge between the developing countries and the developed, and in this instance it was the European Community that received the sharpest criticism. It was the principal *demandeur* on these topics, joined by others such as Japan and the Republic of Korea. The position of the United States was more ambivalent. In response to US demands, the aims for government procurement negotiations were downgraded from market access to transparency concerns, and US officials were concerned over the potential for negotiations on competition policy to become a backdoor means of attacking the anti-dumping laws.

The debate over the Singapore issues centred not just on the substance but on the procedure, with the opponents underlining the Doha Ministerial Declaration's assurance that negotiations on these subjects could begin only with "explicit consensus". Members disagreed on what that phrase meant. In a notable departure from the usual norms of WTO diplomacy, India took the position that it meant a roll-call vote. No matter how one might propose to count or express consensus, it was obvious that consensus on the Singapore issues was conspicuous for its absence.

The manoeuvres over these issues were especially intense during the final 18 hours of the conference, and led the EC Council of Ministers to approve a major concession. The European Community would agree to drop three of these issues altogether if only there would be agreement to begin immediate negotiations on trade facilitation – the least controversial item in the bunch. This concession was made very late in the game, and many of the developing countries that most strongly opposed the Singapore issues were not even aware of it in the concluding hours of the talks. Several of the participants in these negotiations would later observe that the concession might have helped if it were made earlier, but that when it did come the opposition was too entrenched to be persuaded.

The collapse and the aftermath

Unlike the Doha Ministerial Conference, which followed the GATT tradition of negotiating up to and beyond the final hour, these talks would end early and abruptly. The chairman, Mr Derbez, had conducted marathon talks throughout the night that preceded the final day, but by the late afternoon of that day he, and the ministerial along with him, would be finished.

That final day's meetings began at 8:30 am, giving delegates only a few hours' sleep from the previous night's sessions. When the delegates assembled that morning Mr Derbez surprised them by starting with the Singapore issues. He had heard speech after speech in the latest heads of delegations meeting about these issues, and believed that they needed to be resolved before moving on to other business. This struck many participants as an error in sequencing, as developing countries had linked the outcome of the Singapore discussions to the agricultural negotiations. They were not likely to show much flexibility on these issues without knowing whether the agricultural issues would be resolved in their favour. Mr Derbez proposed that the participants in the green room consult with their groups on the question of whether they might accept some subset of the Singapore issues and, if so, which ones. He made clear to the ministers that failure to reach a consensus on the Singapore issues would compel him to end the meeting because that might lead to a further hardening of defensive positions agricultural issues. When they returned to the meeting it was clear that there was no consensus, and Mr Derbez announced that he had decided to close the ministerial. Some countries objected, insisting that a *tour de table* be conducted on agriculture before terminating the meeting. Mr Derbez consented and asked ministers to begin their discussions on agriculture, but members of the G10 group indicated that, with the rejection of all four Singapore issues, they were even more insistent upon their defensive position on agriculture. Mr Derbez then brought the meeting to a close. He reported this decision at the heads of delegations meeting at about 4:00 pm, with the formal close coming at 5:55 pm.

The only accomplishment of the conference was the approval of a brief ministerial statement⁶⁰ in which the ministers instructed their officials –

to continue working on outstanding issues with a renewed sense of urgency and purpose and taking fully into account all the views we have expressed in this Conference. We ask the Chairman of the General Council, working in close co-operation with the Director-General, to coordinate this work and to convene a meeting of the General Council at Senior Officials level no later than 15 December 2003 to take the action necessary at that stage to enable us to move towards a successful and timely conclusion of the negotiations. We shall continue to exercise close personal supervision of this process.

Whoever coined the saying that victory has a thousand fathers but defeat is an orphan never had to sort out the aftermath of the Cancún Ministerial Conference. No one came forward to take the blame personally, but a great many fingers pointed at others to whom the paternity might be ascribed. Some blamed Mr Lamy and Mr Zoellick, whose willingness to make selected and strategic retreats at Doha gave way here to more rigid positions. Cancún saw a belated EU willingness to make accommodations on the Singapore issues and a US refusal to yield on cotton. Mr Derbez also came in for much of the criticism. Some delegations believed he had been too hasty in concluding that their positions as of Sunday morning were their true bottom lines, and hence he overestimated the degree of difficulty in forging a consensus. Several delegates believed that success might have been achieved if the talks had continued

to the customary wee hours.⁶¹ Indian and Malaysian delegates hinted immediately after the collapse that their position of absolute opposition to the Singapore issues was a bargaining stance rather than a bottom line. They might have been willing to accept negotiations on trade facilitation, and India may have been willing to do so on government procurement as well. It would be a huge gain for them to lock in the EC promise that investment and competition policy would be permanently off the table in the WTO. It is impossible to say whether these are accurate assessments or merely attempts to shift collective blame to one individual, but Mr Derbez insisted that his decision to call a halt was not “rash” but “rational”. Another line of speculation is that it was the United States that had made the decision, with Mr Derbez acting as agent rather than principal. Some who advanced this conspiracy theory pointed to the presence of the US senators in town, especially those whose main concern was with cotton. These allegations seem somewhat far-fetched when one considers the active role that Mexico played in the G20. Mexico City would never have joined that group if it were doing Washington’s bidding.

