Background Note

September 2008

Situation Report: The July Collapse: Picking up the Pieces?

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This note reflects on the WTO’s mini-ministerial meeting in Geneva in late July 2008. It takes account of the reports [note 1] provided in August by the chairs of the agriculture and NAMA negotiations. In view of the impasse in which the negotiations are at present, the note goes on to suggest that most WTO members would do well to reflect on the broad thrust of the “July 2008 package” that appeared close to acceptance. It is certainly arguable that much of what is on the table – while perhaps comfortable for the major emerging economies and most industrial country members – misses the fundamental necessities for trade-driven development. It has been suggested by several observers [note 2] that economic success can be built on openness to trade and capital. However, in the Doha negotiations, exceptions to market opening modalities have been heaped on smaller and weaker economies; but is that the best means of driving investment and securing a competitive role in the global economy?

I. Introduction

1. One month after the collapse of the WTO mini-ministerial meeting, WTO members have been informed of some of the elements of what was on the table before it broke down. The WTO Director-General presented his report on the Services Signalling Conference and the Agriculture and NAMA negotiations Chairmen, Ambassadors Crawford Falconer and Don Stephenson respectively, presented their reports on the progress their groups made during the meeting. WTO members now look like having some time to consider where their interests truly lie. These reports, which aim to take stock of the points of convergence and divergence from the mini ministerial, are to be examined by the Trade Negotiations Committee (TNC) at its next session this autumn, which should help to shed light on the positions WTO members plan to adopt in the future vis-à-vis the Doha negotiations.

2. As the tensions surrounding the failed July 2008 meeting gradually ease, the prevailing feeling in the different capitals remains one of a lost opportunity. All those who attended the end-of-July meeting in Geneva were perfectly aware that holding it was risky, and its success was far from guaranteed. Even before it started, very few would have wagered on agreement. This pervading pessimism dissipated momentarily on the fifth day of the Conference, when a compromise proposal of the Director-General was rather favourably received by the G7 [note 3] first, and then, apparently, by the rest of participants during the Green Room meeting that followed. The subsequent days were marked by an unexpected optimism, which led the Signalling Conference of 26 July to be held in a very constructive spirit, before failure took hold. Most delegations had come to Geneva with bleak hope, and left with the feeling that they had just narrowly missed the boat.

3. Moreover, in accordance with the single undertaking principle governing Doha negotiations, nothing is decided until an overall agreement has been reached on all issues being negotiated. As the agenda for the meeting was limited to agriculture, NAMA, and to some extent, services, the progress made in those three areas thus hinges on progress made in negotiations on the other issues. Two particularly contentious matters were left aside during the nine days of meetings: geographical indications (GIs) [note 4] – the scope of which the European Union, Switzerland and some countries with emerging economies, such as India, would like to see extended beyond wines and spirits, in spite of opposition from many members such as the US, Australia and Argentina – and rules, an area in which the United States is trying to restore the legality of its antidumping assessment method (the famous “zeroing” method against which the WTO Appellate Body has ruled on numerous occasions), contrary to the near-unanimous view of the other members.

4. To add to these uncertainties, the fact that the meeting failed to achieve its main objectives may lead many delegations to go back on some of the most painful concessions they had envisaged during the ministerial meeting in a spirit of compromise. Indeed, many doubt that the potential progress made these nine days can be preserved. The Foreign Minister of Brazil, Celso Amorim, expressed this publicly, and many others share his fears, regrettably. The reports of Ambassadors Falconer and Stephenson state this very clearly.

5. Most certainly, the negotiations will not conclude before the end of 2009, at the earliest; even securing a modalities deal on agriculture and NAMA is out of reach this year and probably until a new US Administration is fully in place. The idea that a package must be agreed under the Bush Administration because whoever comes afterwards will be worse, is belied by history. In 1993, a new Democrat Administration entered office and concluded the Uruguay Round within 11 months.

6. Other political changes are likely also next year and in 2010. At root, it needs to be remembered that what is agreed – assuming anything is agreed – is likely to be locked into the WTO for as much as 20 years. In that timeframe, it is difficult to tell how far the big emerging economies will advance or the extent to which they may use a timid deal in the WTO as an excuse for a divide-and-rule approach to new regional and bilateral trade agreements. It is worth thinking about, and now is the time to do the thinking, for all members.

