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The World Trade Organization: Future Negotiations

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ABSTRACT

Future trade negotiations will be launched at the World Trade Organization's (WTO) Ministerial Conference to be held in Seattle from November 30 to December 3, 1999. At the very least, negotiations will include agriculture and services, which are required to begin by the year 2000 in the Uruguay Round Agreement. Other issues that may be addressed are intellectual property rights, government procurement, reduction of industrial tariffs, and reform of the WTO. Some WTO members also want to include investment, competition policy, and the environment in the negotiations. This report provides an overview of the possible scope and structure of the negotiations, and an analysis of negotiations on the "built-in-agenda" issues (agriculture and services), new issues (investment and competition policy) and the social dimensions of trade (environment and labor). This report, which supercedes CRS Report 98-841 E, will be updated as major developments occur.

The World Trade Organization: Future Negotiations

Summary

The World Trade Organization's (WTO) Ministerial Conference, to be held in Seattle from November 30 to December 3, 1999, will launch a new round of trade negotiations. President Clinton, in his State of the Union Address on January 19, 1999, called for an ambitious round focusing on agriculture, services, industrial tariffs, intellectual property, and government procurement. He also proposed that negotiations should result in early agreements, and should be concluded in far less time than the seven years that the Uruguay Round took.

The United States and the other WTO countries are beginning the process of developing goals and procedures for the negotiations. If negotiations lead to multilateral agreements that require changes in U.S. law, legislation will be needed for implementation. Foreign countries are often unwilling to negotiate unless the President has fast-track authority (which he currently does not have). Should the Congress decide to act on fast-track legislation, it can influence the negotiations through specifying the negotiating objectives, and by consulting with the Administration before and during the negotiations. A likely issue in any debate is the extent that labor and environmental questions are addressed.

As of July 1999, the scope of future negotiations is still to be decided. All that is known for certain is that negotiations will include agriculture and services since the Uruguay Round Agreement clearly specified that negotiations on these issues must begin by the year 2000. Agriculture and services are seen by many policymakers as important because of remaining trade barriers; only a relatively small amount of trade liberalization occurred in the Uruguay Round. Moreover, agriculture and services trade is very important to the U.S. economy. For example, in 1997, about 20% of the value of U.S. agricultural production was exported, and the United States is the largest exporter and second largest importer of services.

WTO working groups are studying the relationship between trade and investment and between trade and competition policy. Countries disagree considerably on whether or not these issues are ripe for negotiation and on the possible benefits of negotiations. The European Union supports, and the United States opposes, beginning negotiations on these issues. Developing countries generally oppose WTO discussions on foreign direct investment rules and competition policy.

Including labor and environmental issues in trade agreements is highly controversial, both within the United States and among the WTO members. For example, environmentalists and labor unions argue that labor and environmental standards should be a negotiating goal for humanitarian and environmental protection reasons. Many economists and the business community maintain that a more effective way to increase standards abroad is through trade liberalization and increased economic growth abroad. The Administration supports discussions of environment and labor in the WTO, while the Congress is divided on the issue. Some other industrial countries support WTO discussions, while the developing countries are strongly opposed.

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The World Trade Organization's (WTO) Ministerial Conference, to be held in Seattle from November 30 to December 3, 1999, will launch a new round of trade negotiations. The Ministerial Conference will be chaired by United States Trade Representative Charlene Barshefsky. President Clinton, in his State of the Union Address on January 19, 1999, called for an ambitious round focusing on agriculture, services, industrial tariffs, intellectual property, and government procurement. He also proposed that negotiations should result in early agreements, and should be concluded in far less time than the seven years that the Uruguay Round Agreement took.

The Uruguay Round, the eighth series of negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT), was unique in several ways. For the first time, agriculture, services, intellectual property rights, trade-related investment measures, and textiles and apparel trade were brought under the discipline of multilateral rules. The Uruguay Round also established the World Trade Organization (WTO) and strengthened the dispute settlement procedure. More traditionally, it also reduced tariffs further and clarified and expanded rules on subsidies, antidumping, and safeguards. The Uruguay Round Agreement (URA) requires further negotiations by the year 2000 in agriculture and services, where many trade barriers remain. Agriculture and services negotiations are often referred to as the "built-in-agenda."

