

The ongoing WTO Doha Development Agenda negotiations – close to breakthrough but more time is needed.

**By Terence P. Stewart
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As U.S. Trade Representative Susan C. Schwab said on July 29, trade ministers were “so close” in forging a new WTO agreement on trade liberalization. Director General Pascal Lamy viewed some 90% of issues needed to be resolved for the modalities package to be achieved as having achieved convergence or being close to convergence. The stumbling block turned out to be an issue involving the rights of developing countries to have a special safeguard mechanism to protect their farmers from surges in imports. In fact, all WTO members already have access to one safeguard tool for all products, including for agricultural products. A second tool is available to some countries from the Agreement on Agriculture from the Uruguay Round. The special safeguard at issue in the breakdown was neither of these two existing rights but rather a potentially broader right for developing countries. With time, it may be possible for nations to adjust their stances and still achieve an agreement in the Doha negotiations, but few believe that will occur in the next year or so.

A Brief Summary

First, here is a snap shot of state-of-play leading up to the latest high-level talks.

With 153 members, the World Trade Organization is in its eighth year of pursuing a completion of negotiations covering a complex set of issues including market access in agricultural and non-agricultural goods, reduction of trade distorting agricultural subsidies, improved access for services providers and services trade, review of existing trade remedy provisions, the need for special disciplines on fisheries subsidies, regional trade agreements, ways to improve the movement of goods to and through countries (trade facilitation), dispute settlement revisions/reforms, selected issues involving the TRIPs Agreement among other topics.

As the issues to be negotiated have expanded beyond tariff reductions and as membership has expanded, the time for completion of multilateral negotiations has gotten longer. The prior Uruguay Round started in 1986 was gaveled close in 1993 with the signing of the agreements occurring in 1994. The current round is taking even longer. Started in late 2001 in Doha, Qatar, the negotiations have been aimed at improving the ability of developing countries to participate in the trading system and obtain benefits from it.

Since 2003, WTO members have been pursuing the creation of “modalities” in agriculture and NAMA (non-agriculture market access). Failure in Cancun in September 2003 was followed by a decision by the members on August 1, 2004, further clarifications in the Hong Kong Ministerial in December 2005 and efforts the last two summers to bridge differences (without success). Significant technical work has been done on an extraordinarily complex set of issues in agriculture and, to a lesser extent, in NAMA. With a change in US administration guaranteed for early next year, with a changeover in the EC slated for next fall (2009), with elections in India next year, the Director General of the WTO, Pascal Lamy, called a “mini-ministerial” in Geneva for the week of July 21st. Originally scheduled to conclude by Saturday, July 26th, negotiations continued until the evening of Tuesday, July 29th.

The mini-ministerial was able to make a lot of progress on the vast majority of open issues to get to the so-called “modalities” on agriculture and NAMA (non-agriculture market access). The Director General had put on the table on Friday a proposed compromise on the major issues in the agriculture and NAMA texts that would require all of the major parties to make further concessions to achieve a possible breakthrough. This compromise was presented to the G-7 countries Lamy was meeting with – US, EU, Japan, Australia, Brazil, India and China. Six of the

seven (all but India) accepted the compromise as a way forward. The compromise included details on the following elements:

In agriculture:

- (1) level of cuts to the overall trade distorting subsidies for the EC and US
- (2) number of sensitive products for developed countries
- (3) minimum amount of expansion of TRQs for developed countries
- (4) information on special products for developing countries
- (5) special treatment for recently acceded members (RAMs, including China)
- (6) what part of special products for developing countries would be subject to no tariff liberalization
- (7) proposed import trigger and cap on increased duties for the special safeguard mechanism (SSM) for developing countries (including whether prices must be declining and maximum number of lines that could be subject to the safeguard in any year)
- (8) elimination of the special safeguard (SSG) from the Uruguay Round for developed countries (limit on number of lines, phaseout time limit, cap on maximum tariff during the phaseout).

