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## WTO CUNCUN CHECK LIST ON KEY ISSUES

*Developing Country Opposition Meant a Full New Trade Round Could Not Be Launched at the Doha WTO Ministerial; Key Decisions Put Off Until Cancun Will Determine if There is a New Round or a WTO Turnaround...*

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### 1. “NEW” OR “SINGAPORE” ISSUES INCLUDING INVESTMENT, PROCUREMENT, COMPETITION POLICY, AND TRADE FACILITATION

Pre Doha Goal: The EU, Japan, U.S. and a few other nations sought a mandate to launch negotiations to create new WTO agreements on the so-called “Singapore Issues” or “New Issues” of Investment, Competition, Procurement and Trade Facilitation. These issues are extremely controversial, in part because three of them have nothing to do with trade and rather set parameters on nations’ domestic policies. The U.S. forced rules on these issues into NAFTA. In the multilateral WTO context; however, large developing countries and some rich nations rejected agreements on these topics during the Uruguay Round. The WTO has no trade facilitation or competition agreement. Unlike all other WTO agreements, the existing procurement agreement only applies to countries which voluntarily sign up – only 23 have done so. While developing countries’ despise existing WTO investment rules the Trade Related Investment Agreement (TRIMs) only covers foreign direct investment (for instance manufacturing plants), requires only National Treatment, limits on certain performance requirements and only applies ‘post establishment,’ meaning that countries retain the right to determine their own investment strategies. This is in stark contrast to the investor rights provided in NAFTA which guarantee foreign investors the right to establish investments without government interference, and contains a broad array of additional investor rights all of which applies pre-establishment, and covers a huge range of activities including portfolio investment, land, currency and more. Since the 1997 Singapore WTO Ministerial, a bloc of developed nations have sought to overcome developing nation opposition to new, comprehensive WTO rules on these issues that would apply to all WTO countries. These same issues were also at the core of the “Millennium Round” which failed in Seattle. As a result of persistent developing country opposition, these issues had been relegated to WTO “study groups.” The EU made the launch of new negotiations on these issues a primary Doha goal. Given that other key issues (including agriculture, services, dispute resolution) covered by the Doha

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agenda already are subject to new negotiations under the WTO's "Built-In" agenda, negotiations on these four issues would be the core of any new "round" of WTO talks that might be launched.

Doha Outcome: A deadlock on these "new" issues (and agriculture) resulted in the Doha Ministerial being extended by a day without an agreement: Europe insisted that the Doha text explicitly launch talks on the "new" issues and the developing nations refused. As a result, language was inserted into the Doha Ministerial text to paper over the lack of agreement. The first clause of the textual formulation used regarding each of the four issues states that WTO nations agree to launch negotiations in two years time after the next WTO Ministerial but based on a decision to be taken at Cancun by "explicit consensus" about the modalities of any such negotiations. While the notion of consensus is defined in WTO rules, "explicit consensus" is not defined and was understood by developing countries to mean that unanimous agreement was required before such talks can be launched meaning and thus (given most developing nations oppose such WTO expansion) negotiations were not agreed at Doha. The EU argued that the Doha text launched new negotiations on these four issues and that consensus was required only on modalities. In reaction to the EU position on the text's meaning, in the last hours of the Doha summit a group of developing nations led by India, Jamaica and several African nations declared their intention to block adoption of the Declaration - a WTO meltdown. They then demanded and obtained a Chairman's Note, pronounced by the chair on behalf of the WTO and added before adoption of the Doha Declaration, which states that "explicit consensus" means formal consent by each WTO nation.

Road to Cancun: The existing WTO study groups have held 21 months of discussions about modalities and no consensus has been reached on modalities for any of the new issues. Indeed, an increasingly ugly fight has built up about what is meant by modalities. The EU and Japan argue that agreement must be on a simple single statement of deadlines and administrative structure for negotiations. The U.S. opposes this approach, stating that modalities on each issue must be agreed to separately. Meanwhile, a growing bloc of developing nations insisted that the specific scope and coverage of each issue - actual terms of reference - must be agreed upon. (For instance regarding the investment issue, the developing countries argue that a modalities agreement must set forth the scope/definition of investment (only FDI, versus portfolio investment), when the rules kick in (post-establishment or pre-establishment), and what investor rights would be included.) When the study groups reported back in the spring of 2003 that no agreement on modalities was possible, the EU issued a formal WTO position paper simply declaring that the negotiations had been launched and time lines had to be set before Cancun. In response, in July India, Pakistan, Malaysia, and other Asian nations; Venezuela; Jamaica and other CARICOM nations; Kenya, Nigeria, Zimbabwe, and other African nations issued a formal WTO position paper saying there could be no new negotiations on the new issues. Summit meetings of sub-Saharan African Trade Ministers and Trade Ministers from the ACP (Asian, Caribbean and Pacific nations that were formerly European colonies) issued formal declarations opposing negotiations on the new issues. In mid-August, several of the new issues working groups tabled papers declaring that there was no consensus on modalities. Initially the developing countries were relieved with the honest report of the situation, knowing that the Doha text required consensus on the modalities before formal negotiations on these issues could be considered. However, shortly thereafter in mid-August 2003 the Uruguayan ambassador who was then acting as the chair of the WTO General Council (the name given to the configuration of the WTO membership meeting in the whole) issued an initial draft Cancun Ministerial Declaration, which included two versions of text on the new issues. One version simply stated that there was no consensus on modalities, negotiations could not be launched and that the study groups should continue after Cancun. However, the second version of the text called for the launch of negotiations on the new issues and refers to Annexes from each working group which are to contain "framework" agreements on general modalities. The developing countries exploded in anger with several countries which had been formally silent on the issues to that point, such as China, stating in the WTO meetings on the draft text that there could be no negotiations because there was no

consensus. Even Mexico, which is consistently supportive of the U.S. position at the WTO, criticized the version of text annexing unknown, unagreed-to frameworks for the issues. The second draft Cancun Ministerial text also contains the two versions of text for the new issues. Even as developing country opposition has solidified remarkably, the EU remains strongly committed to launching formal talks on all of the new issues at Cancun.