Preparations for the negotiations are currently underway by the WTO in Geneva. In addition to the built-in-agenda items, there are many proposals to negotiate other issues. Perhaps the most contentious of these are investment and competition policy and the relationship between trade and the environment. No consensus exists among WTO members regarding the extent to which these issues should be included in the negotiations.

If negotiations lead to multilateral agreements that require changes in U.S. law, implementing legislation will be needed, either through the regular legislative process or through fast-track procedures.[1] A number of foreign countries have expressed their unwillingness to negotiate unless the President has fast-track authority. Without such authority, it is argued, Congress can amend an agreement or not vote on it at all, and the U.S. negotiating position might lack credibility. According to Deputy U.S.

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[1]Under fast-track procedures, Congress agrees to consider trade agreements within mandatory deadlines, with limited debate, and without amendment while the Administration agrees to consult with the Congress before and during the negotiations.

Trade Representative Richard Fisher, a new round of multilateral negotiations can be *launched*, but not *concluded*, without fast-track authority.[2]

The President does not currently have fast-track authority to negotiate trade agreements. A contentious congressional debate over renewal of fast-track authority in the fall of 1997 resulted in a postponement of the vote. On July 21, 1998, the Senate Finance Committee reported out S. 2400, the Trade and Tariff Act of 1998, which included fast-track authority (Title II). On September 25, 1998, the House defeated its fast-track bill, H.R. 2621, by a vote of 243-180. It is not clear when fast-track legislation might again be considered.

The World Trade Organization

The World Trade Organization provides a framework of principles to govern international trade, a forum for negotiating trade issues, and procedures to settle disputes among nations. It also monitors national trade policies and provides technical assistance and training for developing countries.

Multilateral rules and principles for trade, agreed on by member countries, play a significant role in encouraging trade and economic activity. The most important principle underlying the WTO is nondiscrimination. The *most-favored nation (MFN) principle* requires each member country to grant each other member country treatment at least as favorable as it grants to its most-favored trade partner. The *national treatment* principle obligates each country not to discriminate between domestic and foreign products; once an imported product has entered a country, the product must be treated no less favorably than a "like" product produced domestically .

Major WTO decisions are made by the member countries as a whole, usually by consensus. The highest authority is the Ministerial Conference, which is required to be held at least every two years. The first Conference, held in Singapore in December 1996, reviewed the implementation of the Uruguay Round Agreement and considered proposals for new issues to be addressed in the future. The second Ministerial Conference, held in May 1998 in Geneva, established a process for future multilateral negotiations. A third Ministerial Conference will be held in Seattle from November 30 to December 3, 1999.

On January 1, 1995, the WTO replaced the General Agreement on Tariffs and Trade (GATT), which had been in effect since 1948. Twenty-three countries signed the original GATT agreement; by July 1999, the WTO had 134 member countries, while more than 30 additional countries have applied for membership.

The main purpose of this report is to provide an overview of the issues that may be included in negotiations and the broad negotiating goals of the United States (and other countries, where available). The report begins with a discussion of the scope and structure of the negotiations, followed by a more detailed analysis of the built-in agenda items (agriculture and services), the new issues (investment and competition policy) and the social dimensions of trade (environment and labor).

[2]Fisher Says Round Can Be Launched Without Fast-Track Authority. *Inside U.S. Trade*. July 23, 1999, p. 22.

Scope and Structure of Negotiations

Possible Issues for Negotiation

As of July 1999, the scope of future negotiations is yet to be decided. All that is known for certain is that negotiations will include agriculture and services since the Uruguay Round Agreement clearly specified that negotiations on these issues must begin by the year 2000. Beyond this, however, a number of other issues may be considered, such as intellectual property rights and transparency in government procurement.

Future trade negotiations were one of the topics addressed at the G-8 Economic Summit held in Cologne, Germany from June 18-20, 1999.[3] In the Communique issued at the conclusion of the Summit, the G-8 countries called for, among other things, a new round of "broad-based and ambitious" global trade negotiations to be launched at the WTO Ministerial Conference in Seattle.[4] The Communique mentioned some broad goals such as the importance of improving the transparency of the WTO and on the need for addressing the trade and environment relationship and promoting social and economic welfare worldwide. Other goals included improving market access for the least developing countries, and greater cooperation among international financial, economic, labor and environmental organizations. On the issue of biotechnology trade, the G-8 countries committed themselves to a science-based, rules-based, approach.