Others blamed not individuals, countries or blocs, but instead attributed the results to the rules and the process. “The failure at Cancun can be ascribed in part to poor communications,” Harbinson (2009: 8) later concluded, observing that the “European Union delayed showing flexibility on Singapore issues until too late” and the “Chairman of the Conference did not signal sufficiently clearly in advance his intention to call a halt to proceedings.” He did not assign blame to anyone, however, noting that finding “a static point of equilibrium across a range of complex issues was a virtually impossible task.” Similarly, Mr Lamy blamed the procedures and rules of the WTO. “The WTO remains a medieval organisation,”⁶² he said, echoing an opinion that he had voiced two years earlier in Seattle. Zoellick (2003: 1) blamed the results of the Ministerial on developing countries. “The United Nations General Assembly has its role,” he wrote soon thereafter, “but it does not offer an effective model for trade negotiations.” Both Mr Lamy and Mr Zoellick seemed to take particular offense at the tone of comments that some developing country ministers had made in a heads of delegations meeting on 13 September. For their part, developing countries were highly critical of the industrialized countries’ refusal to make significant concessions to their demands.

From 2003 to 2008

While the Cancún Ministerial Conference had been a failure, it did make a few advances in the texts, and some parts of the unadopted draft Derbez text⁶³ would find their way into the July package of 2004.⁶⁴ This 20-page agreement formed the basis for subsequent negotiations. One of its most notable features was the final confirmation that three of the four Singapore issues were being dropped. Paragraph 1(g) of the framework provided for further negotiations on trade facilitation, but also stated that on the relationship between trade and investment, the interaction between trade and competition policy and transparency in government procurement “the Council agrees that these issues ... will not form part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.”

There were hopes during much of 2005 that the July framework might be transformed into an actual deal at the Hong Kong Ministerial Conference, on 13-18 December 2005, putting the round back on track and completing the negotiations only a year after the original deadline. Director-General Pascal Lamy, who took office on 1 September 2005, hoped that the issues dividing members could be approached as technical matters that were within the competence of ministers to sort out and solve. By November, however, it had become clear that too much remained to be done, and that the expectations for the conference had to be lowered. Several governments shifted their sights for Hong Kong to delivering a “development package”. One concrete accomplishment was the formal launch of the Aid for Trade initiative, financing improvements in developing countries’ capacity to trade. Other items in the hoped-for development package proved to be too problematic. Members were unable to agree on the five agreement-specific LDC proposals for enhanced special and differential treatment in the draft declaration. The draft text provided for “developed-country Members, and developing-country Members declaring themselves in a position to do so” to grant duty-free, quota-free (DFQF) access to LDC exports by the end of the round, which LDCs hoped could be made part of a Hong Kong “early harvest”. The United States remained cautious on DFQF access, especially in the textile sector.

The ministerial did help to close the gap on some issues that had stalled the negotiations over modalities. The Hong Kong Ministerial Declaration built on the July package, producing 44 pages (mostly in detailed annexes) that further outlined the shape of these negotiations. Members set themselves a series of deadlines, with modalities due by 30 April 2006. By 31 July 2006, they were to submit comprehensive draft schedules based on these modalities for NAMA and agriculture, and to submit revised offers on services. None of these deadlines were met. The European Community definitively committed to the elimination of export subsidies, and the United States expressed a willingness to consider accelerated implementation of cotton subsidy phase-outs. Both of these concessions, however, were contingent on reaching an overall agricultural deal.

The post-Hong Kong negotiations hit low points in the summers of both 2006 and 2007. Mr Lamy reported to the Trade Negotiations Committee in July 2006 that “the gap in level of ambition between market access and domestic support remained too wide to bridge,” and that he believed “the only course of action I can recommend is to suspend the negotiations across the Round as a whole to enable the serious reflection by participants which is clearly necessary.”⁶⁵ In 2007 for the first and (thus far) only time, members opted not even to convene the ministerial conference that, according to the biennial schedule set in Article IV of the Agreement Establishing the World Trade Organization, they were due to hold that year.

The July 2008 mini-ministerial

Members tried again in a meeting on 21-29 July 2008, and this time they came closer than ever to completing the round. The negotiations took the form of a mini-ministerial. The prefix “mini” does not connote trivial, but instead one that is held out of the usual sequence of

full-dress ministerials that are supposed to take place every two years. Two aspects of this meeting were far from mini: at nine days,⁶⁶ it was about twice as long as the typical biennial ministerial conference, and expectations for a breakthrough were higher than at any other event in the round. "Billed as a last chance to save the Doha Round," Harbinson (2009: 9) observed, "the meetings at various stages looked doomed, then very positive, with a clear chance for a breakthrough, before becoming stalemated." This was the third collapse in three successive summers.

The negotiations took place at multiple levels. Some 70 members sent delegations, and about 30 of these were present in the green room sessions, but the principal negotiations took place in even smaller groups. A G7 of Australia, Brazil, China, the European Union, India, Japan and the United States tried to hammer out a deal, and in some meetings it was, in the absence of China and Japan, an even smaller G5. Much of their negotiations centred on a "Lamy Draft" for the Doha Round deal. Unlike the Dunkel Draft of 1991, which presented full draft texts for all of the agreements under negotiation (minus the schedules), this text fit on a single page. That page was a distilled and modified version of the texts that the chairmen of the NAMA and agriculture negotiating groups had been developing in the first half of the year.

The latest versions had come two weeks earlier, when on 10 July Chairmen Crawford Falconer of New Zealand (agriculture) and Don Stephenson of Canada (NAMA) produced the latest revisions of the negotiating documents. Mr Lamy then worked with Mr Falconer, Mr Stephenson and General Council Chairman Bruce Gosper (see Biographical Appendix, p. 579) of Australia to boil down their principal line items, with some modifications, and put them on the page that is reproduced in Box 12.1. The main features of that one-page draft are discussed earlier in this chapter, and were later adopted in the Rev.3 (NAMA) and Rev.4 (agriculture) texts. Mr Lamy presented this one-page to the G7 ministers in a meeting on 25 July.

