

## **PRESENT SITUATION OF THE WTO DOHA TALKS AND COMMENTS ON THE 21 APRIL DOCUMENTS**

### **SYNOPSIS**

The WTO released on 21 April 2011, a 600-page package providing an overview of the last 10 years of Doha negotiations. This paper is an analysis of this overall package. Although Doha started as a “Development Agenda” with a pledge that developing countries’ interests would be at the centre, ironically there is hardly any development content left in the Doha elements. The agricultural deal has side-stepped the major issue of subsidies by developed countries. Special and Differential Treatment (S&D) for developing countries such as the Special Safeguard Mechanism (SSM) is practically inoperable and ineffective. There are no results in cotton. In NAMA, the packaged is imbalanced and problematic in terms of the shrinking of developing countries’ policy space to carry out much needed industrialisation. The services report puts a ‘necessity test’ back in as an option in the domestic regulation negotiations. Key areas of interest to developing countries have been sidelined – Article XXIV; S&D and Implementation issues.

The WTO should not be equated to the Doha Round. Even without Doha, the WTO as an institution, governing a range of trade agreements; dispute settlement; and trade surveillance continues. These functions and others can be improved upon for developing countries.

April 2011  
Geneva, Switzerland

---

This Analytical Note is produced by the South Centre to contribute to empower the countries of the South with knowledge and tools that would allow them to engage as equals with the North on trade relations and negotiations.

Readers are encouraged to quote or reproduce the contents of this Analytical Note for their own use, but are requested to grant due acknowledgement to the South Centre and to send a copy of the publication in which such quote or reproduction appears to the South Centre.

Electronic copies of this and other South Centre publications may be downloaded without charge from:  
<http://www.southcentre.org>.

## I. INTRODUCTION

1. The differences among key countries in the World Trade Organisation's Doha trade talks are so wide as to be unbridgeable in at least one major area (NAMA sectorals) and the time has come to decide on what to do about the talks – to continue trying to get a deal this year, to admit failure and close the talks, or something in between.
2. This seems to be the message coming out of the 600-plus pages of the document issued by the WTO on 21 April, that contains reports on the state of play of the negotiations in nine issues, plus assessments by the Director General Pascal Lamy.
3. On 29 April, the WTO's Trade Negotiations Committee (TNC) will meet to hear what delegations have to say about the reports and the latest crisis-like situation. The failures in recent weeks to make progress have deepened the impasse. The inescapable conclusion is that these talks will not complete in 2011, the deadline set by political leaders.
4. There have been many missed deadlines since the talks began in 2001. But there is now a serious feeling that if they do not complete this year, they may never complete at all, because political events (especially the United States elections) in 2012 and beyond will make it impossible for a deal to be struck.
5. The Brazilian ambassador Roberto Azevedo, expressing frustration at the pressures put on big developing countries by some developed countries, had put it this way: "If this view (that developing countries have to make even more concessions) prevails then we have not reached the end-game, we have reached the end of the game."
6. In his 21 April report, Lamy had focused on the impasse in tariff reductions in industrial tariffs (known as the NAMA issue) and found the gaps between developed countries and major developing countries (China, India, Brazil) to be "not bridgeable today."
7. The specific problem is that the US in particular is demanding that these three developing countries cut their tariffs to zero (or near zero) for three sectors (with the stress on chemicals, electronics and industrial machinery).
8. The super-liberalisation in these "sectorals" is supposed to be voluntary, but the US wants it to be mandatory, at least for the big developing countries.
9. The latter in turn think they are unfairly picked upon to carry the whole burden of the Doha talks. They already have to slash their industrial tariffs significantly; with the extra load of the sectorals, they fear (with justification) that the local industries would be seriously damaged.

10. However it is misleading to point to the differences on NAMA sectorals as the cause of the crisis. On one hand, the US has clarified that it also wants more out of the developing countries in other sectors too (agriculture and services) and not only in NAMA.
11. On the other hand, the major developing countries resent being picked on as the ones blocking the deal. They point to agriculture as the key to the whole Doha talks, and to the contributions that developed countries have to make, and have not yet made. The flexibilities given in the agriculture text, confirmed by the Chair's 21 April report, enable a very low level of ambition in actual subsidies reduction, and low ambition in market access, by the developed countries. This is the real blockage in the Doha talks, and not NAMA in which developing countries have already made great concessions, even without considering the sectorals.
12. To the developing countries, the demands on NAMA sectorals is the last straw on the camel's back, epitomising the gross inequalities that characterise all the issues in the Doha package.
13. Although Doha started as a "Development Agenda" with a pledge that developing countries' interests would be at the centre, ironically there is hardly any development content left in the Doha elements. This is evident from a review of the 600-plus pages of the 21 April texts and reports.
14. What becomes quite evident is that the Doha Round has failed in delivering on development. In individual issues and collectively, what is on the table (in the 21 April documents) remains highly unbalanced. It confirms the trend that development issues have been sidelined. Instead, the market access agenda of developed countries has taken center stage.