Specific Deliverables from Cancun Required to Launch New Round:

\_\_\_\_\_ **Is there text in the final Cancun Ministerial text explicitly launching negotiations on each of these issues without further condition.**

Other issues to review:

- C If there is agreement to launch negotiations, what is the scope? i.e. Does the text launch talks to establish new agreements/disciplines or are the talks limited to clarifying issues that might be covered in future negotiations if agreement can be reached on the definition/scope?
- C Are all four issues agreed? i.e. the U.S. has backed down from its original demands for a full procurement pact and now asks only for new rules regarding transparency in procurement practices, making this issue less controversial.

## **2. DEVELOPING NATION “IMPLEMENTATION” AGENDA**

Pre Doha Goal: Over 90 developing nation WTO members tabled an official paper listing 105 fixes to existing WTO rules that they stated were essential to making the WTO work for developing countries. Included were specific demands regarding special and differential treatment (S&D), extensions of TRIMs and other deadlines and market access improvements in agriculture and textiles/apparel. The countries' position is that these existing WTO problems must be addressed *before* negotiations on any new issues.

Doha Outcome: The official Doha Ministerial text was called the “Doha Development Agenda,” however many developing nations dubbed it the “Everything but Development Agenda” taking a sarcastic twist on an EU “Everything but Arms” trade proposal that had been tabled and rejected by developing countries as meaningless before Doha. A special “Ministerial Declaration on Implementation Issues” was adopted with the main Doha Ministerial Declaration. However between these two texts only two concessions from the list of 105 were agreed to in either of these texts: a change in anti-dumping methodology and a clause calling for “non-reciprocal” cuts in future negotiations on industrial tariff cuts, suggesting that rich nations should cut more than developing nations. On all other issues, the language was hortatory. (I.e. WTO Members agree that X, Y or Z is vital and deserves further discussion...) Demands regarding Market Access and delays in implementation time lines were rejected, as was the entire Growth-on-Growth textile quota acceleration proposal. Several other items, including a comprehensive system to implement special and differential treatment, were included on a list of items that were to be negotiated before Cancun.

Road to Cancun: As predicted by developing nation delegates at Doha, many issues listed in the special Declaration on Implementation Issues were not assigned to negotiating groups and thus have not been discussed. The one major negotiation that was actually initiated was on Special and Differential Treatment. That negotiation missed its interim deadline and remains deadlocked with no agreement on deliverables for Cancun. The draft Cancun Ministerial text contains vague language about continuing with the on-going discussions – even though they are deadlocked, are going nowhere and the situation will only be changed with firm new commitments at Cancun.

### Specific Deliverables from Cancun Required to Launch New Round:

- \_\_\_\_\_ **Agreement on package to operationalize Special and Differential Treatment for *existing* WTO agreements**
- \_\_\_\_\_ **Agreement on TRIMs deadline extensions**
- \_\_\_\_\_ **Agreement on textile/apparel quota acceleration**
- \_\_\_\_\_ **Adoption in Cancun Ministerial Declaration of any other of the 105 demands in the “Implementation Agenda” tabled by developing nations**

### **3. AGRICULTURE:**

Pre Doha Goals: The WTO’s Agreement on Agriculture (AoA) contains a provision that automatically launched new WTO negotiations on agriculture in 2000. The general goal for the Doha WTO Ministerial was to define the scope of these negotiations. Specific goals on agriculture for the Doha WTO Ministerial can be grouped into four groups of countries. But, before describing the divergent goals, it is necessary to understand what the AoA rules require because the debate over the WTO’s agriculture rules has been widely miscast as a single demand by all developing countries for access into rich country markets – when perhaps the biggest issue for the majority of developing countries is a demand for new WTO disciplines to stop dumping of subsidized agricultural goods from rich countries into developing countries. The current AoA rules cover three general topics: market access (which included a commitment to eliminate quotas and replace them with tariffs which are to be phased out over time, to cut tariff levels, and to allow import of minimally 5% of domestic supply of every agricultural product), export subsidies (which were to be cut by a set percentage in equal chunks of six years by each WTO signatory meaning the developing countries which could afford no export subsidies remained at zero while those with the highest export subsidies remained at the highest levels and countries which did not have actual export subsidies such as the U.S. did not have to cut their “hidden” export subsidies such as below-market export credit programs, export marketing programs, etc.; and domestic support (which requires cuts of 20% over six years by developed nations and 13% over ten years for developing nations of each countries’ Aggregate Measure of Support (AMS) which is a complicated formula aimed at combining different forms of support that are deemed to affect trade). The original AoA text set up three categories of domestic support which are called “boxes” in GATTese: the items that fall into the AMS measure that are deemed to affect trade (e.g. price supports) and must be cut. Other programs are categorized as green or blue box and either may affect trade but not greatly or not directly (e.g. disaster relief, construction of ports/roads, domestic food aid, farm land retirement programs, research grants) and those that are deemed not to affect trade (e.g. environmental programs, income support for farmers delinked from any acreage of other production measures). After the Uruguay Round of GATT talks stalled in 1992 over agricultural issues, the U.S. and EU initiated a bilateral negotiation which resulted in the “Blair House Agreement” which resolved to the satisfaction of these two major players the range of issues described above. One key element of this deal was to set the base year from which AMS must be reduced not at the actual year of the negotiations, but to a past year when support levels were higher. This “trick” is how the U.S. was able to increase farm support in the 2002 Farm Bill and Europe has managed its Common Agricultural Program (CAP) reform without violating the WTO’s AoA.. The U.S. and EU also agreed bilaterally about what categories of domestic support would be excluded from disciplines (the blue and green boxes). Finally, the original AoA contained a “Due Restraint” clause (which is also called the “Peace Clause”) in which countries agreed to avoid challenging each others’ support programs as WTO violations. All of the other countries participating in the Uruguay Round