In a repeat of the dynamics at the end of the Doha Ministerial Conference, the members had a text that was least minimally acceptable to every country in the room except India. Each of the other six ministers in the green room indicated that they could live with it, with varying degrees of resignation or enthusiasm, but the Indian Trade Minister Kamal Nath initially rejected it out of hand. His colleagues and Mr Lamy persuaded him not to walk out of the negotiations, however, and for a time it did appear to the US negotiators that Mr Nath had given his acquiescence to the one-page deal. "During the nine days we were there," US Trade Representative Susan Schwab would later recall, "there were really only 24 or 36 hours where we actually thought a deal might be doable."⁶⁷ They allowed themselves a little celebration for that day or so, but it was soon over. As the small G7 circle and the larger circles around it began to deal with the numbers and the principles, they soon returned to their now habitual patterns of debate, deadlock, collapse and recriminations.

Box 12.1. The one-page “Lamy Draft” of 2008

US OTDS 70% cut

EU OTDS 80% cut

Cut tariff top band 70%

Developed country tariff lines above 100% only for sensitive products +1% allowance with payment as per text

Developed country number sensitive products 4% + 2% with payment as per text

Developed country expansion TRQs 4% of domestic consumption

One tier of 12% of tariff lines as special products with an average cut overall of 11%

RAMs do an overall average cut of 10% with a total number of 13% of tariff lines

Within that tier 5% of tariff lines take a zero cut

SSM for above bound rate trigger is 140% of base imports

Remedy for above bound is applicable with a ceiling of 15% of current bound tariff or 15 *ad valorem* points, whichever is the greater

That remedy is not normally applicable if prices are not actually declining

Maximum number of tariff lines for above bound 2,5% in any year

Developed countries SSG to be eliminated. Starting point maximum 1% of lines. Maximum phase out 7 years. No rate above UR bound rates during phase out

NAMA Developed coefficient 8

Developing country coefficient and flexibilities

20	7 (a)(i)	14% of tariff lines 16% volume of trade
	7 (a)(ii)	6.5% of tariff lines 7.5% volume of trade
22	10% / 5%	
25	0	

Anti-concentration clause: 20% of lines, 9% value

Sectorals: insert in para 9 of text: “Recognising the non-mandatory nature of sectoral initiatives, at the time of establishment of modalities, the Members listed in Annex Z have committed to participate in negotiating the terms of at least two sectoral tariff initiatives likely to achieve critical mass. Other Members are encouraged to participate in order to assist in reaching critical mass. Any developing country Member participating in final sectoral initiatives will be permitted to increase its coefficient (in such increment as will be determined no later than 2 months from the date of establishment of these modalities) commensurate with its level of participation in sectoral initiatives.”

The water in the schedules

For all of the other topics at issue in the Doha Round, in these July negotiations the principal focus was on the marquee numbers affecting trade in goods. More precisely, the G7 countries and the rest of the participants devoted much of their time dealing with the terms of market access for agricultural and non-agricultural goods, plus the related issues of agricultural safeguards and domestic support. No other issues made their way onto the one-page proposal.

One of the more remarkable aspects of these failed negotiations is that much of the bargaining was not over deals that would affect members' *actual* tariffs and subsidies but instead their *potential* policies. When reviewing the numbers on the page, it is important to recall that WTO negotiations focus not on members' applied measures but on their bound measures, and those bindings can contain a great deal of water. Brazil, India and the United States were less likely to be obliged to change their more sensitive economic policies as a result of the deals that were on the table than were China and the European Community. The most sensitive item for Brazil and India was their non-agricultural tariffs, but they had 16.5 and 24.5 percentage points of water, respectively, separating their average bound and applied tariffs.⁶⁸ The most sensitive defensive interests for the United States were in agricultural domestic support, but as of 2008 it provided only 32.7 per cent of what was permitted in its schedule.⁶⁹ Or, to put it another way, the water left in these three countries' commitments would allow India and the United States to cut two thirds of their bound tariffs and subsidies, respectively, and Brazil to cut its bound tariffs in half, before they were in any danger of those commitments having an immediate impact on their applied measures. In China and the European Community, by contrast, there was little or no water left in their bound non-agricultural and agricultural tariffs, respectively, so practically any deal that they made on these sensitive topics would – unless it also allowed for substantial flexibilities – take a palpable and immediate bite.⁷⁰

It is therefore ironic that India and the United States, the two leading members whose most sensitive defensive objectives were least at risk, appeared to have the highest levels of concern over the draft. That seeming paradox is more readily understood when one considers two points. First, what mattered most for the United States was that the draft failed to deliver much on the offensive side. Second, Indian defensive sensitivities were so high as to reject almost any deal that might require changes in national laws, however slight. Concerns over rural poverty have always made India take a defensive position on agriculture. "The issue is not about economics or the water in its tariffs," according to Ujal Bhatia, the former ambassador to the WTO, but instead "has to do with electoral politics in a democracy where the largest constituencies are those involving poor agricultural workers or small farmers."⁷¹ In short, India least wanted to give what the United States most wanted to get. Ms Schwab listened to the agricultural and other exporters in the United States who demanded more, and Mr Nath listened to the Indian producers whose preferences were just the reverse. The combined cacophony of their domestic constituencies made it difficult for either of these negotiators to hear the other voices in Geneva that were proposing ways to reconcile their competing national interests.

