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WORLD TRADE
ORGANIZATION

Early Decisions Are
Vital to Progress in
Ongoing Negotiations



Contents

| | | |
|--------|---|----|
| Letter | | 1 |
| | Results in Brief | 2 |
| | Background | 4 |
| | Several Factors Led to Successful Doha Launch | 7 |
| | Early Decisions on Key Sensitive Issues Vital to Progress in Round | 11 |
| | WTO Negotiations Face Several Overarching Challenges | 19 |
| | Concluding Observations | 29 |
| | Agency Comments and Our Evaluation | 30 |

Appendixes

| | |
|---|----|
| Appendix I: Additional Issues on the Doha Negotiating Agenda | 32 |
| WTO Rules | 33 |
| Nonagricultural Market Access | 38 |
| Trade in Services | 41 |
| Trade and the Environment | 42 |
| Dispute Settlement | 45 |
| Registry for Geographical Indications for Wines and Spirits | 46 |
| Issues Negotiated Outside New Negotiating Groups or Special Sessions of WTO Bodies | 47 |
| Appendix II: Work Mandated by the Doha Declaration, but Not Part of Negotiations | 51 |
| Appendix III: Objectives, Scope, and Methodology | 53 |
| Appendix IV: GAO Contacts and Staff Acknowledgments | 55 |
| GAO Contacts | 55 |
| Acknowledgments | 55 |

Figures

| | |
|---|----|
| Figure 1: Organization of the WTO Negotiations | 6 |
| Figure 2: Key Events through the Fifth Ministerial Conference | 11 |
| Figure 3: Agricultural Export Subsidies, 1998 | 15 |
| Figure 4: EU, Japanese, and U.S. Agricultural Domestic Support, 1998 | 16 |
| Figure 5: Organization of the WTO Negotiations | 32 |
| Figure 6: Organization of the WTO Negotiations, and WTO Work Not Subject to Negotiations but Called for in the Doha Declaration | 52 |

Abbreviations

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| ACP | African, Caribbean, and Pacific |
| AFL-CIO | American Federation of Labor-Congress of Industrial Organizations |
| CAP | Common Agricultural Policy |
| DSU | Dispute Settlement Understanding |
| EU | European Union |
| GATS | General Agreement on Trade in Services |
| GATT | General Agreement on Tariffs and Trade |
| MFN | Most Favored Nation |
| MEA | Multilateral Environmental Agreement |
| STE | State Trading Enterprise |
| TRIPS | Agreement on Trade-Related Aspects of Intellectual Property Rights |
| USTR | Office of the U.S. Trade Representative |
| WTO | World Trade Organization |



United States General Accounting Office
Washington, D.C. 20548

September 4, 2002

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable William H. Thomas
Chairman, Committee on Ways and Means
House of Representatives

The Honorable Philip M. Crane
Chairman, Subcommittee on Trade
Committee on Ways and Means
House of Representatives

In November 2001, the World Trade Organization launched a new set of multilateral negotiations at its ministerial conference in Doha, Qatar. The ministerial conference was important, because it laid out an ambitious agenda for a broad set of new multilateral trade negotiations set forth in the Doha Ministerial Declaration.¹ The declaration calls for a continuation of discussions on liberalizing trade in agriculture and services, which began in 2000. In addition, it provides for new talks on market access for nonagricultural products, trade and the environment, trade-related aspects of intellectual property rights, and other issues. The negotiations on these issues are scheduled to conclude by January 1, 2005.

Because the Doha ministerial conference successfully launched new multilateral trade negotiations, you asked us to analyze the nature of those negotiations and their future prospects. In this report, we (1) analyze the factors that contributed to the Doha ministerial conference's successful launch of new World Trade Organization negotiations, (2) analyze the key interim deadlines for the most sensitive issues from the present time through the next ministerial conference in 2003, and (3) evaluate the most significant challenges facing the World Trade Organization in the overall negotiations. Appendix I contains a brief synopsis of remaining issues on

¹The negotiations are formally called the Doha Development Agenda but are commonly referred to as a round. The Doha Declaration refers to the Ministerial Declaration issued at Doha, which is the formal document that the World Trade Organization membership endorsed on the negotiations and work program.

the Doha negotiating agenda. Appendix II identifies the working groups that the Doha Declaration established on issues that are not formally part of the negotiations.

To address these objectives, we met with and obtained documents from a wide variety of World Trade Organization, U.S., and foreign government officials. In addition, we met with private sector, nongovernmental, and intergovernmental organization representatives in Washington, D.C., Geneva, and Brussels. This report, however, is not meant to be a comprehensive review of all the issues in the negotiations. For a detailed account of the issues and their progress in the negotiations, refer to the World Trade Organization Web site <http://www.wto.org>. A full description of our scope and methodology can be found in appendix III.

Results in Brief

Four main factors led to the World Trade Organization's successful launch of new multilateral trade negotiations in Doha. First, the U.S. and the European Union's clear support for the launch, bolstered by the strong personal relationship between the U.S. Trade Representative and the European Union Commissioner for Trade, facilitated agreement on the agenda for new negotiations. Second, World Trade Organization members applied an effective preparation strategy before the Doha ministerial conference. For example, trade ministers from developed and developing countries met throughout the year to rebuild relationships damaged during the World Trade Organization's failed attempt to launch negotiations at its 1999 Seattle ministerial conference.² In addition, Organization members used as a starting point for discussions in Doha a broad set of generally agreed-upon objectives for new negotiations and deferred debate on the details to the actual negotiations being launched. In contrast, before the 1999 Seattle ministerial, World Trade Organization members had tried to reconcile a long list of divergent positions on every issue to be negotiated. Third, some key developments at the Doha conference helped gain support from the developing countries for launching negotiations. Last, Organization officials and member country representatives told us that the tragic events of September 11th galvanized Organization members to show their support for a strong and healthy worldwide trading system.

²See background for a discussion of the Seattle ministerial conference.

The Doha Declaration requires negotiators to make early, crucial decisions, as it mandates several important interim deadlines. One of these deadlines involves decisions on agricultural trade, where World Trade Organization members must agree on modalities, or methodologies, timetables, and desired targets for reducing agricultural export subsidies, domestic support, and agricultural tariffs by March 31, 2003. This will be difficult, because the European Union, World Trade Organization members' main target for reducing export subsidies, faces stiff opposition at home to changing its agricultural policies. The second interim deadline concerns the "Singapore issues,"³ which Organization members must decide whether to include in the negotiations by the next ministerial conference in September 2003. This decision is highly contentious, most notably the negotiations on investment and competition policy. The European Union considers negotiations on investment and competition essential to a successful conclusion of the negotiations, while developing countries have consistently and vehemently opposed including these issues in the talks.

The overriding challenge for the World Trade Organization in the negotiations will be to forge consensus within its large and diverse membership and to deal with several difficult organizational issues. In addition, the Organization will need to overcome the negative effects of outside events such as disputes among its key members. Achieving consensus will be challenging, because the Organization's developing country members, now representing 73 percent of the membership, have divergent views on trade liberalization—the main objective for the negotiations—both compared with developed country members and among each other. For example, some developing country members are willing to lower their barriers to trade provided they can gain greater access to markets where they can be most competitive, such as agriculture and textiles and apparel. Others argue that, given their developing status, they should be allowed special exceptions to protect their markets, such as the ability to retain higher tariffs. In fact, the importance of the developing country members is embodied in the negotiations' name—the Doha Development Agenda. Thus, among other challenges, the World Trade Organization's most difficult organizational task will be to fulfill some developing country members' high expectations, particularly among

³The term "Singapore issues" originated from the work program of the 1996 ministerial conference in Singapore, which created three working groups on the issues of trade and investment, trade and competition policy, and transparency in government procurement. Trade facilitation was also highlighted as a priority in the Singapore Declaration.

African nations, not only for receiving technical assistance, such as for understanding World Trade Organization agreements—the Organization’s traditional role—but also for increasing their capacity to export. This latter role would require the Organization to expand its activities to include providing development assistance. However, the Organization lacks the resources and experience to deliver this type of assistance and thus will be hard pressed to meet developing countries’ expectations. Further, outside events such as ongoing trade disputes among key Organization members could hamper the negotiators’ willingness to reach agreement on the issues. On a positive note, however, the granting in August of trade promotion authority to the U.S. President has provided a boost for the negotiations, according to the World Trade Organization’s Director General and several member countries.

Background

The Uruguay Round, the seventh in a series of multilateral negotiations known as “rounds,” established the World Trade Organization (WTO) on January 1, 1995, as the successor to the General Agreement on Tariffs and Trade (GATT). This round resulted in over a dozen separate agreements that, among others, covered intellectual property rights and trade in services and strengthened existing disciplines on agriculture. It also established a stronger dispute settlement process than had been available under the GATT. Moreover, unlike previous trade rounds, the Uruguay Round agreements were part of a “single undertaking,” meaning that all GATT members had to agree to all their provisions, with no discretion as to which accords they wished to accept.

The WTO administers rules for international trade, provides a mechanism for settling disputes, and provides a forum for conducting trade negotiations. WTO membership has increased since its creation to 144 members, up from 90 GATT members when the Uruguay Round was launched in 1986. WTO membership is also diverse in terms of economic development, consisting of all developed countries and a large percentage of developing countries, from the more advanced to the very poor. Specifically, while the WTO has no formal definition of a “developing country,” the World Bank classifies 105 current WTO members, or approximately 73 percent, as developing countries. In addition, 30

members, or 21 percent of the total, are designated as “least developed countries.”⁴

The ministerial conference is the highest decisionmaking authority in the WTO, convenes at least once every 2 years, and consists of trade ministers from all WTO member countries. The WTO General Council, made up of representatives from all WTO member governments, implements decisions adopted by the members in between ministerial conferences. Decisionmaking in the WTO is largely based on consensus among its members rather than on a majority of member votes as it is in many other international organizations.

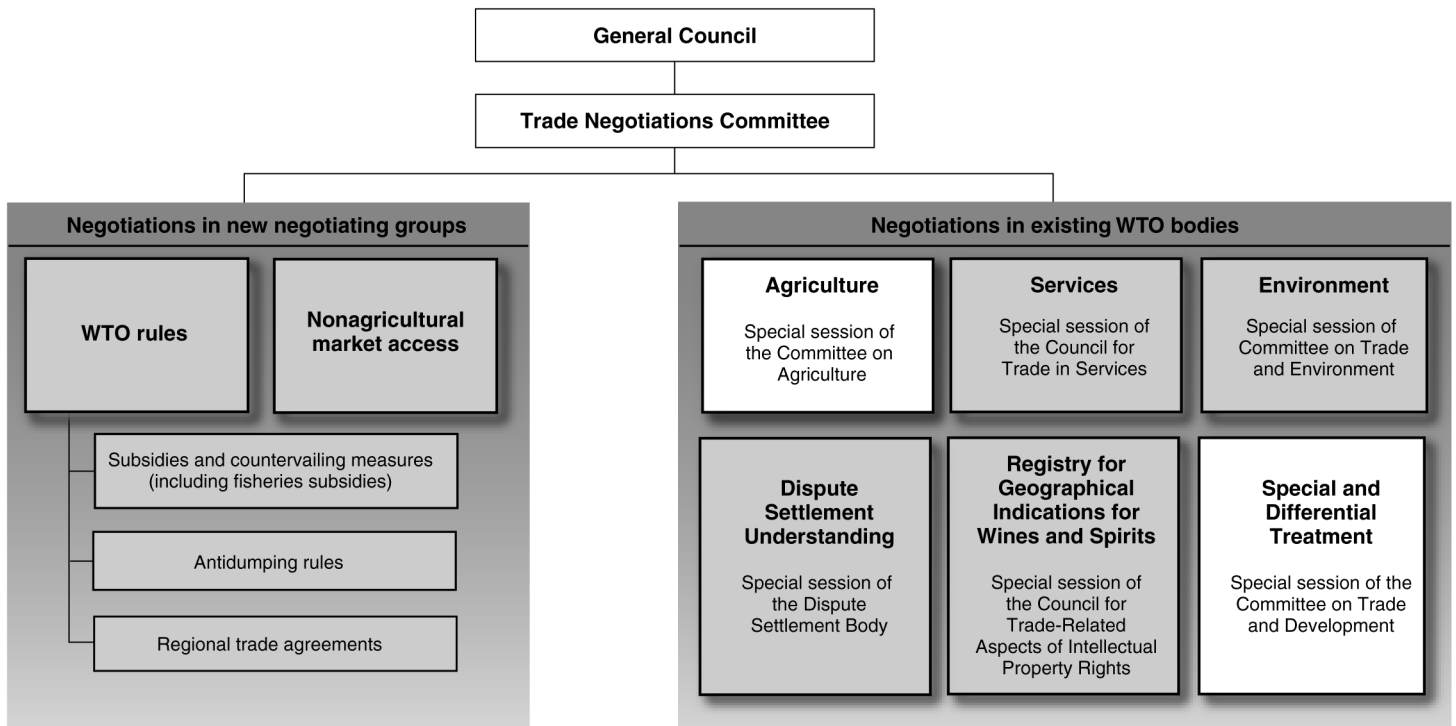
Four ministerial conferences have taken place since the WTO’s creation. Prior to the third ministerial conference, held in Seattle in December 1999, WTO members announced their intention to launch a new round of multilateral trade negotiations. However, the Seattle conference ended without launching negotiations. Following four days of intensive talks, the conference was suspended without issuing a ministerial declaration. The failure to launch a new round in Seattle resulted from a combination of circumstances, including a lack of agreement among members on the issues to be discussed in a new round, the sensitivity and complexity of trade issues under consideration, and inherent difficulties in the negotiation process.⁵

Ultimately, at the fourth ministerial conference in Doha, Qatar, in November 2001, WTO members were able to reach consensus on a new negotiating effort, officially called the Doha Development Agenda. The Doha Declaration sets forth a work program for the negotiations to be concluded by January 1, 2005. Figure 1 illustrates the organizational structure that the WTO has established to conduct the negotiations mandated by the Doha Declaration.