The U.S. Administration is currently consulting with the Congress and the private sector to determine a specific negotiating agenda for the United States. Some broad goals have been announced, however, and include:[5]

- agriculture — reduce tariff and nontariff barriers and lower subsidies.
- services — achieve stronger commitments to liberalization and national treatment.
- government procurement — achieve greater openness and transparency.
- intellectual property — strengthen rules and enforcement.
- industrial tariff and non-tariff barriers — reduce them.
- competition and investment policy — begin a work program to study these issues.

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[3]The Group of 8 countries are the United States, France, Germany, United Kingdom, Japan, Italy, Canada and Russia.

[4]*Text: Group of Eight Cologne Summit Communique*.
Website: http://www.usia.gov/topical/econ/g8koln/20commun.htm

[5]*The Next Round: America's View of the Trading System*. Speech by Ambassador Charlene Barshefsky, U.S. Trade Representative, in Davos, Switzerland, January 29, 1999.

- WTO — achieve reform and greater transparency.
- WTO and international financial institutions — achieve greater coordination.
- trade and environment — ensure that trade liberalization complements environmental goals.
- trade and labor — eliminate exploitative child labor and achieve respect for core labor standards.
- developing countries — assist them in fulfilling their commitments and assure their market access.

A Single Undertaking or Early Harvest?

Under the auspices of the General Agreement on Tariffs and Trade (GATT), trade negotiations occurred in "rounds" where a wide array of issues could be, and were, negotiated. Each round had a specific beginning and ending date (which could be extended), decided on by the member countries. Between rounds, the GATT Secretariat focused on implementing the trade agreements, but was not a forum for actual negotiations. This procedure reflected the nature of the GATT; it was not an institution or an organization, but basically a trade agreement which had a secretariat for administrative purposes.

One of the functions of the WTO, however, is to provide a permanent forum for continuing multilateral trade negotiations. Strictly speaking, rounds are no longer needed; member countries could decide to negotiate on specific issues at any time. For example, negotiations in several service sectors — basic telecommunications and financial services — have been successfully concluded since 1995 when the WTO went into effect.

Another sectoral agreement was the information technology agreement (ITA), finalized in March 1997, which reduces trade barriers on a broad range of products, such as semiconductors, computers, telecommunications equipment, and software.[6] The business community in the industrial countries proposed an ITA in 1995, with U.S. information technology firms providing strong support. Under the ITA, tariffs will be reduced in four equal stages and will be eliminated by January 1, 2000. Currently, another information technology agreement (ITA-2) further liberalizing trade is being negotiated.

Since the more recent negotiating rounds have been long and often contentious, some analysts argue that future negotiations should be on specific issues. The success of the telecommunications, financial services, and ITA negotiations suggests to many that sectoral negotiations can succeed. Others maintain that substantial progress in negotiations occurs only when cross-sector trade-offs are possible. Some countries

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[6]See also CRS Report 98-376 E, *The Information Technology Agreement(ITA): Background on a Proposal to Expand the Scope of the Multilateral Trade Agreement*, by (name redacted).

open their markets in some sectors, while other countries open them in other sectors. For example, in the Uruguay Round, trade liberalization in services (wanted by the developed countries) was linked with reform in textiles (important to the developing countries). The success of the negotiations in basic telecommunications and financial services were, it is argued, special cases because it was widely recognized that they were important to the infrastructure of the global economy. And some maintain that the successful conclusion of the Information Technology Agreement required a side-deal on distilled spirits.[7]

As of July 1999, it is not clear how the negotiations will be structured. The U.S. Administration generally favors continuous negotiations under the auspices of the WTO, not a new round, arguing that recent rounds were too long (the Uruguay Round took seven years), and the continuing emergence of new issues as a result of technological change makes a round less feasible. In this approach, when negotiations on an issue are completed, an agreement would be signed and implemented; this is also referred to as an "early harvest" approach. The European Union and Japan support a new, comprehensive round of trade negotiations, in which all agreements would be concluded at the same time. Recently, the United States appears to be open to consideration of this "single undertaking" approach. U.S. Trade Representative Barshefsky, in congressional testimony on June 24, 1999, stated "We have not...at this point signed on to the notion that this negotiation should be a single undertaking and will not until we know the full scope of the agenda contemplated."[8] It is possible that a compromise will be reached in which some negotiations will be concluded early within the context of a single undertaking.[9]