Agricultural support, market access and safeguards

The disconnect between the numbers on the page and the actual policies in place can be understood by considering the case of US agricultural production subsidies. The draft text called for the United States to cap its overall trade-distorting domestic support (OTDS) at US\$ 13.0 billion to US\$ 16.4 billion. The United States offered US\$ 15.0 billion, which was well below the US\$ 22.5 billion limit that it had previously tabled, and also below the US\$ 17.0 billion figure it informally offered. At a time when the actual level of trade-distorting support that the US government provided to farmers was in the US\$ 7 billion to US\$ 8 billion range, however, it was clear that these numbers mattered only in a contingent fashion. A US\$ 15.0 billion limit would require no change in actual US subsidies, and would allow those subsidies to double before the water ran out.

Turning from domestic support to agricultural market access, the most difficult aspect of these negotiations came from an unexpected quarter. The Special Safeguard Mechanism (SSM) had not previously been a high-profile topic, but came to be closely associated with the proposed tariff cuts on agricultural products. As discussed earlier in this chapter, the chief US concern was that this mechanism would become a fallback by which developing countries, and above all China, might undo whatever liberalization was achieved through tariff reductions. The concept of an SSM in principle was not at issue, but the specific rules – and especially the trigger mechanism – very much were. “Those who feared that the safeguard would lead to a disruption of normal trade wanted this trigger as high as possible,” said Mr Lamy. “Those who feared that the safeguard would not be operational if it was too burdensome wanted a lower trigger.”⁷² The proposal that Chairman Falconer developed, and that became part of Mr Lamy’s draft, would have allowed safeguard tariffs of up to 15 per cent or 15 percentage points above the base rates whenever import volumes rose by 40 per cent over a three-year average, provided that prices were also declining. Such tariffs could be imposed on up to 2.5 per cent of a country’s tariff lines.

Neither side was happy with this formulation. China, India and the other G33 countries argued that this trigger was too high, and proposed instead that the highest remedies be triggered by increased import volumes of 10 per cent. They also wanted safeguard duties to be capped at 30 per cent or 30 percentage points above bound levels, twice what the Lamy draft provided. The United States wanted to ensure that the total duty not exceed pre-Doha bound tariff levels. If a remedy could go beyond the existing bindings, the US negotiators argued, the net result could put agricultural exporters in a worse position after the round than they had been in before it. Mr Lamy responded to these objections by proposing a mechanism without either numerical triggers or remedy caps, based instead on “demonstrable harm” to food and livelihood security and rural development needs. Use of this mechanism would be subject to expert review. India accepted this proposal, but the United States rejected it. Negotiators floated several other variations of such a formula, seeking to find a “sweet spot” acceptable to both the advocates and the opponents of the SSM. The United States, however, would not move from its position that a 40 per cent increase in import volume was the lowest acceptable trigger level for any tariffs that would go beyond the pre-Doha tariff ceilings. These differences over the magnitude of import surges that would trigger safeguards proved to be irreconcilable.

The negotiating dynamics among the developing countries in this G7 were unusual. Those who had portrayed the G20 as an unnatural alliance found vindication in the SSM negotiations, where Brazil's offensive interests collided with the defensive interests of China and India. The relationship between China and India was also unusual. While it was India that argued most strenuously for the SSM, it was China that would appear more likely to utilize the mechanism. India still had plenty of water left in its agricultural tariffs, and could thus respond to import pressure by raising its applied tariffs, but for China the SSM might be the only recourse in any effort to restrict imports. According to Mr Bhatia, the alliance between Brazil, China and India "was based on a clear understanding that Brazil would respect the defensive interests of the other two and the G20 would largely focus on the subsidies and market access issues involving developed economies." The G20 therefore "never took a position on the SSM beyond that of general support, because doing so would risk a fracture within the grouping."⁷³

The Indian position was also shaped by its relations with the wider developing world in Asia, Africa and Latin America, "based on shared colonial histories and shared economic situations" that translate into "Indian positions which always reflect the concerns of smaller developing countries."⁷⁴ Mr Nath saw the SSM as "the test of India's role as the spokesman for the smaller countries with similar defensive interests in agriculture." He was also concerned that if the deal on the table were adopted, this –

would mean the truncating of the Doha Round into limited outcomes on these issues and that other issues which developed countries, including the US were defensive about, would be abandoned. These included cotton, TRIPS amendments, Mode 4, Implementation issues relating to the Uruguay Round and the like.⁷⁵

At times there were signs of progress. "When you talked to the Chinese about how they were going to exercise their flexibility under the one-pager," according to Ms Schwab, "we hoped we would be able to negotiate the details to the point of neutrality and maybe some wins."⁷⁶ American officials were especially keen on ensuring that the tariff deals and the SSM not be structured in such a way as to restrict US access to the Chinese soybean market. Chinese officials seemed equally dedicated to preserving their options for this commodity, but may also have been happy to allow India to be out ahead on this issue.

