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The WTO Third Ministerial meeting Seattle, Washington, Nov. 30-Dec. 3, 1999.

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Background

The purpose of this paper is to provide the Working Group, and especially those of you that will be in Seattle, with a guide to the negotiations on the Seattle Ministerial Declaration and thumbnail sketches of the topics on the agenda for the WTO Ministerial and beyond. There are many topics — from agriculture and services to transparency and coherence — that will, or could, be part of the WTO agenda in the upcoming round. Negotiators are now working intensively on the Seattle ministerial declaration which is intended to organize those topics that make it on to the WTO's agenda into four broad categories and set out the scope and terms of future negotiations or work on each of them.

These broad categories are: 1) **immediate decisions** to be taken by Ministers at Seattle 2) **mandated negotiations** (the "built-in" agenda) 3) **added negotiating topics** (beyond the "built-in" agenda) and 4) the WTO's ongoing **work program** (everything else that makes it on to the WTO agenda).

These categories are not watertight compartments. For example, developed countries want to announce an immediate decision on "transparency in government procurement" at the Seattle ministerial. If they can not get agreement from key developing countries to do so, transparency in government procurement would become an aspect of added negotiations on government procurement or part of the work program. Certain topics, such as biotechnology or investment, could begin as part of the work program but be graduated later to full-fledged negotiating topics. The potential combinations and compromises are many and, given the amount of disagreement at this late date, the Declaration may be deliberately vague or ambiguous on the status of some topics. In addition, certain topics will be negotiated or discussed in a variety of WTO fora. So, for example, whether or not there is agreement to add investment as a full-fledged negotiating topic, investment issues will still be a major part of the built-in negotiations on services and an aspect of any work on intellectual property, e-commerce, biotechnology and more.

Discussion

Negotiations on the wording of the Seattle ministerial declaration have been difficult and are well behind schedule. A heavily bracketed (bracketed text indicates areas of disagreement) draft declaration was circulated on October 19. A revised bracketed draft, narrowing down the differences, was expected in early November, but no consensus could be reached. On Nov. 18 the Chair of the WTO General Council circulated, on his own authority, a partial draft that lacks sections on agriculture, implementation and labour rights. It now appears that no further draft

will be officially circulated prior to the ministerial meeting next week.

The biggest stumbling blocks to agreement on the Declaration appear to be the sections on agriculture and "implementation," i.e. how to respond to developing country demands for greater benefits from existing WTO agreements. There are still significant, but probably bridgeable, differences among the major trading powers on the appropriate scope of the negotiations. The US is arguing for focussed negotiations concentrating on the built-in agenda of agriculture and services and the added topic of industrial tariffs. Europe and Japan are pressing for a broad-based negotiating agenda that would include investment, government procurement, competition policy, anti-dumping and possible other matters as full-fledged negotiating topics.

Another difficult issue concerns strong developing country resistance to US proposals to include trade and labour rights as part of the WTO work program. Agreement must also be reached on important structural issues: the length of the negotiations (likely three years); whether it will be a single undertaking (meaning that "nothing is agreed until everything is agreed" and the results are adopted as a package that applies to all WTO members), and/or whether there can be early results in certain sectors (commitments to implement certain agreements without waiting for the conclusion of the broader negotiations.)

Developing countries have taken a far more activist role in the current talks than in previous GATT negotiations. Developing countries, while far from unified in their positions, have generally asserted that the Uruguay Round agreements are unbalanced, imposing significant obligations on the south without providing sufficient rights or effective access to northern markets. They are demanding action to address these concerns, both immediately at Seattle and in the upcoming WTO negotiations and work program. If the WTO is true to past form, the US, EU and Japan will bridge their differences and after co-opting a few other key delegations (including some developing countries) will, at the last possible moment, impose a draft on everyone else. It will be a major test of developing countries' strength to see if they can work together closely enough to crack this mould.

Overview of Topics

The scope of potential issues on the Seattle agenda and in the upcoming round is very broad. The Declaration, once finalized, is intended to categorize each topic and set the parameters for ongoing negotiations and work related to each.