⁴The United Nations currently categorizes a total of 49 countries as “least developed countries,” calling them “particularly ill-equipped to develop their domestic economies and to ensure an adequate standard of living for their populations.” Under the WTO agreements, developing and, to an even greater extent, least developed countries receive special treatment, such as being granted additional time to meet their various WTO commitments.

⁵For additional analysis of the Seattle ministerial conference, see U.S. General Accounting Office, *World Trade Organization, Seattle Ministerial: Outcomes and Lessons Learned*, [GAO-T-NSIAD-00-84](#) (Washington, D.C.: Feb. 10, 2000).

Figure 1: Organization of the WTO Negotiations



Note 1: Agriculture, highlighted above, is a key issue focused on in this report.

Note 2: Special and differential treatment is also discussed in this report. Some WTO members, including the United States, contend that this special session is not a negotiating body but rather is part of the general Doha work program.

Note 3: For a discussion of other issues shown in this figure, see appendix I.

Source: GAO analysis, based on WTO documents.

The new negotiating effort will encompass agriculture and trade in services, two critical areas where negotiations have been ongoing since 2000, under an existing Uruguay Round mandate. Special sessions of standing WTO bodies will also address the relationship between trade and the environment; attempt to clarify and improve provisions of the WTO Dispute Settlement Understanding; and negotiate the establishment of a multilateral notification and registration system for geographical

indications for wines and spirits.⁶ The WTO also called for a special session of the Trade and Development Committee to identify and attempt to strengthen special and differential treatment provisions for developing countries. The status of this body has been the subject of debate and is unclear. While some countries consider it to be a legitimate negotiating group, the United States and several other countries contend that it belongs under the general Doha work program. In addition to the special sessions, two new negotiating groups have been created to review and propose revisions to WTO disciplines dealing with trade rules and to recommend cuts in tariffs and other steps to facilitate market access for nonagricultural products. Chairpersons of special sessions and new negotiating groups have been appointed by the WTO membership to serve up to the fifth ministerial conference in 2003, at which time all appointments will be reviewed. The Doha Declaration also mandated negotiations on numerous issues related to difficulties that developing countries face in implementing their Uruguay Round commitments. However, the declaration did not create a separate negotiating group for these implementation issues.

Several Factors Led to Successful Doha Launch

Several factors contributed to the WTO's successful launch of new trade negotiations, which was a difficult feat, considering the lingering uncertainty about launching such a round among WTO members since their failure to do so 2 years earlier in Seattle.⁷ First, a strong relationship between the United States and the European Union, particularly the U.S. Trade Representative (USTR) and the European Union (EU) Commissioner for Trade, helped forge consensus among other WTO members. Second,

⁶The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) currently provides protection for geographical indications (indications that identify a good as originating in the territory of a member country, or a region or locality in that territory, where a given quality reputation or other characteristic of the good is essentially attributable to its geographical origin). Examples of such products include Roquefort cheese, Washington state apples, and Idaho potatoes.

⁷During the 2 years following the Seattle ministerial conference, concerns were raised about the long-term role of the WTO in increasing trade liberalization, as WTO members continued to grapple with serious differences over important issues like the scope of any new negotiations. Some countries favored a narrow agenda limited to negotiations mandated under the Uruguay Round, while others wanted to bring new areas of trade under WTO disciplines, including investment and competition policy. Further, some developing countries continued to express serious misgivings about launching a round at all. Many of these countries had experienced difficulty meeting their commitments under the Uruguay Round agreements and were disappointed about the lack of benefits these agreements had provided them. Therefore, they were reluctant to take on any additional obligations.

WTO members used an effective strategy to prepare for the Doha ministerial conference. Third, two key developments occurring during the Doha ministerial greatly contributed to the developing countries', particularly African countries', willingness to launch negotiations. Finally, the tragic events of September 11th helped galvanize WTO members to show their support for a strong and healthy worldwide trading system.

U.S.-EU Relationship Was Critical

The strong support on the part of the United States and the European Union for the negotiations, bolstered by the positive relationship between the U.S. Trade Representative and the EU Commissioner for Trade, helped bring together other WTO members on specific issues and on the overall goal of launching a new set of global trade negotiations. WTO members did not agree to launch a new set of trade negotiations at the 1999 ministerial conference in Seattle due, in part, to a lack of consensus among major trading countries, especially the United States and the European Union. In Doha, by contrast, the United States and the European Union, while not agreeing on all of the key issues, were united behind a common goal of launching a new round. According to some member country representatives, the long-standing friendship between the U.S. Trade Representative and the EU Trade Commissioner, dating back to the 1980s, was a positive force in launching the negotiations. They noted that the two officials used their personal rapport to garner support for an agenda for these negotiations. Examples cited included their efforts to build bridges with developing countries and to work together to devise compromise language on trade and the environment, which allowed the European Union to make crucial concessions in agriculture. Several WTO member country representatives told us that agreement between the United States and the European Union was essential to forging a consensus to launch negotiations.

Preparation Strategy Was Effective

According to U.S. officials and foreign government representatives, a key strategy for achieving consensus to launch negotiations was holding two informal "mini-ministerials," or informal meetings, among a cross section of developed and developing country members, in the months before the Doha ministerial conference. According to U.S. and foreign officials, these meetings helped to rebuild personal relationships among ministers that were crucial to overcoming the negative atmosphere evidenced by the WTO's failure to launch negotiations in Seattle in 1999. Further, throughout 2001, trade ministers from major trading countries met individually with other ministers, especially from developing countries. In addition,

developing countries, including many in Africa, participated in a network of informal meetings to prepare for the ministerial. Some developing country representatives said that in contrast to preparations before the Seattle ministerial, these efforts showed willingness on the part of developed countries to better understand and address their concerns. For example, several foreign representatives cited the fact that the U.S. Trade Representative spent a great deal of time before the Doha ministerial listening to developing countries' views, particularly those of African nations. They added that this was a positive step in relations between developed and developing WTO member countries. According to U.S. and WTO officials and foreign representatives, this effort was significant, as negotiations could not have been launched without the developing countries' support.

Another preparatory strategy that helped WTO members reach consensus on an agenda for new negotiations was the nature of the text used as the basis for discussion at the ministerial meeting. Before the Doha ministerial, the General Council chair produced his own text based on input he received during exhaustive meetings with small groups of WTO members. This text reflected the consensus views of members on the issues, based on the chair's own best judgment. In contrast, before the Seattle ministerial conference, specific proposals from various member countries on each issue drove the discussions on what should be included in the draft declaration. This led to a lengthy (32 page) draft declaration text that was a compendium of member country positions, including nearly 400 bracketed items, indicating disagreement among members.

Key Developments in Doha Won Developing Country Support

WTO officials and foreign representatives said that two developments at the Doha ministerial conference were crucial to gaining developing countries' support to launch a new set of negotiations. First, the WTO granted the European Union a waiver from WTO's most-favored-nation clause (MFN)⁸ to continue providing preferential market access to African, Caribbean, and Pacific (ACP) countries through its Cotonou Agreement,

⁸Most-favored-nation is a fundamental principle in the WTO, which requires WTO members to grant each other trade privileges as favorable as they give to any other WTO member.

which was signed in 2000.⁹ The Cotonou Agreement will be valid for 20 years, during which time the European Union and ACP countries can enter into additional economic integration agreements, progressively removing barriers to trade. In addition, the agreement includes a pledge of 13.5 billion euros in development assistance to ACP countries for the initial 5-year period. The Secretary General of the ACP group has concluded that the Cotonou Agreement will help integrate ACP countries into the world economy by reinforcing regional integration, thus helping them to benefit from globalization.

Second, WTO officials and U.S. and foreign country representatives said the adoption at Doha of a declaration clarifying the relationship between the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and public health was critical to gaining the support of many African nations. The *Declaration on the TRIPS Agreement and Public Health* states that the TRIPS agreement "does not and should not prevent Members from taking measures to protect public health." Prior to the ministerial, African nations, nongovernmental organizations, and others had argued that TRIPS could prevent developing countries from gaining access to medicines needed to fight HIV/AIDS, tuberculosis, malaria, and other epidemics (see app. I for a further discussion of this declaration).

September 11th Tragedy Galvanized Support for Negotiations

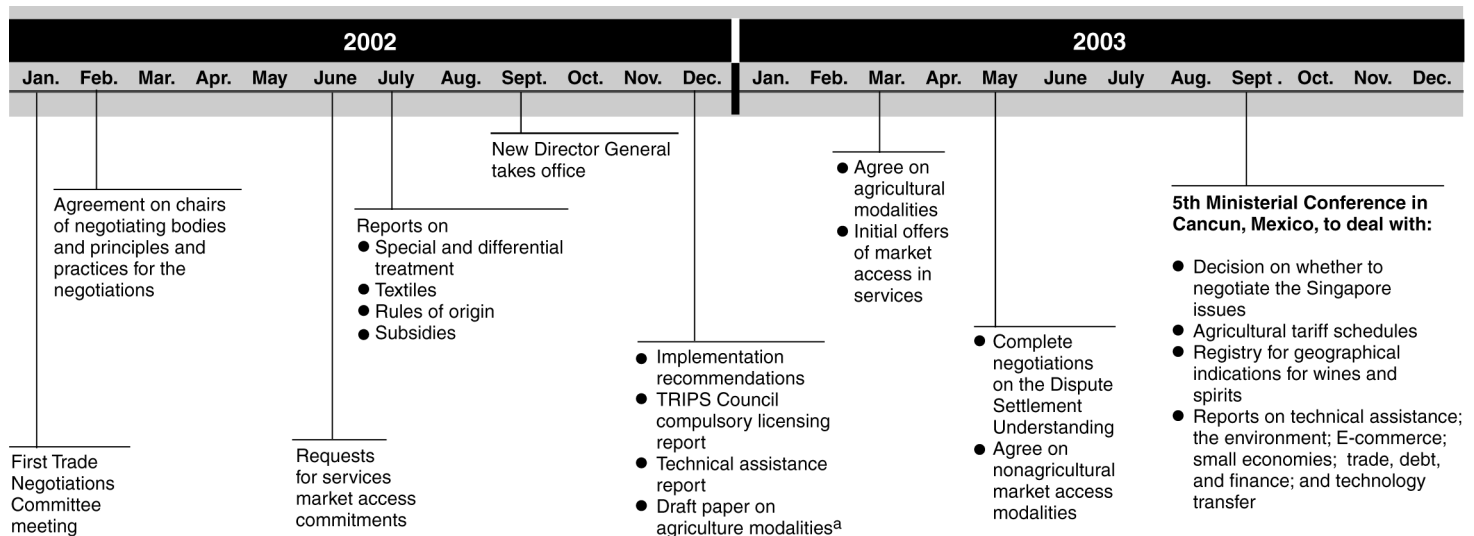
The final major factor that U.S. and WTO officials and member country representatives cited as contributing to the ministerial's success was the tragic events of September 11th. They said that after September 11th, many WTO members felt that it was essential for there to be a successful major international meeting to demonstrate the strength of the international community. Further, given the potential impact of the attacks on the world economy, which was already in recession, the ministerial would be an important barometer of the strength of the multilateral trading system. The combination of these factors led one official to remark that after September 11th, the ministerial had to succeed because "the price of failure was too high."

⁹The African, Caribbean, and Pacific-European Union Partnership Agreement signed in Cotonou, Benin, on June 23, 2000, referred to as the Cotonou Agreement, is an agreement between 77 African, Caribbean, and Pacific states and the European Union that provides trade preferences to the ACP countries.

Early Decisions on Key Sensitive Issues Vital to Progress in Round

The most important interim deadlines in the negotiations involve early key decisions on agricultural trade and the Singapore issues, including competition and investment in particular. Meeting the interim deadlines on these issues will be crucial to achieving overall progress in the negotiations and will provide a good indication of the ultimate prospects for the negotiations' successful conclusion. The following section discusses the nature of these key decisions and analyzes the importance of these particular issues and what makes them sensitive and difficult to negotiate. Figure 2 shows the main interim deadlines and key events in the negotiations through the fifth ministerial conference in 2003.

Figure 2: Key Events through the Fifth Ministerial Conference



^aModalities include numerical targets, timetables, and formulas for countries' commitments.

Source: GAO.

