

# Trade Facilitation

## Doha Mandate:

*"Recognizing 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, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area."*

(Paragraph 27 of the Doha Ministerial Declaration)

*The Doha Ministerial Declaration also provided identical mandates for investment, competition policy, transparency in government procurement and trade facilitation.*

(Paragraphs 20, 23 and 26 of the Doha Ministerial Declaration)

The 2004 July Package represented the first concrete agreement on the status of the so-called Singapore issues in the Doha Round since talks broke down at the Cancun Ministerial in September 2003. WTO Members agreed on the basis of 'explicit consensus' in the General Council to formally launch negotiations on trade facilitation, while dropping the more contentious issues of investment, competition policy and transparency in government procurement from the Doha work programme.

Annex D of the July Package states that negotiations "shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit." Article V deals with freedom of transit for goods from another Member, and states that all charges imposed on goods in transit must be 'reasonable'. Article VIII says that fees and formalities connected with importation and exportation must be about equal to the cost of the services rendered, so that they do not constitute a form of indirect protection, and calls for reducing the number and diversity of such fees. GATT Article X requires all trade regulations to be clearly published and fairly administered.

The modalities for the negotiations contain a series of unprecedented caveats for special and differential treatment (S&D) for developing and least-developed countries (LDCs), such as tying the extent of their obligations under the final agreement to their capacity to implement them. Technical assistance and capacity building provisions are also more binding than they are elsewhere: if developing and least-developed countries do not receive the additional support and assistance that they need to develop the infrastructure necessary to implement their commitments, they simply will not have to.

## Mandated Deadline

As the 2004 agreement to launch negotiations on trade facilitation makes the issue part of the Doha 'single undertaking', the negotiations will conclude when the Doha Round does.

## Background

The 1996 Singapore Ministerial Declaration established working groups to analyse issues related to investment, competition policy and transparency in government procurement. It also directed the Council for Trade in Goods to "undertake exploratory and analytical work [...] on the simplification of trade procedures in order to assess the scope for WTO rules in this area." (For an overview of the run-up to the WTO Cancun Ministerial, refer to the ICTSD-IISD Doha Round Briefing Series, Volume 2).

Paragraph 27 of the Doha Declaration provides the mandate for the Working Group on Trade Facilitation. (WGTF). The post-Doha WGTF work programme is organised around the following three 'core' agenda items: (i) GATT Articles V, VIII and X, each to be addressed in consecutive meetings; (ii) trade facilitation needs and priorities of Members, particularly developing and least-developed countries; and (iii) technical assistance and capacity-building.

At the Cancun Ministerial Conference, the EU showed eleventh-hour willingness to take investment and competition off the negotiating table, but the meeting ended abruptly before any decisions were taken. The fate of all four Singapore issues consequently remained unclear until informal consultations on the way forward started a year later.

A willingness to discuss trade facilitation emerged in December 2003. Bangladesh, on behalf of the LDC group, supported by 15 other developing countries including China and India, submitted a communication on the Singapore issues (WT/GC/W/522) requesting that investment, competition and transparency in government procurement be dropped. In April 2004, a 'core-group' of developing countries and LDCs said they were prepared to discuss trade facilitation, but only for the purpose of clarifying substantive modalities for negotiations. In addition to insisting that negotiations must be based on 'explicit consensus', they called for the remaining Singapore issues to be definitely removed from the WTO work programme, and expressed a desire to see prior movement in issues such as agriculture before starting discussions on trade facilitation.

Developing countries acceptance of negotiations under the July Package was largely due to what one delegate described as "development language unprecedented in WTO negotiating history", as well as a perception of progress on the critical issue of agriculture since Cancun. It also served to alleviate fears on the part of poorer countries with regard to the cost-burden associated with implementation.

## Current State of Play

In post-July negotiations, WTO Members have agreed to deal first with the clarification and improvement of the articles related to trade facilitation mentioned in the July Package. Some international organisations have already presented their work and findings on trade facilitation to Members, and they will be invited to attend future meetings on an ad hoc basis. The negotiating process has been described as 'flexible', 'evolutionary' and 'Member-driven'. Many Members believe that trade facilitation efforts will lead to improved transparency, certainty, legal security and efficiency in customs procedures. The benefits to small- and medium-size enterprises (SMEs) have been highlighted in many submissions. Landlocked developing countries in particular hope that the negotiations will address their concerns about border delays and higher transit costs for their goods. Difficulties have, however, arisen with regard to the timing and extent of commitments on technical and financial assistance to help developing/least-developed countries implement trade facilitation provisions.

Since February 2005, interactive discussions on the substantive issues under the negotiating mandate have been fuelled by the large number of submissions tabled, by both developed and developing countries, and assisted by the presence of technical experts and officials from capitals. An interesting feature of these negotiations has been the joint tabling of submissions by developed and developing countries and countries from different regional groupings, which on other issues in the Doha negotiations would often find themselves at the opposite ends of the table.