1 Immediate Decisions

Immediate decisions refer to agreed actions to be announced by ministers at Seattle. These measures would take effect immediately or by an agreed date in the near future.

Implementation issues.

As noted previously, one of the main causes of the current deadlock over the draft declaration is the extent of developing countries' demands that existing WTO agreements be changed to give them more benefits. Two of the biggest stumbling blocks are developing countries' insistence that immediate implementation concessions must include some action on textiles and anti-dumping.

The U.S. has so far rejected both any increase in the growth of textile quotas which are scheduled to stay in place until 2005 under WTO rules and any accelerated phase-out of the Agreement on Textiles and Clothing. The EU and Canada have shown marginally more flexibility on accelerated phase-outs. There are also some proposals for enhanced market ac-

cess for Least Developed Countries (LDCs), including an EU proposal to provide duty-free access for "essentially all" products from LDCs. The US appears completely determined to reject any immediate relaxation of its anti-dumping rules.

Developing countries were given five years to comply fully with the terms of three WTO agreements: the TRIPS that deals with intellectual property issues, TRIMs that restricts trade-related investment measures, and the customs valuation agreement. With the January 1, 2000 deadline looming, many developing and transition-economy countries are arguing for more time. Unless a decision to extend the period for compliance is made at Seattle , these agreements will automatically apply by Jan 1, 2000. Changing existing WTO obligations would require consensus. The US has been decidedly cool to developing country demands and is well positioned to block their demands for changes or to strike a tough bargain for any amendments.

The U.S. rejects the notion that the implementation period in the Agreement on Trade-Related Investment Measures (TRIMs) be extended for five years; it may be open to considering exceptions on a case-by-case basis. The US is also insisting that TRIPS obligations be implemented by the existing deadline and will not rule out using dispute settlement to enforce them. The U.S. has so far resisted reopening the Customs Valuation Agreement as proposed by developing countries, as well as other demands to change the balance of payments provisions of the GATT.

In another implementation issue that must be dealt with at Seattle, the existing WTO subsidies agreement permits subsidies for certain research, environmental improvements and regional economic development. These provisions, while limited, are progressive. They will expire by the end of the year unless renewed by consensus. Canada and the EU support extending these so-called greenlighted subsidies. The US has so far been non-committal, although it may agree only to a temporary extension. Certain developing countries oppose any extension. They have argued that these exceptions mainly benefit developed countries and have demanded that developing countries be permitted to continue the use of certain export subsidies and subsidies to promote the use of local content (such subsidies are generally prohibited under WTO rules).

The Quad countries are now working together to deflect developing countries demands for immediate steps on implementation. There is a risk that the immediate "concessions" offered to developing countries by the Quad will coincide with developed country corporate interests, for example, by further weakening product and food safety standards-setting under the Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) agreements treatment with respect to imports from developing countries.

Technical cooperation.

Developed countries, despite earlier pledges, have been reluctant to provide additional (over and above their regular contributions to the WTO) funding for technical assistance to developing and transition-economy countries. Resources could be forthcoming at the WTO ministerial, but any extra aid is likely to be tied to assisting developing countries to comply fully with their existing WTO obligations.

Renewed moratorium on duties on E-commerce.

Negotiators are reportedly close to consensus on a decision to renew for 18 months a voluntary ban, adopted by the WTO in May 1998,

on the imposition of customs duties on electronic commerce. This would fall short of the US goal to extend the moratorium indefinitely with a view toward making it permanent and binding on all WTO members. If made binding, such a measure could interfere with the future adoption of a Tobin tax on international financial transactions, which could be construed as a duty on international electronic financial transactions. E-commerce will very likely be part of the WTO work program (see discussion below.)

Transparency in government procurement.

The current WTO Agreement on Government Procurement, unlike other WTO agreements which are part of a "single undertaking," only applies to those governments that sign on to it. Most developing countries have not done so. Developed countries, including Canada, hope to strike an agreement in Seattle, applying to all WTO members, that would require governments to report any procurement practices that do not comply with WTO disciplines. If no immediate decision can be taken at Seattle, this topic is likely to become a negotiating topic or part of the work program.

