

**International Trade Union Confederation (ITUC)**  
**ITUC Update on WTO Negotiations, November 2009**

***Introduction***

This document provides an update on the principal areas of WTO negotiations in the Doha Round since the last TILS meeting in March 2008. Following an introductory summary, it is divided into four parts, covering respectively Agriculture; NAMA; Services; and other major Doha Round issues. The concluding section assesses the context of the negotiations at this stage and the prospects for progress in the Doha Round.

***Summary 2008-09***

Over the past year, the global economic crisis has diverted governments' attention from the Doha Round. International merchandise trade is forecast to decline by 10% in volume in 2009 even though – according to the findings of the WTO's *World Trade Report* – the implementation of protectionist trade measures in response to the crisis has not been widespread. While high-profile international meetings, including those of the G8 and G20, have continued to refer to the importance of concluding the Doha Round, this seems to a large extent to be lip service. One indication of that diminished political enthusiasm was that there was no proposal this year for a Mini-Ministerial trade negotiation before the WTO's summer recess at the end of July, a break with the routine of the past few years.

Over recent months, WTO members have been focusing on preparations for the procedural 7<sup>th</sup> WTO Ministerial Conference, scheduled for 30 November – 2 December, 2009 in Geneva. The conference is being held to satisfy the WTO's statutory requirement that its members meet at ministerial level regularly – theoretically every two years although the last full ministerial conference took place in Hong Kong in 2005. The preparatory process is led by the Chair of the General Council, Ambassador Matus of Chile. The ministerial will be focused on one main theme: “The WTO, the multilateral trading system and the current environment”. A couple of countries have made proposals for concrete discussions about the improvement of some of the organisation's procedures.

At this stage, WTO members insist that this Ministerial is not about advancing the Doha agenda. Nonetheless, Ministers' statements and their actual discussions can certainly address the issue of the Round or specific negotiations. Indeed, discussion on the Doha Round is specifically foreseen in themes for the Conference's Working Sessions and in side meetings.

Over 2008-09, WTO Doha negotiations have continued to be dominated by Agriculture and Non-Agricultural Market Access for manufactured goods (NAMA). Although there has been some movement in the negotiations, a number of problems have been difficult to resolve, in particular the so-called “triangle issues”. These concern the issues of domestic support in agriculture (an area in which the US is expected to make substantial reductions), tariff reductions in agriculture (where it is generally considered that the EU has to make a major effort) and tariff reductions in NAMA (where developing countries are asked to open up their market to developed countries' imports). What is particularly important in the negotiations is the balance and trade-offs between Agriculture and NAMA, and the way such trade-offs are perceived.

Highlights of this period have been the July 2008 mini-ministerial conference, which saw a push for the conclusion of the modalities for Agriculture and NAMA, and the December 2008 modalities text that sought to bring the Agriculture and NAMA negotiations closer to a conclusion. In 2009, little negotiation took place for the first part of the year but following a Mini-Ministerial held at the invitation of India in September 2009 something of a resumption in meetings of negotiating groups has taken place over recent months.

## I. Agriculture

The main issues in the area of Agriculture are demands on the US to lower its domestic support levels, on the EU and other developed countries to offer market access for agricultural products that are of interest to developing countries, and on developing countries to limit the use of the Special Products category (SP)<sup>1</sup> and the Special Safeguard Mechanism (SSM)<sup>2</sup>.

Concerning **domestic support** to farmers, the US has stated its readiness to make commitments that would reduce its maximum permitted domestic support levels in agriculture to around USD 15 billion. However this is above its current levels of spending, so would still enable it to increase its spending or at least continue its current heavy subsidisation of its agricultural production. In the case of commitments by the EU for **tariff reductions**, the overall level of reductions is quite substantial but the EU has at the same time obtained agreement that quite a number of categories will be defined as “sensitive products”, for which the reduction in tariffs would be much lower<sup>3</sup>. Unfortunately, these products are of particular interest to developing countries. At the same time, developing countries have been less successful in their efforts to attain special treatment for their own sensitive areas in Agriculture, despite the food security, production and employment implications. The current situation is therefore characterised by a serious imbalance between developed and developing countries.

In the July 2008 Mini-Ministerial, negotiations involving SPs and the SSM created particular difficulties. A text on the SSM that was proposed by WTO Director-General Pascal Lamy was unable to produce agreement between India and China on the one hand and the US on the other. The main point of contention was under what circumstances and by how much developing countries would be allowed to raise tariffs on agricultural goods under the mechanism. Lamy proposed that a country’s current bound tariff could be raised by a maximum of 15% when imports surged by 40% over a three-year average. This was as far as the US was prepared to go, but the G-33 coalition of developing countries<sup>4</sup> put forward a counter-proposal that would have allowed SSM tariffs to exceed their current bound levels by 30%. In some cases, this remedy could have been available as soon as imports increased 15% over the baseline. The group also said that developing countries should have the right to impose SSM duties on 7% of all agricultural tariff lines in a given year, while Lamy had suggested a limit of 2.5%. Alternatives proposed by Director General Lamy and the EU failed to bridge the differences between the US and the G-33 members.

It should be pointed out that the figures in the Lamy ‘package’ concerned only the most contentious points, and would not have altered other provisions of the 10 July agricultural draft modalities that served as the basis for negotiations at the Geneva ministerial meeting. On **Domestic Support**, the Lamy compromise would have required the United States to lower its maximum permitted overall trade-distorting support (OTDS) (Amber box, Blue box and de Minimis<sup>5</sup>) by 70% and the European Union by 80%. While these reductions would not have resulted in ‘effective cuts’ to actual spending, they would at least have provided a significant guarantee against future backtracking.

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<sup>1</sup> Special Products are products from developing countries that would be subject to no or to low tariff cuts based on criteria related to food security, livelihood security or rural development concerns.

<sup>2</sup> The Special Safeguard Mechanism would allow countries to impose temporary additional tariffs in order to protect farmers from import surges and price falls.