#### **A. AGRICULTURE AND NAMA TEXTS**

15. The real core of the documents comprises the draft texts on agriculture and NAMA, accompanied by reports of the Chairs of the negotiating groups on these two issues. The texts are the same as the ones issued by the Chairs in December 2008; in other words the present Chairs have not tried any amendments, since there has been no progress on the talks on these two issues.
16. However, the two December 2008 texts did not emerge from actual negotiations. They were revised from previous drafts and especially from the one-page paper of the WTO Director General Pascal Lamy of 25 July 2008 which he had presented to the inner group of seven Ministers (called the G7) during the mini-Ministerial meeting that closed without an outcome. The Lamy paper was not accepted by the G7 and not even discussed by the wider meeting of the mini-

- Ministerial of July 2008, let alone by the WTO membership. Yet its elements are the basis of key points in the Chairs' December 2008 texts which are now the centrepiece of the 21 April 2011 mega-document.
17. The two papers contain the imbalances as between developed and developing countries, and between agriculture and NAMA, that were already in the previous documents, as well as new imbalances contained in the Lamy paper of 25 July 2008.
  18. The papers on agriculture and NAMA cater to the sensitivities of developed countries, which are given many types of flexibilities to avoid actual cuts to their agricultural subsidies or painful cuts to their applied tariffs. On the other hand, many developing countries are required to take commitments, some of them proposed by developed countries only months before the July 2008 Mini-Ministerial and which had been strongly opposed by developing countries and thus had not enjoyed any consensus.
  19. These proposals however have been placed in the texts by the Chairs. The two texts oblige developing countries to cut their tariffs significantly (especially in NAMA) and drastically reduce their policy space for future development strategies.
    - a. **Agriculture**
  20. The agriculture report mainly reaffirms the 2008 text. Under this text, the developed countries will be allowed many flexibilities to continue to shelter their agricultural subsidies (including the creation of a new Blue Box window, the fixing of overall trade distorting support bound levels above the applied or planned levels, and the retention of relaxed rules including no ceiling for Green Box subsidies), and to have sizeable numbers of sensitive products (without the trade value constraint, unlike in NAMA) to cushion their tariff cuts.
  21. Although developed countries' domestic subsidies are hardly curtailed, the developing countries (non-SVEs and non-LDCs) are asked to undertake agricultural tariff cuts two-thirds the rates to be cut by developed countries. This comes to a 36% average cut. This goes much further than their obligation under the Uruguay Round of a 24% average cut. The special products flexibility for developing countries is also much less than what the G33 had requested.
  22. And the new special safeguard mechanism (MSS) for the developing countries to use to prevent import surges (that damage local farm production) is so weak and so riddled with conditions that it is difficult to use and when used of practically no benefit.

23. It is supposed to be easier to use than the normal safeguard and the existing SSG (special agricultural safeguard, used mainly by developed countries). But it is turning out to be more restrictive in crucial areas -- such as that the extra duties under SSM can be allowed to exceed the Uruguay Round bound rates only under limited conditions and the quantum of the extra duties is very limited, while there are no such conditions under the normal safeguard or the SSG. The "triggers" in volume and price changes that enable the SSM to come into effect are also very restrictive and difficult to use.
  
24. On cotton, on which the African countries in particular place great importance, the Chair's text retained its previous proposal of a more significant cut in domestic support than the average cut. But even such a modest (minimal in fact) principle was not accepted, particularly by the US. The 21 April report by the Chair indicates that there has been no progress on this issue since December 2008.
  
- b. Nama**
  
25. The report on NAMA reaffirms the December 2008 text. Under this, some major developing countries have to cut their industrial tariffs by 50-70%, while major developed countries' cuts are only around 25%. This is in clear contradiction of the Doha Ministerial Declaration which gives the NAMA mandate, that developing countries are to enjoy "less than full reciprocity" (LTFR) in tariff reductions. Instead it is the developed countries that enjoy LTFR while the developing countries' tariffs are to be slashed much more steeply, due to the workings of the Swiss formula, which has until now never before been used as an agreed formula in GATT or WTO negotiations.
  