negotiations were presented the Blair House deal on a “take it or leave it” basis. After considerable balking by other countries, the U.S.-EU deal ultimately became the WTO Agreement on Agriculture. This context explains why passions regarding the future AoA talks run extremely high: many countries feel that their interests were not only not considered but were undermined in the initial deal.

The “built-in” WTO Agriculture talks had proceeded for nearly years before the Doha WTO Ministerial and countries’ goals for Doha were closely related to the outcomes under the existing rules. For the sake of trying to simplify an extremely complicated sets of issues, it is best to consider the goals of what are effectively four divergent blocs of countries.

The Cairns Group/ Major Food Exporting Nations: The Cairns Group is an association of major food exporting nations and includes developed and developing countries (Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Indonesia, New Zealand, Paraguay, the Philippines, South Africa, Thailand, Uruguay.) This group’s goal at Doha was to obtain an agreement defining the future AoA talks as resulting in the *elimination* of tariffs, domestic support and export subsidies and other types of export support as quickly as possible. As well, this bloc sought to eliminate the distinctions between the different categories of domestic support and apply the requirement for elimination to the categories now sheltered from WTO rules. The Cairns group proposal for Doha was to move rapidly to totally liberalized agricultural trade – basically treating food like any other commodity. Some key developing countries belong to this group, although as described below, the majority of developing country WTO members have a very different agenda for future WTO agriculture talks.

The U.S.: Although the U.S. claims to support the Cairns agenda and berates other countries for lack of willingness to liberalize agriculture trade, in fact the actual U.S. goals for Doha were different from the “zeroing out” Cairns agenda – which is worth noting given the extremely powerful role the U.S. plays at WTO. Given U.S. agribusiness interests, the U.S. was seeking an agreement in Doha that forced the European Union and others to zero out export subsidies but that did not add new disciplines to the “hidden” supports for exports used in the U.S., such as the government subsidized export credit program. As well, the U.S. sought only reductions – not elimination – of domestic support. Basically, the U.S. goal was to ensure a future WTO agriculture agreement that allowed the U.S. to keep its existing programs while forcing Europe, Japan, Korea and others to bring their levels of support down to the U.S. level and ensuring that developing country markets for which the U.S. competed with Europe would remain open to U.S. exports. The specific U.S. proposal to achieve this goal was to set unitary levels of support to which all countries had to conform their domestic programs – meaning the EU, Japan and others would make significantly larger cuts so as to have a level playing field with the U.S. while developing countries without resources for such support programs would remain disadvantages relative to the unitary level of support.

Net Food-Importing Developing Countries: Most developing countries (with the developing nation Cairns group members being notable exceptions) are not focused on obtaining broad market access into new markets for a broad variety of food exports, but instead sought an agreement at Doha for future WTO negotiations to focus on two goals: disciplining dumping of subsidized exports into developing country markets and *fair* trade terms for the goods they sought to export. These countries mainly sought to export a few cash commodities such as cocoa, coffee, cotton, sugar, etc.. The AoA eliminated commodity agreements that existed for some of these items which had stabilized world prices for these goods, which has contributed to dramatic decreases in commodity prices – and thus to crashing developing country agricultural export earnings. Fair terms of trade for these countries’ exports requires not only elimination of barriers to rich country markets, but also mechanisms to ensure a fair

return on exports – such as reinstating commodity agreements. As regards the dumping problem: Prior to the Uruguay Round, many developing countries grew much of their staple foods but sought to earn export revenue from their cash crops with which to import supplemental foods, including processed foods. Prior to the Uruguay Round, many of the countries in this group had tariffs and quotas on staple crops to protect domestic production from dumping of below-cost-of-production imports from countries with domestic and export subsidies. Given that the vast majority of the populations in these countries live on the land producing their own food rather than earning cash to purchase food, these countries sought to ensure food security by tariff and quota measures that only allowed imports when domestic supplies could not fulfil food needs. The AoA required these countries to remove their quotas and cut their tariffs. As a result of AoA rules, during the almost nine years of the WTO dumping of subsidized agriculture products has increased dramatically as the U.S, EU and others kept significant domestic support and export support while the developing countries tariffs and quotas fell. Thus, this large bloc of countries sought new disciplines on dumping AND the right to re-establish quantitative restrictions (quotas) to ensure against dumping. The entire package of their demands is sometimes called the “Development Box.”