Canada has signed the WTO AGP, but it does not apply to provincial or local governments. Any agreement on transparency in government procurement, if it applied to subnational governments, would be a foot in the door on the way to fuller coverage. This could discourage the use of procurement for local economic development, discourage "selective purchasing" policies designed to promote human rights (through boycotts or preferential purchasing), and impose significant administrative costs, particularly on local governments.

Transparency and dispute settlement.

Stung by criticism about the secrecy of WTO processes, Ministers are expected to announce some limited reforms to improve the transparency of WTO institutions and dispute settlement procedures. This may include a commitment to more timely declassification and publication of WTO documents and opening the WTO dispute panel proceedings to observers. The US has proposed opening the WTO dispute settlement processes to amicus briefs, but many other countries, including Canada, oppose this.

There is also an ongoing review of the WTO dispute settlement procedures that was scheduled to have been completed by the Seattle Ministerial. Japan, the EU and Canada are proposing amendments to the WTO dispute settlement rules that clarify the procedures and time limits around retaliation. The US has resisted these proposals which could require changes to its domestic trade legislation. Section 301 (of the US Trade Act of 1974, as amended) sets out procedures and time limits for retaliation in cases when the US decides unilaterally that its trading partners have failed to implement their international trade obligations.

Chinese accession.

The way has now that been cleared for Chinese accession to the WTO by the bilateral deal between the US and China. Bilateral deals with the EU and Canada on the terms of China's entry are likely to be struck shortly. While China will not become a member by the Seattle meeting, its imminent accession will be heralded as the major accomplishment of the Seattle ministerial. The biggest remaining obstacle to China's entry is that the US Congress must approve so-called permanent MFN status for China. China's entry will have enormous internal implications for China and

also for the WTO as an institution. China would immediately become a very influential WTO player aligned with other developing country interests in the upcoming negotiations.

2 Mandated Negotiations (The "Built-In" Agenda)

Mandated negotiations, or the "built-in" agenda, refer to new negotiations that have already been agreed to by all member governments as part of the 1994 WTO Uruguay Round agreements. Regardless of what else is agreed to at the Seattle ministerial, these negotiations will begin by early 2000. There is continuing disagreement on how to set out the precise scope and terms of these mandated negotiations in the Seattle Declaration.

Services.

Further negotiations under the General Agreement on Trade in Services (GATS) are a key part of the WTO's "built-in" agenda. WTO members agreed to resume negotiations within five years of the date of entry into force of the GATS (before Jan. 1, 2000). These negotiations are aimed at "achieving a progressively higher level of liberalization (GATS Art. XIX)."

The existing GATS applies to all government measures "affecting trade in services." Such measures would include tax measures; subsidies and grants; nationality requirements; residency requirements; licensing standards and qualifications; registration requirements; authorization requirements; performance requirements; technology transfer requirements; local content; training requirements; restrictions on ownership of property / land; market access limitations and more. Only government procurement measures are explicitly exempted, but GATS Art. XIII calls for negotiations on government procurement in services as part of the built-in agenda.

The GATS is a complex agreement. There are three levels of commitments / obligations that apply in the GATS: general rules such as most-favoured nation (MFN) and transparency that apply to all services; specific commitments to market access and national treatment that apply only to those services listed by countries in a schedule to the GATS (Canada, for example, has not made any specific commitments in the health, education and social services sectors); and sectoral annexes that set out rules for particular sectors such as telecommunications and financial services.

The GATS is also, in the words of the WTO secretariat, "the world's first multilateral agreement on investment, since it covers not just cross-border trade but every possible means of supplying a service, including the right to set up a commercial presence in the export market." Services "provided in the exercise of governmental authority" are excluded from the GATS, but these are defined narrowly as "any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers." Because most public health, education and social service systems involve a mix of public and private funding and public, non-profit, and commercial delivery they would not benefit from this exclusion.