7. The WTO Director-general, as well as most of the members underscored the need to reflect on the reasons for the failure, when so much was at stake. It may be that the irreconcilable differences are much too wide to bridge. As was stated by the US Trade Representative, Ms Susan Schwab, the traditional “split-the- difference” or “lowest-common denominator” solutions are unworkable for the difficult and complex issues under negotiations. Each member had its wish list, and the political will to deviate from it was absent. The “red lines” for each member differed: for the US, these were the in non-agricultural market access (NAMA), the sectoral initiatives on industrial tariffs, and the anti-concentration provision, plus on agriculture, limited flexibilities on special products and the special safeguard mechanism for developing countries (SSM). For many developing countries, in particular those in the G33, a high level of flexibility for special products and the SSM was indispensable; for others (Argentina and China in particular) the sectoral initiatives were voluntary and they were unwilling to agree on even a limited number; the anti-concentration provision was similarly unacceptable to many. So, what did the package that was so close to agreement hold? It is far from crystal clear, as there are conflicting signals, but what follows is an attempt to record what was lost during the 2008 summer mini-ministerial meeting.

II. Agriculture: Was it all about to “fall into place”?

8. Much of the report by the Chairman of the agriculture negotiations, Ambassador Crawford Falconer (New Zealand) avoids any direct reference to what was discussed and supposedly agreed in the G7 and the later Green Room sessions. Ambassador Falconer persistently refers to what was “well reported”. That reflects his view that the convergence was a product of very particular political circumstances during the informal ministerial meeting. It may no longer exist; and certainly cannot be presumed – an approach apparently not shared by the NAMA chair. For Ambassador Falconer: it is “on the hard drive” but it may be counter-productive to put members publicly on the spot on positions they may, or may not, have adopted in the July mini-ministerial. Still, what was “reported” was substantial if unsurprising; much of it taking mid-points in the ranges provided in the pre-ministerial modalities draft [note 5].

9. The key issue of cuts in the Overall Trade-Distorting Domestic Support (OTDS), in the domestic support chapter, was an example of splitting-the-difference to provide comfort to one of the G7 members rather than moving the negotiations on to more challenging ground. Thus, the second band cut was set at a 70 per cent reduction which marginally reduced a possible US commitment from a ceiling of USD15 billion, as volunteered by Washington in the first days of the meeting, to USD14.5 billion. This figure remains almost twice the level of current spending in the US. However, it recognises the near impossibility of legislating additional cuts in the present US Congress and the fact that with commodity prices now falling once more from recent peaks, US farmers will be in no mood to put current safety nets on their income in question. The US Trade Representative (USTR), Ms Susan Schwab, argues that a USD15 billion ceiling would have limited actual spending in seven of the last 10 years.

10. Chairman Falconer noted that other domestic support issues remained unresolved, including product-specific (US) Blue Box limits and the base periods for US product-specific AMS reductions. However, he suggested these would have been resolved in an overall package, as would OTDS scheduling and Blue Box entitlements for recently acceded members (RAMs).

11. On export competition, Ambassador Falconer reported that a “balanced outcome” was “ripe and ready to go”, as was a “fine-tuned text” on export restrictions. He bemoaned the fact that ministers had not engaged at any point on the crucial cotton dossier.

12. Thus, broadly, the domestic support and export competition chapters looked ready for a deal, even if it was a shaky and timid deal and one that did not yet cover any US commitment to more ambitious undertakings for cotton. That could not truly be said of market access on which, ostensibly, the meeting broke down.

13. The 70 per cent cut in the top tariff band was predictable and simply represented a mid-point (rounded up) of the 66-73 per cent range already defined for many months. Further, the option for a one per cent allowance for developed-country tariffs remaining above 100 per cent – in addition to any sensitive products that remain above that level – appears to have emerged from the G7/Green Room process. The allowance would be paid for as in the 10 July 2008 modalities text (Paragraph 76) [note 6].

14. The number of sensitive products that may be designated by developed countries appears to have settled at 4 per cent with an additional 2 per cent available for payment (Paragraph 75). Paragraph 8 of the Chairman’s report outlines, in a rather vague fashion, a “revised tripartite structure” within which developing countries would exercise their sensitive product entitlements. The approach links the degree to which cuts deviate from the formula to the implementation period. This arrangement will presumably be made clearer in the event that the rest of the package moves forward.

15. The designation and treatment of “special products” for developing countries (Paragraphs 120-122 of the July 2008 draft) seem to have moved forward significantly; although it must be recalled that very few developing countries were engaged in the discussions and that many will want to analyse the reported outcome carefully. Thus, 12 per cent of tariff lines would be available for self-designation as special products (previous range: 10-18 per cent) and would be subject to an overall average cut of 11 per cent (previous range: 10-14 per cent). Five per cent of tariff lines could take a zero cut. The situation of RAMs was more clearly delineated from the July 2008 draft (Paragraph 122): 13 per cent of tariff lines to be designated and subject to an average cut of 10 per cent. The 5 per cent allowance for zero cuts appears also to apply to RAMs.

16. The Chairman reported that two market access issues remained without even a basis for resolution: first, within the context of sensitive products, whether the creation of *new* tariff quotas will or will not be permitted where none previously existed (see the two options presented in the July 2008 text); and, second, the proposal that all – or most – current “complex” (non *ad valorem*) tariffs be simplified (Paragraphs 100-104 in the July 2008 text). These are both troublesome issues on which WTO members with some of the most protected markets feel strongly.