For instance, Paraguay, Rwanda and Switzerland have jointly proposed that Members examine ways to improve and clarify the provisions of GATT Article V on freedom of transit, with a view to finding solutions to the particular problems affecting land-locked developing countries (TN/TF/W/39). Ten percent - or about 350 million people - of the total developing country population live in such countries. As a percentage of exports, freight and insurance costs in the least-developed among them account for nearly 13 percent on average, rising to more than 50 percent for certain African countries (the averages are 8.1 percent in developing and 5.8 percent in developed countries). These costs have direct implications for the competitiveness of SMEs, and thence livelihoods in the poorest land-locked

countries. The submission noted that as existing international transit arrangements faced huge implementation problems, the establishment of WTO rules on transit would "provide land-locked countries with effective instruments [...] to make such agreements work." The proposal also noted that technical and financial assistance would be required in cases where the developing/least-developed country lacked adequate information technology, or a sufficiently developed banking system for customs to require shipments to be covered by bank guarantees.

This proposal responds, *inter alia*, to the trade facilitation priorities identified by the African Group, i.e. the reduction of transport and communication costs, enhancing the capacities of customs administrations, and the integration of African enterprises/economies into international payments and insurance systems (TN/TF/W/33).

India and the US have proposed the establishment of a multilateral mechanism to facilitate information exchange (TN/TF/W/57), and Pakistan and Switzerland have tabled a submission on a specific, transparent and predictable technical assistance and capacity-building mechanism (TN/TF/W/63). The use of international standards as the basis of documentation and data requirements was raised by New Zealand, Norway and Switzerland (TN/TF/W/36), as well as Bolivia, Mongolia and Paraguay (TN/TF/W/28). Submissions have also raised issues such as corruption, non-discrimination regarding modes and routes of transport, and security.

## Support and Assistance

The operationalisation of technical assistance, as well as capacity-building and special and differential (S&D) treatment, have been at the heart of many developing country submissions, including those by the African Group (TN/TF/W/56) and several Latin American countries (TN/TF/W/41). The African Group made strong statement in April regarding the high importance it attaches to

enhanced S&D, technical assistance, support for capacity-building and implementation assistance, adding that "the right to select policy options and exercise policy flexibility granted in favour of developing and least-developed countries must remain sacrosanct" (TN/TF/W/33). The EU has given examples of several trade facilitation initiatives underway, including a 60 million euro project to overhaul customs administration in Egypt (TN/TF/W/37), as well as the importance of trade facilitation-related technical assistance in the EU's free trade area negotiations with Mercosur and ACP countries. The EU has also said that it will increase direct aid to improve infrastructure in African countries.

Some tension is evident in this area, however. A number of WTO delegates have stressed the importance of allaying developing country fears that technical assistance will be 'one-off' and short-term rather than 'dynamic' and long-term. Others have raised the lack of clarity over sequencing, i.e. should needs assessment be tackled first, followed by technical assistance and then WTO commitments, or should WTO commitments be addressed before needs assessment, followed by technical assistance.

On 11 November, talks broke down over a draft report prepared by the Chair of the negotiations, Ambassador Muhamad Noor Yacob of Malaysia, who suggested that there was a need to "move into focused drafting mode early enough in 2006 so as to allow for a timely conclusion to text-based negotiations on all aspects of the mandate." African and least-developed countries had said earlier that they wanted more detailed commitments on technical and financial assistance, as well as capacity-building, before starting text-based negotiations on trade facilitation disciplines. Developed countries, on the other hand, argued that details on technical assistance/capacity-building could only be settled once the provisions themselves were clearer. On 11 November, the EU said it could not accept the latest changes proposed to the Chair's report. The US and Canada also suggested that the amendments would break the report's 'delicate balance'. The negotiating group was tentatively scheduled to meet on 18 November in hopes of securing a compromise.

Although Members have already discussed a Secretariat document (TN/TF/W43/Rev.2) that consolidates into a single text existing proposals on the broad mandate of the trade facilitation negotiations, it now looks unlikely that a single text laying out the basis for further substantive negotiations will emerge by the Hong Kong Ministerial. While this a disappointment to some Members, others would be content with a ministerial stock-taking exercise.

### Other Singapore Issues

Paragraph 1(g) of the July Package states that the other Singapore issues (investment, transparency in government procurement and competition policy) "will not form part of the Work Programme set out in [the Doha] Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round." Indeed, all clarification work on Singapore issues other than trade facilitation has been suspended. In addition, the WTO's Technical Assistance Plan for 2005 states that the three remaining Singapore issues will not be covered in regional seminars, although assistance could be requested at the national level. They will also continue to feature in Geneva-based and Regional Trade Policy Courses (see Doha Round Briefing No.12).