The existing GATS was negotiated on the basis of a "request-offer" or "bottom-up" approach. The U.S., Japan, the European Union and Canada are pressing for new approaches which they believe will lead to more liberalization. These include "horizontal approaches" that would develop more rules that apply across the board to all sectors and modes of delivery and "formula approaches" that might, for example, require that a minimum level of commitments be made by each government in every sector or that countries

must offer to cover a certain specified percentage of its total services.

The US proposal on services calls for increasing market access across a broad range of sectors through a mix of "negotiating modalities" including request-offer, horizontal, and sectoral approaches. It also calls for a new, comprehensive nomenclature for classifying services. By reclassifying services from an uncovered to a covered sector, negotiators can increase coverage without otherwise changing the agreement. (For example, if hospital management services were reclassified under a general category of management services then they could be covered without any change in Canada's country schedule.) The US and other Quad countries also want to strengthen constraints on "domestic regulation." Strengthening such rules (which are already present in a limited form in GATS Art. VI) would permit challenges to non-discriminatory government regulations on the basis that these regulations are not reasonable, objective, impartial, or even, as some have proposed, pro-competitive.

It appears that the US government and its corporate community have decided that the GATS negotiations are their best bet for promoting the failed MAI agenda through the WTO. Because the GATS negotiations have already been agreed to, there is no need to overcome developing country opposition to including investment as a new topic on the WTO agenda or to make any concessions in order to get negotiations underway. After the MAI campaign, NGOs are also highly mobilized against investment negotiations migrating to the WTO. By contrast, public and NGO awareness of the critical investment dimension of the GATS is not high. This may help explain why the office of the US Trade Representative has resisted investment discussions at the WTO, but has made the GATS negotiations one of its highest priorities.

Agriculture

Article XX of the Uruguay Round Agriculture Agreement requires new negotiations to begin by Jan 1, 2000 toward the "long-term objective of substantial progressive reductions in support and protection." These negotiations are likely to be organized, as was the UR Agreement on agriculture, around the issues of market access, domestic support, and export competition. The UR also created for the first time an agreement restricting government health protection measures that affect trade, the Sanitary and Phytosanitary (SPS) Agreement. There are no new negotiations built into the SPS agreement but it could be revisited as part of broader agriculture negotiations.

There remain deep and serious disagreements on the agriculture section of the Seattle Declaration. The United States and the Cairns Group of agricultural exporters (which includes Canada) are championing aggressive agricultural liberalization. They want the declaration to commit the parties to specific goals, such as a reduction of export subsidies leading to elimination. Japan and the EU, supported by Norway, Switzerland, Korea want language that would describe the goals of the negotiations in general terms. The EU is also insisting that "non-trade" concerns be part of the negotiations and wants the GATT agriculture agreement to acknowledge the so-called "multifunctionality" of agriculture (that is the multiple goals and aspects of agricultural policies such as environmental protection, food security, animal welfare and rural development). There are diverse interests among and within developing countries between exporters, net food importers, and regions such as Caribbean nations that depend on EU preferential policies.

As noted, Canada has taken an aggressive initial position on agricultural market open-

ing, aligning itself with governments of other major agrifood exporters. Canada's initial negotiating objectives regarding agriculture were announced in August, 1999 prior to a meeting of Cairns Group ministers.

- Canada is seeking "agreement to eliminate all export subsidies in agriculture as quickly as possible [and] rules to ensure that government-funded export credit and export credit guarantee programs, export market promotion and development activities, certain types of food aid, or other forms of export assistance do not become a substitute for export subsidies. "

- Canada will seek "the maximum possible reduction or elimination of production and trade-distorting support, including support under so-called "production-limiting" or "blue-box" programs; an overall limit on the amount of domestic support of all types (green, blue and amber); a review of the criteria of the green category to ensure that green support does not distort production and trade, and permanent international recognition that such support should not be countervailable.[1]

- At the same time, and somewhat contradictorily, the Canadian government states that it will defend Canadian supply-managed sectors. Under the Uruguay Round agreement Canada was forced to convert to tariffs the import restrictions that had enabled supply management to function. There will now be enormous pressure on Canada to reduce these high tariffs and to increase current "tariff-rate quotas" which allow a certain amount of imported agricultural products into the country at a much lower tariff rate.