Meeting Interim Deadline on Agricultural Trade Crucial but Difficult

According to several WTO member country representatives and senior WTO officials, whether WTO members meet the March 31, 2003, interim deadline for establishing the agricultural modalities (that is, numerical targets, timetables, and formulas for countries' commitments) specified in the Doha Declaration will be a crucial indicator of the likelihood of success in the overall negotiations.¹⁰ This is attributable to the extreme importance of agricultural trade reform for a large number of WTO member countries, many of which want to see progress in the agriculture talks before coming to agreement on other issues. However, meeting this deadline will be difficult, because it necessitates reaching agreement on areas of long-standing dispute, particularly with regard to agricultural export subsidies and domestic support payments, which have generated strong domestic constituency concerns. Specifically, it is the negotiators' intention to agree on a target and timetable for phasing out agricultural export subsidies. They will also need to agree on a definition of the types of domestic agricultural support payments that should be considered trade-distorting. Agricultural modalities also include devising a formula for WTO members to reduce tariffs, which, while important, is less controversial.¹¹

Achieving agricultural trade reform in the negotiations is critical because improving access to countries' agricultural markets is a major priority for a wide range of WTO member countries, including major agricultural exporters such as Canada, Australia, and Brazil, who want to expand their overseas markets. Proponents also include many developing countries, among them Colombia, the Philippines, South Africa, and Thailand, who wish to take advantage of their natural competitive advantage in the agricultural sector. Agricultural reform is also critical to the United States, whose farmers have faced a finite domestic market over the past several years, falling international commodity prices, and a strong dollar that had effectively inflated the cost of their exports to foreign markets. Because agricultural trade is such a top priority to so many WTO members, the chair of the special session of the Committee on Agriculture has called it a key to

¹⁰The Doha Declaration commits WTO members, without prejudging the outcome, to negotiate substantial improvements in market access for agricultural products; reduce, with a view to phasing out, all forms of export subsidies; and substantially reduce domestic support payments that distort trade.

¹¹By the fifth ministerial conference in September 2003, members must submit their tariff schedules detailing the specific concessions they are willing to make by tariff line, based on the modalities they agreed to 6 months earlier in March.

completion of the negotiations, stating that without progress in agriculture, there will be no progress in the overall round.

Meeting the March 2003 interim deadline on modalities for export subsidies¹² and domestic support payments¹³ will be difficult, as these areas have been particularly contentious, generating intense domestic constituency concerns in the European Union, Japan, and the United States. For the European Union, the goals set out in the Doha Declaration for phasing out export subsidies present a serious challenge. Over the years, European farmers have come to rely on the generous support and subsidies provided under the Common Agricultural Policy (CAP).¹⁴ In fact, the CAP has become the single biggest expenditure in the EU budget, representing approximately 42 percent of its budget. In recent years, the European Union has begun to reform the CAP and lower costs. Nevertheless, EU farmers in certain countries, such as France, wield considerable political power and could challenge the positions taken by governments that would agree to eliminate export subsidies. Similarly, in Japan, accepting substantial cuts in domestic support for agriculture and reduced tariffs on agricultural imports could jeopardize farmers' support for the current government. Meanwhile, in May 2002, the United States enacted the Farm Security and Rural Investment Act of 2002 (P.L. 107-171), which will raise U.S. spending on domestic support for agriculture by about \$73.5 billion over the next 10 years.¹⁵

¹²Export subsidies are subsidies contingent on export performance. For example, they include cost reduction measures, such as subsidies to reduce the cost of marketing goods for export, and internal transport subsidies applying to exports only.

¹³Domestic supports are payments made to farmers that raise or guarantee prices or income. They include such measures as government buying at a guaranteed price and commodity loan programs.

¹⁴The CAP is a set of rules and regulations governing agricultural production in the European Union. CAP rules cover most aspects of agricultural activity, including financial support to farmers, production methods, marketing, and controls over quantities of food that different agricultural sectors can produce.

¹⁵In addition to raising the level of domestic support for some of the major U.S. crops, including corn, soybeans, and wheat, the new legislation reintroduces payments to producers of other commodities that had been phased out after 1996.

Many WTO member countries are aggressively pursuing the goal of reducing and eventually eliminating export subsidies, including the 18-country coalition known as the Cairns Group,¹⁶ which accounts for one-third of the world's agricultural exports, as well as India, Mexico, Nigeria, and the United States.¹⁷ The European Union is the main target of the Doha mandate regarding export subsidies, as its subsidies far exceed those of other countries. As shown in figure 3, in 1998 the European Union was responsible for about 90 percent (\$6.6 billion) of all agricultural export subsidies used worldwide. In 2000, EU expenditures on export subsidies were about 170 times the amount paid by the United States.¹⁸ The European Union has stated that it cannot agree to eliminate export subsidies completely. The European Union and other WTO member countries maintain that disciplining export subsidies without addressing other programs affecting export competition, such as U.S. export credit guarantees, would be discriminatory.¹⁹

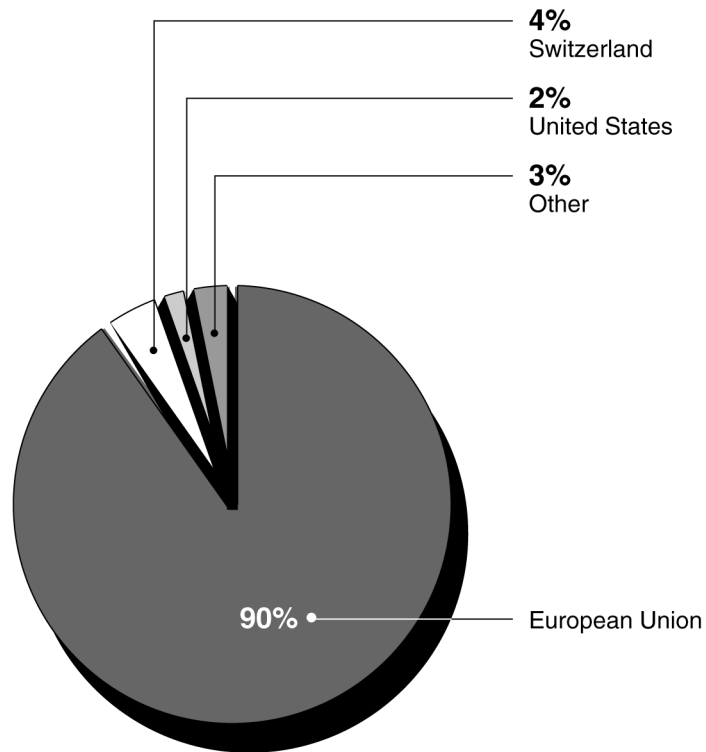
¹⁶The members of the Cairns Group are Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, the Philippines, South Africa, Thailand, and Uruguay. The group takes its name from the city in Australia where members first met in 1986.

¹⁷An important issue for the United States has been the role of state trading enterprises (STE), which the United States contends provide export subsidies in some cases. An STE is generally considered to be a government enterprise authorized to engage in trade and owned, sanctioned, or otherwise supported by a government. The United States seeks to end the exclusive export rights of STEs in order to ensure private-sector competition; establish WTO requirements for notifying costs, pricing, and other sales information for STEs; and eliminate government funding or other support for these enterprises.

¹⁸The latest comprehensive official WTO figures on export subsidies for all WTO members are from 1998. However, the latest official figures for the European Union indicate that its export subsidies totaled approximately \$2.6 billion for the marketing year 2000–2001. The latest official WTO figures for U.S. export subsidies were about \$15 million for fiscal year 2000.

¹⁹The U.S. Department of Agriculture operates four types of credit guarantee programs. These programs provide government guarantee of repayment to U.S. banks willing to finance agricultural exports to countries where credit might otherwise be difficult to obtain. Proposed disciplines on credit guarantees would apply to these U.S. programs, as well as similar programs of other WTO members. Fourteen other such programs have been identified, according to the Department of Agriculture.

Figure 3: Agricultural Export Subsidies, 1998



Note 1: 1998 is latest year for which official WTO data are available for all WTO countries' export subsidy payments.

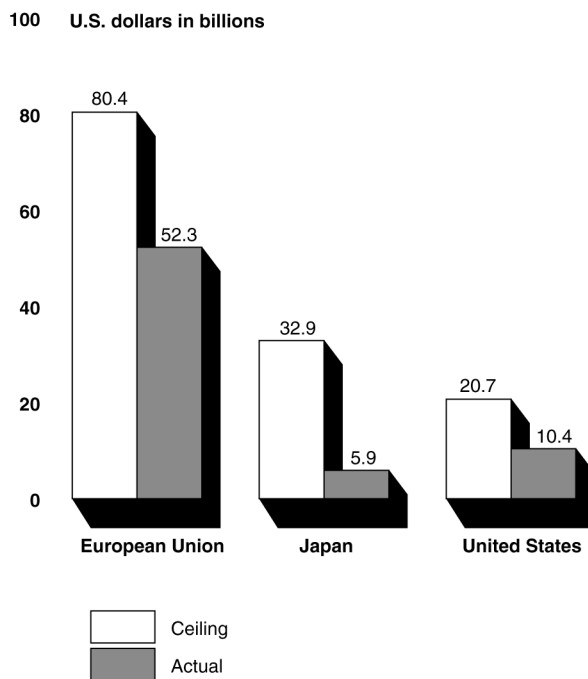
Note 2: Percentages do not add to 100 because of rounding.

Source: Congressional Research Service analysis based on WTO, *Export Subsidies: Background Paper by the Secretariat* (Geneva, Switzerland: May 2000).

Like export subsidies, the Doha mandate of reducing domestic support payments to farmers is highly controversial. The Cairns Group maintains that only non-trade-distorting support payments, such as for pest and disease control measures, should be allowed. Non-trade-distorting domestic support programs are government funded and typically are not directed at particular products or related to production levels or prices. Although Japan and the European Union are willing to reduce support payments to their farmers, they want to maintain some types of payments linked to production. EU officials, for example, argue that certain payments to farmers, based on measurement such as acreage or number of animals, should continue to be allowed, provided they are tied to limits on

production and serve worthwhile goals. These goals include stewardship of the rural environment and more humane treatment of farm animals. The United States has called for simplifying the rules for domestic support and establishing a ceiling on trade-distorting support that applies proportionately to all countries. As shown in figure 4, the European Union has provided much higher levels of support to its farmers than have other WTO members, and it also enjoys a much higher allowable ceiling for such support under its Uruguay Round commitments.

Figure 4: EU, Japanese, and U.S. Agricultural Domestic Support, 1998



Note 1: "Ceiling" refers to each country's domestic support limit under the Uruguay Round.

Note 2: The latest year for which official WTO data are available for members' domestic support payments is 1998.

Source: GAO analysis based on WTO, *Domestic Support: Background Paper by the Secretariat* (Geneva, Switzerland: March 2002).

A third aspect of the decision on modalities is to devise a formula for reducing tariffs on agricultural products. While less contentious than attempts to reach agreement on modalities for export subsidies and domestic support payments, agreeing on how to reduce agricultural tariffs is important, particularly to the United States. According to the U.S. Undersecretary of Agriculture, the average tariff for U.S. agricultural products is 12 percent, while the average global tariffs for food and agricultural products worldwide are 62 percent. Japan's tariffs average 59 percent, while the Cairns Group's and the EU's are 30 percent. Tariff reductions are a sensitive issue for many developing countries. Some developing countries are reluctant to bring tariffs down to a level that might compromise the livelihood of significant segments of their populations who depend on agricultural production. Once WTO members agree on agricultural tariff modalities, they must submit tariff schedules detailing their proposed new tariff levels by the fifth ministerial conference in September 2003. Accomplishing this task 6 months after the March modalities deadline could be difficult for some WTO members. For example, some developing countries have limited staff, experience, and resources. In addition, the European Union must create tariff schedules not only for its current members but also for the 10 countries that are candidates to become EU members.²⁰

Meeting Interim Deadline on Singapore Issues Is Highly Contentious

A second critical decision point in the Doha Development Agenda involves whether negotiations should proceed on what are generally referred to as the Singapore issues, which include issues related to investment, competition, trade facilitation, and transparency in government procurement. Because of the extreme sensitivity of these issues, particularly regarding competition and investment, WTO members decided in Doha to delay the start of formal negotiations on these topics until they could make certain decisions at the fifth ministerial conference in 2003. These decisions are of key importance, because they, along with progress in agriculture, are likely to drive the rest of the negotiations. EU officials insist that moving forward with negotiations on competition and investment is essential to the successful conclusion of the overall

²⁰Although EU officials mentioned only 10 countries as candidates, 13 countries are currently seeking to become EU members. They include Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Slovenia, Romania, Bulgaria, Malta, Cyprus, and Turkey. The timing of accession of each country depends upon the progress each country makes in meeting the criteria for membership laid down by the European Council in 1993.

negotiations, while developing countries have consistently opposed including them in the talks.

Basic disagreement among WTO members on the meaning of the language in the Doha Declaration is likely to make the upcoming decision on the Singapore issues difficult, particularly in the areas of trade and investment and trade and competition.²¹ The language in the declaration is ambiguous on this issue. It states that for each of the four areas, negotiations should take place after the fifth ministerial conference “on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.” In the view of developed countries, including the United States and the European Union, the declaration calls for negotiations on these issues to be launched after the fifth ministerial in September 2003. However, India, with the support of some other developing countries, maintains that no such consensus was reached at Doha. In Doha, India held up consensus until it obtained a statement from the ministerial conference chair that each WTO member would have “the right to take a position on modalities that would prevent negotiations from proceeding . . .until that member is prepared to join in an explicit consensus.” The general view among WTO member representatives in Geneva is that the Doha Declaration does not mandate that negotiations on the Singapore issues be launched after the fifth ministerial conference. Instead, a decision on whether to proceed with these negotiations will have to be made at that 2003 ministerial meeting.