<sup>3</sup> “Sensitive products” are those for which developed and developing countries can identify tariff lines that would receive “less than formula” tariff reduction in exchange for expanded import quotas.

<sup>4</sup> The G-33 is a group of developing countries with defensive interests in Agriculture, including China, India and Indonesia. They are principal advocates of the Special Products and the Special Safeguard Mechanism.

<sup>5</sup> The Amber box contains all domestic support that distorts production and trade, including price support and subsidies related to production. The Blue box contains trade distorting support that is, however, subject to conditions aimed at reducing distortion and which requires farmers to limit production. “De Minimis” support constitutes minimal levels of support that are allowed, above which anything else has to be reduced. Taken together, these reduction commitments are called the Total “Aggregate Measurement of Support” (AMS).

On **Market Access**, as mentioned earlier, key products of export interest to developing countries would have continued to face significant import duties, even though overall developed country tariffs would have decreased under the Lamy proposal.

On **Tariff Reduction Formula** and **Tariff Caps**, the cut required for developed country import duties in the top tier of the Doha Round tariff reduction formula has been one of the major points of contention in the farm talks. Lamy proposed that tariffs over 75% be cut by 70%. Exporters have long sought to constrain unusually high tariffs with a ‘tariff cap’, a measure opposed by import-sensitive countries. Pascal Lamy suggested capping developed country farm tariffs at 100%. This limitation would not have applied to sensitive products, and Iceland, Japan, Norway and Switzerland would have been allowed to exceed the cap for an additional 1% of non-sensitive tariff lines. On **Sensitive Products**, Lamy recalled that all WTO members may protect a share of their farm products from full formula cuts by designating them as ‘sensitive’. According to his proposal, developed countries would have been able to shield 4% of their agricultural tariff lines in this way. The limit would have been increased to 6% for those among them with more than 30% of tariff lines above 75%. Countries opting for the smallest possible sensitive product tariff cut – one-third of what would otherwise be required by the formula – would have had to provide compensatory market access by expanding the import quota for any product designated as sensitive by at least 4% of domestic consumption. Nevertheless, sensitive product protection is likely to limit market access for those developing countries whose exports are concentrated in very few tariff lines, such as groundnuts for Gambia or husked rice for Guyana.

With regard to **Special Products**, only developing countries will be able to designate some tariff lines as SPs, exempting them entirely or in part from tariff reductions. The number of SPs has been highly controversial since negotiations began, as has the extent to which they should undertake tariff cuts, if at all. Lamy proposed allowing developing countries to designate 12% of their farm tariff lines as ‘special’, with an average cut of 11%, while 5% of all agricultural tariff lines could have been totally exempt from cuts. Many developing country members - especially Small and Vulnerable Economies (SVE)<sup>6</sup> and Recently Acceded Members (RAM) – considered that this was clearly not enough.

The July 2008 mini-ministerial thus broke down without any decisions taken on the main issues. The talks were also called off before they moved on to the politically sensitive subject of **cotton subsidies**. In that regard, responding to the concerns of four least-developed African countries WTO members had agreed in 2005 that domestic subsidies for cotton would be reduced faster and ‘more ambitiously’ than those for other agricultural commodities. The Cotton Four (C-4) (Chad, Mali, Benin and Burkina Faso) subsequently proposed a formula that would have guaranteed a significant reduction in cotton support even if the general subsidy cut turned out to be small. These cotton subsidies are highly problematic for cotton producers in developing countries, but the US (which is the main subsidiser) has still not come forward with any substantial proposal to reduce or remove them<sup>7</sup>, arguing that cotton support cannot be discussed until the overall agricultural modalities are agreed. For the C-4, the July 2008 Geneva ministerial would have been an opportunity to finally engage the US in serious negotiations on Cotton. To their intense disappointment, the talks collapsed before the subject was even addressed. However, in a trade dispute opposing Brazil and the US on cotton subsidies, on 2 June 2008 Brazil obtained a final confirmation that the United States had not eliminated cotton subsidies found to breach WTO rules. This meant that after nearly six years of

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<sup>6</sup> SVEs include countries such as Antigua and Barbuda, Jamaica, Mongolia, and Papua New Guinea.

<sup>7</sup> On Cotton, a compliance panel was established in 2006. The interim ruling in 2007 ruled that the US was still not in compliance with the earlier ruling of 2004, when a panel had found that a range of US support measures for cotton growers and exporters violated WTO obligations, as confirmed by the WTO Appellate Body in 2005. While the US abolished the ‘step 2’ programme that paid US cotton mills and exporters the difference between American cotton prices and world benchmark rates as well as some export credit schemes, the US had still not altered some of the principal support programmes that violated WTO rules.

litigation, the door is now open for Brazil to seek the right to apply trade sanctions on US goods, services and intellectual property rights.

Talks moved forward very slowly over September-December 2008. On the 6<sup>th</sup> of December 2008, the Chair of the Agriculture negotiations released a revised draft text, intended to serve as the basis for a deal on tariff and subsidy cuts. It reflected progress in a number of areas since the July draft. In particular, it incorporated the controversial concessions made under the ‘Lamy compromise’ on subsidies and top-level tariffs referred to above – namely that the US would cut its **OTDS** by 70% and the EU by 80%. However, in **Domestic Support**, both would be allowed to maintain billions of dollars of ‘green box’ subsidies which ostensibly cause not more than minimal trade distortion, with no cap or reduction commitments on this category of payments. Developed countries’ top-level tariffs (those above 75%) would be subject to a 70% cut (except for the designated sensitive products), and developing countries would have to make a 46.7% cut in tariffs over 130%. The number of ‘**special products**’ that developing countries would be allowed to indicate for gentler tariff cuts reflected the figures discussed in July. The revised text put forward some new suggestions on the **SSM**. However, it also revisited the issue of the permitted number of ‘**sensitive products**’ that countries would be allowed, following calls from Japan and Canada for an expanded allowance in this area, since many WTO members stressed that the sensitive product issue was critical.