Europe, Japan, Korea, others: These countries’ proposals for the Doha Ministerial were similar to the approach taken at the Uruguay Round. They sought an agreement based on all countries committing to further cut their domestic and export support a certain percentage – meaning that inequities in the levels of support would be preserved. (If the cut was 50%, then the EU and Japan would end up with half of their higher level while the U.S. would end up with a 50% cut of its lower base level.) These countries also sought several additional goals. First, they sought a redefinition of the export support category to include U.S. export credits. They also sought a new category, called the Multifunctional Aspects of Agriculture or Non-Trade Concerns to provide a framework for countries to negotiate new WTO rules allowing the maintenance or establishment of programs relating to agriculture and the rural sector that focused on ensuring the maintenance of the countryside and rural lifestyles for environmental and cultural purposes and on programs supporting animal welfare.

Doha Outcome: A deadlock on agriculture was a main factor leading to an extension of the Doha WTO Ministerial by one day. With the goal of avoiding comparison to the collapse of the 1999 Seattle WTO Ministerial, the U.S. and EU were desperate not to leave Doha without signing some Ministerial Declaration. Thus, in the end, the Doha Ministerial Declaration text on agriculture included an array of ambiguities and trap doors with a clear commitment on only one thing: to put off the hard decisions and return to Geneva and figure out the specifics (called modalities) later. From the press coverage it obtained, one might assume that the Doha text included a binding agreement to a set of ambitious goals for the agriculture talks. However, the EU insisted on a lead-in clause (“without prejudging the outcomes of the negotiations”) inserted before the section of the text listing the reduction “commitments.” This means that while an ambitious agenda is in the text, the future negotiations are not bound to obtain these stated goals. The EU also obtained language (“all forms of export subsidies”) that brought U.S. export credits and such into the parameters of the negotiations on reductions. On multifunctionality there was no new commitment, but rather language agreeing to “take note of non-trade concerns reflected in the negotiating proposals submitted by Members.” The demands raised by developing countries seeking new disciplines on dumping, the right to use quotas to counter dumping and a means to address the crisis in commodity prices were not addressed. The text includes a general clause agreeing that special and differential treatment for developing countries “shall be an integral part of all elements of the negotiations,” but no specific commitments in this area were included. The text was lauded by the U.S. and EU, but developing countries decried it as ignoring their needs and the Cairns groups countries left Doha fuming and strategizing about how to turn the fudged text into real commitments in the context of the negotiations on modalities that were to begin immediately after the Doha Ministerial.

Road to Cancun: The only clause in the Doha text that was not packed with double talk was a commitment that formal modalities for the agriculture talks would be negotiated and agreed no later than March 31, 2003. The March 2003 date came and went with countries far apart on any specifics for the talks. The chair of agriculture talks was Hong Kong WTO Ambassador Stuart Harbinson, who did publish a text (known as the Harbinson text) based on the formal written positions countries had submitted after the Doha summit. These positions basically replicated the positions described above with several important additions. First, the EU's CAP reform process was being closely watched by other WTO member countries and when it seemed that the EU CAP reform strategy would be to delink income support paid to farmers from production factors, (ie. no longer would payments be based on how much a farm produced), several blocs of countries began to demand that future WTO talks had to narrow the definitions of what domestic support could be placed in the green or blue box category which were not subject to reduction commitments. The argument was that even if the new EU program did not link support payments to crop production, the reality would be that farmers whose incomes were supported by government funds could afford to sell their crops at prices below the cost of their production and still stay in business. This meant that while the delinkage limited the incentive to grow more volume to earn higher payments, the reality remained that EU farmers would be able to grow and sell onto world markets large amounts of crops that would otherwise not be economically viable without the support. As well, the type of supports used in the U.S. Farm Bill led some countries to demand new disciplines for the blue and green categories— for similar reasons. Plus, the Cairns group and others demanded an end to the “Peace Clause” so that they could begin challenging countries’ support programs. The Harbinson text was rejected by each of the blocs for different reasons and went into a sort of limbo state. In early August 2003, the U.S. and EU announced an agreement on a framework that they had worked out. In describing the proposal to Congress, the U.S. WTO agriculture negotiator highlighted how the approach avoided any specifics. Indeed, the U.S.-EU text is extremely vague, with no firm modalities nor numbers. The U.S.-EU proposal – additionally tainted by the lingering anger over the bilateral Blair House deal – was savaged by nearly all other countries as only suiting the U.S. and EU and being unworkably vague. The bilateral proposal moved a powerful bloc of 20 developing countries including China, Brazil, India, South Africa and others to issue their own proposal. With at least two diametrically opposed proposals on the table in addition to the Harbinson text, the draft Cancun Ministerial text admits that there is no agreement on modalities. As a fall back position, the latest “goal” for Cancun is to agree on a “framework” – yet, a framework on agriculture was what was already agreed in the Doha Ministerial text. The proposed framework text is roughly based on the rejected Harbinson text and is annexed to the draft Ministerial Declaration. It is most notable for having numerous blank spaces where all numbers, definitions, percentages and deadlines would otherwise be in the text. This aspect of the draft Ministerial text was greeted with howls of protest in Geneva, including by the EU. A final meeting on the issue at Geneva declared that no further work could be done on the issue, punting decisions off to Ministers meeting in Cancun. Given the greatly diverging interests of the different blocs, all of the eggs are now in the Cancun basket.