17. Ambassador Falconer also suggests that other elements were close to conclusion; presumably on the basis of consultations among senior officials that took place in parallel with the ministerial events. On in-quota tariffs (Paragraph 105, July 2008 text), there appeared to be acceptance of going to the lower of an unspecified (by Ambassador Falconer) threshold or an unspecified formula cut. A single tariff rate would apply to all tariff lines covered by a quota. The arrangement for developing countries appears to have been less well defined. The remaining issue on tariff quota administration (the “under fill” mechanism) was also apparently largely agreed.

18. “Understandings” were supposedly developed with respect to the issue of the treatment of products overlapping both the tropical and diversification products list (“fullest liberalisation”) and preference erosion products (longer implementation periods for cuts). The options for dealing with the tensions within this group of products were covered in Paragraphs 138-141 of the July 2008 text.

19. One tropical/preference erosion product that would normally have been subject to these understandings was bananas. An agreement was announced during the meeting which would have provided for the EU tariff on bananas to be rebound on 1 January 2009 at 148 Euros per tonne and reduced over seven years to 114 Euros per tonne. The agreement, between the EU on one side and the Central/South American producers and the US on the other, would have settled the several outstanding dispute settlement cases among these members. The ACP countries opposed the settlement and tabled an alternative schedule of tariff cuts. However, the collapse of the meeting also meant the loss of the agreement on bananas and a quick return to hostilities in the Dispute Settlement Body (DSB).

20. The treatment of least-developed countries on market access (duty-free, quota free) would be treated on the basis eventually agreed in NAMA.

21. This left the two “safeguards” issues. The first – the *Uruguay Round Special Agricultural Safeguard (SSG)* – would have been phased out after seven years for developed countries with only one per cent of tariff lines permitted at the start of the implementation period and no duty being raised above the Uruguay Round binding. The Chairman commented that the SSG might have been retained for developing countries *“at a very low percentage of tariff lines…and at a somewhat higher percentage for [small, vulnerable economies] SVEs.”*

22. However if the SSG was largely settled, its baby brother refused to be pacified. The proposed *new Special Safeguard Mechanism (SSM)* for developing countries brought about the collapse of the meeting. There is little to add to what was a very comprehensively documented breakdown. The concept of providing an SSM has long been accepted; the trigger points (volume and value) and the extent of the remedy permissible were largely settled within the July 2008 text. The controversy [note 7] arose only in relation to the circumstances in which a remedy might breach pre-Doha bindings. The July 2008 text (Paragraph 134) recognised that LDCs could breach such bindings, within limits. The two following paragraphs, covering the same situation with respect to SVEs (Paragraph 135) and other developing countries (Paragraph 136) were clearly controversial. The Lamy paper presented to the G7 on 25 July 2008 sought to impose a trigger of 140 per cent of base imports after which bindings could be breached. The remedy could take the duty to a maximum of 15 per cent above the bound level or increase it by 15 *ad valorem* points, whichever was the greater. Further, the above-binding possibility could be applied to a maximum of 2.5 per cent of tariff lines in any one year.

23. There remain differences of opinion as to whether the Lamy proposals were agreed within the G7 – the US and EU insisted that the Lamy paper was a package that could not be picked apart. In any event, it quickly became clear that India, China and others outside the small group would not acquiesce. Their view was essentially that few limits could reasonably be placed on their freedom to act to protect the income of poor and vulnerable farmers. On the other side, most of the Cairns Group, including Brazil, and the US could not stomach the notion that market access could become seriously insecure, retreating even from the post-Uruguay Round levels. Given that the measure could be applied in two of the largest and fastest growing food markets in the world – China and India – it was seen as substantially reducing the potential value of the Doha package. Given the polarisation on such a point of fundamental principle, it was not surprising in retrospect that it became a deal-breaker.

24. It was pointed out that in some cases the significance of the SSM measure could be exaggerated because of the preponderance of applied duties at levels very far below those bound by the developing countries liable to use the mechanism (though that is not the case for China). This argument had little impact as did the attempts to resolve differences by changing the figures and even the entire approach. The two sides camped on points of principle and the meeting subsequently collapsed.

III. NAMA: Conditional convergence but a disputed report

25. Although Ambassador Stephenson, in his August 2008 report [note 8], goes one step further than Ambassador Crawford Falconer’s report by presenting new draft language, his perceptions of what was and what was not agreed during the ministerial meeting are significantly more controversial. In certain areas – namely the commitment to negotiate sectoral agreements in NAMA – there is now controversy over what precisely was accepted among the G7 members. More broadly, it is clear that there was far less acquiescence in the subsequent, more-inclusive, Green Room sessions on the Lamy proposals in this area of negotiations. As the Chairman himself points out, the acceptance was evidently highly conditional on eventual agreement in other areas of the NAMA package, as well as essential elements of agriculture.