Following discussion of these proposals and those in other areas (see below), it was decided that the likelihood of concluding the modalities in a ministerial meeting remained insufficient, and so Trade Ministers were not called upon to come to Geneva. However the December texts were accepted by most WTO members as a basis for further negotiations.

In 2009, work in agriculture has been proceeding on a two-track approach. One track, template work, is advancing with contributions from many members. Step 1 of this template work concerns the identification of base data and appropriate tables; this Step is expected to conclude in November 2009 with work to start on Step 2, the preparation of the templates to be used for scheduling commitments in Agriculture, in November as well.

The other track of work in Agriculture is the Chair's informal consultations on the bracketed text in the draft modalities. There have been discussions on domestic support and market access issues, including work on sensitive products, tariff caps, TRQ<sup>8</sup> expansion and tariff simplification. Over November, the focus is on the SSM, special products, tropical products and preference erosion, with the intention to return to some of the above issues in December 2009.

Going into the 7<sup>th</sup> WTO Ministerial the main issues remain unchanged, starting with the negotiations regarding the SP and the SSM for developing countries. Developing countries argue that there should be a large enough number of special products to provide protection against imports from big agricultural producers when necessary to protect their agricultural production and employment, while the SSM needs to be flexible, easy to use and effective in the protection that it offers. They further consider that the protection of sensitive products should be limited in order to provide them with meaningful market access, while any agreed reduction in domestic support must constitute a reduction in real spending in order to have a beneficial impact.

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<sup>8</sup> A Tariff Rate Quota (TRQ) is a trade policy tool used to protect a domestically-produced commodity or product from competitive imports. A TRQ combines two policy instruments that nations historically have used to restrict such imports: quotas and tariffs. In a TRQ, the quota component works together with a specified tariff level to provide the desired degree of import protection. Imports entering during a specific time period under the quota portion of a TRQ are usually subject to a lower, or sometimes a zero, tariff rate. Imports above the quota’s quantitative threshold face a much higher (usually prohibitive) tariff.

## II. Non-Agricultural Market Access (NAMA)

In NAMA the main issues concern the level of tariff reductions on industrial products in developing countries, the imbalance between commitments by developed countries and developing countries, and exceptions and exemptions from tariff reductions for different groups of countries.

Overall, the major developing countries have been asked to make tariff reductions in the NAMA negotiations that would not only be much higher than the tariff reductions in Agriculture, but would also be higher than the tariff reductions made by the developed countries. Such tariff reductions would take place on a line by line basis, contrary to the average cut approach in Agriculture. This line by line reduction basically involves a high reduction in tariffs on all products. The tariff demands currently on the table would reduce almost all bound tariffs (which are the maximum tariffs a country can apply on imported products) in major developing countries to levels around 12-14% (they currently are around 28-30% on average), which would have disastrous effects on their employment and, by locking them into their current production structures, restrict them in diversifying and endanger their future industrial development. Furthermore, although developed countries obtained agreement on a relatively large number of sensitive products in Agriculture, the number of tariff lines that developing countries can protect in NAMA is currently very limited. Given the wide range of products concerned, including for countries that are still in different and sometimes early stages of industrialisation, developing countries have maintained that a higher level of flexibilities and changes in flexibilities over time are required<sup>9</sup>.

In July 2008 a new NAMA draft modalities text was prepared just before the above-mentioned July 2008 Mini-Ministerial that brought around 35 Trade Ministers to Geneva, including ministers of most NAMA 11 countries<sup>10</sup>. The Lamy text proposed at the mini-ministerial included three possibilities of **coefficients and flexibilities** for developing countries: a coefficient<sup>11</sup> of 20, with flexibilities of 6.5% or 14%; a coefficient of 22 with flexibilities of 5% or 10%; or a coefficient of 25 without flexibilities (the coefficient would be 8 for developed countries). These coefficients, like previous ones, would have resulted in high tariff reductions and, consequently, job losses in developing countries) and did not respect the Doha mandate that includes the principle of 'less than full reciprocity' in favour of developing countries. Moreover, the flexibilities that were offered remained extremely low, despite a slight increase.

However, the above Lamy text was accepted by India, China and Brazil, mainly because although these were deep cuts in their bound tariffs they would not have overly affected their applied rates, since these are generally much lower than their actual bound tariffs. This had serious consequences for the NAMA 11 position as it constituted a break-away by these countries from the previous joint NAMA 11 position without prior consultation. Although most major developing countries agreed on the above Lamy proposals, three countries continued to oppose them, namely Argentina and South Africa (both in the NAMA 11 group) as well as Venezuela. Both Argentina and South Africa considered the proposed tariff reductions far too high and the flexibilities much too low.

<sup>9</sup> The "flexibilities" or "paragraph 8 flexibilities" would allow developing countries to retain some unbound tariffs or to apply "less than formula" cuts to a certain percentage of products, which were indicated as two possible numbers within brackets in paragraph 8 of the agreement reached in the WTO General Council in July 2004.

<sup>10</sup> The NAMA 11 is a group of developing countries that stand to be particularly affected by the NAMA negotiations and currently comprises Argentina, Brazil, Venezuela, Egypt, India, Indonesia, Namibia, Tunisia, Philippines and South Africa.

<sup>11</sup> The coefficient in a simple Swiss formula is calculated on the following basis :

$$[(\text{tariff} \times \text{coefficient}) \div (\text{tariff} + \text{coefficient})]$$

For example, if a current bound tariff is 10%, then a coefficient of 30 in a simple Swiss formula would yield a new bound tariff of 7.5% [i.e.  $(10 \times 30) \div (10 + 30) = 7.5$ ]. Conversely, if a coefficient of 6 is applied to the same bound tariff of 10%, that would yield a new bound tariff of 3.75% [i.e.  $(10 \times 6) \div (10 + 6) = 3.75$ ].