26. On average, developing countries affected by the agreed formula will have average applied tariffs of 11-12 per cent after the cuts, according to estimates by the WTO Secretariat. This will be damaging to their domestic industries.
  
27. But on top of these already onerous obligations, the US backed by other rich countries are now demanding that China, India, Brazil and others agree to super-liberalisation in the "sectorals". The 21 April report by the NAMA Chair also implies that all WTO members involved in the Swiss formula (which thus includes several other developing countries besides the big ones) would have to take on obligations on sectorals as well. This has of course never been agreed to at the Doha negotiations until now.

## **B. SERVICES**

28. The 21 April report shows that in services, the developing countries are also under pressure to open up to foreign competition in many sectors such as finance, telecoms and retail trade. The report implies that the plurilateral negotiations have still been actively in the process, after the July 2008 mini-Ministerial. The report on labour services shows that the developed countries are unwilling to open up in labour services. As recent press reports indicate, many developed countries are in fact tightening their quota of visas for foreign workers and professionals from developing countries.

## **C. PROCESS ISSUES**

29. At the 29 April WTO meeting of the TNC, it is unlikely that countries will stop the Doha talks altogether, though they may accept the 2011 deadline cannot be met. A suspension of talks - at least in some areas - is an option, though the question is when are they to resume and under what conditions.

30. The meeting may also decide on the status of the 600-plus page document. Will future negotiations be based on this, or are other relevant documents just as valid, such as existing proposals that are not adequately reflected in the reports, and new proposals?

31. Since the main papers are reports by Chairs and not made or endorsed by Members, and since the main draft texts on agriculture and NAMA are also by Chairs which have not been properly discussed let alone endorsed by Members, it would be logical for the 21 April documents to be only reference papers which do not enjoy special status. All other relevant documents including Members' proposals should still be on the table, when and if the talks resume.

## **II. AGRICULTURE**

32. The biggest loophole which has contributed to the imbalance in agricultural trade has been in subsidies. After the Uruguay Round and during the period of the Doha talks, there has not been a reduction in overall domestic supports in the EU and US, but there has been significant "box shifting." The US and EU's domestic supports have simply been shifted from trade distorting categories (especially the Amber box) to the supposedly non-trade distorting category of the Green Box. The US now houses 80% of its domestic supports in the Green Box, and its total subsidy levels have also increased from about USD 60 billion

- (in 1995) to USD 94 billion (in 2008). The EU's overall level of domestic supports has remained at almost the same level of 90€ billion (in 1995) as compared to 90€ billion in 2006 and 82€ billion in 2007. However, the EU has very clearly engaged in 'box shifting' so that its Amber box (trade distorting) supports of 50€ billion in 1995 are now down to 12€ billion. However, its Green Box payments have increased from 18€ billion in 1995 to 62€ billion in 2007.
33. Latest data on domestic supports filed at the WTO by the US and EU enable an analysis of how the maximum allowed OTDS (overall trade distorting domestic support) in the Agriculture draft text of December 2008 (which is appended to the 21 April report on agriculture) would not reduce the actual or applied levels of OTDS in the US and EU:
- The US' current bound level of OTDS is \$48.3 billion. However, the applied OTDS was \$12.9 billion in 2007. The 60% cut it is asked to undertake (para 3b, Rev.4) will bring the bound OTDS level to \$14.5 billion. This is still above the 2007 level. Thus the US does not have to reduce its actual or applied OTDS. It only has to "cut water" (the value between the bound and applied level).
  - The EU's bound OTDS level is 110.3€ billion. The OTDS cut to be undertaken is 80% (Rev.4, para 3a) and thus the bound level will be 22€ billion. However, in 2007, the actual or applied OTDS of the EU was 19.9€ billion, which was below the bound level. Thus, the EU need not cut its actual OTDS under the new rules. It would only be cutting "water."
34. The shift to the Green Box does not remove the trade distorting content of subsidies. Some Green Box subsidies have been found to be trade distorting in a number of WTO dispute cases. Recent studies have also shown that many Green Box supports in fact have trade distorting effects and that a significant proportion of farms in the US and EU would not be viable if the Green Box subsidies are removed.
35. In the last few decades, many developing countries' agricultural producers have been put in crisis because the OECD countries' subsidies have led to artificially cheap agricultural imports displacing small farmers and destroying rural livelihoods. Imports have entered in such large quantities because of the low applied tariff levels most developing countries have adopted due to structural adjustment policies. As a result, many developing countries have found that their food production capacities have declined, often even steeply. This has contributed to these countries being in crises, now that global food prices are high. Whilst food imports have taken over local markets – sometimes to startling proportions -- most developing countries' small farmers cannot meet the

stringent food standards of export markets. Nor do they have the adequate support or infrastructure to export.