Specific Deliverables from Cancun Required to Launch New Round:

**\_\_\_\_\_ Is a detailed modalities agreement included in the Cancun Ministerial text which fleshes out the framework agreement on agriculture already agreed to in the Doha Ministerial Declaration.**

This would include setting out: specific definitions of types of domestic subsidies to be covered (what is amber versus green versus blue box); methods for subsidies cuts (e.g. a flat across-the-board percentage cut from countries’ current levels, versus all countries come to the same level versus zeroing out versus allowing domestic supports to be used in poor countries); and agreement on the range of cuts which further negotiations would narrow as well as timelines for cuts; resolving the tariff cut issues meaning what categories would be subject to additional cuts of what range over what time and whether

developing countries will be exempted from these to protect against dumping; agreeing to a definition of what export support will be disciplined and to what degree (same issues as with domestic subsidies disciplines) and over what timeline.

\_\_\_\_\_ **Does the Ministerial Text include any specific, immediately binding concessions to deal with net-food-importing developing countries' urgent concerns regarding dumping.**

\_\_\_\_\_ **Is there an agreement on the future of the "Peace Clause."**

\_\_\_\_\_ **Is there agreement to launch new talks about commodity prices, for instance the re-establishment of commodities agreements for certain goods as sought by some developing countries.**

#### **4. TRIPS/INTELLECTUAL PROPERTY: PATENT RULES AND ACCESS TO MEDICINES/ PUBLIC HEALTH AND GEOGRAPHIC INDICATORS**

##### Pre Doha Goal:

*Access to Medicine* - Developing countries demanded amendments to the WTO's Trade Related Intellectual Property (TRIPs) Agreement regarding the use of compulsory licensing of patented drugs so as to provide access for poor consumers to essential medicines. (The TRIPs Agreement requires that by 2006 all WTO nations implement a 20-year monopoly patent system on a broad array of good including medicines, seeds and more.) There were two elements to this agenda: a legally binding interpretation of the TRIPs rules allowing WTO nations to use compulsory licensing, and allowing imports of such medicines by countries without production capacity as well as a political declaration that such actions are permissible, supported by WTO member nations, and are not subject to WTO challenges.

*Geographic Indicators* - The EU, India and a bloc of other nations demanded the launch of negotiations to produce a new agreement to restrict the use of names referring to a geographic location – not only for alcoholic beverages but for other foods (Burgundy wine AND Roquefort cheese, Basmati rice) to products produced at that location or to products produced under a trademark license issued by the geographically-accurate trademark holder. (For instance, this means countries – such as the U.S. - would be violating WTO obligations if they issued a geographic specific copyright or allowed a product (like California burgundy wine, Wisconsin Camembert cheese or Jasmati or Texmati rice) to be sold in domestic markets bearing such a name that was not licensed.)

##### Doha Outcome:

*Access to Medicine* - A special Public Health and TRIPs Declaration was issued at the Doha Ministerial. It was not legally binding—it did not amend the TRIPs agreement. The U.S. and Switzerland had fiercely resisted any amendments to TRIPs rules. However, the Declaration contained a strong political statement announcing that nothing in the TRIPs agreement restricted countries' use of compulsory licenses to make affordable medicines available (the opposite position taken by the U.S. in several threatened WTO cases.) However, one major issue remained deadlocked: under the TRIPs rules, could countries import drugs produced under a compulsory license in another country and if not, what TRIPs amendments were required to allow such activity. Given only a few developing countries have pharmaceutical manufacturing capacity (South Africa, Brazil, India, Argentina), being able to import compulsory licensed drugs is the only means by which many African, Caribbean and Asian countries being ravaged by HIV/AIDS, malaria and other treatable, devastating illnesses could obtain affordable drugs for their citizens. The Doha text set a December 2002 deadline for an agreement on this issue.

*Geographic Indicators* - The Doha Ministerial Declaration launched negotiations on this issue. A final agreement on this issue was to be prepared for approval in Cancun, although the issue over the scope of the talks was not resolved.