Senior Argentine negotiator Nestor Stancanelli noted that developing countries were still asked to make disproportionate cuts to their industrial tariffs compared to what was on offer on rich-country farm reforms. In addition, Stancanelli said that the proposed coefficients ran counter to the principle that ‘less than full reciprocity’ would be required from developing countries in the NAMA negotiations. He pointed out that while a developed country coefficient of 8 would reduce US and EU tariffs by more than 42%, a coefficient of 20 – the lowest proposed for developing countries – would entail a 60% average reduction to Argentina’s current bound industrial tariffs. South Africa, which had less ‘water’ between its bound and applied tariffs than most developing countries, stressed that cutting its maximum bound tariff using a coefficient of 25 (the highest figure proposed for developing countries) would mean an unacceptable 35% cut (on average) to applied tariffs. South Africa would therefore need both the highest coefficient and the use of flexibilities, the country’s trade negotiators argued. With regard to Venezuela and the RAM and SVE country groups, ultimately there was no convergence on how much additional flexibility they should be granted.

The impacts on employment in developing countries of the tariff reductions set out in the July 2008 Lamy modalities would have been serious. Simulations produced by the ITUC in August 2008 showed both direct employment impacts in many sectors and many countries as well as future impacts on industrial development for most sectors due to the low overall protection that most sectors would have. The ITUC simulations indicated substantial tariff reductions in **bound rates** with average reductions of between 50% and 60% for all countries. All coefficients for developing countries, whether set at 20, 22 or 25, would bring down the bound or maximum tariffs and therefore reduce policy space. Bound tariffs would end up at between 10% and 16% for most countries, which is extremely low from a policy space / industrialisation point of view. With regard to reductions in **applied rates** and consequently **job losses**, the picture differed from country to country and from sector to sector with sectors such as textiles, clothing, leather, footwear, automobile, furniture, and in some countries also plastic, rubber, metal and wood being most affected. The difference between the use of a coefficient of 20 and a coefficient of 25 is small, and in terms of new bound tariffs only represents a difference of 1 to 2%. Therefore, the tariff reductions need to be far lower than currently proposed if they are to provide developing countries with policy space for industrialisation. Moreover, under the Lamy proposal, developing countries receiving a coefficient of 25 would not be allowed any flexibilities to exempt any single tariff line from deep cuts

Two other contentious NAMA issues addressed in the Lamy proposal concerned participation in sectoral negotiations and an anti-concentration clause. Developed countries had pressured developing countries to participate in mandatory **sectoral negotiations**<sup>12</sup> that would result in a complete elimination of tariffs in the sector targeted. In view of the critical economic and social impacts this would have caused, developing countries argued that participation in such sectoral negotiations should be voluntary as was already decided in Hong Kong. The **anti-concentration clause** related to developing countries’ use of the flexibilities in NAMA and would not allow all product lines in one sector to be exempted from tariff cuts. It was proposed by the EU in 2008 in order to prevent developing countries from excluding a whole sector or most of it from the tariff reductions when using the flexibilities. The anti-concentration clause in Lamy’s text proposed that full formula tariff reductions should apply to a minimum of either 20% of national tariff lines or 9% of the value of imports of the member in each chapter.

When the July 2008 negotiations broke down due to the Agriculture issue described above, the NAMA Chair stressed that any tentative progress had been accepted conditionally as part of a ‘package’ that ultimately did not materialise. Any narrowing of differences on NAMA issues therefore remained “just substantial convergence, but no consensus.”

From September 2008 onwards, the NAMA 11 countries regrouped and focused on the non-modalities issues around which they could build a NAMA 11 consensus, relating principally to the

<sup>12</sup> The ‘sectoral initiatives’ are aimed at fully liberalising trade in industrial goods in certain sectors, a major flash point in the NAMA negotiations.

sectoral negotiations and the anti-concentration clause. In December 2008 the new NAMA chairperson, Luzius Wasescha, tabled a revised modalities text based on the previous texts and with proposals for the **coefficient and the flexibilities** reflecting the Lamy July text. Unlike previous drafts, which contained ranges of numbers, the new text included specific figures for determining countries' future tariff levels. Different treatment for South Africa, Argentina and Venezuela remained under negotiation. Developing countries that would not be subject to the Swiss formula and its tariff cuts would mainly be subject either to average tariff cuts in the case of SVEs, which requires some further research on the impacts, in particular with respect to policy space for these countries, or to tariff binding only in the case of paragraph 6 countries<sup>13</sup>.

The Wasescha text showed that WTO members remained far apart. Wasescha said in his foreword that convergence on many issues had allowed him to present an 'almost complete' text, but stressed that the entire text remained subject to negotiation. Participation in so-called **sectoral liberalisation** initiatives remained probably the most divisive issue in the NAMA negotiations. Fourteen specific sectors of industrial products had been proposed for total tariff elimination, or at least far steeper cuts than would result from the application of the general tariff reduction formula. While the NAMA mandate clearly stated that participation in these negotiations was voluntary, the US, Canada and Japan sought to secure the participation of the three major emerging markets - China, Brazil and India - in at least two such sectoral negotiations. To ensure that no significant economy would benefit from the dramatically lowered tariffs without cutting its own import duties, the US in particular insisted that any sectoral negotiation must cover a 'critical mass' of world trade. However developing countries remained very sceptical about the issue.

**On Preference Erosion**, to soften the impact on many of the world's poorest countries of the erosion of trade preferences that the EU and the US had long granted to them, draft NAMA texts included provisions allowing each of these two WTO members to take ten years instead of five to phase in Doha Round tariff cuts on some tariff lines, primarily textiles and clothing (and also some fish products for the EU). The purpose of these provisions was to slow the rate at which preference beneficiaries would have to confront potential displacement by more competitive exporters of the same products.