The main controversy surrounding the Singapore issues deals with the EU’s strong advocacy for negotiations on trade and investment and trade and competition. Japan and South Korea also support negotiating these issues. The European Union argues that investment rules based on the principles of national treatment,²² MFN treatment, transparency, and the right to establish businesses overseas are necessary to contribute to a stable and predictable global business climate for foreign direct investment. Regarding trade and competition policy, the European Union advocates incorporating basic principles into domestic law, including

²¹The Doha Declaration mandates that WTO members focus on clarifying various aspects of the Singapore issues through existing WTO working groups on trade and investment, trade and competition, and transparency in government procurement; and, in the case of trade facilitation, through the WTO’s Council for Trade in Goods.

²²National treatment is the act of treating a foreign product or supplier no less favorably than domestic products or suppliers.

nondiscrimination, transparency, due process, judicial review, a ban on certain cartels, and sufficient enforcement powers.

Many developing countries, on the other hand, led by a group of countries known as the Like-Minded Group,²³ have consistently expressed their strong opposition to the inclusion of the Singapore issues in the negotiating agenda. For example, India has acted to prevent any discussions in the applicable WTO working groups on these issues. India is concerned that any discussion might be construed as a negotiation, rather than as an effort to clarify the issues. India argued that undertaking new obligations in these areas would present too great a burden on developing countries. In fact, many developing countries maintain that they are still having difficulty implementing their Uruguay Round obligations (see app. I for a discussion of implementation issues). Some developing countries want to see progress on other issues, particularly improving the adequacy of the WTO's technical assistance and capacity building efforts, before agreeing to launch negotiations on the Singapore issues.

WTO Negotiations Face Several Overarching Challenges

The overarching challenges facing the WTO in the negotiations launched in Doha will be (1) building consensus within its large and diverse membership, (2) overcoming various organizational difficulties, and (3) avoiding tensions generated by controversial events occurring outside the negotiations.

Diverse Membership Makes Consensus More Difficult

The WTO's large and diverse membership makes reaching agreement by consensus more difficult, particularly between developed and developing country members. Developing countries are taking on a more active role in these negotiations as compared with those under the Uruguay Round, and in some cases they express different views about trade liberalization. For instance, some developing country members are concerned that commitments they make in the current negotiations could put them at a disadvantage as compared with their developed country counterparts. They argue that they should not be held to the same standard of trade liberalization as the developed country members. Balancing these different

²³Members of the Like-Minded Group include Cuba, the Dominican Republic, Honduras, India, Indonesia, Kenya, Malaysia, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda, Zambia, and Zimbabwe.

views will be a challenge in the negotiations. Further, China's recent membership in the WTO could affect the dynamics of the organization, partly because of the size of its economy.

WTO members include high-income countries like the United States, which alone accounts for about 13 percent of world trade; large, low-income countries like China and India, each having populations of over 1 billion; and members like Dominica, with fewer than 71,000 inhabitants, and Mongolia, which accounts for less than 0.01 percent of world trade. As mentioned earlier, the World Bank classifies 105 current WTO members, or approximately 73 percent, as developing countries, and about 21 percent of these as least developed countries. One WTO official pointed out that 80 percent of the WTO membership represents only 1.7 percent of world trade.

Developing countries are taking a more active role in the current negotiations as compared with the Uruguay Round, and they will scrutinize more closely the commitments they agree to make. Notably, WTO members are calling the current negotiations the Doha Development Agenda, symbolizing the special emphasis on meeting the needs of developing countries. According to a WTO official and a developing country representative in Geneva, many developing country members have maintained that they had not fully realized that, under the Uruguay Round, all WTO members were obligated to implement the complete package of agreements and were to be held accountable by the WTO's dispute settlement system. (Prior to the completion of the Uruguay Round, parties to GATT could opt out of agreements if they so chose.) One WTO official believed that, because WTO developing country members now better understand the WTO dispute settlement process, they are less likely to accept vague language in order to reach a consensus, as compared with the previous round. He said that this could make it harder to reach consensus, as negotiators demand more clarity. Finally, some developing country members have had difficulty implementing their Uruguay Round obligations.²⁴

Some developing country members have views on trade liberalization that are different from those of their developed country counterparts. Although many developing countries are willing to liberalize their markets to gain

²⁴See appendix I for a discussion of WTO member country concerns about the commitments they made under the Uruguay Round.

concessions in areas in which they are most competitive, particularly in agricultural trade, others maintain that they need special exceptions to trade liberalization to help them develop. For example, some of these developing country members want to opt out of lowering tariffs for certain products, reevaluate existing tariff bindings for food security reasons, or continue to use export subsidies to promote development.

The WTO's challenge lies in the fact that the Doha Declaration calls for strengthening the ability of developing countries to argue for exceptions to trade liberalization through the WTO's "special and differential treatment" provisions.²⁵ By the end of July 2002, the Committee on Trade and Development was to identify those special and differential treatment provisions that are mandatory and those that are nonbinding in character, and to examine ways in which these provisions could be made more precise and effective. On July 24, 2002, the committee recommended that the General Council agree to set up a monitoring mechanism, whose details would be worked out later. It further asked the General Council to approve extending until December 31, 2002, the committee's deadline for making clear recommendations for decisions on special and differential treatment. According to a WTO official, this exercise will be difficult, given the potential for such exceptions to undermine the overall negotiations' goal to increase trade liberalization.

²⁵The WTO agreements have a total of 145 special and differential treatment provisions, 22 of which apply only to least developed country members. These provisions give developing countries special privileges, such as longer time periods for implementing agreements. For example, when the WTO agreements took effect on January 1, 1995, developed countries were given 1 year before they had to apply the provisions of the TRIPS agreement. Developing countries were given 5 years, and least developed countries were given 11 years. Other special and differential treatment provisions include exemptions from, or a reduced level of, commitments otherwise applying to members in general; actions to increase trading opportunities for developing countries; and actions taken or avoided to safeguard their interests.

China's entry as a new member of the WTO in 2001 is another sign of the diversity of the WTO's membership. Because China is a large economy and a significant trader, as well as a developing country under World Bank standards,²⁶ the role it chooses to take in the WTO could affect the dynamics of the organization and therefore the negotiations. In fact, one high-level WTO official noted that China's new mission to the WTO in Geneva is the fourth largest among the membership. WTO officials and member country representatives with whom we spoke generally believed that China would act in its own national interest and not necessarily side in all cases with any one bloc of WTO member countries. One WTO representative from a developing country predicted that China would form alliances where it made sense for China. Many WTO country representatives predicted that China would be active in the negotiations and would be likely to support further trade liberalization by other WTO members. However, it has been reported that Chinese officials have recently taken the position that China should not be expected to make significant concessions in the negotiations given the substantial commitments it has already made in joining the WTO, particularly in the area of market access for nonagricultural products. In addition, one WTO country representative predicted that China's membership might have an impact on the outcome of the WTO negotiations on trade remedies. Specifically, WTO member countries may be less inclined to weaken WTO antidumping provisions because of the possibility of China's dumping products on their markets.²⁷

WTO Faces Organizational Challenges

The WTO will face several organizational challenges during the negotiations. First, the WTO will face pressure to meet many developing country members' high expectations for receiving technical assistance to help them fully participate and benefit from the negotiations. Second, some aspects of the WTO's guiding principles for conducting the negotiations

²⁶Although China is considered to be a developing country under World Bank development criteria, China does not automatically have recourse to the more favorable treatment accorded to developing country members of the WTO. For example, the amount that China can exempt from the calculation of its total allowable domestic agricultural support is less than that permitted developing country members: 8.5 percent compared with 10 percent.

²⁷Antidumping measures include tariff duties or fees that countries apply to imported goods that a foreign industry has exported for sale at a lower price than it normally charges for the same product or a similar product in the "home" market of the exporter. The WTO allows governments to impose antidumping measures when there has been genuine, material injury to the competing industry in the importing country.

have the potential for slowing progress in the negotiations. Finally, uncertainties associated with the change in WTO leadership could potentially affect negotiations as a new WTO Director General took office in September 2002.

High Expectations for Technical Assistance Must Be Met

The WTO's most difficult organizational task will be to meet some developing country members' high expectations for receiving technical assistance mandated in the Doha Declaration. While the WTO has recently been allocated additional funds to meet these needs, a WTO official suggested that the WTO might lack the staff and resources to effectively utilize the funds. In addition, according to foreign country and WTO officials, some developing countries are expecting the WTO to expand its activities not only to play its traditional role of explaining WTO agreements but also to provide broader assistance, such as helping countries to increase their capacity to export. The latter involves providing development assistance, a role for which the WTO lacks the resources and expertise. Many developing countries have indicated that the adequacy of these efforts will affect their willingness to accept many of the developed countries' priorities in the negotiations, according to WTO and foreign government officials.

The WTO's delivery of technical assistance to developing countries has become critical to the successful outcome of the Doha Development Agenda. The Doha Declaration calls for firm commitments to provide technical assistance and capacity building, which it identifies as "core elements of the development dimension of the multilateral trading system." The WTO Director General has repeatedly highlighted the importance of these commitments, stating that further progress in trade liberalization is conditional on capacity building.

The WTO is also highlighting the importance of coordination among other international organizations in providing trade-related development assistance to developing countries, particularly least developed countries. The focus of these efforts is through an enhanced Integrated Framework

for Trade-Related Technical Assistance to the Least Developed Countries.²⁸ The six core international agencies of the integrated framework, which include the WTO, issued a joint communiqué in February 2002 committing them to helping least developed countries and low-income economies to “stimulate supply-side responses to improve market access opportunities, diversify their production and export base, and enhance their trade-supporting institutions.” The Doha Declaration directs the WTO Director General to provide an interim report to the General Council in December 2002 and a full report to the fifth ministerial conference in 2003 on the implementation and adequacy of commitments made to provide technical assistance and capacity building to developing countries, including WTO efforts to enhance the integrated framework on behalf of least developed countries.

However, despite a significant increase in funding from the WTO and commitments for a coordinated effort from other international organizations to expand technical assistance, several WTO and foreign government officials were concerned that developing countries’ expectations for these efforts may be unrealistic. These officials worried that developing countries may view such assistance as a condition to their agreeing to move forward in the negotiations. According to both a WTO official and a foreign government representative in Geneva, some developing countries expect to obtain assistance from the WTO with infrastructure projects to facilitate their capacity to export. However, the Deputy U.S. Trade Representative stated in April 2002 that the WTO’s mandate for providing technical assistance and capacity building relates “strictly to assisting these countries in negotiations and does not require broader development aid.” He further stated that the extent of these activities and what they should accomplish must soon be clarified. Some WTO member country representatives whom we interviewed agreed with the U.S. view that this clarification was essential so that developing countries cannot claim later that technical assistance was inadequate to obtain their willingness to participate further in the negotiations. This will

²⁸At their first conference in Singapore in December 1996, WTO ministers adopted the comprehensive and integrated *WTO Plan of Action for the Least Developed Countries*, which “envisaged a closer cooperation between the WTO and other multilateral agencies assisting least developed countries” in the area of trade. The plan of action was aimed at improving the overall capacity of least developed countries to respond to the challenges and opportunities offered by the trading system. The WTO, the United Nations Conference on Trade and Development, the International Trade Center, the International Monetary Fund, the World Bank, and the United Nations Development Program formed the integrated framework for the provision of trade-related technical assistance, for that purpose.

Principles Guiding the Negotiations Could Slow Progress

be one of the critical issues to be addressed at the fifth ministerial conference in Mexico in September 2003.

In January 2002 the General Council established “principles and practices,” or guidelines, for conducting the negotiations.²⁹ Certain aspects of these guidelines were written specifically to accommodate many of the concerns of developing countries. However, some of these guidelines could create delays in the negotiations. For example, a WTO official highlighted a requirement that chairs of negotiating bodies include the different views of members in draft texts if no consensus exists. This is partly because several developing countries claimed that the General Council chair’s draft Doha Declaration did not reflect their consistent opposition to negotiations on the Singapore issues. Consequently, these countries insisted on this requirement in the principles and practices to prevent drafts from being produced that do not reflect their positions. However, this limitation could make it harder for chairpersons to broker a final negotiating agreement, if it produces the type of unwieldy text that prevented consensus at the Seattle ministerial.

Another element of the principles and practices that could delay the progress of the negotiations is guidance that only one negotiating body should meet at a given time, according to a WTO official.³⁰ The objective of this guideline is to structure the talks so that small delegations would be better able to participate. Developing countries have stressed the importance of enabling greater inclusion of all members in the negotiating process. Although this is an important goal, it limits the total number of meetings that could possibly take place over the course of the negotiations. A chair of one of the negotiating groups believes chairs still have the flexibility to schedule overlapping meetings if absolutely necessary to move the talks along. However, he suggested that some WTO members, who do not support further trade liberalization, could use the principles and procedures as a means of restricting the flexibility of the negotiating bodies.

²⁹See document # TN/C/1 at www.wto.org.

³⁰See figure 1 for a description of the negotiating bodies.

Transition to New WTO Director General Presents Some Uncertainties

A new WTO Director General from Thailand, Dr. Supachai Panitchpakdi, began a 3 year term in September 2002, replacing the former Director General, Mike Moore, from New Zealand.³¹ Before the Seattle ministerial in 1999, after failing to reach consensus on one candidate, WTO members selected both men to serve consecutive 3 year terms. While this latest transition in leadership could very well be a smooth one, any change in leadership could potentially affect the negotiations. The new Director General has come on board in the middle of difficult negotiations. In addition, the terms of the four current Deputy Directors General expire at the end of September, and four new deputies have been named to replace them as of October 1st. While the WTO is largely a member-driven organization, the Director General and his or her deputies can play an important role in facilitating consensus and organizing work so as to ensure maximum progress in the negotiations. Significantly, as the first Director General from a developing country, the new leader may face additional pressure to address the concerns of developing country members. For example, the new Director General will have to try to deliver on promises made regarding technical assistance.