26. The G7 process dealt with the three most political elements outstanding from the July 2008 draft. A formula coefficient of 8 for developed countries was a mid-range outcome, the acceptance of which was clearly conditional. The developing country coefficients – 20, 22 and 25 – were also mid points (or rounded up) in the July 2008 ranges and ignored the outlying positions of Argentina and others claiming coefficients above 30. Brazil appears to have been instrumental in conceding these figures within the G7, although neither India nor China appears to have held out for long. The corresponding cuts for the low 20 coefficient were largely mid-range choices from the July 2008 text (Paragraphs 7(a)(i) and (ii)). For the 22 coefficient the flexibilities were as in the July 2008 text [note 9]. The 25 coefficient option attracts no flexibilities.

27. The second major issue that appears to have been fully resolved by the G7 (and not significantly challenged thereafter) was the celebrated “anti-concentration clause” (Paragraph 7(d) of the July 2008 text). Thus, full formula cuts must be imposed – for those developing members actually applying the formula – on a minimum of either 20 per cent of national tariff lines or 9 per cent of the value of imports at the HS chapter level.

28. The toughest issue among those on which the G7 engaged was that of sectoral agreements. Public statements since demonstrate that what was promoted as agreement was anything but. The challenge was, and remains, to find a formulation that recognises the “non-mandatory” nature of participation in any sectoral exercise, while providing some political assurance that major emerging-market members will indeed participate in a meaningful way. China has found it especially difficult to accept zero-tariff initiatives in the sectors so far identified. Beijing has divided interests. The initiatives would probably open up interesting new markets; however, at the same time, much Chinese industry remains under-competitive – particularly the technologically backward and the state-owned enterprises – and wants to hold onto its own domestic market share. Ironically, other big developing markets – notably India, South Africa and Brazil – fear sectoral agreements precisely because they see domination by Chinese suppliers. Major developed members have selective interests in sectorals; few are likely to take part in those proposed for textiles, clothing and footwear, for instance. At the same time, those same developed members need a credible exercise on sectorals to offset the view among many industrial lobbies that the likely outcome of tariff cuts linked to the Swiss formula and its extensive exceptions will provide little if any meaningful new market access.

29. Thus, almost everyone has conflicting interests. The G7 text envisaged appending to the modalities agreement a list of members committed to “*participating in negotiating the terms of at least two sectoral initiatives likely to achieve critical mass”.* The text presented by the Chairman in his report drops any reference to “critical mass” and substitutes the phrase *“with a view to making them viable”.* The change appears to provide comfort to China which saw itself coming under pressure to participate in vulnerable sectors because it represents such an important share of the world market. It should be noted that the current (10 July 2008) texts of each of the proposed sectoral agreements include explicit references to the proportion of world trade that would represent a critical mass: participation at that level would, in effect, make the agreements operational. Naturally, the inclusion of the target of “at least two” raises the question of whether reluctant members would simply pick sectors where they have no import sensitivities, with or without export interests.

30. The Chairman’s report also adds the rider (Paragraph 9): *“Participation in the negotiation of the terms of a sectoral initiative shall not prejudge a Member’s decision to participate in that sectoral initiative.”* Finally, there remains no hint of what additional flexibility any member agreeing to participate in a sectoral initiative would eventually receive. An increase in the relevant coefficient is assumed, but the extent of the increase is not to be decided until two months from the date the NAMA modalities are established.

31. All in all, it is a very confused arrangement for which the Chairman has come under intense fire, notably from the US which considers his text inaccurate. It is unclear how much of this new language was the result of backroom discussion at the end of the ministerial that was presented neither to the G7 nor to the Green Room. The powerful National Association of Manufacturers in the US has attacked the text, claiming that it reduced the potential for agreement and represented a *“further and unacceptable weakening of ambition”.*

32. Adding to the confusion – perhaps deliberately – is an additional sectoral proposal tabled by the EU in mid-July (so not in the 10 July text) covering textiles, clothing and footwear [note 10]. Unlike the other proposals, this is a skeleton text, simply calling for all members (no reference to “critical mass”) to reduce tariffs to an end rate *“as close to zero as possible”* and the removal of all Non-Tariff Barriers (NTBs) and export restrictions on raw materials. There has been no explanation to accompany what may be seen as a somewhat interesting proposal. It certainly would embarrass the US if ever taken seriously; and many members would be fearful of its effect in encouraging imports from China. It would potentially undermine several major preferential arrangements. As for the NTBs, it would be interesting to know if the US and EU would give up their complex and, for some, unfair rules of origin in this sensitive sector.

33. In his report the Chairman notes several areas where he considers “convergence” was secured outside the headline issues.