Delegates said that the new text indicated the near-consensus that had been achieved on gentler tariff treatment for two de facto sub-groups of developing countries, the SVEs and the non-LDC (non-Least Developed Country) developing countries with binding caps on fewer than 35% of their industrial tariff lines. Countries accounting for less than 0.1% of world manufacturing trade, with a current average bound maximum allowable NAMA tariff of 50% or more, would be required to bind all their non-agricultural tariff lines at an average of no more than 30%. SVEs with an average bound rate of between 30% and 50 % would have to bind them at an average of not more than 27%; those with an average between 20% to 30%, at no more than 18%. SVEs with a bound average industrial tariff of less than 20% would have to make 5% reductions to 95% of tariff lines (or bind NAMA tariffs at the average that would have resulted from those reductions). RAMs would get an extra three years to implement Doha Round tariff reductions.

As noted above, ultimately it was decided in December 2008 that prospects of agreement were insufficient to justify calling upon Trade Ministers to come to Geneva. However as with Agriculture, the December texts were accepted by most WTO members as a basis for further negotiations.

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<sup>13</sup> The Paragraph 6 countries are those non-LDC developing countries that have bound less than 35% of their tariff lines, namely: Cameroon (0.1%), Congo (3.2%), Côte d'Ivoire (22.9%), Cuba (20.4%), Ghana (1.2%), Kenya (1.6%), Macao (15.6%), Mauritius (5.3%), Nigeria (6.9%), Sri Lanka (28.3%), Suriname (15.1%) and Zimbabwe (9.0%). Those with binding caps on fewer than 15% of industrial tariff lines would have to bind 75% of them at an average of 30%.

In 2009, consultations on NAMA focused on mainly technical discussions on how to move forward the **NTB (Non-Tariff Barriers)**<sup>14</sup> negotiations. During the year, a Negotiating Group has been discussing the various NTB textual proposals through a process of questions and answers. This exchange has contributed to a better understanding and clarification of different proposals but there still remains a lot of work to be done. The most recent week of NAMA negotiations from 2-6 November 2009 was mostly devoted (in multilateral plenary, bilateral and plurilateral meetings) to analysing the different proposals in relation to NTBs and how to resolve them. One of the newer submissions discussed was a paper from India and the EU and supported by Cuba, Ecuador, Argentina, Venezuela and Brazil outlining a framework for addressing industry-specific NTB proposals and involving a so-called “horizontal mechanism” to solve NTB problems. According to trade officials, the US considered the proposal to be “not realistic”, unnecessary and bureaucratic.

Another proposal, from Japan, Switzerland, and the US, urged liberalising trade in re-manufactured goods. The proposal called for countries to review their non-tariff measures so that re-manufactured goods are subject to the same rules as new ones. However, Cuba, Indonesia, and India expressed some reservations, such as the proposal’s lack of a clear definition for exactly what constitutes a re-manufactured good. Furthermore, some manufacturers from developing countries fear that opening up trade in re-manufactured products would expose them to a wave of cut-rate, second-hand goods from the industrialised world.

Two papers from the EU - one that set out potential rules for standards, technical regulations, and conformity assessment procedures for the automotive sector, and another that does the same for electronics - were criticised by both developed and developing countries as complicated and overly prescriptive. The auto proposal provided for mutual recognition of domestic technical regulations. The electronics proposal, which was co-sponsored with Switzerland, stipulated that countries should not “prevent or unduly delay” the entry to market of products incorporating new technologies unless they could scientifically demonstrate safety issues or other risks. The US has tabled proposals on the same two topics. While similar to the EU proposals in terms of international standards and conformity assessment procedures, the US papers set out more detailed transparency requirements.

A proposal that seems to have more widespread acceptance is one concerning labeling requirements for textiles, clothing, and footwear, sponsored by the EU, the US, Mauritius, and Sri Lanka. In addition to rules about consulting with trading partners about regulation, the proposal would forbid countries to have rules prohibiting labels in non-official languages, or requiring information beyond the minimum stipulated by domestic regulations.

At an open-ended informal meeting of the NAMA Negotiating Group on 6 November 2009, Ambassador Wasescha said that while the overall Doha negotiations might be 80 percent complete - an assessment made by WTO Director-General Pascal Lamy - the talks on NTBs were further behind. On the issue of the sectoral initiative, he reported that there was not much information but that members had continued talking to each other in bilateral meetings. According to trade officials, the Chair said that he would continue small group consultations on NTBs in the coming weeks, and hold meetings with senior officials in the week of 23 November. He also said that he will convene further meetings in early December, including another week of NAMA talks.

In summary, the last three months of intensive talks at the WTO to iron out differences in the long-running NAMA negotiations have done little to change perceptions that the talks are drifting. Apart from NTBs, other issues such as sectoral liberalisation proposals remain highly divisive issues

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<sup>14</sup> These include countries’ various technical regulations, health and safety standards, and certification and labeling requirements. Contentions at the WTO include whether such promote legitimate objectives like consumer protection, or are more trade-restricting than strictly necessary. Existing WTO agreements set some rules for such regulations. The DDA calls for the reduction of NTBs, particularly on products of export interest to developing countries.

in the NAMA negotiations. Many other important issues detailed above, including the special treatment for Argentina, South Africa and Venezuela, the anti-concentration clause and the sectoral negotiations, remain on hold.

### III. Services

Together with Agriculture and NAMA, Services form the core of the Doha Round's market access negotiations. Trade unions have expressed serious concern that GATS commitments, which like other WTO commitments are in principle irreversible, can undermine measures aimed at regulating foreign services suppliers or promoting local service providers.

In July 2008, a Services Signalling Conference took place, bringing together a group of 30 countries to discuss the services negotiations and to exchange potential offers. Most of the participants were developing countries, in whose markets the *demandeurs* of the high-level services meeting were seeking deeper and broader concessions in a large number of sectors. In contrast, the main developing countries' demands centred on more access for their temporary service providers (movement of natural persons or mode 4) and cross-border services, such as business outsourcing (mode 1). Developed countries like the EU and US stated they were willing to allow more mode 4 commitments, albeit mainly linked to mode 3<sup>15</sup> and only for higher skilled personnel. Ambassador Fernando de Mateo, Chair of the Services negotiations, presented on 17 July a draft proposal on the 'elements required for concluding the Services negotiations'.