- The Canadian government also firmly opposes reopening the Uruguay Round SPS Agreement because it believes that any renegotiation, for example to meet European concerns about incorporating the precautionary principle, will only weaken the market-opening capability of the SPS agreement. Canada will attempt to establish stricter timelines for product approval processes; specifically, the Canadian government wants to use the WTO to overturn the effective moratorium by the EU on the approval of new genetically modified foods.

- During negotiations, the US will be targeting the activities of state trading enterprises such as Wheat Board. Canada has countered by arguing that "any new disciplines proposed to deal with the perceived market power of such enterprises apply equally to all entities, public or private, with similar market power."

While negotiations on agriculture have already been agreed to, the precise scope and terms of these talks is one of the most fractious issues on the table. It will likely be one of the last issues resolved as part of an overall agreement on the Declaration. The ensuing negotiations will also be very difficult and one of the keys to the outcome of the Seattle round.

Trade-related intellectual property rights (TRIPS)

The Uruguay Round agreements contain provisions which require the member governments to review virtually every aspect of the agreement. Also embedded within the agreements are a variety of clauses that either kick in at a specified date or exclusions that expire unless there is agreement to renew them. In some areas, such as TRIPS, these reviews and triggers are so extensive that they amount, for better or worse, to an opportunity to renegotiate. There are two built-in reviews of the TRIPS agreement approaching: a country-by-country review in 2000 of developing coun-

try members' implementation of TRIPs and in 2002 the entire TRIPs agreement is to be reviewed based on members implementation experiences. The TRIPS agreement also requires further negotiations on the protection of certain "geographical indications" (such as "champagne" or "port"). Currently, the United States is arguing that the focus should be on full and effective implementation of existing TRIPS obligations, not on renegotiation of the TRIPS agreement.

Intellectual property rights was one of the new areas covered for the first time in the 1994 Uruguay Round agreements. The United States and its corporate sector (Pfizer and IBM joined forces with other companies in 1986 to form the Intellectual Property Council which worked closely with US negotiators) were the driving force behind the TRIPS agreement. The concerns of many developing countries were largely brushed aside. The TRIPS agreement provides for strong protection and enforcement of a wide range of intellectual property rights including copyrights, patents, trademarks, trade secrets, layout-designs of integrated circuits, industrial designs and "geographical indications." The TRIPS goes beyond non-discrimination commitments to specify minimum standards of protection — e.g. the minimum term of patent protection is 20 years.

One of the means to overcome developing country opposition was to allow for transitional periods before applying TRIPS fully to developing, transition-economy and least developed countries. The agreement gave developing and transition-economy countries 5 years to apply TRIPS provisions. Least developed countries were given 10 years to comply. If developing countries did not have pharmaceutical and agricultural chemical product patent protection in place when the TRIPS agreement came into force (on Jan 1, 1996) they were given 10 years to fully implement in these two sectors. With the Jan 1, 2000 deadline looming, many developing country governments are now arguing for longer transitional periods.

Some developing countries are arguing for effective renegotiation of the TRIPS agreement, which they argue is biased in favor of developed countries. One objective is to enhance IPR protection for traditional and indigenous peoples' knowledge. Another is to provide stronger recognition for compulsory licensing schemes, for example for health protection purposes. (A compulsory license is an authorization by government to permit someone, upon payment of royalties to the patent owner, to make, use, or sell a patented product or process.) Recently, combined pressure from US AIDS activists and the South African government forced the US administration to back down on threats to use the WTO to attack South Africa's compulsory licensing regime for drugs.

Article 64 of the Agreement on TRIPS provides for a so-called "non-violation" remedy. Basically this would permit formal complaints and WTO dispute settlement where a country felt that its rights under the TRIPS had been "nullified or impaired" by a government measure that conforms to the letter, but not "the spirit," of the TRIPS agreement. A 5-year moratorium was placed on "non-violation remedies" during which the WTO Council for TRIPS was supposed to study the matter. Many developing countries fear "non-violation" remedies. Canada has taken a good position on this issue arguing that "transplanting this remedy into the TRIPS environment … will constrain Members' abilities to introduce new and perhaps vital measures such as those related to social, economic development, health and environmental objectives (Communication from Canada to the WTO General Council, July 16, 1999)." Canada is arguing that the moratorium should be extended for a further 5 years while member governments considers the matter

further. The US opposes such a long extension.