#### Road to Cancun:

*Access to Medicine* - A year of intense negotiations resulted in a draft agreement on the issue of importing compulsory licensed medicines. Called the Motta text after the Mexican chairman of the negotiating group, it was harshly criticized by *Medicins sans Frontiers*, ACT-UP, Oxfam and other public health groups as providing rights so limited – and bureaucratic procedures so cumbersome - as to be almost useless in practice. However, as flawed as the Motta text was, U.S. and Swiss opposition to all broader proposals was absolute. By mid-December the Motta text was signed off on by every WTO country except the U.S.. Two weeks later, USTR Robert Zoellick single-handedly blocked adoption of the text after U.S. pharmaceutical companies were able to insert Vice President Cheney into the process and Zoellick, who was largely responsible for the original Doha TRIPs and Public Health deal, was forced to reverse course. Since then, a *battle royal* has raged. The U.S. took the industry position that the agreement had to be modified to contain a specific, short list of covered illnesses. All other WTO nations have rejected this proposal, declaring that the Motta text already represented a deep compromise that set up an array of burdensome requirements and gave the WTO a new role not provided in the TRIPs text in reviewing compulsory licenses and that thus the Motta text could not be reopened at all. On the eve of Cancun, the U.S. shifted its approach - instead of limited covered diseases it seeks to limit to which countries the agreement would apply with only the poorest of the poor covered. However, the other WTO countries again refused to reopen the already limiting Motta text. Because a lack of agreement on this issue could absolutely poison the entire Cancun summit – which faces considerable other problems - the U.S. floated another “compromise” proposal. This proposal does not open the Motta text but rather set forth terms for its use. This U.S. proposal, which was supported by Pharma (the U.S. industry association), was opposed by a bloc of twenty of the African and other nations seeking to import compulsory-licensed drugs. Many of these countries were then excluded from the process and the U.S., Brazil, the EU, South Africa and Kenya agreed to the proposal that the others had rejected. After several days of intense pressure, other countries were pushed into also signing off on August 30 - a few hours after the bloc of opponents to the “deal” had issued a paper describing why the “deal” would make it nearly impossible for them to have the affordable access to the medicines that their populations so desperately needed. However, this agreement is only temporary and requires that WTO TRIPs rules themselves be amended to meet the agreement’s terms. Thus, another round of ugly negotiations are forthcoming.

#### *Geographic Indicators* -

This negotiation is bogged down in a battle between coalitions of countries with relatively equal power at WTO. The EU leads one bloc and the U.S. leads the other. Even though this agreement was to be inked and final at Cancun, there is no consensus or proposed text for an agreement and it is expected to be rolled over with everything else into the post-Cancun agenda.

#### Specific Deliverables from Cancun Required to Launch New Round:

##### *Import of Compulsory-Licensed Drugs* -

\_\_\_\_\_ **Deadline set in Ministerial Declaration to adopt changes to TRIPs agreement to implement the Motta-plus-interpretation agreement.** Special note: an issue to watch is whether the bitterness among the bloc of nations who opposed the deal but were squeezed to sign off will effect other Cancun issues, such as agriculture and the “New Issues.”

## **5. ANTI-DUMPING aka “RULES”:**

Pre Doha Goal: Starting before the 1999 Seattle WTO Ministerial, a bloc of nations led by Japan, Brazil, and Korea has sought new WTO negotiations to establish additional binding international disciplines on countries' use of anti-dumping, countervailing duty and other trade safeguard measures. This demand went down with the rest of the Seattle agenda. In the U.S. Congress, the initial establishment of WTO constraints on the use of AD-CVD laws had been among the most controversial outcomes of the Uruguay Round. When many in the pro-WTO congressional trade committees had balked at the WTO agreement (which set constraints on the methodology, timelines and other elements of domestic trade safeguard laws) then-USTR Mickey Kantor had pledged that the trade law issue would not be reopened at WTO, noting that all WTO members countries were clear that this agreement had been a one time visit to the subject matter and that further discussions were a non-starter for the U.S. Thus, the WTO implementing legislation passed Congress, replete with amendments to conform the then-existing U.S. trade laws to the WTO rules. Since the Uruguay Round, U.S. anti-dumping investigations have decreased by 42% and the number of countervailing duty orders has dropped by 34%. Meanwhile, although the U.S. changed its domestic AD/CVD and safeguard laws to conform with WTO rules, the U.S. has lost a score of WTO challenges against such laws. This string of U.S. losses has invigorated the countries that wanted the launch at Doha of new talks on these issues. At the 2001 Doha WTO Ministerial, the same countries, now joined by scores more, had built yet more intensity behind their demand to launch new WTO negotiations to set additional limits on the use of AD, CVD and other safeguards. An ironic twist is that by the time of the Doha Ministerial, developing countries were beginning to use AD/CVD laws almost as frequently as rich countries, with India filing more cases in 2001 than the U.S. Foreseeing the threat of a possible agreement to launch such talks at Doha, both the U.S. Senate and the House of Representatives had taken extraordinary steps to explicitly instruct the USTR on the matter. In the fall of 2001, 62 Senators sent a letter to President Bush noting that Congress had jurisdiction over the terms of trade policy and sacrificing U.S. trade safeguard law by reopening such negotiations at Doha was absolutely not acceptable. When it became clear that Zoellick was ignoring the Senate instructions, a House resolution (H. Con. Res. 262) was passed 410-4 instructing U.S. negotiators to keep U.S. trade laws off the WTO negotiating table.

Doha Outcome: The Doha Ministerial text includes an unambiguous launch of negotiations to tighten existing WTO disciplines in this area. In WTO jargon, these negotiations, which started in Geneva in 2002, are known as the “Rules Negotiations.” The main document coming out of the Doha Ministerial *failed* to launch negotiations on many issues that had been proposed, but anti-dumping and other trade safeguard measures was one of the few on which there had been agreement to start new negotiations: “In light of the experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at “clarifying and improving disciplines...” At the Doha Ministerial, USTR Zoellick also signed off on a special “Implementation-Related Issues and Concerns” Declaration that included several specific changes to anti-dumping rules that went into effect immediately when the Ministerial ended. These new provisions dealt how dumping margins are calculated and over what time periods. Maintaining domestic discretion over these aspects of trade law were among the very issues over which the U.S. fought hard and won in the Uruguay Round.