36. This phenomenon will not be helped by the Doha package on the table – where developing countries’ bound tariffs are to be brought down, even as the subsidy problem has been sidestepped rather than resolved.
37. Furthermore, the SSM on the table (see TN/AG/W/4/Rev.4 of Dec 2008, which was reissued on 21 April 2011), supposedly to address food imports, if agreed to, will be ineffective and inoperable due to the limited remedies allowed and the difficult conditionalities that would make accessing the SSM nearly impossible. Even though LDCs need not themselves undertake tariff cuts, tariff cuts that are undertaken by their non-LDC customs union neighbours will equally affect LDCs.
38. The present package of rules for agriculture therefore does not help developing countries in responding to the challenges of today’s food crisis. If poor countries are to be supported to better weather the crisis, tariffs would be very important to encourage local and regional food production; dumping (from subsidies) must be stopped i.e. the Green Box has to be strictly disciplined; and a robust and easy to use Special Safeguard Mechanism (SSM) should be available to protect local farmers from being destroyed by food imports.

**a. COTTON**

39. Often seen as representing the development quotient of the Doha Agenda, the cotton issue has failed in the negotiations. The main problem in cotton has been the subsidies provided by certain developed countries to their cotton farmers. This has in the past depressed world cotton prices to such a level that many West African as well as other cotton farmers have lost their livelihoods or have been severely affected. The Hong Kong Ministerial Declaration calls for a solution to this issue. Amongst others, it notes that ‘trade distorting domestic subsidies for cotton production be reduced more ambitiously... and...over a shorter period of time than generally applicable’. A solution proposed by the cotton countries is contained in the agriculture draft text. However, as the Chair confirms in his 21 April 2011 communication (para 2.9, TN/AG/26), ‘not all members are in a position to agree to the text as drafted’ and ‘what that solution might be remains unclear’ (para 2.11).
40. Any real development outcome of the Round must contain a robust trade-oriented solution that addresses the issue of subsidization leading to the distortion of world cotton prices.



### III. NON-AGRICULTURE MARKET ACCESS

41. The central tenant of these negotiations for developing countries has been ‘less than full reciprocity’ (LTFR) in the sense that developing countries have to take cuts that are less than cuts taken by developed countries. However, the text on the table (TN/MA/W/103/Rev.3 or now TN/MA/W/103/Rev.3/Add.1) does not deliver LTFR. Developed countries would have to cut their tariffs using a ‘coefficient’ of 8 i.e. they cut their tariffs by about 28% (EU by 33%; US by 29% and Japan by 22%).
42. The text also fixes coefficients 20, 22 and 25 for developing countries (with flexibilities for 14%, 10% and zero in numbers of lines respectively) - that is, countries are asked to choose one of the options. A choice of the middle coefficient 22 would reduce the average tariff of developing countries like India, Brazil, Indonesia, and Venezuela by about 60%. There are also very limited flexibilities for developing countries.
43. The Chair’s paper basically uses the coefficients and flexibilities of the Lamy paper of 25 July, which in turn is mainly based on the then NAMA Chair’s 10 July text.
44. The outcome is extremely imbalanced and does not fulfil the “less than full reciprocity for developing countries” (LTFR) principle. It requires the developing countries to undertake steeper tariff reductions than developed countries. It also cuts the developing countries’ bound tariffs very deeply, thus reducing many applied tariffs, and seriously reducing policy space to make use of tariffs for industrial development in general and the development of future industries in particular.
45. The flexibility that 10% of NAMA lines can have tariff cuts that are half the rates of the formula cuts, or else 5% of lines to be exempted from any cut, which is linked to coefficient 22, is not sufficient. This is further restricted by the condition that the lines enjoying the flexibility must not exceed 10% of the value of NAMA imports (for flexibility of half the formula cut) or 5% of the value of imports (for flexibility of exemption).
46. The sets of flexibilities for the options of coefficient 20 (14% of lines limited by 16% of value for tariff cuts at half the formula cut) and for coefficient 25 (zero flexibility) are also meagre and extremely insufficient to enable developing countries to undertake industrial development successfully.
47. The drastic effect on developing countries’ industrial tariffs is seen in an estimate by trade officials that following the application of the Chair’s coefficients and