On NAMA:

- (1) developed country coefficient for the Swiss formula of tariff cuts
- (2) developing country range of coefficients and respective flexibilities
- (3) anti-concentration clause
- (4) language for sectorals indicating that while voluntary, countries in an annex have agreed to participate in negotiating the terms of at least two sectorals

India did not accept the compromise as a basis for moving forward but did not block the compromise from being presented to other trade ministers (the group of some 30 trade ministers who were the "green room" group). The media referred to these developments as a breakthrough in the negotiations.

There seemed to be good progress on other issues over the weekend, including the holding of what was viewed as a very successful "signaling conference" on services offers on Saturday. By Monday morning there was a general sense of forward movement, DG Lamy spoke of releasing revised texts later on Monday, moving from the G-7 to the green room to the full membership as appropriate.

But the problems with the proposed compromise on the special safeguard provisions proved too much for members to achieve consensus in resolving, despite intense negotiations by the G-7 throughout Monday and Tuesday. India wanted to make the special safeguard measure easier to use and provide greater levels of protection if used. The U.S. was unwilling to have one piece of the compromise altered (presumably India did not offer to rebalance other parts of the compromise for developed country members like the U.S.). China sided with India in wanting a more expansive special safeguard, even though they had taken the position that they could live with the compromise package on Friday night. US evaluation of the compromise that was already on the table suggested that China and India would be able to invoke the special safeguard on many products of export importance to agricultural exporters (including the US) in many years, looking at trade in the last nine years as a frame of reference. Other countries in the G-7 process were looking for compromise positions between India (and China) and the U.S., but it does not appear that there was any effort to rebalance the package other than to offer options to reduce the requirements to impose additional duties on agriculture where imports have risen but where there is no demonstration of harm. Some developing country agriculture exporters (Uruguay and Paraguay) – not part of the G-7 -- spoke publicly about the need to limit the special safeguard so the round didn't result in a step backward in market access from the status quo for agricultural goods. By Tuesday afternoon/evening, the Director General met with the G-7, with

the green room group and with the full membership to review the fact that a successful breakthrough had not been possible despite tremendous progress having been made.

A few other important issues were yet to be resolved (cotton being one example), but DG Lamy indicated that on the vast majority (18 of 20 or 90%) of issues convergence had occurred or was close. While other issues may have ultimately been irresolvable if the resolution of the special safeguard issue had been agreed, the WTO membership and the media have focused on the SSM issue as the cause of the impasse.

While countries have expressed deep regrets, most have urged the WTO and other members to keep the progress achieved to date on the table. Some have talked about whether an early harvest of some issues may be possible (right now everything is part of a single undertaking – nothing is agreed to everything is agreed). Most expect that it will be some time before negotiations aimed at the breakthrough in agriculture and NAMA can start back up. With elections in the U.S. and other political changes expected, many doubt the breakthrough can occur in 2009.

Safeguards for agricultural products

Initial coverage of the break down in negotiations that focused on the special safeguard mechanism (SSM) for agriculture has not noted the other safeguard tools that are available either to all members or certain members of the WTO from prior negotiations.

Since the beginning of the GATT in 1948, temporary safeguards (GATT Art. XIX) have been available to be used on all products whether agricultural or manufactured. Article XIX is an exceptional remedy since it results in the imposition of restrictions/tariffs contrary to GATT/WTO obligations because of the serious problems being faced by a domestic industry. Relief provided by such a remedy is understood to be, if tariffs, above bound rates (if below bound rates, a safeguard action is not needed to use), to be temporary in duration, degressive in effect and to require considerations of compensation to trading partners to rebalance rights and obligations of trading partners adversely affected. In the US, by statute, we limit the amount of increased duties to no more than 50 percentage points above the existing tariff rate, but that reflects US law not our international obligations. All countries, including developing countries like India, have access to Art. XIX for all goods, including all agricultural products. Because of the serious injury test and other requirements, Article XIX is used very rarely by members of the WTO.