Road to Cancun: Congress exploded in anger at Zoellick's moves. Then- Department of Commerce Secretary Don Evans suggested that the U.S. had agreed to negotiate anti-dumping and countervailing duty issues because "all we want to do is strengthen them." However, the claim is ridiculous given the countries demanding negotiations have the opposite goal. In the 21 months since the new "Rules" negotiations started, a group of countries called the "Friends of Anti-dumping" (who are the countries including FTAA nations Brazil, Chile, Argentina, Mexico, Uruguay, Columbia, and others as well as non-FTAA nations such as Japan, Korea, Singapore, Thailand, Taiwan and others seeking new limitations on antidumping and countervailing duty policies) have made an array proposals. Among their key goals for these talks is to tighten WTO constraints on the methodology countries can maintain in their domestic laws and use when investigating cases and imposing countervailing measures. By mid-summer 2002, even the EU has joined in an attack in the Rules negotiating group against the use by the U.S. of zeroing in calculating dumping margins. (Not using zeroing methodology would have had serious implications for an array of steel and other cases in which tariff rates were calculated based on zeroing and obviously would have significant implications on future cases.) The other main methodology issues now on the table are to require countries to accept price undertakings deals as an alternative to trade remedy duties (meaning countries would lose the right to decide which approach to use and instead would be required to take the price undertaking approach) and to be restricted in trade remedy duties "only to the extent necessary to offset injury." Three very detailed papers were submitted to the Rules negotiating group in June 2003 as a framework for the on-going talks which clearly are on the road to further limit U.S. trade law.

Specific Deliverables from Cancun Required to Launch New Round:

\_\_\_\_\_ **Is there a specific modality agreement describing what subject matter will be negotiated (to date this has not been settled with the "Friends of Anti-Dumping" going in one direction and the U.S. in the opposite.** Special Note: And if there is such an agreement, what is the fall out in U.S. Congress?

## **6. INDUSTRIAL GOODS MARKET ACCESS:**

Pre Doha Goal: A fairly universal goal among WTO member countries was to agree to launch some negotiations providing new market access for non-agricultural goods, but positions diverged enormously on the details. The U.S. sought to require reciprocal concessions between rich and poor countries and no exclusions of categories of goods. The developing world, which has by far higher industrial tariffs than the average in developing countries, sought to maintain some of these protections they argued were essential to develop their domestic industries (and that now developed countries used when developing) through special and differential treatment, non-reciprocal concessions and by being allowed to exclude specific sectors or goods as necessary for their development. The developing countries sought to target tariff peaks (high tariffs remaining on some goods in the developed world) and tariff escalation (when tariff rates increase as value is added which creates an incentive for developing countries to simply rip and ship minerals, forest products, etc. and not diversify their economies into processing).

Doha Outcome: Negotiations were unambiguously launched in the Doha Ministerial text on this issue. The U.S. demand that no products be excluded *a priori* was included in the text – but, so was an agreement to provide developing countries with concessions that allowed in return "less than full reciprocity." (The reciprocity issue is a politically hot one in the U.S. because one of the key pledges given to GOP textile state congressmen to obtain their 2001 Fast Track votes was an end to non-reciprocal concessions.) As well, the text covers elimination of "non-tariff barriers" which has raised considerable concerns about an array of environmental, health and other

domestic regulatory policies which implicate trade that could be brought to the negotiating table to trade away. As well, wood and forestry products are covered by this category of negotiations. Conservation and environmental groups view this section of the Doha Ministerial Declaration as effectively launching a “WTO Free Logging” agreement which had been stymied for various reasons in the past. Timber industry sources estimate that if the tariff and non-tariff liberalization they seek in this agreement come to fruition, logging worldwide will increase significantly.

Road to Cancun: The deadline for agreeing to modalities was missed in these talks and the blocs of countries fighting over fundamental issues were so far apart that the attempt to cover the issue in the draft Cancun Ministerial text caused a passionately negative reaction, with countries claiming that the negotiations have not resulted in anything that can be presented in Cancun – even as a rough framework agreement.

Specific Deliverables from Cancun Required to Launch New Round:

\_\_\_\_\_ **Does the Cancun Ministerial Text include an agreement on the modalities of these talks with precise details about scope, methodology, S&D, whether cuts must be reciprocal or not, linear or not and timelines to flesh out framework agreed in Doha?**

## 7. ENVIRONMENT

Pre Doha Goal: The EU’s goal was to obtain an agreement to launch negotiations to develop WTO rules clarifying the legal prioritization between conflicting terms in WTO rules and multilateral environmental agreements (MEAs), safeguarding domestic policies based on the Precautionary Principle and safeguarding Eco-labeling from WTO attack. The Bush Administration joined developing nations to oppose any negotiations on environmental issues.