Outside Events Could Affect the Negotiations

Events not directly part of the negotiations could also affect their progress. First, any ongoing contentious WTO dispute settlement cases concerning issues being negotiated could negatively affect negotiators' willingness to reach agreement. For example, several WTO members have filed dispute settlement cases against the United States in reaction to its decision to impose higher tariffs on imported steel. Another event that may undermine the negotiations is concern on the part of many WTO members about the increase in the U.S. agricultural domestic support payments called for in the U.S. Farm Security and Rural Investment Act of 2002, mentioned earlier. This concern could affect U.S. credibility in persuading other countries to reduce such payments in the negotiations. Finally, more optimistically, the enactment of the Trade Act of 2002 (P.L. 107-210) this August, granting the U.S. President trade promotion authority, is likely to provide positive momentum in the negotiations.

Dispute over U.S. Imposition of Tariffs on Steel Imports

Some experts believe that tensions caused by a recent WTO dispute settlement case regarding increased U.S. tariffs on steel imports could

³¹The Director General heads the WTO Secretariat, which provides the administrative support for all aspects of the organization.

diminish the level of trust and cooperation among negotiators that had existed at the time of the Doha ministerial conference. On March 5, 2002, President Bush agreed to impose tariffs of up to 30 percent on certain steel imports. This was in response to a U.S. International Trade Commission finding that the U.S. steel industry had been harmed by substantially increased imports of steel products. As a result of the tariff increases, the European Union, China, Japan, Korea, Brazil, and other WTO members have entered into consultations with U.S. officials under WTO dispute settlement procedures.³² On June 3, 2002, the WTO established a dispute settlement panel to hear concerns that these countries have about U.S. tariffs on steel imports.

Some countries have indicated that they may also introduce tariffs to guard against what they perceive as a surplus of steel imports flooding their markets, as a result of the U.S. action. China has already enacted a tariff-rate quota on 9 categories of steel products to prevent a possible surge of steel imports resulting from U.S. actions. Similarly, the European Union has imposed a provisional tariff-rate quota on 15 categories of steel to prevent what the European Union describes as a potential flood of diverted steel coming into the EU market. Moreover, the European Union is considering imposing tariffs on imports from the United States amounting to about \$335 million to offset potential losses as a result of increased U.S. steel tariffs.

The U.S. Trade Representative has responded to WTO members' criticism of U.S. tariffs on steel imports by emphasizing that "the WTO expressly permits safeguard measures to allow an industry injured by imports temporary relief and time to restructure." He also pointed out that Japan, Korea, Brazil, and others have used similar safeguards in the past or are using them today. Further, he noted that in the 1980s the European Union and its member states provided more than \$50 billion in government subsidies to restructure the European steel industry.

WTO Member Concerns about U.S. Farm Legislation

Several WTO members have expressed concern that the U.S. farm legislation passed earlier this year calls for raising domestic support payments to U.S. farmers over the next 10 years. They maintain that it undermines one of the main objectives set out in the Doha Declaration, that of reducing trade-distorting domestic support. The EU Commissioner for Agriculture has severely criticized the farm legislation, claiming that it will

³²Other WTO members that have requested consultations with U.S. officials under WTO dispute settlement procedures include Switzerland, Norway, and New Zealand.

undermine ongoing multilateral efforts to reform global farm trade. Specifically, the Commissioner criticized not only the increase in domestic payments but also their potential to distort trade. For example, he maintained that one type of support payment in the legislation, termed “counter-cyclical payments,” would shield U.S. farmers from low agricultural prices and would result in overproduction.³³ Similarly, Australian government officials have declared that because the act raises domestic support payments and would increase payments to U.S. farmers should commodity prices fall, the United States has effectively relinquished its leadership in the WTO agricultural talks, even though this leadership has historically been crucial to obtaining agricultural concessions from the European Union. Further, the Canadian Minister of Agriculture and Agri-Food called the farm legislation, particularly its price-based support payments, a serious blow to U.S. credibility in the WTO negotiations.

The United States has countered that it is fully committed to the negotiations and will be a strong advocate for liberalizing trade in food and agricultural products. USTR officials stated that the new farm legislation supports U.S. farmers while maintaining U.S. obligations under WTO. The U.S. Secretary of Agriculture said that the legislation does nothing to change the resolve of the United States to negotiate a very aggressive result in the Doha Development Agenda negotiations. Moreover, the U.S. Undersecretary of Agriculture emphasized that the U.S. domestic support ceiling allowable under the WTO is low relative to those of other WTO members, and pledged that the United States would not exceed its allowable ceiling. For example (as shown earlier in fig. 4), in 1998, the EU ceiling was \$80.4 billion, versus the U.S. ceiling of \$20.7 billion. Stressing this point, the Undersecretary cited a fail-safe mechanism in the legislation directing the Secretary of Agriculture to use, to the maximum extent practicable, a so-called circuit breaker to ensure that the United States does not exceed its WTO limit on domestic support payments to agricultural producers.

Outcome of U.S. Trade Promotion Authority Legislation

On a positive note, for the first time since 1994, in August of this year, Congress granted the President trade promotion authority. Under this

³³The farm legislation allows producers of covered commodities to receive direct payments based on farmers’ historical acreage and to receive payments that increase as commodity prices decrease. An example of the latter type of domestic support payment is a system of “counter-cyclical” payments meant to guarantee a minimum per-bushel price for eligible commodities by paying producers the difference between the market price and a “target price” specified in the legislation.

authority, Congress agrees to consider legislation to implement trade agreements negotiated by the President under a streamlined procedure with mandatory deadlines, no amendments, and limited debate. Prior to the act's passage, WTO officials and member country representatives cited the lack of trade promotion authority for the U.S. President as a significant obstacle to progress in the WTO negotiations. Following congressional approval of this authority, the WTO Director General and trade ministers from the European Union, Japan, Australia, and other countries cited it as providing a boost to the WTO negotiations. Specifically, the WTO Director General noted that it has "renewed confidence to wrap up these talks" by the 2005 deadline.

Concluding Observations

On the whole, two main factors made it possible for WTO members to reach consensus on the Doha Development Agenda: (1) the strong U.S. and EU support for the negotiations, bolstered by the positive relationship between the U.S. Trade Representative and the EU Commissioner for Trade; and (2) the strategy of deferring some important decisions to the actual negotiations. Nevertheless, the first factor may not continue to be present throughout the negotiations, and the second may actually impair WTO members' ability to reach a viable agreement.

First, if the negotiations go beyond the WTO's target date of January 2005, there will be a new set of players who may not have the same kind of positive relationship that existed when the negotiations were launched. Specifically, in January 2005, a new EU Commission is likely to take office and thus a new EU Commissioner for Trade may be appointed. In addition, a new U.S. Trade Representative could be named depending upon the outcome of the 2004 U.S. presidential election. Further, the current WTO Director General's term of office expires on August 31, 2005, and the terms of his deputies are up a month later.

Second, the Doha strategy of deferring several contentious decisions to the negotiations means that these decisions now need to be made, and the timetable is ambitious. For example, the outcome of the ministerial conference in September 2003 in Cancun, Mexico, will be a critical indication of whether key decisions on agricultural trade and the Singapore issues can be made. This is especially true because trade ministers have only 15 months thereafter to conclude the negotiations by January 1, 2005. During the Uruguay Round, the negotiations took 7 years to conclude, which was significantly longer than the original 4 year deadline.

Further, these negotiations will take place in the context of significant organizational challenges. In particular, the larger and more diverse set of WTO developing country members are taking a more active role in the negotiations and placing greater demands on the organization than during the Uruguay Round. The WTO's ability to successfully address these development dynamics could have a direct bearing on the progress of the negotiations. Therefore, the Doha Development Agenda is a serious test of WTO members' ability to preserve positive relations while balancing their considerable organizational challenges and their strongly held disparate views on several politically sensitive trade issues.

Agency Comments and Our Evaluation

We requested comments on a draft of this report from the U.S. Trade Representative and from the Secretary of Agriculture, or their designees. The Assistant U. S. Trade Representative for WTO Multilateral Affairs and the Director of Multilateral Trade Negotiations, Foreign Agricultural Service, provided us on July 24th and August 8th, respectively, with technical oral comments on the draft, which we incorporated into the report. In addition, on July 26th we obtained and incorporated into the report oral comments from the Director of the Office of Policy, Import Administration, the Department of Commerce, on sections in the draft covering trade rules regarding countries' unfair trade practices.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 12 days after its date. At that time, we will send copies of this report to the U.S. Trade Representative, the Secretary of Agriculture, the Secretary of Commerce, and interested congressional committees. We will also make copies available to others on request. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4128. Other GAO contacts and staff acknowledgments are listed in appendix IV.

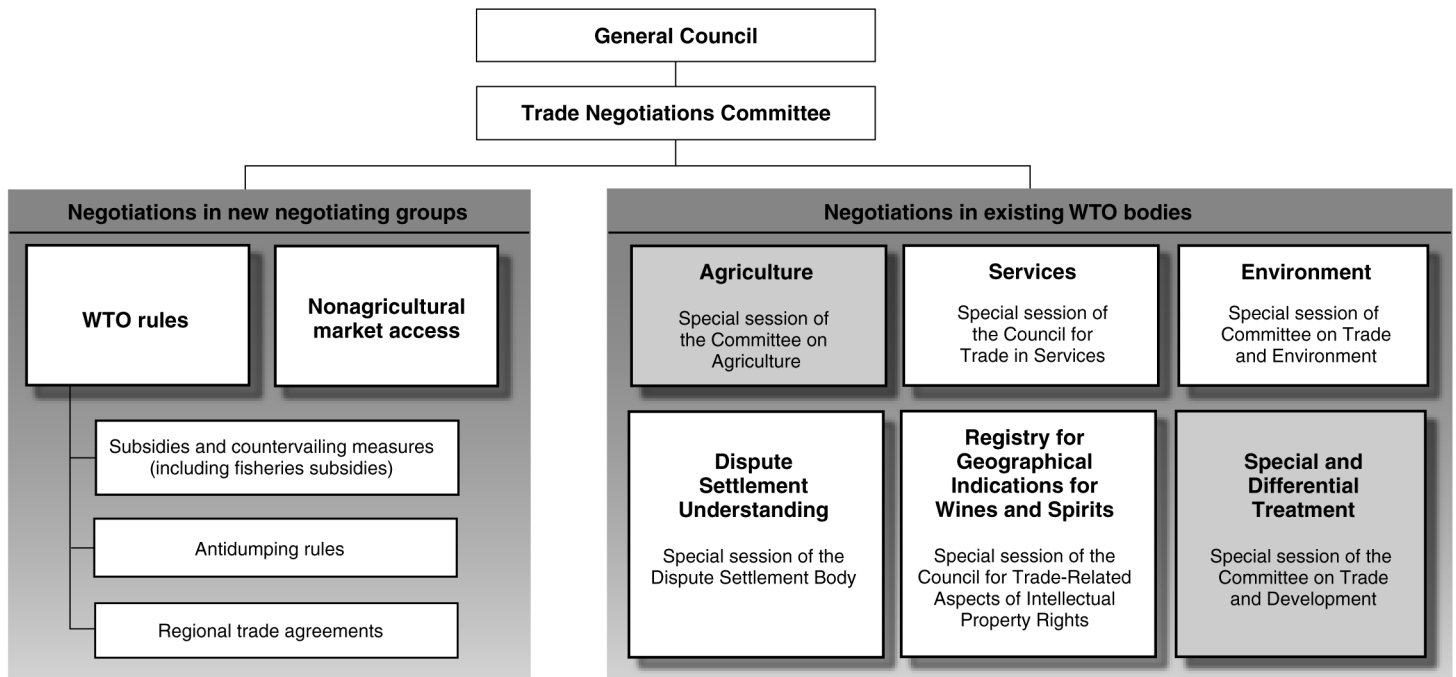
A handwritten signature in black ink that reads "Loren Yager". The signature is written in a cursive style with a large initial "L" and "Y".

Loren Yager, Director
International Affairs and Trade

Additional Issues on the Doha Negotiating Agenda

This appendix provides a brief synopsis of the issues to be negotiated in the Doha Development Agenda (other than agriculture, the Singapore issues, and special and differential treatment). As seen in figure 5, these issues include World Trade Organization (WTO) rules, nonagricultural market access, services, environment, dispute settlement, and a registry for geographical indications for wines and spirits. Also included in this appendix is a discussion of intellectual property and public health as well as the implementation of existing Uruguay Round agreements, for which the WTO did not create new negotiating groups or special sessions of existing WTO bodies. For a more detailed account of all the issues in the Doha Declaration and updates on their progress, refer to the WTO Web site at <http://www.wto.org>.

Figure 5: Organization of the WTO Negotiations



Note 1: Highlighted issues are discussed in this appendix.

Note 2: Shaded issues (agriculture, and special and differential treatment) were discussed earlier in the report.

Note 3: Some WTO members, including the United States, contend that the special session of the Trade and Development Committee is not a negotiating body but rather is part of the general Doha work program.

Source: GAO analysis, based on WTO documents.