- **Members with low binding coverage** (Paragraph 8 of the July text) This issue appears to have been resolved prior [note 11] to the ministerial meeting. Within Paragraph 8(a) the ranges for the final target levels of binding coverage were fixed at 75 per cent for Members whose NAMA tariffs are currently less than 15 per cent bound and 80 per cent for those with current binding coverage at or above 15 per cent. For all these Members the final average level of newly-bound tariffs shall not exceed 30 per cent. In Paragraph 8(d) the first option on implementation is retained and the second deleted. Thus, the target average bound rate must be achieved through 11 annual equal rate instalments starting on 1 January of the *second* year after the Doha results come into force.
- **Bolivia** is encouraged to implement the SVE modalities (Paragraph 13) but will not have to report to the Goods Council each year.
- **Market access for LDCs** Annex B of the Chairman’s report presents amended language (following Paragraphs 15-17 of the July text) which largely consists of adopting references in the agricultural draft modalities (July text) and the Hong Kong Ministerial decision itself. The insertion of Paragraph 15(b) – “*Provide meaningfully enhanced market access for all LDCs”* – is supposedly intended to ensure that the 97 per cent of trade the US, in particular, will need to cover initially will include some products where trade with LDCs is actually present.
- **Mongolia** is now listed among those RAMs not required to undertake tariff reductions in addition to their accession commitments (Paragraph 20 of the July text).
- **Preference erosion** Arrangements in Paragraphs 28 and 30 as well as Annexes 2, 3 and 4 of the July text, to moderate the speed of tariff reductions on preference products (and, thereby, also to provide extended protection to the textiles and clothing industries in the US and EU), have been amended substantially but remain controversial. The lists of covered products have been lengthened, especially with respect to clothing: from 40 to 57 lines for the EU and from 25 to 29 for the US. Further, the Paragraph 30 arrangements for compensatory shorter implementation periods for those developing members who export products contained in the Annex 2 and 3 lists to the US and EU but do not benefit from preferences have been significantly extended. Thus rather than merely applying to Pakistan and Sri Lanka (six tariff lines each to the US market) they now apply additionally to Bangladesh, Cambodia and Nepal. In the cases of Pakistan and Sri Lanka, certain products (including textiles, carpets, clothing and some fisheries items) entering the EC market are now included.

34. The Chairman draws attention to four areas where “little or no” convergence was achieved:

- **South Africa and SACU** Broad opposition to providing South Africa with flexibility over and above that indicated in Paragraph 7(e) of the July text: namely, between 1 and 6 additional percentage points on top of the 10 envisaged in the Paragraph 7(b)(i) flexibility (for the y=22 coefficient).
- **Additional flexibilities for Venezuela** Paragraph 7(g) of the July text.
- **SVEs** Target averages in the top two bands contained in Paragraph 13(a)(i) and (ii) of the July text remain in dispute. In other words, where in the range 28-32 per cent should the final average bound rates for current tariffs above 50 percent be aimed; and for those tariffs now between 30 and 50 per cent, where within the range 24-28 per cent?
- **RAMs** Should the additional implementation period envisaged in Paragraph 19 of the July text be 3 or 4 years? This applies only to RAMs applying the formula and is largely about China; therefore, settlement is certainly linked to other issues also focused on Beijing.
- **Oman** A recent request by Oman to secure exceptional treatment (no requirement to reduce any bound rates below 5 per cent) remains in question.
- **Product coverage** Some continued opposition to removing the bracketed footnote to the Annex 1 list of product coverage for NAMA commitments. The footnote provides for certain exceptional product inclusions and exclusions for several members.

IV. Services: Nice signals, but...

35. At the Signalling Conference held on 26 July, participants worked in a very constructive spirit, expressing their intention to improve their specific commitments, sometimes to a significant extent. A clearer picture of the potential improvements will emerge once the revised offers are circulated.

36. As to the modes of supply, most participants (especially from developed countries) stated their intentions to improve their commitments under Mode 4, by providing better coverage for independent professionals, eliminating discretionary economic needs tests, and extending the length of authorised stays. As regards Mode 3, many plan to raise the ceiling for foreign share of capital, or even eliminate it altogether, particularly in the telecommunications, financial, environmental and distribution service sectors. Some improvements, albeit comparatively minor, could also be expected for Modes 1 and 2.

37. From a sectoral point of view, proposals for more or less significant improvement have been made for most sectors. In addition to the above-mentioned sectors, business services [note 12], services related to energy and all modes of transport are those who witnessed the highest number of proposals. These improvements should help to significantly close the gap between the current regime and members’ specific commitments, or even eliminate it altogether in a great number of cases. Some members have even shown a readiness to go beyond the status quo and liberalise further their applied regime in certain sectors. Lastly, most participants expressed their wish for effective disciplines on domestic regulation to be set up, even though the Conference did not go into detail on this matter.