Article 27.3 of the TRIPS agreement allows member governments to exclude plants and animal other than microbiological products and processes from patentable subject matter. The United States and the global biotechnology industry want to eliminate this exclusion which must be reviewed after Jan. 1, 2000. Some developing countries, such as the Africa Group, are arguing that "the review process (under 27.3) should clarify that plants and animals as well as microorganisms and all other living organisms and their parts cannot be patented, and that natural processes that produce plants, animals and other living organism should also not be patentable." Others have expressed concerns about the possible incompatibility of the TRIPs with other international agreements, including the Biodiversity Convention being negotiated under the auspices of the United Nations.

3 Additional Negotiating Topics

Industrial market access

One topic that is almost certain to be added to the WTO negotiating agenda is industrial market access, that is tariff and non-tariff barriers to non-agricultural goods. Once industrial market access is added to the built-in agenda on services and agriculture, virtually the whole of world commerce will be on the negotiating table. Despite all the jockeying among the US, the EU and Japan around the scope of the negotiations and which topics merit dedicated negotiating groups almost any issue could be raised under the encompassing rubric of these three topics alone. One immediate US priority is to gain agreement to accelerated tariff liberalization (ATL) in a number of key industrial sectors including fisheries and forestry. This initiative, backed by Canada, originated in APEC but withered there because of many Asian countries reluctance. The US wants agreement that ATL would be part of an early harvest to be announced before the conclusion of the negotiations.

Investment

The EU and Japan strongly support negotiations to establish multilateral rules on a framework for foreign direct investment. The US has so far resisted setting up a negotiating group specifically on investment. A possible saw-off is that the existing WTO Working Group on the Relationship between Trade and Investment will be given a new, broader mandate and, after the mid-term review of negotiations, its status will be upgraded to a full negotiating group. The US has resisted specific negotiations on investment, because it is concerned that any investment deal reached at the WTO would be a "low-quality" agreement riddled with exceptions. The US appears to prefer to focus on expanding the "high-standard" investment rules already contained in the GATS. Many developing countries oppose outright any specific negotiations on investment. Others have argued that the working group should focus on issues of interest to developing countries, such as examining the obligations of foreign investors to host countries.

Competition policy

Japan, supported by the EU, has proposed the establishment of a multilateral agreement on competition law and policy as a possible option to be pursued in the negotiations. At the end of the Uruguay Round the US also indicated that it considered competition policy an important topic for future negotiations. At that time it was particularly concerned about Japanese anti-competitive practices. The US has since changed its position. Since the Uru-

guay Round concluded, the US has lost a WTO dispute with Japan over Japanese marketing and distribution practices that the US alleged disadvantaged Kodak in the Japanese domestic market. There have also been some serious disputes between US and the EU over the alleged trade restrictive effects of European competition policy (e.g. over the European approval of the Boeing-McDonnell Douglas merger). Some countries, including Canada, view an international agreement on competition policy as a potential substitute for national anti-dumping trade remedies (i.e. rules against selling products in foreign markets at below the cost of production in the domestic market). The US, which frequently resorts to antidumping actions, may be wary of this strategy.

Government procurement

As discussed above, the US is seeking an immediate agreement on transparency in government procurement. Responding to pressure from developed countries, the Singapore ministerial authorised a working group to study transparency in government procurement. If agreed at Seattle, such an agreement could enter into force as early as Jan. 1, 2001. There remains considerable resistance among developing countries, however, and if immediate agreement can not be reached then government procurement will likely be part either of the WTO negotiating or its work program. The EU and Japan, while accepting that an agreement may not now be feasible by the Seattle ministerial, still favour full negotiations which would could go beyond transparency to provide for market access. As also noted previously, negotiations on government procurement of services are already part of the built-in GATS agenda.