The seven countries represented in the green room were not the only participants in the negotiations, of course, and other members had strong views of their own. Competitive exporters such as Uruguay sided with the US position, arguing that if safeguard duties exceeded current tariff bindings it would upset the balance of rights and obligations agreed to in the Uruguay Round. Ambassador Guillermo Valles pointed out that the SSM in the draft agricultural text could be triggered even by normal rates of growth, and a 10 per cent trigger could lead to safeguards on 82 per cent of China's food imports and 64 per cent of India's (ICTSD, 2008). Other developing countries were concerned that the G7 was not addressing agricultural issues of interest to them. Kenya's Deputy Prime Minister Uhuru Kenyatta, speaking on behalf of African members, complained that "most of the key issues of interest to the African continent were not even discussed" (quoted in Coulibaly, 2008). The failure to

resolve the cotton problem was especially troubling. The negotiations over tropical products also pitted the interests of Latin American exporters against the ACP, the former seeking market access and the latter fearing preference erosion.

The mini-ministerial did produce agreement on one long-standing irritant. Director-General Lamy, who had been asked to mediate between the European Community and Latin American banana exporters to settle the banana dispute, convened a separate green room with ACP ministers as well as those representing Latin American exporters. Mr Kenyatta represented the ACP's views, and Peruvian Trade Minister Mercedes Araoz spoke for the Latin American camp. Discussions focused on a handful of tropical products that were sensitive to both sides, and long hours of negotiating line by line produced a tentative deal agreeable to both sides. This deal complemented an agreement negotiated in a separate room that settled the banana case, primarily through deeper cuts to banana tariffs over longer implementation period, as well as a package of development assistance that the European Community would provide to ACP countries. The banana agreement survived the collapse of the 2008 deal, ultimately bringing a lengthy dispute to a final settlement in 2012.

The collapse and the blame

On 29 July, after nine days of ultimately fruitless negotiations, Mr Lamy told the Trade Negotiations Committee that the talks had failed. They had been tantalizingly close to finalizing modalities in agriculture and NAMA, and for "a wide range of problems which had remained intractable for years we have found solutions," but the negotiations ultimately ran into a wall over the SSM. He said that "perhaps the dust needs to settle a bit" before deciding on how to proceed with Doha, but urged members to preserve the progress made in agriculture and NAMA and other areas.⁷⁷

Mr Lamy asked the ambassadors not to engage in the blame game, but recriminations were inevitable and in this instance were especially deep. When diplomats and other politicians wish to express the idea that they have come to an impasse but remain on friendly terms they will often say that they "agreed to disagree." That expression of cordiality is missing from participants' recollections of what happened in July 2008, as key players in those failed negotiations disagree about what made them disagree. Those disagreements are rooted in *Rashōmon*-like recollections that are filtered through the participants' highly subjective perceptions.

Most of the participants who blame specific people focus on either Ms Schwab or Mr Nath. Indian officials noted that it would not be useful for them to agree to a deal that the United States was not likely to accept. They also thought that Mr Lamy was asking too much of them and too little of the United States, while also providing too little on the special safeguard. Like their US counterparts, Indian negotiators also point to issues of personal chemistry in the negotiations. Mr Nath reportedly had a good, working relationship with Rob Portman (see Biographical Appendix, p. 589), who held the position of US trade representative between the departure of Mr Zoellick in 2005 and the arrival of Ms Schwab in 2006. They also perceived

Mr Portman, who had served in the US House of Representatives from 1993 to 2005, as being better positioned to clinch a deal and sell it to Congress. From the Indian point of view Ms Schwab, who had served as a congressional staffer and as a USTR negotiator before getting the top job, seemed too beholden to US industry groups, the American Farm Bureau Federation, and Congress.

Not surprisingly, US officials viewed things the other way around. "The Chinese were being obstructionist," one of them recalled, "but it was the Indians that killed the thing."⁷⁸ The Americans concluded they could accept the one-page deal, and for a day or two they believed that the bargain was in hand. Their Indian counterparts sought changes, however, and when the US delegation concluded that the deal was not stable they lost confidence in the process and their partners. "It became very, very clear that there was zero chance that the Indians were ever going to let us do a deal," Ms Schwab would later recall, "and that every time we responded to an Indian concern they'd move the goal-posts."⁷⁹

Rather than choose between Ms Schwab and Mr Nath, Mr Lamy saw them both – or the "Schwab-Nath coefficient," as he put it – as a leading problem. In his estimation, neither of these ministers were as prepared to close the deal as their respective leaders would have been. "Had Bush and Singh been there," he believed, "there would have been a deal. But Schwab was less inclined to lead than Bush, and Kamal Nath was less inclined to lead than Singh, Schwab for technical reasons and Kamal Nath for political reasons."⁸⁰

Another problem relates to a fundamental insight from game theory. "The essence of a game," as Dixit and Nalebuff (2008) observed, "is the interdependence of player strategies." The payoff that a player can expect from a given strategy is not immutable but depends on the strategies that other players adopt. Player A's strategy may do well against Player B, but A might have a very different experience if either B changes strategy or if A tries the same strategy with Player C. The same logic might be applied to the role of a mediator, in which the strategy that a mediator adopts may help Group 1 find a deal based on mutual gains but may fail with Group 2. This set of negotiations followed the well-established WTO model of the confessional, in which a chairman or, in this case, the director-general seeks to mediate a solution by exploring in depth each participant's positions and discovering the zones of possible agreement. That requires an exploration of each party's sensitivity as well as judgment calls by the chairman. As Mr Lamy described his approach:

The spirit of the confessional is, "Give me your red lines so that I don't over-step them, but don't you cheat me [by] telling me it's a red line where it's a blue line." And they all try to hide their red lines, the red lines are behind where they say, and it's for the one in the confessional to guess that they know full well at the end of the day once they express their red lines the name of the game is that I can put something on the table that doesn't breach red lines. It's a question of trust: "I know you, you will tell me, 'This is my red line,' and I will step fifteen percent beyond that red line, because I know you gave me a number which is fifteen percent above what you can accept."⁸¹