38. By general consent, the signalling conference among 32 members appears to have been a success, although no formal record is available to make any but the most superficial assessment. Director-General Lamy’s report [note 13] largely speaks for itself. Members will draw their own conclusions as to whether the signals suggest a potentially worthwhile outcome in their own particular circumstances. Of course, as Mr Lamy points out, possible commitments signalled were conditional in all cases and, in any event, would not represent a final result even if they are eventually confirmed in formal offers and draft schedules.

39. While Ambassador Fernando de Mateo (Mexico), the Chairman of the Negotiating Group on Services, appeared buoyed by the meeting – possibly because his expectation level had been low – the big players had reservations. As India, China and Brazil all made substantial “offers”, the US and EU found reasons for encouragement and even more reasons for expecting more. It is evident that financial services commitments will be crucial in assessing a final Doha package. From the opposite viewpoint, India and others welcomed some signals from Brussels and Washington on Mode 4, including visa and economic-needs issues; however, they will remain unconvinced until such prospects are firmed up at the legislative level.

40. Given the subsequent collapse of the meeting, it is not at all clear how many of the signals remain valid – especially since the signalling meeting was held in the euphoric aftermath of the apparent acceptance by the G7 of the Lamy package on agriculture and NAMA modalities. The only formal document on the current state of the services negotiations overall remains the Chairman’s report of 28 July 2008 [note 14]. This report reflected the progress made prior to the ministerial. Members tentatively agreed on a timeframe for new offers (15 October 2008) and draft schedules (1 December 2008), but these deadlines do not mean much since the ministerial was unsuccessful. The thorny issue of the comparative levels of ambition expected among the three principle Doha negotiating dossiers was resolved by the Chairman through a simple reference to “a high level of ambition and political will as reflected in other areas of the DDA.” The objective of some members to secure the binding of, at least, current applied levels of market access and national treatment remains controversial. It is accepted only “where possible” and with a link in particular to sectors and modes of supply of export interest to developing countries.

41. The main progress reflected by the Chairman’s report is the agreement amongst members on the recourse to a waiver to enforce an appropriate mechanism for according preferences to LDCs. The specific characteristics of such a waiver still have to be negotiated (supposedly prior to the submission of revised offers, i.e. by 15 October 2008). In any event, out of the various legal options that were available to them, members have clearly chosen the most temporary one, since a waiver would have to be renewed annually. The fact that the Enabling Clause adopted at the end of the Tokyo Round was also initially just a temporary waiver might nevertheless be of some comfort to LDCs. Time will tell whether the current agreement on a waiver is indeed a turning point for the GATS.

V. Geographical Indications: A tug of war

42. In public and TNC statements, in the early stages of the mini ministerial meeting, many members appeared to be raising the stakes on the three intellectual property issues: the *register* of Geographical Indications (GIs) for wines and spirits; the *extension* of GI protection to other goods (an issue on which Switzerland stated that the demands of over 100 WTO members could not be ignored, while the EU has stressed this is one of the “must haves” of the negotiations); and the TRIPS/Convention on Biological Diversity questions, i.e. the *disclosure* on the source of genetic information for new patents (an issue which finds a wide support among developing countries). The US and Australia and other developing countries (Argentina, Brazil, Chile, etc.) have consistently opposed the inclusion of GI extension in the negotiations. The LDC group had a particular interest in extension and disclosure. Although the Director-General had hoped to keep these issues off the playing field, he had little option but to include them on the margins of the meeting.

43. To that end, Mr Lamy invited the Norwegian Foreign Minister, Jonas Gahr Støre, to undertake the unenviable task of finding consensus where it had been utterly absent from the earliest stages of the Doha talks, indeed even before their launch. He did his best on unfertile ground. His last known report to the TNC before the meeting broke down was to signal failure on substance and, reading between the lines, his intention to provide a text that pushed the issues into yet further discussion sometime after agriculture and NAMA modalities had been decided. Whether this would have been acceptable to the EU (especially France), Switzerland, India and other enthusiasts we shall never know.

VI. Assessment of the Mini- Ministerial: Some matters of principle

44. The Friday (25 July) night deal on the Lamy proposals looks less and less substantial and secure as time passes. The G7 ministers – notably USTR Susan Schwab, Ministers Celso Amorim and Kamal Nath (India) – appeared to be optimistic. Minister Amorim stated that the prospects for an agreement had increased from 50 to 65 per cent.