Antidumping and subsidies

The US is apparently isolated in its firm opposition to specific negotiations on antidumping rules. Congressional opposition to any real or perceived weakening of US antidumping and countervailing duty laws seriously constrains the US administration's flexibility on these issues. Developing countries have insisted, however, that some movement on anti-dumping is a precondition of their agreement to other negotiations. As noted previously, anti-dumping issues could still be raised in the agriculture and industrial market access negotiations and this may provide a way out if the US persists in its opposition. Canada has formally proposed that a negotiating group be created to "improve disciplines and remedies" under the Uruguay Round Subsidies and Countervailing Measures agreement.

Trade facilitation

Such negotiations would deal with formalities and procedures related to the import, export and transit of goods. Again the EU, Japan, and Canada are seeking full negotiations leading to the development of binding rules. The US favours a work program that could lead to future proposals for rules. Developing countries have been pressing for more time and financial assistance to implement their current obligations under the Uruguay Round Customs Valuation Agreement which they argue are administratively costly and will result in significantly reduced tariff revenues.

4 The WTO Work Program

The work program will deal with issues on which there is, as yet, no agreement to negotiate or that are not considered "ripe for negotiation." All of the issues considered above on which no consensus can be reached to make an immediate decision at the ministerial or where there is no agreement to add them to the full negotiating agenda will almost certainly be included in the WTO work

program. As noted previously, topics that begin as part of the work program may still be graduated later to full negotiations that may lead to texts or agreements.

Trade and development

Given the serious disagreements that have arisen over "implementation," developing countries are now unlikely to agree to see their demands to change existing agreements to give them more benefits relegated to a working group. They are insisting that immediate steps be taken at Seattle and that longer term changes to extend them more benefits be part of the negotiating agenda. Nevertheless, a working program on trade and development will probably be established and the Quad countries, particularly the US, will do their best to consign as many of the controversial issues to that work program rather than to full negotiations. Another developed country tactic will be to repackage and label their own interests, for example in the area of e-commerce and agriculture, as "development issues." The upcoming negotiations are already being touted as "the Development Round." The WTO committee on Trade and Development may be given a horizontal mandate to provide advice through the Trade Negotiations Committee to all negotiating groups on the development implications of proposals and texts.

Biotechnology

The US wants to negotiate on approval processes for biotech products. The US and its agrifood industry are very concerned about the effective three-year moratorium which the EU has placed on the approval of new genetically modified foods. If the US is unsuccessful in getting this issue added to the negotiating agenda, its fallback position is for a working party that focuses specifically on approval processes for genetically modified foods. Japan, Canada, Argentina, New Zealand, Chile and Uruguay also support creating a Working Group on Biotechnology. The Canadian, which shares US concerns about the EU's position on genetically modified foods, has proposed that the working party have a broader mandate than simply approval processes.

No country but the United States appears to support entering directly into negotiations on biotechnology and there is strong resistance among many developing countries even to the concept of a working party. Norway and Switzerland, backed by Malaysia and Bolivia, have argued that biotechnology was currently being dealt with outside of the WTO and that these matters should continue to be addressed under the aegis of the United Nations Convention on Biodiversity. The EU has reserved its position on a biotech working party.

E-commerce.

There is support for a Canadian proposal to establish a horizontal (i.e. cross-cutting) working group on e-commerce. Currently, WTO work on e-commerce takes place in four WTO bodies, the Councils for Trade in Goods, Services, and TRIPS, and the Committee on Trade and Development. Developing countries are resisting Canadian and European proposals to affirm in the Seattle declaration that existing WTO rules already apply to e-commerce.

An issue that may not, because of EU resistance, be addressed in the declaration is how to classify certain electronic commerce transmissions. The EU's view is that all electronic transfers should be classified as services under the General Agreement on Trade in Services (GATS). The U.S. and Japan argue that transfers of digital content that have physical equivalents, such as software, books, or films, should be classified as goods under the more sweeping commitments of the General Agree-

ment on Tariffs and Trade (GATT). The EU opposes this classification because it could lead to a circumvention of its audiovisual exemption under the GATS. This should be a critical issue for Canada, because, as the WTO magazine defeat demonstrated, it is more difficult to defend a cultural measure under the GATT rules applying to goods than under the GATS whose main obligations apply only to service sectors that are specifically listed by a member government.