A consensus appears to have emerged on the length of the proposed negotiations. Most countries agree that negotiations should last no longer than three years. It is argued that the upcoming negotiations will focus on extending and consolidating the Uruguay Round Agreement (URA), and therefore three years will be adequate to achieve this goal.[10]

The Built-In Agenda

The agriculture and services agreements in the URA are similar in two respects. First, they both began the process of liberalizing trade in new areas, but left much to be done in the future. Second, in both cases, progress in multinational negotiations depended on, and fostered, to some extent, domestic reform. Similarly, in the future, any liberalizing of trade may require economic policy changes in the domestic economy, unlike in the past when tariff reduction could be achieved in relative

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[7]Sauve, Preparing for Services 2000, p. 6.

[8]Barshefsky Says U.S. To Consider Single Undertaking for WTO Round. *Inside U.S. Trade*, June 25, 1999, p. 4.

[9]WTO Members Urge Early Harvest Provision Within Single Undertaking for Next Round. *International Trade Reporter*. July 14, 1999, p. 1174.

[10]*ECOSOC High-Level Segment, Geneva*. Speech by David Hartridge, Director in charge, WTO, 5 July 1999.

isolation from the domestic economy. At the same time, trade agreements now often "lock in" past domestic policy changes, since countries are less willing to retract past reforms when they have committed to them in an international agreement. Many economists argue that multilateral negotiations are necessary to continue the process of opening markets and also to reinforce previous policy changes and stimulate further domestic reform.

Agriculture

The Uruguay Round Agreement on Agriculture established, for the first time, multilateral rules on market access, export subsidies and domestic support for agriculture.[11] Agreement was possible, after long, difficult negotiations, because the major countries were reforming their domestic agricultural programs. The developed countries realized the high costs of most domestic support programs, especially amid strong efforts to reduce government budget deficits. Furthermore, efforts to reduce the government's role in agriculture were consistent with, and part of, broad economic policy changes in a number of countries. Improving the efficiency and the global competitiveness of agriculture was an underlying motivation for both domestic reforms and trade liberalization.

Although developing multilateral rules was an historic accomplishment, relatively little immediate trade liberalization and increased market access was achieved. Countries agreed to replace non-tariff import measures with tariffs (called tariffication), an important step, but the rates at which tariffs were bound are very high. Agricultural tariffs in the industrial countries average more than 40%, compared with 5-10% in manufactured goods. Moreover, tariffs for some specific products are much higher. For example, Canadian tariffs on dairy and poultry products are over 200%.[12] The URA imposed limits on export subsidies and prohibited new export subsidies. The Agreement also imposed limits on spending for domestic agricultural subsidies, but since both U.S. and EU domestic support were well below spending levels allowed, these limits are not expected to have any practical effect in the URA implementation period (1995-2001).

Further negotiations in agriculture are important for several reasons. First, the Uruguay Round Agreement on Agriculture was only a first, albeit significant, step, and much remains to be done. Second, agricultural exports are very important to the United States. In 1997, about 20% of the value of U.S. agricultural output was exported and for some products, the proportion was much higher (for example, 43% for wheat and 36% for soybeans).[13] Looked at in another way, in 1997, agricultural

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[11]For more information, see CRS Report 98-254 ENR, *Agriculture in the Next Round of Multilateral Trade Negotiations*, updated June 21, 1999, by (name redacted).

[12]Josling, Timothy. *Agricultural Trade Policy: Completing the Reform*. Institute for International Economics. Washington, D.C. April 1998, p. 6-7.

[13]CRS Report 98-253 ENR, *U.S. Agricultural Trade: Trends, Composition, Direction, and Policy*, by (name redacted) and Mary L. Dunkley, p. 5.

exports accounted for about 30% of gross cash farm receipts.[14] It is expected that, in the future, productivity in U.S. agriculture will continue to grow faster than domestic consumer demand. At the same time, foreign demand for U.S. agricultural products likely will be strong, reflecting both rapid population growth and increasing consumer incomes abroad. Thus, unrestricted access to foreign markets may help to prevent domestic farm surpluses from occurring.