45. Mr Lamy informed the TNC on Monday 28 July that important progress had been achieved as well as “a very high level of convergence in many subjects”. However, within 24 hours, while Mr Lamy and Peter Mandelson were spinning an historic agreement to the press, others were picking the deal apart as doubt spread about the real extent of consensus within the small G7 group and the chances of acceptance among the broader Green Room assembly. Was there an accepted text on the treatment of sectoral initiatives in NAMA? Similarly, was there really “broad agreement” and “convergence” on the products that would be subject to tropical product treatment or those sheltered from preference erosion? It now seems not. Was the modest additional concession by the US on OTDS likely to survive the protests of Argentina and others? The meeting finally broke down over rather obscure details of the special safeguard mechanism in agriculture; but it is more than clear that if it had not been the SSM, it would have been something else.

46. It is probably correct, as the USTR since has insisted, that the breakdown was less over technical detail than principle. The imposition of a safeguard mechanism under which members may break long-standing bindings – in addition to that which already exists, i.e. the Agreement on Safeguards – is a move of considerable significance that does not add to the stability and security of market access conditions that the WTO is intended to achieve.

47. However, the issues of principle – which should engage the interests of the widest membership and especially the least influential and economically most fragile among them – run deeper still. They have to do with the very long period during which anything agreed now will stay in place – notably for the super emerging economies like India, China and Brazil. But, more importantly what that infers for a continued trend towards bilateralism and regionalism and the fate of those smaller and less powerful members left out of the party.

48. Perhaps the most candid view would be that the “Development Agenda” has been something of a trap for many members. As a round that skewed obligations to make meaningful commitments towards advanced economies and away from poorer and smaller nations, it has denied the least-favoured members the encouragement to build the kind of markets and regulatory environments that attract investment. Ironically, the large emerging economies that have insisted on heavy exceptional treatment are precisely those that receive investment in any event. China, India and Brazil receive the lion’s share of foreign direct investment (FDI) already. Major firms have no choice but to be present in these markets, almost regardless of the friendliness of the regulatory environment. The rest of the developing world and many transition economies must fight for the kind of FDI that will help build productive, export-oriented capacity.

49. Of course, there is little to prevent any WTO member from adopting, unilaterally, policies that favour investment – indeed, this is precisely what India and Brazil have done, even if reform in China was largely driven by its WTO accession process. Again, however, the major economies can take that route and attract investors even without binding their new tariffs and regulatory regimes in the WTO. Hence the vast gap that remains between bound and applied tariffs for some such markets. On the other hand, smaller economies need to establish secure investment environments if they are to be credible; and that means binding.

50. The fundamental dynamic of the Doha process has been contrary to this necessity. Little by little, exception has been piled on top of exception as though this were some kind of end in itself. For some members it is; for others it is a trap. It provides a good sound-bite to assert that industrial countries have held on to extensive special treatment for their agriculture and textiles sectors. That is clearly the case; but knowing it, and basing negotiating positions upon it, does not turn small poor nations into economic success stories. Certainly, on issues like cotton, it is without doubt policies in the US and EU that have undermined the global market. But correcting that – if it happens – will not be enough to bring sustained economic progress to the African producers.

51. A deal now, on the terms proposed, may well be of value in some respects to many members. But it could lock in place some doubtful arrangements for as much as two decades to come. The world has been stunned by the advance of China and India just in the period since the Doha negotiation was launched; where shall they be in 2028? These members will probably continue to liberalise but will do it increasingly on a regional or bilateral basis in the absence of a seriously demanding Doha outcome. That may be greatly to the benefit of Asia-Pacific area LDCs and other smaller economies. Many other WTO members will face only increased import competition from the super-competitive economies on the sectors where these have become dominant suppliers.

52. Now, there are alternative views to be taken of the Doha negotiations and what is currently on the negotiating table. This text takes a deliberately different view. However, what the preceding paragraphs are intended to do is suggest that a period of reflection may not be a bad thing. A rush to conclusion this year – even if that were possible – is not necessarily in the interests of all members. Much depends on what governments want from the WTO; something that has become less, not more, clear in recent years.

VII. Prospects: time for reflection

53. In any event, the chances of agreement on agricultural and NAMA modalities this year look remote; a Doha conclusion is out of the question. The fundamental political chemistry remains as it has been for a year or more. The US has in place a Farm Bill that is incompatible with any likely Doha outcome. The chances of a Republican President correcting the legislation to accommodate a Doha result are currently minimal. At the same time, nobody can have much confidence that the US will ratify a Doha deal since the current Administration has no “fast track” negotiating authority from the Democrat Congress and is unlikely to receive it. The Democrat majority in the Congress is not likely to be reversed at the elections in November; on the contrary, it may become overwhelming. If there is a Democrat elected President, the situation for the WTO changes dramatically. Certainly, a new Administration will wish to review trade policy objectives. As a result it is likely that labour and environmental issues will be emphasised more than ever. Nevertheless, a Democrat President asking a Democrat Congress for fast track authority would probably get it, even if the conditions are demanding. However, those conditions could apply largely to *bilateral* trade deals. Conditions relating to *multilateral* trade agreements are liable to focus on China and the maintenance of US trade protection instruments; namely, antidumping laws.