WTO Rules

The Doha Declaration launched negotiations in several areas pertaining to WTO rules.³⁴ Specifically, WTO members agreed to negotiate on WTO rules dealing with antidumping, subsidies and countervailing measures, fisheries subsidies, and regional trade agreements.

Antidumping and Countervailing Duties

The negotiations on the trade remedies of antidumping and countervailing duties are among the most important and contentious on the Doha agenda. An increasing number of WTO members are applying antidumping and countervailing duty measures.³⁵ At the same time, several members are voicing serious concerns about how their fellow members, particularly the United States, are implementing those measures, and questioning whether in some cases the measures are being applied fairly. While the United States accounted for about 20 percent of antidumping measures reported to the WTO in 2001, Canada and the European Union (EU) also made extensive use of these measures. In addition, some developing countries have become major users of antidumping measures. In 2001, for example, India actually reported more antidumping measures to the WTO than did the United States. Accordingly, before the 2001 Doha ministerial conference, countries including Brazil, Korea, and Japan called for clarifying rules on antidumping measures to prevent unjustified investigations and to remove ambiguity and excessive discretion in their implementation. Urging caution, the United States has strongly supported preserving current trade remedy laws while allowing for clarification of existing provisions. In addition, U.S. officials emphasize the need for enhanced disciplines on the way that WTO members apply trade remedy measures.

³⁴The work on WTO rules will deal with trade remedy measures, which are actions that countries take to counter the adverse effects on domestic producers of unfair practices by their trade partners. These measures include: the imposition of antidumping duties, to neutralize the injurious effect of unfair pricing practices; and countervailing duties, to counteract the economic effect of a subsidy and thus prevent injury to a domestic industry caused by a subsidized import. A subsidy is generally considered to be a bounty or a grant provided by a government that confers a financial benefit on the production, manufacture, or distribution of goods or services.

³⁵The WTO allows the use of antidumping and countervailing duties provided that the application of these measures conforms to rules specified in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994, also known as the Antidumping Agreement, and the Subsidies and Countervailing Measures Agreement.

According to U.S. officials, the major difficulty in these negotiations will be to find common ground, on the one hand, between WTO members who believe that clarifying and improving trade remedies require a major overhaul of the Uruguay Round agreements on antidumping and countervailing duties, and on the other hand, U.S. insistence that these agreements remain intact and that no changes in U.S. trade remedy laws are necessary.³⁶ In the first phase of negotiations, member countries will identify and agree on the specific issues to be clarified and improved. A group of 14 countries has submitted a list of several topics that they want to raise in these discussions on trade remedies to clarify and improve, including a number on antidumping measures. Examples include the practice of excluding certain transactions from the calculation of a “dumping margin,”³⁷ or establishing a clearer link between dumped imports and the resultant injury. The WTO Appellate Body has issued rulings regarding the use of these practices over the past few years, in some cases citing problems with EU and U.S. methodologies.

While the United States is advocating caution and discretion in this initial phase of identifying WTO trade remedy disciplines to be clarified and improved, it is not discounting the need for improvement in some areas. In particular, the U.S. Trade Representative (USTR) has noted that any consideration of WTO rules must focus on improving the transparency of the processes of the rapidly increasing number of countries using trade remedies. Moreover, the United States is concerned about the way that other countries determine damages and trade-distorting practices. For example, one USTR official explained that he would like to see improved disciplines on what constitutes valid trade remedy investigations.

The Doha Declaration does not specify any interim deadlines regarding the trade remedy negotiations. A U.S. negotiator told us that the really difficult decisions on trade remedies will likely be left to the end of the 3 year

³⁶The Doha Declaration mandates negotiations aimed at clarifying and improving disciplines under the GATT agreements on antidumping and subsidies and countervailing measures, while preserving their basic concepts, principles, and effectiveness, as well as their instruments and objectives.

³⁷The dumping margin is the amount by which the imported merchandise is sold in the United States below the home-market or third-country price, or the constructed value (that is, at less than its “fair value”). For example, if the U.S. “purchase price” is \$200 and the fair value is \$220, the dumping margin is \$20. This margin is expressed as a percentage of the U.S. price. In this example, the margin is 10 percent.

negotiating period, because so many trade-offs will be necessary to achieve any progress in this controversial area.

Some labor and industry groups and some members of the Congress have expressed strong opposition to weakening U.S. trade remedy laws.³⁸ For example, the American Federation of Labor/Congress of Industrial Organizations (AFL-CIO) has warned that including antidumping and countervailing duties in the WTO negotiations will weaken U.S. trade remedy laws and leave American workers vulnerable to other countries' unfair trade practices. Some U.S. businesses, such as those in the steel industry, argue that effective rules against dumping and trade-distorting subsidies are an essential element of the multilateral trading system.

The importance of antidumping and countervailing duty measures was emphasized in the trade promotion authority sections of the recently passed Trade Act of 2002. Thus, the law states that one of the principal U.S. trade negotiating objectives is to preserve the ability of the United States to rigorously enforce its trade laws, including antidumping and countervailing duty law, and avoid agreements that lessen the effectiveness of domestic and international rules on unfair trade, especially dumping or subsidies.³⁹ Another provision in this legislation requires that the President report to Congress, at least 180 days before entering into a trade agreement, on the range of proposals advanced in the negotiations and how those proposals relate to the negotiating objectives on trade remedy laws.

Fisheries Subsidies

As part of the mandate to negotiate WTO rules, including subsidies in general, the Doha Declaration specifically calls for negotiations to “clarify and improve” WTO disciplines on fisheries subsidies. The United States was one of the major proponents for these negotiations, which it views as a win-win opportunity to reduce trade-distorting subsidies while supporting

³⁸The U.S. private sector is divided on this issue. While some members of the U.S. business community have supported the agreement to begin a new round of negotiations on trade remedies, other industry groups have opposed it.

³⁹In November 2001, the U.S. House of Representatives passed a concurrent resolution—H.R. Con. Res. 262—aimed at ensuring that these issues be considered in the Doha negotiations. Both the Trade Act of 2002 and the House Concurrent Resolution also expressed concern that recent WTO dispute settlement decisions are imposing obligations and restrictions on the use of antidumping and countervailing measures by WTO members, as well as concern that the standard of review contained in article 17.6 of the WTO Antidumping Agreement be appropriately applied.

environmental and developmental goals. Fisheries subsidies will be covered under the general heading of “subsidies,” which are part of the agenda of the Negotiating Group on Rules.

The United States is one of a group of countries known as Friends of Fish.⁴⁰ The group believes that current trade disciplines under the WTO Agreement on Subsidies and Countervailing Measures are inadequate to address the negative effects of fisheries subsidies. They cite a range of studies that conclude that annual subsidies in the fisheries sector are between \$14 and \$20.5 billion. In an April 2002 paper submitted to the Negotiating Group on Rules,⁴¹ these countries argued that fisheries subsidies distort trade and contribute to “excessive fishing capacity,” leading to the depletion of fish stocks. They also argued that trade distortions and overcapacity in the fisheries sector “impede the sustainable development of many countries with significant fisheries resources.” The Friends of Fish paper also claims that developing countries cannot compete with subsidized, distant-water fishing fleets from wealthier countries. Additionally, nonsubsidizing countries seeking to safeguard a shared fish stock lose the extra catch gained by fishers from subsidizing countries, according to this paper.

Japan and Korea, both major providers of subsidies in the fisheries sector, opposed specific reference to fisheries subsidies in the Doha Declaration. They argued that subsidies are not to blame for the depletion of fish stocks. Instead, they claimed that inadequate management regimes and uncontrolled illegal fishing were the main causes of the depletion of fish stock, and that subsidies designed to reduce capacity would actually be beneficial. The European Union, which includes a group of countries with subsidized fishing sectors, mostly in Southern Europe, is also unlikely to support efforts during the negotiations to reduce or eliminate fisheries subsidies, according to a USTR official. Efforts within the European Union to reform its fisheries policies have faced resistance from France, Spain, Italy, Portugal, Greece, and Ireland.

⁴⁰This coalition of countries includes the United States, Australia, Chile, Iceland, New Zealand, Peru, and the Philippines.

⁴¹See WTO document # TN/RL/W/3 available at www.wto.org.

Regional Trade Agreements

Regional trade agreements are arrangements through which countries may grant more favorable terms of trade to countries within a regional group than to countries outside that arrangement. These arrangements may vary in form but generally include customs unions and free trade areas.⁴² They also differ in the extent to which their preferential treatment provisions cover trade in various economic sectors and products. Regional trade agreements have proliferated during the past decade. In addition, there has been interest in clarifying WTO rules on such arrangements. Nearly all WTO members have notified the WTO of their participation in one or more such agreements.⁴³

WTO members are permitted to enter into preferential trade arrangements. Nevertheless, a fundamental debate has taken place concerning the compatibility of regional trade agreements with the multilateral trading system. At Doha, WTO members agreed to negotiations to clarify and improve the current WTO provisions that apply to regional trade agreements. However, countries are divided over whether such a mandate would require revising existing WTO rules or developing additional rules. Countries are also split over whether to apply new disciplines to existing regional trade agreements.

Toward the end of the Uruguay Round, regional trade agreements emerged as an issue for certain countries as they became aware of how these agreements might work to their disadvantage. Several countries began calling for a review of the impact of these arrangements on multilateral commitments under WTO agreements. The concerns these countries express vary. For example, Australia and New Zealand are concerned that regional trade agreements may lead to an uneven process of trade liberalization, because existing rules allow countries negotiating these agreements to select those sectors that they wish to liberalize. In contrast, a U.S. official stated that Japan and Korea have opposed regional trade

⁴²According to GATT, Article XXIV, a “customs union” refers to two or more customs territories in which (1) duties and other restrictive regulations are eliminated with regard to substantially all trade within the union and (2) substantially the same duties are applied by each member of the union to territories not part of the union. A “free trade area” is a group of customs territories in which tariffs and other commercial regulations have been eliminated on substantially all the trade between the constituent territories for products originating in such territories.

⁴³Since the establishment of the WTO, there have been more than 100 additional notifications to the WTO on regional arrangements covering trade in goods and services.

agreements in the past because such arrangements permit different terms of trade for certain products that originate in specified countries. India has sought reforms to WTO rules on regional trade agreements because it has felt excluded from those arrangements. And Japan, Korea, and Hong Kong have also argued that newly clarified and improved WTO rules should apply to existing agreements; otherwise, new disciplines may be irrelevant, because so many countries have already entered into regional agreements.

Those WTO members that have entered into regional trade agreements generally have less of an interest in seeking further disciplines covering such agreements, which could then be applied retroactively. The United States, already a member of the North American Free Trade Agreement and currently considering other bilateral and regional free trade arrangements, including a free trade agreement encompassing the entire Western Hemisphere, has not taken a strong position in favor of reforming existing WTO provisions governing regional trade agreements. The United States has advocated more transparency in the implementation of existing obligations. Similarly, the European Union (which has notified the WTO of more than 30 regional trade agreements) has been hesitant to clarify disciplines, because it seeks flexible procedures for interpreting its existing regional agreements and future agreements with countries seeking to join the European Union.⁴⁴ Other WTO members, such as Argentina, Brazil, Hungary, and Mexico, oppose the application of new disciplines to existing agreements. These countries argue that the application of new rules to already negotiated agreements may allow members to undertake dispute settlement cases on trade agreements that have been in existence for years.

Nonagricultural Market Access

The reduction of nonagricultural tariffs is one of the key goals of the new multilateral negotiations and has been the traditional focus of past multilateral negotiations. For example, previous multinational negotiations have reduced trade-weighted most favored nation (MFN) tariff rates on industrial goods from an average high of 40 percent at the end of

⁴⁴Some sources have indicated that the European Union may be neutral on the subject of WTO rules on regional trade agreements.

World War II to about 4 percent at the conclusion of the Uruguay Round in 1994.⁴⁵ Still, there is considerable potential for further cuts, as tariff reductions have not been evenly distributed across countries or applied equally among all products and sectors. According to the World Bank, even though developing countries agreed to cut their tariffs in the Uruguay Round, these tariffs are still on average considerably higher than those of the developed countries. For example, the post-Uruguay Round average ad valorem “bound” rate for developed economies was 3.5 percent, as compared with 25.2 percent for developing economies, according to the World Bank.⁴⁶

The Doha Declaration mandates negotiations aimed at reducing or, as appropriate, eliminating tariffs for nonagricultural products, including reducing or eliminating tariff peaks⁴⁷ and tariff escalation,⁴⁸ as well as nontariff barriers. Negotiations are to be comprehensive in that no products are to be excluded, and they must take fully into account the principle of special and differential treatment for developing countries embodied in the General Agreement on Tariffs and Trade. This includes allowing for “less than full reciprocity” in meeting tariff reduction commitments.

The negotiations on market access for nonagricultural goods face several difficulties. U.S. tariffs, as well as those of its industrialized trading partners, are already very low. For example, the average U.S. trade-weighted industrial tariff rate is about 3 percent, and more than 5,000 of the 10,000 U.S. tariff lines are now duty free. This leaves the United States with

⁴⁵These figures are based on trade-weighted average tariffs in which the value of trade by product across all imports provides a basis for the tariff rates that are averaged together.

⁴⁶“Ad valorem” signifies any charge, tax, or duty that is applied as a percentage of value. Bound tariff rates are most-favored-nation tariff rates resulting from GATT or WTO negotiations and thereafter incorporated as integral provisions of a country’s schedule of concessions. The bound rate may represent either a reduced rate or a commitment not to raise the existing rate, or a ceiling binding.