Third, it is argued, further agricultural trade liberalization would improve the efficiency of the U.S. and other economies, lower prices for consumers, and provide a wider variety and higher quality of products. Finally, trade liberalization is seen by some as being an impetus to further domestic agricultural reform in the developing countries, especially those in Asia, and helping to make permanent reforms that have already occurred in the developed countries.

Within the United States, most agricultural organizations support WTO negotiations. They maintain that greater market access abroad is necessary, especially now with declining U.S. farm incomes. Some agricultural organizations representing small farmers, however, are opposed, arguing that more domestic support programs, not trade liberalization, are needed.

The Administration is currently collecting information from the public on agricultural trade barriers in anticipation of the upcoming negotiations. Although a formal agenda for agriculture negotiations has not yet been determined, Department of Agriculture officials have announced the following goals.[15]

- Eliminate export subsidies.
- Reduce tariffs on agricultural products (the world average is 56% compared with 3% in the United States).
- Improve transparency and disciplines on State Trading Enterprises (STEs), which allow some countries to undercut U.S. exports into third markets and restrict imports.
- Develop scientifically-justified rules on biotechnology products (genetically modified organisms, or GMOs).
- Strengthen the rules on the administration of tariff rate quotas, which, in practice, have been administered to restrict access.[16]

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[14]*Testimony of Ambassador Peter L. Scher, Special Trade Negotiator for Agriculture*, before the Subcommittee on Trade, House Committee on Ways and Means, February 12, 1998, p. 2.

[15]Ibid., p. 6 and 7 and U.S. Department of Agriculture. *Glickman to Participate in WTO Ministerial Conference*, Release No. 0196.98, p. 1.

[16]In the URA, some nontariff barriers were converted to tariff rate quotas (TRQs), in which tariff-free imports are permitted up to a certain level.

Services

Services include a wide range of activities, such as travel, tourism, transportation, accounting, advertising, banking, insurance, construction, architecture, engineering, communications, health, education, information, and legal, business, professional, and technical services. Unlike merchandise, which is usually shipped across a border, services can be delivered in four main ways. The service provider can travel to the country of the recipient (such as an opera singer), or the service recipient can travel to the country of the provider (e.g., a tourist). Services can be sent abroad by mail, telephone, facsimile, or computer network. Finally, services can be provided through foreign direct investment, as when a firm establishes a branch or subsidiary abroad. Barriers to services trade often take the form of government regulations which may limit the provider of the service (such as restrictions on foreign professionals entering a country) or on the type of investment that can be done by a foreign subsidiary.

World trade in services has grown rapidly over the past several decades and now accounts for about 20% of global merchandise and services trade. For example, of total world exports of $6.2 trillion in 1995, $1.2 trillion was in services.[17] Not only is services trade large and growing rapidly, but it is an important part of the infrastructure of the world economy. Much economic activity in the goods sector depends on services such as banking, accounting and professional services, and computer networks. Thus, reducing trade barriers in services is seen by many as crucial to future economic growth in most countries.

Moreover, the United States is the largest exporter and second largest importer of services. In 1995 U.S. services exports and imports were 16% and 11%, respectively, of global services exports and imports.[18]

The General Agreement on Trade in Services (GATS), one of the Uruguay Round Agreements, is the first multilateral agreement on services trade.[19] Conceptually, the GATS can be thought of as having two main components. The first part is a system of multilateral rules and principles for trade in services which are less comprehensive than those applying to merchandise trade in the GATT. The second part contains the schedules of specific commitments in which each country listed the service sectors for which it would provide market access and/or national treatment. While the multilateral rules were a significant achievement, any immediate reduction in trade barriers from the GATS would occur via the specific commitments.

One criticism of the GATS is that it is a complex and difficult document to read and interpret. The schedules of commitments lack transparency and make future liberalization more difficult. Another concern is that very little actual trade

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[17]World Trade Organization. *Annual Report, 1997*. Volume II, p. 6.

[18]*Ibid.*, p. 5.