54. It has become received wisdom in Geneva that a Doha deal must be done with the current US Administration because it will be far more difficult, if not impossible, under the next. This is untrue. As we have commented before, the Uruguay Round was concluded in 1993, despite the anti-trade rhetoric that accompanied Bill Clinton’s election. The current Democrat nominee for the presidency, Barack Obama, may say things that sound worrying for trade officials elsewhere, but once in the Oval Office (if he were to be elected) he may shed the protectionist rhetoric and he does favour multilateralism. Thus, we may well see more, not less, US leadership in the WTO where it has been lacking in recent years. That, of course, does not mean the new Administration will simply accept what is now of the table. However, as suggested above, that may not be a bad thing.

55. India’s next general election must take place by May 2009. Brazil will hold elections in 2010. The new European Commission will take office in November 2009. These are the key dates for some of the major players. They suggest that a conclusion of the Doha negotiations in 2009 would be difficult, but not impossible.

56. Add to all this that many large firms – especially in the manufacturing and services sectors – are far from convinced of the benefits in the July 2008 framework, and one can reasonably deduce that all is far from a “done deal” in the Doha process. Much remains to be said, much remains to be negotiated and those WTO members outside the chosen circle would do well to think carefully and constructively over the coming months on what a better deal might look like.

Acronyms

ACP	African Caribbean and Pacific Group of States
DDA	Doha Development Agenda
DSB	Dispute Settlement Body
EC	European Communities
EU	European Union
FDI	Foreign direct investment
G7	Group of Seven
G33	Group of 33
GATS	General Agreement on Trade in Services
GIs	geographical indications
HS	Harmonised System
LDCs	least-developed countries
NAMA	non-agricultural market access
NTBs	non-tariff barriers
OTDS	overall trade-distorting domestic support
RAMs	recently-acceded members
SACU	Southern African Customs Union
SSG	special agricultural safeguard
SSM	special safeguard mechanism
SVEs	small and vulnerable economies
TNC	Trade Negotiations Committee
TRIPS	trade-related aspects of intellectual property rights
UN	United Nations
US	United States of America
USD	US Dollars
USTR	US Trade Representative
WTO	World Trade Organization

Note 1: See *Report to the Trade Negotiations Committee by the Chairman of the Special Session of the Committee on Agriculture, Ambassador Crawford Falconer*, WTO, JOB(08)/95 (Agriculture), 11 August 2008 and *Report by the Chairman, Ambassador Don Stephenson to the Trade Negotiations Committee*, WTO, JOB(08)/96 (NAMA), 12 August 2008. (return to text)

Note 2: In particular, a proposal to complement the UN’s Millennium Development Goals with a set of development goals for competitiveness has been floated most recently by Helen Johnson Sirleaf, president of Liberia and Nicky Oppenheimer, chairman of De Beers in *“Aid is Good, but Business is Better”*, International Herald Tribune, 30-31 August 2008. (return to text)

Note 3: Australia, Brazil, China, the EU, Japan, India, and the US. (return to text)

Note 4: Given the importance assigned to this issue, the WTO Director-General nominated Norway’s Foreign Minister to consult informally with WTO members. See Section V. (return to text)

Note 5: See *Committee on Agriculture Special Session - Revised Draft Mod alities for Agriculture* , WTO, TN/AG/W/4/Rev.3, 10 July 2008. (return to text)

Note 6: See *Committee on Agriculture Special Session - Revised Draft Modalities for Agriculture*, WTO, TN/AG/W/4/Rev.3, 10 July 2008. (return to text)

Note 7: A detailed explanation of the SSM issue can be found on the WTO website. (return to text)

Note 8: See *Report by the Chairman, Ambassador Don Stephenson to the Trade Negotiations Committee*, WTO, JOB(08)/96 (NAMA), 12 August 2008. (return to text)

Note 9: See *Negotiating Group on Market Access - Draft Modalities for Non-Agricultural Market Access - Third Revision*, WTO, TN/MA/W/103/Rev.2, 10 July 2008. (return to text)

Note 10: See JOB(08)/78, *“Draft Modalities for the Liberalization of Tariffs in the Textiles, Clothing and Footwear Sector”, Communication from the European Communities* , 15 July 2008. (return to text)

Note 11: See JOB(08)/84 released on 21 July 2008 and covering developments since the full July text on NAMA. (return to text)

Note 12: Particularly professional services (such as legal services and accounting, architecture, engineering, medical and paramedical services), information technology, research and development services and rental services. (return to text)

Note 13: See *Services Signalling Conference*, WTO, JOB(08)/93, 30 July 2008. (return to text)

Note 14: See *Elements Required for the Completion of the Services Negotiations*, WTO, TN/S/34, 28 July 2008. (return to text)

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