⁴⁷There is no agreed-upon cut-off value at the multilateral level that delineates tariff peaks; however, they are commonly defined as greater than 10 to 20 percent ad valorem.

⁴⁸Tariff escalation is a practice that industrialized countries often use, whereby they increase tariffs in relation to the degree of processing found in a product. For example, a leather jacket would have a higher tariff than animal hide. The result is that developing countries are able to export their raw materials but are discouraged from using their raw materials to develop processed goods because of higher tariffs in developed country markets.

limited leverage to convince other countries to reduce their higher tariffs, according to USTR officials. In addition, the countries with the highest tariffs, primarily developing countries, are resistant to reducing their tariffs for several reasons. First, many already enjoy dutyfree access through U.S. and EU trade preference programs, so further reductions in MFN rates will only dilute the competitive advantage they receive from these programs. Second, many developing countries are resistant to making significant reductions in their nonagricultural tariffs, or are opposed to their elimination, because they rely on tariffs as a significant source of revenue.

The key points of controversy will likely surround the issues of tariff reciprocity among countries, tariff peaks, and tariff escalation. The United States views “less than full reciprocity” as, among other things, allowing longer transition periods for implementing tariff concessions, and it will consider it on a case-by-case basis depending upon the situation and the country involved. Some developing countries may argue that less than full reciprocity entitles them, under some circumstances, to avoid eliminating or reducing their tariffs. A priority of many developing countries is to reduce the tariff peaks and tariff escalation practices that industrialized countries often employ, especially in sectors in which they have the greatest competitive advantage, such as textiles and apparel. For example, the relatively high U.S. textile and apparel tariffs (out-of-quota rates for various apparel items range from 20 to 33 percent) will be a certain target for developing countries because of the size of the U.S. market, according to a USTR official. However, it will be difficult for the United States to offer concessions in this area. Indeed, the U.S. textiles industry has proposed that the level of U.S. textile and apparel tariffs be frozen, while Asian and other countries’ tariffs are brought down to U.S. levels.⁴⁹

On July 19, 2002, the Negotiating Group on Market Access established a program of meetings for the negotiations on market access for nonagricultural products. As a part of this program, the participants in the negotiations will aim at achieving “a common understanding on a possible outline of modalities by the end of March 2003 with a view to reaching an agreement on those modalities by May 31, 2003.”

⁴⁹Footwear and glassware are also products with tariff peaks in the United States.

Trade in Services

The large and growing volume of international trade in services makes services liberalization an important part of the Doha negotiating agenda. Over the past 10 years, international trade in services has grown dramatically, increasing from \$783 billion in 1990 to \$1.4 trillion (or about 19 percent of total world trade) in 2000. At the national level, trade in services accounts for nearly 80 percent of U.S. employment and private-sector gross domestic product. U.S. exports of commercial services were \$279 billion in 2000, supporting more than 4 million services and manufacturing jobs. Other major services exporters in 2000 included the United Kingdom (\$100 billion), France (\$81 billion), Germany (\$80 billion), and Japan (\$68 billion). A U.S. Trade Representative official indicated that the U.S. objectives in the services negotiations include broad participation by many countries, reduction of restrictions, building upon previous services agreements, and expansion of regulatory transparency. A U.S. services industry representative noted that issues of importance for the negotiations also include providing regulatory transparency and personnel mobility and preventing a safeguard provision for trade in services.

The Doha Declaration intends that WTO members complete the work they initiated in January 2000 under the General Agreement on Trade in Services (GATS).⁵⁰ The declaration calls for pursuing the GATS' intention of increasing developing country participation in world trade and achieving a progressively higher level of liberalization in the services trade. Guidelines and procedures for the negotiations include two key principles: no sectors should be excluded from the negotiations; and negotiations can occur in bilateral, plurilateral, or multilateral (including all members) groups, mainly using a request-offer method.⁵¹ However, according to a WTO official, the negotiations will be conducted predominantly on a bilateral basis using the request-offer approach, with results applied to all WTO members on an MFN basis.

⁵⁰GATS has been termed a "standstill" agreement, in that most individual country commitments (with the exception of financial and telecommunication services) have remained confined to confirming status quo market conditions. The negotiations are aimed at moving beyond the standstill agreement to increasing liberalization. GATS required the first round of negotiations under the built-in agenda to begin no later than 5 years from 1995.

⁵¹The request-offer approach is a negotiating technique whereby an individual country submits a request list of commitments to another country. That country then responds with an offer list of commitments it is willing to make.

Although it is probably one of the least controversial issues on the Doha agenda, the services negotiations face several difficulties.⁵² One challenge is to convince developing countries to open up their services sectors. According to a U.S. services industry representative, this difficulty is attributable, in part, to the fact that developed countries can offer few concessions in the services area because their barriers are already so low in many sectors. Another difficulty is that some areas of trade in services that developing countries are interested in pursuing may be difficult to negotiate.⁵³ For example, the tourism sector is one of the developing countries' best economic growth opportunities. But liberalization in this sector will be difficult to negotiate because of its linkage to other sectors such as air and road transport and financial services. Finally, services negotiations are by nature especially complex, time consuming, and resource intensive. For example, they can involve a separate set of bilateral negotiations among all 144 WTO member countries, for each and every sector; and they would involve agreeing to change domestic laws and regulations and developing and implementing new administrative procedures.

Trade and the Environment

For the first time, the WTO will begin negotiations on trade and environment issues. These negotiations are intended to clarify the relationship between WTO rules and explicit trade measures included in multilateral environmental agreements (MEA). An MEA is any agreement between three or more signatory countries concerning some aspect of environmental protection. There are approximately 200 multilateral environmental agreements in place today. In addition, the negotiations are to address procedures for exchanging information between WTO committees and MEA secretariats, and the criteria for granting observer status. They are also to liberalize trade in environmental goods and services. These negotiations will be conducted in special sessions of the existing WTO Committee on Trade and Environment.

⁵²The WTO attributes the lack of controversy to the flexibility of the GATS agreement. This flexibility includes the fact that members can choose those sectors on which to make commitments guaranteeing the right of foreign suppliers to provide the service; that members may specify limits to their commitments; and that members may take exemptions (in principle, limited to 10 years' duration) from the MFN principle, which is otherwise applicable to all measures covered by the GATS agreement.

⁵³The WTO reports that developing countries have a keen interest in many services areas, including tourism, health, and construction.

During the preparation period before the Doha ministerial, the European Union demanded that the negotiations include environmental issues. Developing countries have generally resisted any efforts to negotiate these issues in the WTO, arguing that industrialized countries might use environmental standards as a form of “green” protectionism. The United States also opposed the EU’s objectives for addressing environment in the WTO. Of the three environment-related issues that the European Union specifically sought at the Doha ministerial, only the relationship between MEAs and WTO rules became part of the negotiating agenda. The European Union also sought negotiations to clarify countries’ use of the “precautionary principle”⁵⁴ in taking trade measures to protect environmental and human health, and of “eco-labeling.”⁵⁵ However, the issue of precaution was left out of the Doha Declaration entirely, while eco-labeling could be added to the negotiations if members decide at the next ministerial that there is consensus to do so. According to a USTR official, additional environmental issues are unlikely to be included in the negotiations.

Clarifying the relationship between the WTO and the MEAs is the most prominent item on the negotiating agenda related to the issue of trade and the environment. To be acceptable to WTO members, including the United States, the Doha Declaration limited the scope of these negotiations. In particular, the results of the negotiations are limited to the applicability of WTO rules to parties to an MEA. Further, negotiations shall not affect WTO rights of any WTO member that is not a party to an MEA in question. However, there has never been a challenge under the WTO dispute settlement system⁵⁶ to trade measures taken between parties to an MEA,

⁵⁴According to the European Union, the precautionary principle covers circumstances “where scientific evidence is insufficient, inconclusive or uncertain and. . .there are reasonable grounds for concern” about a product’s “potentially dangerous effects on the environment, human, animal or plant health.”

⁵⁵According to the European Union, European eco-labeling schemes are an attempt to validate the fact that certain goods and services have been produced in an environmentally friendly manner.

⁵⁶There have been challenges to environmental measures under both the GATT and the WTO. Dispute panel decisions in these cases have been primarily based on GATT, Article XX. This article provides exemptions to normal trade disciplines for restrictive trade measures “necessary to protect human, animal or plant life or health.” For a detailed review of interpretations of Article XX in past dispute settlement cases, see WTO document # WT/CTE/W/203, “GATT/WTO Dispute Settlement Practice Relating to GATT Article XX, Paragraphs (b), (d) and (g),” available at www.wto.org.

and, according to both a USTR official and a WTO Secretariat official, such a challenge is unlikely. Consequently, the negotiations on this issue may have a limited impact.

The Doha Declaration also limits the negotiations to clarifying the relationship between WTO rules and “specific trade obligations set out in MEAs.” Members are debating whether this language excludes trade measures that are not specifically mentioned by an MEA but that are taken to pursue an MEA objective. The European Union is likely to support a broader scope than are most other members, including the United States.⁵⁷ Only about 20 MEAs contain trade provisions. For example, the Montreal Protocol on Substances that Deplete the Ozone Layer controls the production and consumption of ozone-depleting substances such as chlorofluorocarbons. The Basel Convention, which controls trade or transportation of hazardous waste across international borders, and the Convention on International Trade in Endangered Species are other multilateral environmental agreements containing trade provisions.

The Committee on Trade and Environment has been charged with reviewing the effect of environmental measures on market access and reporting to the fifth ministerial conference on the desirability of future action. In addition, although the mandate in the Doha Declaration for negotiations on environmental goods and services appears in the section on trade and the environment, the negotiating body handling trade in services will cover environmental services. Further, the negotiating group addressing nonagricultural market access will cover environmental goods. However, the special session of the Committee on Trade and Environment will also play a role in these negotiations, including monitoring developments in the aforementioned negotiating groups and clarifying the concept of environmental goods. The United States believes that these negotiations allow “win-win” opportunities to provide trade liberalization and promote sustainable development.

⁵⁷For additional information on the initial debate on the scope of the negotiations, see WTO document # TN/TE/1, “Statement by the Chairperson of the Special Session of the Committee on Trade and Environment to the Trade Negotiations Committee,” available at www.wto.org.

Dispute Settlement

The Uruguay Round agreements, which created the WTO, also established a new dispute settlement system, replacing the procedures that had gradually emerged under the GATT.⁵⁸ Unlike the GATT, the WTO Dispute Settlement Understanding (DSU) discourages stalemate by not allowing parties to block decisions. It also establishes a standing Appellate Body, making the dispute settlement process more stable and predictable. Nevertheless, many WTO member governments have argued there is still room for improvement in the existing WTO dispute settlement system.⁵⁹ Beginning in 1997, the WTO Dispute Settlement Body, which administers the dispute settlement process, held a series of informal discussions on the basis of proposals and issues that members had identified to improve the DSU. However, this effort did not result in a consensus for change. Subsequently, at the Doha ministerial conference, WTO members agreed to initiate formal negotiations to improve and clarify DSU provisions.

Many countries want these negotiations to address the issue of conflicting time lines in WTO rules regarding when a member can retaliate against another for failing to implement a dispute settlement ruling. Other priorities for the United States specifically include (1) streamlining the dispute settlement process to achieve faster results by preventing countries from delaying compliance with dispute settlement rulings and (2) increasing the transparency of the proceedings of dispute settlement and appellate panels. A potential area of disagreement in the DSU negotiations involves the way in which members can impose sanctions on other countries when they fail to implement adverse WTO decisions. The European Union wants to limit the ability of members to shift sanctions

⁵⁸The agreement that governs this system is formally titled the “Understanding on Rules and Procedures Governing the Settlement of Disputes” and is generally referred to as the Dispute Settlement Understanding.

⁵⁹For additional information on the way in which the WTO dispute settlement system has affected U.S. interests, see U.S. General Accounting Office, *World Trade Organization: Issues in Dispute Settlement*, [GAO/NSIAD-00-210](#) (Washington, D.C.: Aug. 9, 2000).

among various imports from the offending country. To the contrary, the United States supports shifting sanctions among imports.⁶⁰

The Doha Declaration calls for concluding DSU negotiations by May 2003, and for taking steps to ensure that the results enter into force as soon as possible. Unlike other aspects of the negotiating agenda that the Doha Declaration mandated, the DSU negotiations will not be part of the single undertaking. In other words, the DSU negotiations will not be tied to the overall success or failure of the other negotiations, which are scheduled to conclude by January 2005.

Registry for Geographical Indications for Wines and Spirits

The Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) must resolve the issue of developing a registry and notification system for geographical indications. While TRIPS mandated that the Council negotiate the establishment of a multilateral system for notification and registration of geographical indications for wines, it did not establish a deadline for the negotiations. At the Doha ministerial, WTO members decided that these negotiations, which began in 1997, should be concluded by the fifth ministerial conference in 2003.⁶¹ The negotiations are being undertaken in special sessions of the Council for TRIPS.

Proposals previously submitted in meetings of the Council for TRIPS adopted two different approaches. One proposal made by the European Union and supported by a number of other countries maintains that geographical indications on the registry for wines and spirits would be considered as protected by all WTO members. The proposal allows WTO members to challenge any geographical indication on the registry that they consider to be generic. The other proposal, made by United States, Canada, Chile, and Japan and supported by a number of other countries, treats the registry as a database to assist WTO members, but it contains no requirement that all members protect all items on the registry.