Although the outcome of the Services Signalling Conference was in no way binding, the indications put forward at the meeting seem to have reassured WTO members such as Australia, the EU, India and the US that more robust market access commitments could be secured in Services if an acceptable deal were struck in Agriculture and NAMA. According to Pascal Lamy's wrap-up report, members signalled potential new market opening concessions across a wide range of sectors, including business and financial services, telecommunications, tourism, distribution and postal services, health, education, transport and construction, as well as energy, environmental and audiovisual services.

There was no major progress concerning the Services negotiations over the second half of 2008 nor indeed until September 2009, mainly due to the focus on Agriculture and NAMA and the overall slowdown in the negotiations. When discussions resumed in September 2009, the focus was mainly on the **market access pillar** but also touched somewhat upon **rule-making**. It was stressed that the Services negotiations could not be separated from the rest of the Doha Development Agenda (DDA) and that if progress on Agriculture and NAMA was made, there was a need to have commensurate clarity on services. There was also a general sense that while some time had passed since the Signalling Conference of July 2008, and while recognising that those signals were conditional, there were no intentions of back-tracking. While it was recognised that more clarity should be pursued through bilateral and plurilateral meetings, it was also understood that whatever came out of such efforts should not be labelled as "final offers".

Ultimately, however, the talks resulted in little forward movement as members largely reiterated their long-standing positions. A cluster of Services meetings held in the week of 5 October was largely meant to lay a foundation for more substantive meetings in November 2009. WTO members are to hold 'regular' talks during the first week of the November cluster before entering into intensive negotiations covering a full range of Services issues during the second week. Several delegates said they expect that WTO members will hold a range of bilateral and plurilateral meetings

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<sup>15</sup> Mode 3, or Commercial Presence, is a mode of service supply or trade where services are supplied through any type of business or professional establishment, i.e. foreign direct investment, of one member of the agreement in the territory of another. An example is the establishment of a branch of a foreign bank or of a franchising outlet in a foreign location.

on the sidelines of these intensive multilateral talks. Several Services negotiators say they remain frustrated with the overall pace of the talks and the low levels of political support that have been given to their segment of the Doha Round negotiations.

On the rule-making part, there is a general feeling that work should be intensified on domestic regulation and that senior officials should pay more attention to the rule-making agenda within Services, focusing on text based negotiations. The week of 9 November has been designated as a “Services week” to pursue desired levels of comfort on all areas of the Services negotiations including the implementation of LDC modalities, which have reached a stage of preparation allowing involvement of a larger number of members. During October talks, a group of countries including Australia, Chile, India and New Zealand expressed a preference for resuming talks on rules before engaging further in market access negotiations. There seems to be some tension between that group and the “demandeurs” of market access that considers rules negotiations less important than market access.

Since the onset of the financial crisis last year, many countries - developed and developing alike - have become more sensitive with regard to domestic regulation and commitments in financial services, as well as broader issues covered by the Committee on Trade in Financial Services.

In summary, the Services talks face at least two major barriers - a lack of political support for market access commitments and a dearth of enthusiasm among certain developed countries for the talks on domestic regulation.

#### **IV. Other major Doha Round issues**

On **Trade-Related Intellectual Property Rights (TRIPS)**, in the run-up to the July 2008 ministerial meeting an unprecedented coalition of developed and developing countries - including the EU, Brazil, India, many African countries, and Switzerland - proposed joint ‘draft modalities’ on three highly controversial intellectual property issues: a requirement to disclose the origin of any genetic resources involved in an invention in patent applications (disclosure); the extension of stronger protection for geographical indications to all goods (GI extension); and the establishment of a multilateral register for GIs denoting wines and spirits. The proponents hoped to obtain a ministerial mandate to make ‘text-based negotiations’ on disclosure and GI extension part of the Doha Round ‘Single Undertaking’. The wines and spirits register is already part of the formal Doha Round negotiations, but the talks are lagging. The coalition called for starting text-based negotiations on this topic as well. But that group was strongly countered by another coalition - whose members include Argentina, Australia, Canada, New Zealand and the United States - that has opposed these ‘modalities’ on substantive and procedural grounds.

Since March 2009, Lamy has held four informal consultations with a select group of 17 WTO members -Argentina, Australia, Brazil, Canada, Chile, India, Egypt (for the African Group), the EU, Japan, New Zealand, Norway, Peru, Switzerland, Tanzania (for the least-developed countries or LDC group), and the United States - that represent the major sides in the debate. At the end of July 2009, Lamy stated at an informal consultation open to the entire Membership that active involvement in the negotiations WTO Members remain deeply divided on critical intellectual property issues, as well as over whether the current round of trade talks even has a mandate to address some of the issues as part of the “single undertaking” of the Doha Round trade talks.

On the ‘disclosure’ issue, Lamy reported that Members agree that they must address the misappropriation of genetic material and traditional knowledge. However, they have failed to find consensus on whether that goal would best be reached through an amendment to the TRIPS Agreement requiring patent applicants to disclose the origin of any genetic resources or traditional knowledge involved in their inventions or through other approaches, such as contractual agreements and databases.

Trade delegates are currently preparing wording for a ministerial decision to be issued at the close of the Ministerial Conference. They achieved agreement on wording on two issues - at a 6 November meeting of the TRIPS Council. The first issue, 'non-violation complaints' under the TRIPS Agreement, concerns whether countries should be allowed to bring WTO dispute cases on the grounds that the spirit, but not the letter, of the TRIPS Agreement has been violated. The WTO allows such non-violation complaints for trade in goods and services, but there has been a ban on IP-related cases since the organisation's founding in 1995. The prohibition was meant to last five years, but it has been extended at ministerial conferences ever since. The US and Switzerland, two countries that are home to industries that stand to benefit from effective intellectual property protections, have long insisted that the moratorium should be lifted in order to enable them to protect their intellectual property rights. But supporters of the ban argue that the notion of a non-violation complaint is questionable, arguing that the TRIPS agreement does not grant members any market access rights, and that non-violation complaints should be limited to cases where a member is deprived of such access.