In addition to the Tobin tax issue discussed previously, the development of e-commerce rules at the WTO should be watched carefully because any agreement further restricting governments' authority to regulate e-commerce could allow foreign commercial service providers to bypass national regulations covering cultural industries (e.g. Canadian content rules), post-secondary education (e.g. through distance education), and health care (e.g. through remote health information management systems).

Trade and environment

The WTO Working Group on Trade and Environment established at the Singapore ministerial has made little or no progress. It has studied the issues of the relationship of the WTO to multilateral environmental agreements, eco-labelling and environmental assessment of trade agreements without developing any consensus or specific proposals. Canada has now proposed that the Trade and Environment committee be given a horizontal mandate to provide advice to all negotiating groups on the environmental implications of proposals and texts. The Canadian government has also proposed what it calls a "principles and criteria" approach to avoiding potential conflicts between the WTO and multilateral environmental agreements. This proposal has generally been dismissed as timid by Canadian environmental NGOs. Canada is also intent on clarifying that the GATT standards-setting rules constrain the activities of non-governmental certification bodies. The federal government and most provinces are convinced that these NGO-sanctioned eco-labels discriminate against Canadian forest products (and potentially other industries such as mining) on the basis of GATT-illegal process and process standards, such as recycled paper content or clear-cutting in old-growth forests. The Canadian government has committed itself to conduct an environmental assessments of new trade agreements. There has been no official acknowledgement of the threat posed to national environmental protection, wildlife conservation or pest control measures by WTO rules and recent panel decisions. For example, no government is championing the reform or strengthening of the GATT Article XX to provide effective exemptions for bona fide environmental protection and resource conservation measures.

Trade and labour

For domestic political reasons, the US administration is committed to finding some formula to put labour rights on the WTO agenda. The US has proposed the establishment of a working group on trade and labour. Most developing countries are dead set against this. The European Union, acknowledging the degree of developing county opposition to a formal work program within the WTO, has proposed "a joint ILO / WTO Standing Working Forum on trade, globalization and labour issues." The EU-proposed dialogue would "include an examination of the relationship between trade policy, trade liberalisation, development and core labour standards and it should explicitly exclude any issue related to trade sanctions." Most developing countries, with a few exceptions such as South Africa, are firmly entrenched on this issue. Because US organized labour is viewed as the major

demandeur of a work program on trade and labour, US negotiators may be tempted to "pay" to set up a work program on trade and labour with "concessions" that hurt US organized labour (increased market access in textiles and apparel, autos, steel and other unionized, "old economy" sectors.)

Coherence

Coherence is a WTO buzzword that refers to efforts to achieve greater policy coherence among the multilateral institutions jointly responsible for global economic policy-making (the WTO, IMF, World Bank, Bank for International Settlements, United Nations, International Labour Organization, etc.). The Uruguay Round Agreements included a declaration on global policy coherence that refers primarily to the need for the IMF, World Bank and the WTO to "follow consistent and mutually supportive policies." Developed countries have now begun broadening the concept of coherence beyond the World Bank and IMF to encompass other institutions such as the United Nations and the ILO. Many developing countries, including India, view coherence initiatives with suspicion. They strongly reject the suggestion of "cross-conditionalities" (such as explicitly making World Bank or IMF funding conditional on adherence to WTO obligations) and suspect coherence is a strategy to circumvent their resistance to discussing labour and environmental concerns in the WTO. Canada, among others, supports further work on coherence. If established, a working group might be mandated to report at the next ministerial on the experience of adjusting to globalization, the WTO relationship to international institutions, facilitating participation by developing countries in global policy-making and improving multilateral surveillance and transparency.

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Endnotes

1 "Domestic support" is currently divided into three categories: 1) green support, which has little or no production and trade effects, is not countervailable, and is not subject to reduction commitments; 2) amber support, which is subject to reduction commitments; and 3) blue support, which is not subject to reduction commitments but which is liable to countervailing duties.

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