⁶⁰Under an amendment to section 306 of the Trade Act of 1974, subject to certain exceptions, USTR is required to periodically revise a retaliation list against goods of a foreign country because of the country's failure to implement WTO dispute settlement recommendations.

⁶¹The Doha Declaration mandates that the multilateral system of notification and registration include wines and spirits.

The debate among WTO members over the meaning and purpose of this registry has been contentious. According to the U.S. Department of Agriculture, under the EU's proposal, many WTO members would incur significant costs for the examination and enforcement of geographical indications, which would not be paid for through fees or trade concessions and would be offset by few benefits. In contrast, the European Union believes that its proposal would not impose any new substantive obligations on WTO members. In addition, the European Union contends that the joint U.S., Canadian, Chilean, and Japanese proposal to publish a list of geographical indications exclusively for informational purposes would not necessarily facilitate the protection of those indications, as called for in the TRIPS agreement.

Issues Negotiated Outside New Negotiating Groups or Special Sessions of WTO Bodies

WTO members have also agreed to negotiate two sets of issues outside of any new negotiating group or special session of existing WTO bodies. They include intellectual property rights and public health, and issues surrounding the implementation of existing Uruguay Round agreements.

Intellectual Property Rights and Public Health

Prior to the Doha ministerial, African nations, nongovernmental organizations, and others argued that the patent protection provisions of TRIPS were preventing developing countries from gaining access to medicines needed to fight HIV/AIDS, tuberculosis, malaria, and other epidemic diseases. For example, they argued that such provisions made some medicines unaffordable in some developing countries. In response, some developed countries, including the United States, maintained that TRIPS should not prevent access to such medicines, because the agreement is flexible. For example, it contains provisions allowing WTO members to grant licenses to domestically produce pharmaceuticals without the consent of the patent holder in situations of "national emergency or other circumstances of extreme urgency." In response to this ongoing debate, ministers from WTO members adopted the *Declaration on the TRIPS Agreement and Public Health* in Doha that explicitly stated members' opinions that TRIPS does not and should not prevent any WTO member from taking measures to protect public health. According to U.S. government officials, the declaration demonstrates the flexibility of TRIPS while keeping the provisions of the agreement intact. In addition, the

declaration mandates that the WTO Council for TRIPS develop alternatives for members to take advantage of the flexibilities in TRIPS to allow them access to medicines even if they lack the ability to manufacture pharmaceuticals domestically. The Council for TRIPS is mandated to complete this work by the end of 2002.

Implementation Issues

Issues surrounding the implementation of agreements deal with long-standing concerns on the part of developing country members about the Uruguay Round agreements. These issues played a primary role in preparations for the Doha ministerial. Their discussion was facilitated when a group of seven countries, chaired by Uruguay, proposed that they be dealt with in three stages—before, during, and after the ministerial conference. Implementation issues involve two major concerns. First, many developing countries maintained that they lacked the capacity in terms of expertise, financial resources, and institutions to fully meet their Uruguay Round obligations such as complying with subsidies obligations and initiating trade-related investment measures. Given these difficulties, many developing countries demanded that deadlines for these obligations be extended. Second, many developing country members claimed that they had not reaped the economic benefits promised by the Uruguay Round agreements. They argued for changing the agreements to make them more balanced in favor of developing country interests. Examples include accelerating the schedule for increasing textile and apparel quota growth rates in the Uruguay Round Agreement on Textiles and Clothing. While developed countries have been agreeable in some cases to extending developing countries' deadlines for implementing their Uruguay Round obligations and making other changes, they have maintained that any issues involving changes to the Uruguay Round agreements would have to be pursued in new trade negotiations.

Ultimately, the Doha Declaration commits WTO members to addressing the implementation issues under two categories. First, issues with a specific negotiating mandate will be addressed in the relevant negotiating group. For example, since trade remedies are mandated for the negotiation group on WTO rules, concerns about antidumping practices will be folded into the negotiations on trade remedies. Second, other outstanding implementation issues not mandated for negotiations, such as initiatives surrounding textile and apparel trade, are to be addressed as a matter of priority by the existing WTO bodies. The WTO bodies are to report on those issues to the Trade Negotiations Committee for "appropriate action" by the end of 2002. Many implementation issues are contained in the Decision on

Implementation-Related Issues and Concerns adopted at the Doha ministerial.

Several WTO developing country representatives emphasized that it was very important that existing WTO bodies address outstanding implementation issues by the end of 2002, as mentioned in the Doha Declaration. One WTO official said that he expected developing countries to push hard for progress on those implementation issues not mandated for negotiation at the fifth ministerial conference in September 2003. Another WTO official was concerned that some developing countries might try to keep some implementation issues that were mandated for negotiations, particularly trade remedies, on a separate track.

Geographical Indications Other than Wines and Spirits

Whether or not to extend a higher level of protection for geographical indications for products other than wines and spirits is one of the more controversial implementation issues listed in the Doha Declaration but not mandated for negotiations. The issue has been assigned to the WTO's Council for TRIPS, which is to report on appropriate action by the end of 2002. WTO officials have indicated that this is an important issue to watch, because it involves many WTO members with diametrically opposed positions and thus could affect the progress in the overall negotiations.

Using the geographical indication when the product was made elsewhere, or when the product does not meet the standards originally associated with the geographical indication, can mislead consumers, and TRIPS requires countries to prevent the misuse of geographical indications. For wines and spirits, TRIPS provides an even higher level of protection, protecting geographical indications even when there is little risk of misleading the consumer.

The European Union and some other WTO members believe that the Council for TRIPS should agree on rules for negotiating the extension of a higher-level protection for products beyond wines and spirits. These countries believe that extending heightened protection would benefit countries' development, because geographical indications can be a means for countries—particularly developing countries—to market their products and secure higher prices, since product quality is associated with those geographical indications. Further, one WTO member has warned that failure to reach consensus on this issue would have implications for other subjects under negotiation: in particular, agriculture. The United States and some other WTO members believe that the Council for TRIPS should simply report to the Trade Negotiations Committee on its discussions,

Appendix I
Additional Issues on the Doha Negotiating
Agenda

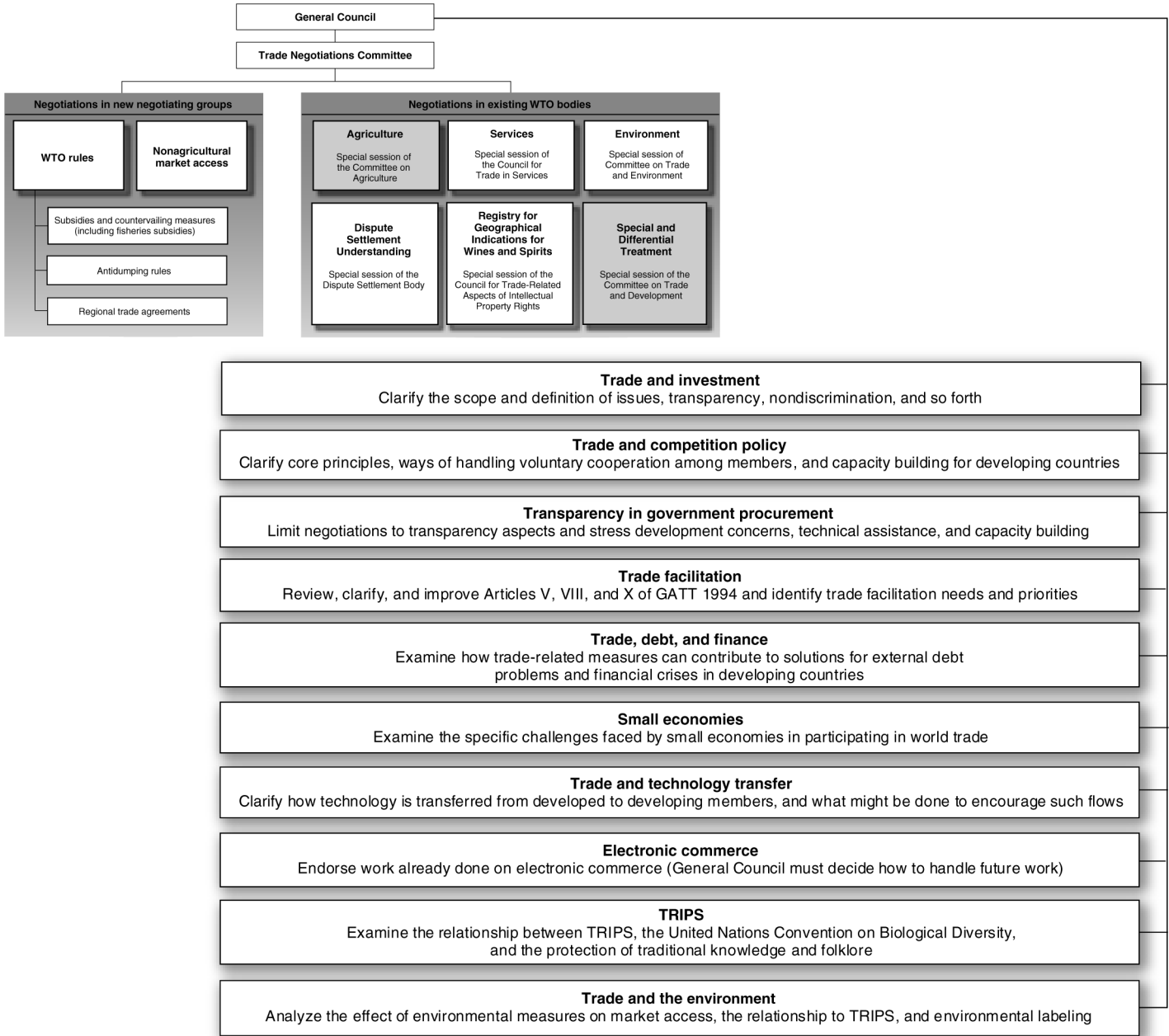
without proposing any rules for further negotiations. These members believe that existing protection for geographical indications for all products is sufficient, and that extending the higher level of protection to products other than wines and spirits would restrict trade and necessitate serious costs to governments, manufacturers, and consumers. According to the U.S. Department of Agriculture, examples of such costs include administrative mechanisms to implement the broadened standards, relabeling, and repackaging.

Work Mandated by the Doha Declaration, but Not Part of Negotiations

In addition to the issues under negotiation discussed in the report and in appendix I, the Doha Declaration mandates other areas of work that are not part of the negotiations. Figure 6 shows the organization of the WTO negotiations from appendix I and also identifies these additional areas in the general Doha work program.

**Appendix II
Work Mandated by the Doha Declaration, but
Not Part of Negotiations**

Figure 6: Organization of the WTO Negotiations, and WTO Work Not Subject to Negotiations but Called for in the Doha Declaration



Source: GAO.

Objectives, Scope, and Methodology

The Ranking Minority Member of the Senate Committee on Finance, the Chairman of the House Committee on Ways and Means, and the Chairman of the House Ways and Means Subcommittee on Trade asked us to (1) analyze the factors that contributed to the Doha ministerial conference's successful launch of new WTO negotiations, (2) analyze the key interim deadlines for the most sensitive issues, from the present time through the next ministerial conference in 2003, and (3) evaluate the most significant challenges facing the WTO in the overall negotiations.

We followed the same overall methodology to complete all three of our objectives. We obtained, reviewed, and analyzed documents from a variety of sources. From the WTO, we analyzed the *Doha Ministerial Declaration*, the *Decision on Implementation-Related Issues and Concerns*, and the *Declaration on the TRIPS Agreement and Public Health*, as well as numerous negotiating proposals from WTO member countries and other documents. From U.S. government agencies, we obtained background information and documentation regarding negotiating proposals and positions.

We met with and obtained documents from a wide variety of U.S. government and private-sector officials, foreign government and private-sector officials, WTO officials, and officials from international nongovernmental and intergovernmental organizations. Prior to the Doha ministerial conference, we met with officials from the Department of Agriculture, the Department of Labor, the Environmental Protection Agency, the Department of Commerce, the Office of the U.S. Trade Representative, the Department of Justice, and the State Department. We also met with representatives from developed and developing countries in Washington, D.C., including Australia, Brazil, Canada, the European Union, France, Jamaica, Malaysia, Mexico, South Korea, Thailand, and Zambia. Further, we met with private-sector representatives from the AgTrade Coalition, the American Forest and Paper Association, the National Association of Manufacturers, the National Farmers Union, and the National Foreign Trade Council.

After the Doha ministerial conference, we met with additional U.S., WTO, and foreign government officials, private-sector representatives, and nongovernmental and intergovernmental organizations to obtain their views about the negotiations launched in Doha. We also traveled to the WTO's headquarters in Geneva, where we met with WTO member country representatives from developed and developing countries, including Brazil, Canada, Chile, China, Hong Kong, India, Jamaica, Japan, Malaysia, Mexico,

and Uganda. We also met with WTO officials, including all the Deputy Directors-General and eight division directors. In addition, while in Geneva, we met with representatives from the South Centre and the International Centre for Trade and Sustainable Development. In Brussels, we met with officials from the European Commission, including the Directorates-General for trade and agriculture. Also in Brussels, we met with representatives of business and environmental groups from the European Union. In Washington, D.C., we met with private-sector representatives including those from the American Forest and Paper Association, the Coalition for Service Industries, the Center for International Environmental Law, and Kodak.

We performed our work from August 2001 through July 2002 in accordance with generally accepted government auditing standards.

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