That is a logical way to proceed, and has been a tried and true method throughout the history of the multilateral trading system, but trouble may arise if a mediator perceives more “give” in a negotiator’s position than that negotiator meant to convey. Ms Schwab believed that she had gone as far as she could, arriving at a point where “the only person I was negotiating with at that point was myself,” but the director-general believed otherwise. “Give me your bottom line,” Mr Lamy would ask, but “I had literally given him my bottom line, and he was back asking me to give him my bottom line, and I’d done that in good faith.”⁸²

A counter-factual speculation

Could the deal that was then on the table resolve the round? Ms Schwab would have to get past two familiar difficulties: the Washington problem (negotiating with Congress) and the Geneva problem (negotiating with the other members). She might have resolved the Geneva problem by accepting the deal, but she believed that in so doing her Washington problem would be insuperable. This deal, in her estimation, ran a serious risk of becoming the biggest trade agreement that Congress had rejected since the Havana Charter to the ITO. It would be difficult to second-guess Ms Schwab’s estimation of the chances. She knew Congress well, having worked there for years, and throughout the mini-ministerial she was in constant contact with the Capitol Hill, the White House and the many representatives of the US private sector who were on hand in Geneva. It is nonetheless intriguing to speculate on what might have happened in both Washington and Geneva if she and her counterparts had been able to strike a deal.

Had the negotiators gone down this road they would soon have come across an entirely different sort of Washington problem. What no one then negotiating could have known was that the first indicators of the impending financial crisis were emerging across the Atlantic at the very time these negotiations were under way in Geneva. One early warning sign came on 15 July 2008 – the week before the Geneva negotiations began – when the Securities and Exchange Commission issued an emergency order temporarily prohibiting naked short selling in the securities of the housing finance agencies known as Fannie Mae and Freddie Mac. The full magnitude of the crisis was not apparent until two months later, when the Federal Housing Finance Agency placed these two agencies in government conservatorship (7 September), Lehman Brothers filed for bankruptcy protection (15 September) and the stock market began a plunge that would continue for the next half-year. Throughout the next few weeks there was a new sign of economic calamity coming out of Washington, New York, and other political and financial capitals almost every day. The Dow Jones Industrial Average offered a fairly accurate barometer of the damage. It had fallen from 11,378 at the end of July to 9,325 by the end of October (down 18.0 per cent), and would hit 6,547 the next March (42.5 per cent below the July level) before it began to rebound.⁸³

Had a deal been struck in July the WTO negotiators would likely return in September to begin the months-long process of scheduling specific commitments and finalizing the agreements. They would thus be starting the most detailed part of the negotiations just when the crisis broke. One could spin out a scenario in which that crisis would make them redouble their

efforts, fearing that global markets would take any retreat from the deal as a very negative sign. Another outcome, perhaps more likely, would be near-paralysis. Consider as well that a wholly new US team would come in after the presidential and congressional elections of 4 November 2008. There is a tradition of multilateral trade rounds carrying over from one US administration to the next, even when party control of the White House changes hands; both the Tokyo and Uruguay rounds were started under Republican presidents and finished under Democrats. In the special circumstances of the 2008 to 2009 presidential transition, however, which took place under the cloud of the Great Recession, the chances for delay or disruption were much greater.

One can only speculate on how all of these factors would ultimately have played out, should the mini-ministerial have been successful. There is strong reason to suspect, however, that if the deal were done in July, it would face much more severe challenges in the months to come than the negotiators could reasonably have anticipated at the time.

Endnotes

- 1 Note that throughout this chapter the term “ambassadors” encompasses those diplomats of any rank or title who are resident in Geneva, and is used generically to distinguish them from the deputy ministers and ministers who are less frequently involved in the negotiations.
- 2 This count includes annual gatherings along the margins of meetings in the OECD (Paris) and the World Economic Forum (Davos), the five biennial ministerial conferences of the WTO (2001, 2003, 2005, 2009 and 2011), and at least 13 mini-ministerials. That latter group of meetings peaked in frequency at mid-decade, there having been one in 2002 (November in Sydney), three in 2003 (February in Tokyo, June in Egypt, July in Montreal), one in 2004 (July in Geneva), five in 2005 (March in Kenya, May in Paris, June in Livingston [Zambia], July in China, November in the Republic of Korea), one in 2006 (Geneva), and just one each in 2008 (July in Geneva) and 2009 (September in India). This does not count smaller meetings (e.g. of the G4 or G5 variety) or teleconferences that can be arranged by the WTO for small numbers of ministers. The year 2007 was unusual both for missing the scheduled ministerial conference and for having no mini-ministerials, although some ministers did meet that year in smaller gatherings.
- 3 Note that the discussion here assumes that readers are familiar with the issues of scheduling and formulas that were covered in Chapter 9.
- 4 Zeno's paradox of motion is related and refuted in Book VI, Chapters 8-9 of Aristotle's *Physics*.
- 5 For a detailed and comparative summary of the formulas proposed by these members, see *Formula Approaches to Tariff Negotiations: Note by the Secretariat*, WTO document TN/MA/S/3/Rev.2, 11 April 2003, p. 11.
- 6 See *Market Access for Non-Agricultural Products: Communication from the European Communities*, WTO document TN/MA/W/11, 31 October 2002.
- 7 See *Market Access for Non-Agricultural Products: Communication from the United States*, WTO document TN/MA/W/18, 5 December 2002.
- 8 See *Draft Elements of Modalities for Negotiations of Non-Agricultural Products*, WTO document TN/MA/W/35, 16 May 2003.
- 9 See *Market Access for Non-Agricultural Products: Non-Agricultural Market Access – Modalities*, WTO document TN/MA/W/44, 1 September 2003.
- 10 For the sake of clarity, this discussion elides past some important but highly technical questions such as how the negotiations would deal with items for which members did not have bindings and how *ad valorem* equivalents would be calculated for specific or compound tariffs, among others.
- 11 For example, a developing member opting for an a coefficient of 20 would be entitled to make smaller or zero cuts in 14 per cent of its most sensitive industrial tariff lines, up to 16 per cent of the total value of its NAMA imports. Alternatively, the member could keep 6.5 per cent of its tariff lines unbound or exclude them from tariff cuts, provided they do not exceed 7.5 per cent of the total value of its NAMA imports. At the other extreme, a member applying the a coefficient of 25 would have to apply it to all products without exception. The flexibilities for an a coefficient of 22 would approximately split the difference between these options.
- 12 In other words, during a transition period there would be three different tariffs applied on these imports: the preferential rate for imports from certain developing countries, a less-than-MFN rate on imports from the disproportionately affected countries, and the declining MFN rate on imports from all other sources.