- flexibilities, the majority of NAMA tariff lines for developing countries having to apply the formula would be less than 12-14 per cent (depending on the coefficient and flexibilities used).
48. For these countries, bound tariffs would be at an average of 11-12 per cent, and only a small number of tariff lines would have levels above 15%. The low tariffs across a broad range of industrial products would not be able to support future development of local industries.
  49. For a balanced NAMA outcome, the less than full reciprocity principle should be respected and reflected in the coefficients. Thus if coefficient 8 is chosen for developed countries, the tariff reduction rates for developing countries should at most be two thirds of the reduction rates of the developed countries. This should be reflected in the coefficients for developing countries. The fact that this is not provided for in the Chair's text is a violation of the mandate in the 2001 Doha Ministerial Declaration that launched the Doha agenda. Its absence, and instead the presence of its opposite, shows the extreme imbalance in the NAMA paper.
  50. The NAMA text also retains the "anti-concentration clause" which is designed to prevent developing countries from excluding an entire sector, or close to an entire sector, from full formula tariff cuts. This clause made its first appearance very late in the negotiations, when it was proposed by some developed countries. Yet, incredibly, it was included in the former NAMA Chair's 10 July draft (as a general concept) and legitimised further with numbers in Lamy's 25 July paper, which had simply stated: "ACC 20% of lines, 9% of value."
  51. The present NAMA text legitimises it yet further by incorporating the clause in para 7(d), stating that "full formula tariff reductions shall apply to a minimum of either 20% of national tariff lines or 9% of the value of imports of the Member in each HS Chapter."
  52. Despite the protests by many developing countries before and in July, this anti-concentration clause has now been solidified in the Chair's text.
  53. Furthermore, sectoral negotiations (lowering tariffs for whole sectors even below formula cuts or to zero) are mandated to be on a voluntary basis. Yet some developed countries have asked certain developing countries for mandatory participation in certain sectorals, demanding for example in chemicals, that the bulk of tariffs be brought to zero. According to Pascal Lamy, in his special report on this issue (TN/C/14, 21 April 2011), the gaps are 'not bridgeable today'. Brazil stated in a TNC meeting that taking on the sectorals would reduce its coefficient in effect to 8. The Lamy report confirms that this is what he heard in his bilateral discussion: Developing countries if they participate in 3 sectors -

chemicals, industrial machinery and electric and electronic products – would have to bring their tariffs down to the equivalent of applying a Swiss formula of coefficient 8, instead of the 20 – 22 in the December 2008 text.

54. Small and Vulnerable Economies (SVEs) and ‘low binding countries’ have been given some flexibilities. The issue is whether or not these are sufficient for these countries to industrialise. For SVEs, it means that their ‘water’ between bound and applied tariffs will be cut, and for low-binding countries, they will have to bind the 75 – 80% of their tariffs at a maximum of 30%. Most developed countries have industrialised by using sometimes much higher rates of bound tariffs for sectors they are developing. Particularly as these tariff bindings will apply for the long term, these levels may not provide the adequate policy space for countries should tariffs need to be raised for certain sectors in the future. LDCs need not take on tariff liberalization. However, those in customs unions with non-LDCs will be affected by the formula cuts or tariff bindings. For example, Lesotho in SACU or Togo in ECOWAS will be bound by the new tariff commitments of their non-LDC neighbours.

#### **IV. SERVICES**

55. The services market access discussions have not moved much in recent years. However, what is of concern is that the Chair in his TN/S/36 (21 April) report highlights in particular the ‘Proposals for the Way Forward’ – by Australia, Mexico, Chinese Taipei and Korea. In particular, Australia’s proposal calls for countries to bind their services liberalization at ‘current levels of market access in priority sectors’. The Chair does note that this proposal has been criticized as going beyond the Doha mandate. It is important for most developing countries that the GATS positive list approach is retained, allowing countries to liberalise at a rate of their own choosing, when they are ready to do so, as most developing countries are still growing their services sectors and as they are also still developing their services regulations.
56. On the domestic regulation negotiations, the Working Party on Domestic Regulation Chair’s text on 20 March 2009 (Room Document, also now in TN/S/36) has been largely opened up for discussion in the last one and the half years. Developing countries have both offensive and defensive interests in disciplines on domestic regulation (licensing requirements and procedures, qualification requirements and procedures and technical standards). Currently, the offensive interests of developing countries, particularly Mode 4 (movement of natural persons), are not likely to be helped much by these disciplines, since visa barriers still seem to be undisciplined by these rules. At the same time, the