However, the difference of opinion has been settled, at least for the time being. Members agreed on November 6 2009 to recommend that ministers should extend the moratorium on 'TRIPS non-violation complaints'. Delegates also suggested that ministers recommend that the matter be taken up at the WTO's next ministerial conference, which is planned for 2011.

On e-commerce, delegates agreed to recommend an extension of the current moratorium on import tariffs on goods bought and sold online that has been in place since 1998, when WTO members agreed to refrain from "imposing customs duties on electronic transmissions".

The **rules** negotiations have been characterised from the start by a strong divide in members' objectives. The US, often supported by Egypt, has focused on the need for stronger provisions to ensure that countries do not circumvent anti-dumping measures, while most other members active in the negotiations have concentrated on amendments that would impose new limits to the frequency and duration of anti-dumping investigations and duties.

In December 2008, the chair of the Negotiating Group on **Rules** Ambassador Guillermo Valles Galmés released a long-awaited revision of his first draft on changes to WTO disciplines on **anti-dumping** and **non-agricultural subsidies**. The first draft, released in November 2007, had given rise to serious criticism from many WTO members, who maintained that it did not accurately reflect views expressed in the negotiations. In particular, the majority of the members objected to proposed text that would have allowed the use of 'zeroing'<sup>16</sup>, a methodology used principally by the US to calculate **anti-dumping** duties. Divisions were also clear on a number of other trade remedy provisions and the provisions proposed by the chair for disciplining fisheries subsidies. The second draft took a much more cautious tack and on all contentious points, discarded previously proposed amendments to existing provisions. In his introduction, Valles noted that he had received a 'clear message' from delegations that new texts should reflect a new, bottom-up approach. Valles acknowledged that he lacked an 'adequate basis' to propose a new balance, and had therefore provided draft legal language "only in those areas where some degree of convergence appears to exist." He added that "not only are there large gaps where on issues of great importance to delegations no solutions are proposed; but few, if any, of the textual proposals that can be found in these new texts can be considered to attract consensus support."

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<sup>16</sup> WTO anti-dumping rules currently specify that government anti-dumping authorities can compare home market costs and export prices either in terms of weighted averages, or across a range of individual transactions. The term "zeroing" refers to the methodology of US trade authorities when calculating the extent to which the imports are being 'dumped' - that is, exported at artificially low prices - by which they ignore ('zero out') instances where goods command higher prices in the US than outside. This only takes into account cases where prices in the US are lower. Critics say zeroing inflates 'dumping margins', allowing injured US companies to secure inappropriately high levels of anti-dumping duties on competing imports.

In 2009, work proceeded in accordance with the Group's work programme. The Group held a two-week cluster from 16-25 September, with another cluster held in the last week of October, in many cases tackling issues on which they have long been divided. On **anti-dumping**, the Group continued to review the Chair's text of December 2008, including bracketed, un-bracketed and unaddressed issues, a process which should be completed early next year. The first issue concerns how to define the scope of the products to be investigated in anti-dumping enquiries<sup>17</sup>. The second is related to requests by investigating authorities for companies to guarantee that their affiliate branches cooperate and provide information in anti-dumping investigations. Both of these issues remained unresolved at the close of the meeting.

On **subsidies**, the group considered how to streamline two WTO agreements - the Agreement on Subsidies and Countervailing Measures (CVD) and the Anti-Dumping Agreement (ADA) - that have a significant amount of overlap. On **Regional Trade Agreements (RTAs)**, the Chair continued consulting informally with members on how to advance various questions relating both to the transparency of RTAs and systemic issues.

On **fisheries subsidies**, the Group expects to complete discussion of a Roadmap, and to begin consideration of new proposals as requested by various delegations by December. There is disagreement between a group that wants to ban fishing subsidies outright, made up of Argentina, Australia, Chile, Colombia, New Zealand, Norway, Iceland, Peru, Pakistan and the United States, and a group of developing countries (Brazil, China, Ecuador and Mexico) that puts a strong emphasis on the importance of substantive special and differential treatment. They argue that poorer countries should be allowed to subsidise fishing on the high seas if they meet certain conditions. Such flexibilities should be 'effective', 'substantive', and should go "beyond mere technical support or transitional provisions." Following the discussions, Members largely agreed that developing countries will need to demonstrate that they have effective fisheries management systems in place before they can become exempt from any bans on subsidies that the agreement enacts. Despite the discussions, the group was unable to develop an explicit definition of what it means by the term 'fisheries management'. Moreover, delegates continued to disagree over how broad of a ban should be imposed on various fisheries subsidies. They also discussed how WTO's dispute settlement system might be adapted to mediate fisheries-related disputes.

On **Trade and Environment**, the CTESS (Committee on Trade and Environment Special Session) held a Workshop on Environmental Goods and Services at the end of September 2009 with the participation of experts from governments, the private sector and other international organisations. The workshop provided an opportunity for in-depth examination of the different environmental goods sectors, with a particular focus on relevant goods and technologies, their environmental benefits, and the market drivers and trade barriers faced in these sectors. The workshop also addressed some development-related aspects of the mandate, including the issue of technology transfer. Members have been invited by the Chair to identify environmental goods of interest. Consultations on this issue as well as on other parts of the negotiating mandate were held in the run-up to the next CTESS meeting on 17 – 19 November 2009.

In the area of **Trade Facilitation**, a new agreement is taking shape. In line with the work programme, the Negotiating Group has successfully completed the first part of its task of producing a consolidated negotiating text. This text covers GATT Articles V (transit) and X (transparency), and work has started on consolidating the text on Special and Differential Treatment. At the Group's next meeting in November, the intention is to consolidate the negotiating text on GATT Article VIII (fees and formalities), on customs cooperation and on cross-cutting issues. The Chair plans to produce a draft consolidated negotiating text on Trade Facilitation after its next meeting on the week of 9 November. The next and final stage will involve negotiations to narrow down the differences in positions that are currently reflected in the text so as to arrive at a consensus agreement.