- 13 These RAMs are Albania, Armenia, Cape Verde, the Kyrgyz Republic, the Republic of Moldova, Mongolia, the Kingdom of Saudi Arabia, the former Yugoslav Republic of Macedonia, Tonga, Ukraine and Viet Nam.
- 14 The members of this group were Canada, the European Union, Japan, the Republic of Korea, New Zealand, Norway, Switzerland, Chinese Taipei and the United States. Hong Kong, China also supported the proposal without officially being a co-sponsor.
- 15 The designation of this "non-paper" is JOB(07)/54, dated 27 April 2007. It is available at www.mfat.govt.nz/downloads/NZ-WTO/wto-doha-ministerialdeclaration27apr07.pdf.
- 16 See *Committee on Trade and Environment in Special Session: Report by the Chairman, Ambassador Manuel A. J. Teehankee, to the Trade Negotiations Committee*, WTO document TN/TE/20, 21 April 2011, p. 2.
- 17 The proposal was entitled "EC-US Joint Text – Agriculture." It is posted at http://trade.ec.europa.eu/doclib/docs/2003/october/tradoc_113884.pdf, and is cited hereinafter as the EC–US Joint Text.
- 18 All references in this chapter to the G20 refer to this coalition that first emerged in the Cancún negotiations, and not to an entirely different group by the same name that became a summit-level global forum in 2008.
- 19 Tariffs on agricultural products can be more complicated than those on non-agricultural products due to: (i) a higher incidence of specific or compound (as opposed to *ad valorem*) tariffs; (ii) the prevalence in some countries of seasonal tariffs for fruits and vegetables (i.e. higher rates applying to imports that enter during a country's own harvest season); and (iii) the use of tariff-rate quotas (i.e. lower rates for imports up to a specified level and higher rates for any amount thereafter). Those issues are not discussed here.
- 20 EC–US Joint Text, paras. 2.1 and 2.2.
- 21 See *Agriculture: Framework Proposal*, WTO document WT/MIN(03)/W/6, 4 September 2003, para. 2.5. Note that this was a reissue of a restricted document (JOB(03)/162) that had originally been distributed 20 August 2003.
- 22 Cited at www.twinside.org.sg/title2/twninfo220.htm.
- 23 See *Special Agricultural Safeguard: Background Paper by the Secretariat*, WTO document G/AG/NG/S/9/Rev.1, 19 February 2002.
- 24 See *Revised Draft Modalities for Agriculture*, WTO document TN/AG/W/4/Rev.4, 6 December 2008, p. 3.
- 25 EC–US Joint Text, para. 3.1.
- 26 See *Agriculture: Framework Proposal*, WTO document WT/MIN(03)/W/6, 4 September 2003, para. 3.1.
- 27 As discussed in Chapter 9, the Uruguay Round negotiators also prohibited any subsidies that are placed in the "red box" but then declined to place any subsidies in this box.
- 28 EC–US Joint Text, para. 1.1.
- 29 EC–US Joint Text, para. 1.2.
- 30 See *Agriculture: Framework Proposal*, WTO document WT/MIN(03)/W/6, 4 September 2003.
- 31 It is notable that both the subtraction of the Singapore issues and the addition of cotton reflected positions promoted by developing countries.