defensive interests of developing countries are likely to be put at risk - such as the need to regulate services in such a way as to ensure that local services suppliers can grow or that communities' democratic preferences and choices can be respected. For example, regulation regarding land development limiting investors to some areas but not others; or introducing legislation regarding certain environmental or cultural objectives; or affirmative action for certain groups may be found to be more trade restrictive than necessary, not transparent or objective. The present text attached to the 21 April report of the Chair veers too much on the side of restricting developing countries' ability to regulate, whilst giving little (or nothing) in return in terms of advancing developing countries' interests in Mode 4. The Special and Differential treatment (S&D) provision for developing countries remains inadequate - limited to a transition period. Most worrying is the inclusion of the option for a "necessity test" (that regulations chosen should be not more burdensome than necessary). This most blatant form of a necessity test had been deliberately left out in the 20 March 2009 text by the Chair at that time because of the controversial nature of the necessity test, rendering it unlikely to enjoy agreement.

## **V. RULES**

57. In the Rules negotiations, a major issue of interest to developing countries is inserting S&D into Article XXIV (which governs the rules on Regional Trade Agreements). In particular, the systemic issues of Article XXIV needed to be changed to embody development (eg. in the 'substantially all trade' requirement; and in the interpretation of 'reasonable length of time' of Article XXIV). These negotiations are very important for developing countries as many are today engaged in free trade agreements with developed countries. For example, the EU is arguing for Article XXIV to be interpreted such that ACP countries must bring down tariffs to 0 for at least 80% of their total tariff lines.
58. Unfortunately, developed countries have refused to move on this agenda in the Doha negotiations. According to the Rules chair, 'the objectives of various Members in these negotiations remain conceptually different' and 'gaps persist in Members' positions' (TN/RL/W/253, 21 April 2011). This is another lost opportunity for truly reaping development outcomes.

### **A. Special and Differential Treatment**

59. The only real outcome so far following the Doha Declaration mandate was what was agreed to in Hong Kong for LDCs (mainly 97% duty free and quota free

market access; and the ability for LDCs to take TRIMS inconsistent measures till 2020).

60. In fact, many of the S&D proposals seem to have vanished from the negotiating scene. The Chair in his 21 April 2011 report (TN/CTD/26) notes that further consultations will be held.
61. Instead, a new Monitoring Mechanism has taken over the negotiating landscape on S&D issues. It is a mechanism to monitor S&D utilization. According to the Chair's Annex 1 (TN/CTD/26), 'the Mechanism is not a negotiating body'. However, it can propose actions to the General Council, 'to strengthen and improve the implementation of the S&D provisions'.
62. Whilst this Monitoring Mechanism could potentially be useful, the S&D mandate of the Doha Declaration was that 'all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational' (para 44). Without first strengthening and making operational the S&D provisions, a Monitoring Mechanism may be of very limited value. Negotiations on this Monitoring Mechanism should not distract Members from the real work of negotiating for better S&D provisions.

## **B. Implementation Issues**

63. Outstanding implementation issues from the Doha mandate has not been reported upon (para 12 b in the Doha Declaration) aside from 2 issues regarding intellectual property. This is a major omission and indicates the extent to which development concerns have been marginalized. Implementation issues were in fact the central issue of concern to developing countries before the launch of the Doha Work Programme. These issues address the imbalances in the agreements from the Uruguay Round, which developing countries wanted rectified. Developed countries however refused to move on this agenda before Doha. They agreed to do so only in the context of a Round, with the inclusion of other issues.
64. Unfortunately, despite this promise, once the Round was launched, this agenda has been sidelined by the developed world- yet another missed opportunity to truly deliver on development.
65. In the documents released on the 21<sup>st</sup> April, the only two implementation issues that have been reported upon are the extension of the protection of Geographical Indications (GI) beyond wines and spirits, and the issue of disclosure of the origin of generic resources and/or associated traditional knowledge in a patent application. The EU is the main demandeur of the protection of GIs and developing countries are the main demandeurs of the 'disclosure' proposal.

66. Even here, the reports provided by the Pascal Lamy in his capacity as Director General (WT/GC/W/633, TN/C/W/61,21 April 2011) is unbalanced. He has portrayed the GI extension proposal as being much more developed, and the disclosure proposal as much more preliminary, which is not the case.