Doha Outcome: The Doha text commits countries to launch negotiations on the question of the relative status of MEAs and the WTO, on the right for international environmental treaty organization staff to have WTO observer status and exchange information (that it requires a new agreement to share this information gives some sense of the WTO culture’s antipathy towards things environmental) *and* on cutting tariff and non-tariff barriers to trade in environmental goods and services. However, the same double-speak clause the EU inserted into the agricultural text was used in the section of the Doha Ministerial Declaration on “Trade and Environment.” Thus these “commitments” to come to new agreements on these issues is prefaced by a clause stating that “we agree to negotiations without prejudging their outcomes,” meaning that in fact there is no commitment that negotiations result in new agreements, which otherwise is the default understanding of the “agree to negotiate” clause. The text also sent the ecolabelling issue and other items to the WTO’s feckless “Committee and Trade and Environment” for more study. Many observers knew that the EU’s demands in this area were aimed at distracting from the many things (such as demanding the launch of negotiations on the new issues) that European civil society was raging against. Most environmental organizations around the world oppose the WTO having any role in environmental policy and instead seek a body to provide neutral arbitration between WTO and international environmental treaty obligations when they collide. The language on MEAs is written so that it provides an opportunity for the WTO to decide that the WTO will be legally supreme to the MEAs, a decision that obviously must be taken at a neutral body. Also, the language creates an incentive for nations to stay out of MEAs. The U.S. had worked with developing countries to block the European environmental agenda until the last hours of the ministerial. Then, the U.S. pushed the “environmental goods and services” market access, and in exchange

brokered a deal on ambiguous language allowing negotiations on the relationship between MEAs and the WTO. The language on “environmental services” has caused a firestorm of environmental opposition and upset, because this is shorthand in GATTese for opening negotiations on trade in bulk water **B** its collection, treatment, distribution, etc. In the U.S. most water systems are publicly owned and controlled, but several large multinational corporations are seeking to have water services privatized as new market opportunity. Industry considers the water services sector to be “blue gold.” As well, the required elimination of what WTO calls “non-tariff barriers” and the rest of the world calls domestic health, safety and environmental regulatory policies hardly seems to be a pro-environment move. Finally, there is no definition of environmental goods and some countries have suggested the category include natural gas, toxic waster incinerators and other goods whose environmental benefits are highly contested.

Road to Cancun: A Trade and Environment Working Group was set up and has adopted a work agenda, but there have been no real negotiations.

# Checklist: Deliverables from Cancun Required to Launch New Round

## 1. NEW ISSUES (INVESTMENT, COMPETITION, TRADE FACILITATION, PROCUREMENT)

\_\_\_\_\_ Does the Cancun Ministerial text explicitly launch negotiations on each of the 4 issues without further condition?

Other issues to review:

- If there is agreement to launch negotiations, what is the scope? ie: Does the text launch talks to establish new agreements/disciplines or are the talks limited to clarifying issues that might be covered in future negotiations if agreement can be reached on the definition/scope?
- Are all four issues agreed? ie: the U.S. has backed down from demands for a full procurement pact and now asks for only transparency on procurement practices making this issue less controversial.

## 2. DEVELOPING NATION "IMPLEMENTATION" AGENDA

\_\_\_\_\_ Agreement on package to operationalize Special and Differential Treatment for *existing* WTO agreements

\_\_\_\_\_ Agreement on TRIMs deadline extensions

\_\_\_\_\_ Agreement on textile/apparel quota acceleration

\_\_\_\_\_ Adoption of any other of the 105 Demands in the "Implementation Agenda" tabled by developing nations

## 3. AGRICULTURE

\_\_\_\_\_ Is a detailed modalities agreement included in the Cancun Ministerial text which fleshes out the framework agreement on agriculture already agreed to in the Doha Ministerial Declaration?

This would include setting out: specific definitions of types of domestic subsidies to be covered (what is green versus blue box), methods for subsidies cuts (ie: a flat percentage across the board from countries' current levels versus all countries come to the same level versus zeroing out versus allowing domestic supports to be used in poor countries), and agreement on the range of cuts which further negotiations would narrow and timelines for cuts; resolving the tariff cut issues meaning what categories would be subject to additional cuts of what range over what time and whether developing countries will be exempted from these to protect against dumping; agreeing to a definition of what export support will be disciplined and to what degree (same issues as with domestic subsidies disciplines) and over what timeline.

\_\_\_\_\_ Does the Ministerial Text include any specific, immediately binding concessions to deal with net-food-importing developing countries' urgent concerns regarding dumping?

\_\_\_\_\_ Is there an agreement on the future of the "Peace Clause"?

\_\_\_\_\_ Is there agreement to launch new talks about commodity prices, for instance the re-establishment of commodities agreements for certain goods as sought by some developing countries?

## 4. TRIPS/INTELLECTUAL PROPERTY: PATENT RULES AND ACCESS TO MEDICINES/ PUBLIC HEALTH AND GEOGRAPHIC INDICATORS

*Import of Compulsory Licensed Drugs -*

\_\_\_\_\_ Deadline set in Ministerial Declaration to adopt changes to TRIPs agreement to implement the Motta-plus-interpretation agreement.

*Geographic Indicators -*

\_\_\_\_\_ Final agreement signed on this issue in Cancun Ministerial Declaration as required in Doha Declaration.

## 5. "RULES"/ ANTI-DUMPING

\_\_\_\_\_ Is there a specific modality agreement describing what subject matter will be negotiated (to date this has not been settled with the "Friends of Anti-Dumping" going in one direction and the U.S. in the opposite. Special Note: And if there is such an agreement, what is the fall out in Congress?

## 6. INDUSTRIAL GOODS MARKET ACCESS

*Specific Deliverables from Cancun Required to Launch New Round:*

\_\_\_\_\_ Does the Cancun Ministerial Text include an agreement on the modalities for these talks with agreement on scope, methodology, S&D, whether cuts must be reciprocal or not, linear or not, and timelines to flesh out the framework agreed in Doha?