- 32 Although a restricted document, the text of JOB/IP/3/Rev.1 is included as an annex to *Multilateral System of Notifications and Registration of Geographical Indications for Wines and Spirits: Report by the Chairman, Ambassador Darlington Mwape (Zambia) to the Trade Negotiations Committee*, WTO document TN/IP/21, 21 April 2011.
- 33 GATS Article I.3(b) defines "services" to include "any service in any sector except services supplied in the exercise of governmental authority." This exception is further refined in I.3(c), which specifies that "a service supplied in the exercise of governmental authority" means "any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers." The provision thus carves out a potentially wide category from the scope of GATS rules. It does not precisely define the scope of this category, however, a lacuna that propagandists exploited.
- 34 See, for example, "La santé et l'éducation pris dans l'engrenage du libre-échange?", *Le Monde*, 3 October 2000, and "WTO denies claims it is trying to abolish public services", *Agence France-Presse*, 6 October 2000.
- 35 See *Guidelines and Procedures for the Negotiations on Trade in Services: Adopted by the Special Session of the Council for Trade in Services on 28 March 2001*, WTO document S/L/93, 29 March 2001, p. 1.
- 36 The requests may be accessed at www.gatswatch.org/requests-offers.html#outgoing.
- 37 See *Special Session of the Council for Trade in Services: Report by the Chairman to the Trade Negotiations Committee*, WTO document TN/S/20, 11 July 2005, p. 1.
- 38 See *Guidelines and Procedures for the Negotiations on Trade in Services: Adopted by the Special Session of the Council for Trade in Services on 28 March 2001*, WTO document S/L/93, 29 March 2001, p. 1.
- 39 See *Negotiations on Trade in Services: Report by the Chairman, Ambassador Fernando de Mateo, to the Trade Negotiations Committee*, WTO document TN/S/36, 21 April 2011, p. 12.
- 40 *Ibid.*, p. 1.
- 41 See *Draft Consolidated Negotiating Text: Revision*, WTO document TN/TF/W/165/Rev.8, 21 April 2011.
- 42 See Articles 1.2.3, 2.3.1 and 6.1.6.
- 43 Mr Valles' approach to these negotiations is discussed in Chapter 14.
- 44 See *New Draft Consolidated Chair Texts of the AD and SCM Agreements*, WTO document TN/RL/W/236, 19 December 2008.
- 45 See *Communication from the Chairman*, WTO document TN/RL/W/254, 21 April 2011, p. 1.
- 46 See *General Council: Implementation-Related Issues and Concerns*, WTO document WT/L/384, 19 December 2000.
- 47 See *Implementation-Related Issues and Concerns: Decision of 14 November 2001*, WTO document WT/MIN(01)/17, 20 November 2001.
- 48 Per WTO document JOB(03)68, Category II consists of "proposals made on areas in which mandated negotiations are ongoing or which are otherwise being considered in the respective WTO bodies."
- 49 See Annex 1 of *Special Session of the Committee on Trade and Development: Report by the Chairman, Ambassador Shahid Bashir (Pakistan), to the Trade Negotiations Committee*, WTO document TN/CTD/26, 21 April 2011, p. 4. For the background, see *Report to the General Council*, WTO document TN/CTD/3, 26 July 2002.

- 50 Author's interview with Mr Lamy on 28 September 2012.
- 51 *Ibid.*
- 52 Uruguay was a seventh Latin American member of the Cairns Group that would eventually join the G20 but did not do so in its early stages. This reticence, which stemmed from the desire of General Council Chairman Carlos Pérez del Castillo (Uruguay) to retain a neutral stance during a crucial phase of the negotiations, would be a source of friction between Brazil and Uruguay (see Chapter 14).
- 53 See Figure 3.2 for the composition of this group as of late 2012.
- 54 The text of the Brasilia Declaration is available at www.dfa.gov.za/docs/2005/ibsa_brasilia.htm.
- 55 Author's interview with Mr Lamy on 28 September 2012.
- 56 Author's interview with Mr Ricupero on 11 September 2003.
- 57 Author's interview with Mr Supachai on 27 September 2012.
- 58 *Ibid.*
- 59 *Ibid.*
- 60 The statement is posted at www.wto.org/english/thewto_e/minist_e/min03_e/min03_14sept_e.htm.
- 61 The characterizations of delegates' positions in this paragraph are based on the author's interviews in Cancún.
- 62 "Press Conference closing the World Trade Organisation 5th Ministerial Conference" 4 September 2003 posted at http://europa.eu/rapid/press-release_SPEECH-03-409_en.pdf.
- 63 The draft as circulated on 13 September 2003 is posted at www.wto.org/english/thewto_e/minist_e/min03_e/draft_decl_rev2_e.htm.
- 64 See *Doha Work Programme: Decision Adopted by the General Council on 1 August 2004*, WTO document WT/L/579, 1 August 2004.
- 65 See *Chairman's Introductory Remarks, Informal Trade Negotiations Committee Meeting at the Level of Heads of Delegation*, informal document reference JOB(06)231, 24 July 2006.
- 66 The meeting was originally intended to last no longer than five days.
- 67 Author's interview with Ms Schwab on 10 January 2013.
- 68 See Appendix 9.2.
- 69 See Appendix 9.3.
- 70 See Appendix 9.2.
- 71 Author's correspondence with Mr Bhatia on 25 March 2013.
- 72 Author's interview with Mr Lamy on 28 September 2012.
- 73 Author's correspondence with Mr Bhatia on 25 March 2013.
- 74 *Ibid.*
- 75 *Ibid.*

- 76 Author's correspondence with Ms Schwab on 10 January 2013.
- 77 Comments posted at www.wto.org/english/news_e/news08_e/meet08_chair_29july08_e.htm.
- 78 Interview with the author.
- 79 Author's interview with Ms Schwab on 10 January 2013.
- 80 Author's interview with Mr Lamy on 28 September 2012.
- 81 *Ibid.*
- 82 Author's correspondence with Ms Schwab on 10 January 2013.
- 83 The relative level of these declines would be even higher if calculated from 9 October 2007, when the Dow Jones closed at its pre-recession high of 14,164. The declines experienced between then and mid-2008 were unrelated to the financial crisis *per se*, however, and the most appropriate point of comparison is in 2008 rather than 2007. The stock market would not recover to the October 2007 levels until early 2013.