## VI. CONCLUSIONS

67. For too long, the WTO as an institution has been equated to the Doha Round, and failure to conclude the Doha Round has been seen and portrayed in the press as a sign that the Institution is falling behind and becoming irrelevant. Is this true?
68. The WTO embodies a set of trade rules which remain whether or not Doha concludes. Pascal Lamy himself also points to its surveillance and dispute settlement system. He notes though that this is not enough, 'For the WTO to remain efficient, our disciplines need updating for trade today as well as for the next generation' (TN/C/13).
69. The question is – does the package on the table 'update' trade rules in a way that is in the interest of developing countries? An assessment of the issues above shows that this is not the case. There was the opportunity to do so in the negotiations. The institution could indeed have been strengthened in a way that could have served the majority of its members better –e.g. bringing balance to agricultural trade rules; cotton; implementation and S&D issues etc. However, as seen above, very little of real development value has been reaped in the last 10 years of negotiations. This is in large part due to the refusal by developed countries to provide further flexibilities to developing countries.
70. Issues on S&D and implementation to improve the Uruguay Agreements have been ignored by developed countries, and most have fallen by the way side. Even the high profile issue of cotton, despite lobbying from the highest political ranks in the cotton countries, has seen no result in the area of trade rules.
71. Agriculture and NAMA negotiations aiming at further liberalisation will reduce the flexibilities developing countries now have in the area of tariffs. These tariff policy directions should be carefully considered and even rethought, in light of the need for countries to increase food production, and also to industrialise.

72. Thus it is **important for the WTO to update its rules to reduce or remove its imbalances in favour of developing countries, but this is unlikely to happen with the current proposals in the 21 April documents.**
73. Developing countries can continue to pursue their proposals and agenda should the Doha talks continue.
74. Meanwhile the WTO as an institution of rules, with its trade review process and its Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) continues. If necessary there can be a de-linking of Doha from the WTO itself, to counter the view of some that a failure of Doha means a threat to the survival of the multilateral trading system.
75. On some of the process issues, the appendix to this paper addresses key points in this area.

## ANNEX

**The Present Situation Regarding the Doha Talks and the Way Forward: Some Questions and Answers****By Bhagirath Lal Das**

The South Centre posed some questions to Mr. Bhagirath Lal Das, an international trade expert, on some issues regarding the process in the present state of the Doha negotiations at the WTO, following the issuance of new documents on 21 April 2011. The following are the questions and the replies by Mr. Das, who is a former Director of Trade and Manufacturing at UNCTAD, former Ambassador of India to GATT and a former Chair of the GATT General Council.

*What are the options for the way ahead for Doha and WTO? Should negotiations go on as usual even if the gaps are not bridgeable? Should they be suspended altogether and if so is it forever or can it re-open again at an opportune time. Or something in between (e.g. Chairs call meetings once in two months to see if there is anything new to report)?*

The chairpersons of various negotiating groups and the DG have clearly indicated that the differences among positions are very wide. These observations also specify that the differences are not of technical nature but in respect of the basics. The gaps do appear unbridgeable at this stage. Intense efforts have gone into the negotiations for the last five years but the real hard ground has not been broken in spite of the spirit of compromise exhibited by the developing countries at various stages. In this background, it appears totally unlikely that differences can be patched up by continuing the negotiations. In fact, it is likely that the atmosphere may get further soured by going over the same points of differences again and again. In such a situation, howsoever unpleasant it may be, the best option is to let the position rest at where it is.

This approach appears rational at this stage also because of the air of uncertainty in the major developed countries. In the US, uncertainty was generated by the lapse (on 30 June 2007) of the so called "fast track" authority to the Executive to conduct and conclude international trade agreements. It was aggravated by the delays and enhanced demands when some bilateral agreements concluded by the Executive were placed in the Congress for approval. Now, of course, the US has entered into its election mode, further constraining the Executive to make definitive commitments in negotiations like those in the WTO. The EU is having its own economic problems following the financial crisis which will make it difficult for the governments to be forthcoming with new offers in multilateral economic negotiations. And Japan is still reeling under its Tsunami and nuclear crises. With these three major partners in a difficult and uncertain mood, it will be unwise to expect any breakthrough in the WTO negotiations at this stage.



Thus the most pragmatic course will be to “let the Doha negotiations rest for a while”. It can be resumed “later when Members feel that conducive environment exists for resuming a meaningful course of negotiations”.