In the Uruguay Round, in an effort to bring agriculture more fully under the GATT/WTO, countries agreed to a special safeguard for selected products that had been subject to quotas before that would permit higher tariffs based on volume increases or price declines of a specified amount. The special safeguard (“SSG”) was available to any country which had quota limitations on agricultural products but was limited to those products. See Article 5 of the Agreement on Agriculture. The US has had nine percent of its agricultural tariff lines covered by SSG. The EC has had 31 percent; Canada, 10%; Australia, 2%; Japan, 12%; Norway, 49%; Switzerland-Liechtenstein, 59%. However, many developing countries have had certain products covered as well: Colombia, 27%, Costa Rica, 13%; El Salvador, 10%; Indonesia, 1%; Korea, 8%; Malaysia, 5%; Mexico, 29%; Namibia, 39%; Philippines, 13%; South Africa, 39%; Swaziland, 39%; Thailand, 11%; Tunisia, 4%; Venezuela, 31%. G/AG/NG/S/9 at 4. As part of Doha negotiations, developed countries are supposed to eliminate SSGs, with the starting point being 1% of tariff lines, phasing out within 7 years and capping duties that can be applied to the bound rates from the Uruguay Round. While the July 10 draft text had options for SSGs for developing countries (continuation as is (with an update of tariff rates to reflect Doha results) or a reduction to no more than 3 percent of tariff lines, no reference is made to developing country SSG in the Lamy compromise proposal. SSGs for developing countries would likely continue under any outcome. SSGs do not require an injury test to be met and do not require compensation to trading partners when employed.

Developing countries in the Doha Round have been seeking a third safeguard provision (SSM) to address all agricultural products that would similarly be automatic, require no injury test, involve no compensation and permit tariffs to be raised above bound levels. For countries like India which has very high bound tariff rates but no existing SSG rights or for countries like China that have entered since the conclusion of the Uruguay Round (and hence would have no SSG rights), the SSM would provide a special safeguard similar to that enjoyed by some WTO members under the Uruguay Round Agreement on Agriculture but would be broader in scope..

The breakdown in the Doha talks on Tuesday was about the parameters of this third safeguard tool, the SSM.

The Road Ahead

With the breakdown, there is the question of how the process moves forward. DG Lamy apparently pressed G-7 members to avoid a blame game set of press conference to preserve whatever options might exist. Normally when talks break down, there is substantial finger pointing which hardens positions for an extended period of time. In the press conferences I saw, the countries tried to honor that request although the US viewed the request of India and China (never cited by name) as insisting on a deviation from the compromise that unraveled the deal. India obviously took the opposite position. USTR Schwab suggested in her press conference that possibly pieces of the forward movement could be captured, but that would require members to agree to deviate from the single undertaking approach – possible but not high probability.

Net/net, I believe that we won't see a conclusion of the Round in 2008 and 2009 is unlikely. If what has been accomplished through the nine days of hard work remains in play (the stated desire of most WTO members at yesterday's conference) and are ultimately part of a final package, there are a number of clarifications of future US rights and obligations. It had already been agreed to phase out all export subsidies by a date certain. Hence, a date certain for elimination of export subsidies in agriculture was not part of the compromise put forward by DG Lamy. The US would be required to reduce its overall trade distorting subsidies (domestic subsidies including amber box, blue box and de minimis) by 70% with the EC agreeing to 80% reductions. Developed countries would face a top tariff cut of 70%, would be able to designate up to 4% of their tariff lines as sensitive products (6% for certain countries); tariffs above 100% would not be allowed for developed countries other than for sensitive products. SSGs for developed countries would be eliminated; limited to 1% of tariff lines as the starting point, maximum phase out over 7 years; no tariff rate above the Uruguay Round bound rate during the phase out.

Rights and obligations in other areas were also obviously part of the proposed compromise or progress that was made in the last two weeks. Clarification of coefficients and, for developing countries, flexibilities in NAMA were part of the Lamy compromise generally viewed as a basis for moving forward. The US and others were urging the major emerging countries like Brazil, India and China to agree to participate in negotiating on at least two of the sectorals being considered within NAMA. A fairly ambitious signaling conference on services included a signal from the US that it was willing to explore expanded visas for professional service providers. And, the EU's desire to have the issue of whether geographical indications extended beyond wine and spirits to other products (e.g., cheeses, etc.) and an issue raised by developing countries on the relationship between the TRIPS Agreement and the Convention on Biological Diversity (issue is described by the WTO as requiring that patent applicants disclose the origin of genetic material and traditional knowledge used in their inventions, or alternative proposals.") were moving forward as part of the process, although no agreement had been reached.