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<sup>17</sup> For instance, if Country A were to accuse Country B of 'dumping' its pencils in Country A's home market, Country A would need to define exactly which pencil imports it thinks are being dumped.

On **Special and Differential Treatment**, the Chair is in the process of revising his non paper, which will form the basis for continued discussions on the Monitoring Mechanism.

## **V. Impact of the Crisis and other Prospects for the DDA Negotiations**

The WTO expects the volume of cross-border commerce to plunge 10% this year, the biggest drop since World War II. Exports from developed countries will lead the way with a fall of roughly 14%, while developing country exports will slide by 7%. Services trade appears to have weathered the storm better than trade in goods. Trade finance - loans and other forms of credit - has received a modest boost from institutions such as the World Bank, export credit agencies, and some national governments and central banks. But even with that support, low-income countries that lack strong economic and social safety nets 'remain vulnerable' to future drop-offs in trade finance. The situation of LDCs is particularly fragile due to the decline in demand, the decline in commodity prices, reduced revenues from tourism and remittances as well as a decrease in foreign direct investment in sectors such as mining, automobiles and construction.

Since the outbreak of the financial and economic crisis the WTO has published 3 reports on trade-related measures taken by members in response to the economic crisis. The third report found a growing trend toward protectionism, stating that "In the past three months there has been further slippage towards more trade restricting and distorting policies, but resort to high intensity protectionist measures has been contained overall, albeit with difficulties". Between 1 March and 19 June 2009, a total of 119 new trade measures were notified to the WTO, with trade-restrictive or distorting measures outpacing trade liberalising action by a factor of two.

Anti-dumping and safeguard investigations are on the increase, as are new tariffs and non-tariff measures, the report said. The sectors most affected include agriculture, and in particular dairy, iron and steel, motor vehicles and parts, chemicals and plastics, and textiles and clothing. The impacts of various stimulus packages that distort competition through subsidisation or 'buy national' clauses continue to be difficult to monitor due to insufficient data, according to the report. Other protectionist actions include the resumption and extension of export subsidies for dairy products by the EU, Switzerland and the US. According to the report, there is no general indication yet of governments unwinding or removing the measures that were taken early on in the crisis. The WTO secretariat urges countries to phase out sector-specific support programmes as soon as possible because the heavy subsidies provided unfairly undercut producers whose governments cannot afford to match such high levels of state support.

Against this background, India convened a Doha-focused mini-ministerial meeting in New Delhi on 3-4 September, 2009 (met with notable resistance by local social groups and protests in Delhi during the ministerial). The meeting was not intended to deliver concrete progress in itself, but to prepare for the Pittsburgh G-20 Summit on 24-25 September that was seen as the closest thing to a possible new "crunch time" for achieving progress at the WTO in the near term. Some hoped that it could be a moment for governments to re-ignite momentum in the negotiations by indicating clear new directions for compromise. In the event, the statement of the G-20 Leaders reaffirmed their commitment to seeking a conclusion to the DDA in 2010, consistent with the mandate and based on the progress already achieved. They endorsed the current WTO work programme and instructed their Ministers to take stock of the situation no later than early next year.

On 22 September 2009, the Trade Negotiations Committee (TNC) held an informal meeting to consider the next steps in the DDA over the coming months. After consultations led by Chairs in the respective negotiations groups, a comprehensive and structured work programme was devised for the next three months, which included participation of senior officials each month in October, November and December. The past three months have indeed been characterised by focused and relatively constructive discussions. In Lamy's reports to the TNC and General Council at the end of

October he stressed that the key now is not focusing on the process, but rather trying to get to an agreement through effective negotiations. Specifically, it is now about engaging in text based negotiations to bridge gaps, particularly on Agriculture and NAMA which remain keys to these negotiations, and also on Services and on the rest of the topics figuring on the Agenda.

Nonetheless, prospects for the Doha Round negotiations remain contingent on a number of factors. They remain slowed by the preoccupation of the US administration with other issues, from the global financial, economic and employment crisis to the domestic healthcare reform agenda, in what amounts to a temporary American withdrawal from the negotiations and without a clear US position in the different negotiating areas other than increasing their demands, which risks to undo a balance that had already been hard to get. The chairs of the negotiating groups have already indicated that they would like to continue work on the technical issues and the schedules of commitments rather than the big political decisions on the contentious matters indicated in the above report, which is an indication that they do not expect such political decisions any time soon.

The financial and economic crisis is also affecting the Doha negotiations. Although some see the finalisation of the Doha round as an effective instrument against protectionism, it is not very realistic to expect countries to make substantial liberalisation commitments that are likely to add to the employment losses already being caused by the recession. The indications of the past year are that countries would rather ensure they can keep a maximum number of policy instruments at their disposal to ensure an adequate response to the crisis in terms of supporting domestic production and employment.

In light of the above, despite the renewed pace of negotiations some proponents of concluding the Round are manifesting open discontent and scepticism. At the 23 October TNC meeting Brazil said that it considers the whole Doha package is slowly unravelling and backsliding, while Turkey's representative contended that the coming 7<sup>th</sup> Ministerial Conference was the least promising ever. Calls for an early harvest on issues such as Trade Facilitation, Duty Free Quota Free Market Access for LDC's, Cotton and Bananas seem to lack sufficient support to achieve consensus. NAMA remains an area of great danger for many developing countries, given what they stand to lose in terms of the consequences for their employment and industrial development.

Summing up, although the 2009 WTO Conference is designed to be more of a forum discussion without real negotiations on the Single Undertaking, many efforts are going to be made there to get the negotiations going again. Nonetheless, it will be extremely difficult to conclude the Round in 2010 without sustained political commitment, a significant acceleration of the pace, and hard bargaining among WTO members at all levels (multilateral, plurilateral and bilateral).

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