*If the talks suspend, then what is the status of the new documents and of the papers and proposals that delegates think are still on the table? How to word a decision so that all relevant documents are still on the table should the talks re-open? There is a concern that the new documents will be given a special status, superior to previous documents and individual members' proposals.*

It is important to ensure that all the papers and proposals along with the latest papers of the chairpersons remain on the table. Also it should be ensured that these new documents do not have any special status. And there is logic to this line. After all, these documents are not negotiated results, they merely give the impressions of the chairpersons. Hence, their presence should not obliterate the status of the papers and proposals of the Members presented so far. To ensure it, all that is needed is to make a simple stipulations that papers and proposals continue to remain on the table once the negotiations resume.

*There was some talk of the DG being given a mandate to produce his own compromise draft text or report, similar to a Dunkel draft. Many countries are opposed to this but some have called on him to do so. What should be the approach in this regard?*

There is absolutely no rationale for a Dunkel draft type effort to be made at this stage. It is clear that there are basic differences among the Members on important issues. The differences are of approach and directions in many cases and not only of levels. Hence any attempt at a comprehensive “compromise text” at this stage will not be fruitful at all. Instead, it will make the possibility of compromises recede further.

In any case, the developing countries are not likely to get any favourable consideration in any such text. In fact, it will be really dangerous for them. Hence it is imperative that any suggestions for such a step in any forum and in any form must be opposed in clear terms without any ambiguities or diplomatic niceties. If developing countries keep silent on this issue, it is likely that they will be faced with the possibility of such an exercise.

*What should be the attitude towards the “single undertaking” format? In the event of the Doha negotiations being suspended, should some issues be taken up in the standing committees/councils for negotiations? Also, should some results be taken up for implementation?*

If some results have been clearly arrived at through consensus and there is no opposition from any side to their being adopted, there is no harm in adopting them and

putting them into implementation. For example, some such decisions may be relating to the Least Developed Countries.

However, carrying forward some issues for negotiating in standing bodies of the WTO should be considered with a lot of caution as it may disturb the balance among the issues in these negotiations. If any Member is keen to continue with some issue, it should bring it before the relevant standing committee/council and seek approval there for putting it in the agenda of negotiation there. Thus any such step should not be a part of the decision on the Doha negotiations; it should be a separate and independent decision of the standing committee/council where it is to be taken up.

**READERSHIP SURVEY QUESTIONNAIRE**  
**South Centre Analytical Note**

**PRESENT SITUATION OF THE WTO DOHA TALKS AND COMMENTS ON THE 21 APRIL  
DOCUMENTS**

An important objective of the South Centre is to provide concise and timely analytical inputs on selected key issues under ongoing negotiation in the WTO and other related multilateral fora such as WIPO. Our publications are among the ways through which we try to achieve this objective.

In order to improve the quality and usefulness of South Centre publications, we would like to know your views, comments, and suggestions regarding this publication.

**Your name and address (optional):** \_\_\_\_\_

**What is your main area of work?**

- |   |  |
|---|--|
| <input type="checkbox"/> Academic or research       | <input type="checkbox"/> Media                         |
| <input type="checkbox"/> Government                 | <input type="checkbox"/> Non-governmental organization |
| <input type="checkbox"/> International organization | <input type="checkbox"/> Other (please specify)        |

**How useful was this publication for you? [Check one]**

- Very useful    Of some use    Little use    Not useful

*Why?* \_\_\_\_\_

**What is your assessment of the contents of this publication? [Check one]**

- Excellent    Very Good    Adequate    Poor

**Other comments:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Would you like to be on our electronic and/or hardcopy mailing lists? [ ] Yes [ ] No**

*If yes, please indicate:*

- Electronic** – please indicate your name and email address:  
 **Hardcopy** – please indicate your name and mailing address:

**Personal Information Privacy Notice:** Your personal contact details will be kept confidential and will not be disseminated to third parties. The South Centre will use the contact details you provide solely for the purpose of sending you copies of our electronic and/or hardcopy publications should you wish us to do so. You may unsubscribe from our electronic and/or hardcopy mailing lists at anytime.

Please return this form by e-mail, fax or post to:

South Centre Feedback  
Chemin du Champ d'Anier 17  
1211 Geneva 19  
Switzerland

E-mail: [south@southcentre.org](mailto:south@southcentre.org)

Fax: +41 22 798 8531



Analytical Note  
April 2011

Original: English

---



Chemin du Champ d'Anier 17  
Case postale 228, 1211 Geneva 19  
Switzerland

Telephone : (41 22) 791 8050  
Fax : (41 22) 798 8531  
Email : [south@southcentre.org](mailto:south@southcentre.org)

Website:  
<http://www.southcentre.org>