[19]See also CRS Report 95-1051 E, *Services Trade and the Uruguay Round*, by Arlene Wilson.

liberalization occurred in the specific commitments. Most of the commitments reflected a standstill, or ceiling, on existing measures, not a reduction of barriers.[20] Also, although many countries scheduled commitments in a large number of service sectors, these commitments cover a relative small proportion of actual service production.[21]

One contemplated goal for future negotiations, then, is to expand the market access commitments incorporated in the national schedules.[22] Another goal might be to reform regulations that restrict competition in services, which, as noted earlier, are one of the major services barriers. Also, the way in which the schedules of commitments were designed could be reviewed with the aim of increasing transparency and making future liberalization easier. Finally, since services are often delivered via foreign direct investment, multilateral rules for foreign direct investment might also improve market access for services.[23]

It should be noted that negotiations in a number of services sectors were continued after the GATS went into effect in 1995. An agreement liberalizing trade in basic telecommunications was announced in February 1997.[24] In financial services, 102 countries reached an agreement in December 1997 to open up banking, insurance, securities and other financial service markets to foreign service providers. The GATS also required continued negotiations on government procurement, subsidies and emergency safeguards in the first few years after 1995; these have not been concluded, and will likely be part of the services agenda in the year 2000.

One new services issue that has attracted considerable attention is electronic commerce (e-commerce), which can be defined as commercial transactions by electronic means, especially over the Internet. It would include, for example, sales and purchases of goods and services over the Internet. E-commerce was not even an issue when the Uruguay Round was negotiated, since the Internet was not widely used at that time. It is a significant development, however, since it makes purchases and sales by consumers and/or suppliers in remote locations much quicker and cheaper. At the Geneva Ministerial, the WTO members agreed not to impose tariffs on electronic transactions for one year and to begin a work program to examine trade-related aspects of e-commerce. The U.S. Administration favors reaching agreement at the Seattle Ministerial to extend indefinitely the temporary moratorium on tariffs.

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[20]Schott, Jeffrey J. *The Uruguay Round: An Assessment*. Washington, D.C., Institute for International Economics. November 1994, p. 100.

[21]Snape, Richard H. and Malcolm Bosworth. Advancing Services Negotiations. In *The World Trading System: Challenges Ahead*, Jeffrey J. Schott, Ed., Washington, D.C., Institute for International Economics, December 1996, p. 189.

[22]Feketekuty, Geza. Setting the Agenda for the Next Round of Negotiations on Trade in Services. In *Launching New Global Trade Talks: An Action Agenda*, Jeffrey J. Schott, Ed., Washington, D.C., Institute for International Economics, September 1998, p. 92.

[23]Sauve, Pierre. *Preparing for Services 2000*. Occasional Paper. Coalition of Service Industries, October 1997, p. 1.

[24]For more information, see CRS Report 98-165 E, *Telecom Services: The WTO Agreement*, by (name redacted).

The European Union, however, said that, before extending the moratorium, the WTO members should first complete the e-commerce work program.[25]

The U.S. government is in the process of formulating a services agenda. U.S. business firms are strong supporters of further negotiations in services. Generally, services negotiations are not a controversial issue in the United States; most recognize the benefits such negotiations might bring. The industrial countries are the prime motivators for services negotiations, although developing countries recognize, to some extent, the benefits an improved infrastructure can bring to their economies.

New Issues

The two issues discussed in this section — rules for foreign direct investment and competition policy — are controversial, both within the United States and among the WTO members. Countries disagree considerably on whether or not these issues are ripe for negotiation and on the possible benefits of negotiations. Generally, the European Union favors, and the United States opposes, beginning negotiations on investment and competition policy.

To some extent, bilateral and regional agreements already include the new issues, as does the WTO. Furthermore, Article 9 of the Uruguay Round Agreement on Trade-Related Investment Measures (TRIMS) requires that, by the year 2000, the WTO shall *consider* whether the TRIMS should be complemented with provisions on investment policy and competition policy. These issues were discussed at the Singapore Ministerial in December 1996, which established working groups to study the relationship between trade and investment and between trade and competition policy. The working groups, which exchange information and undertake analysis, began meeting in mid-1997.

Investment and competition policy are, in one way, an extension of the more traditional trade issues (tariffs and import quotas). The goals of reducing tariffs or of establishing rules for investment and competition policy are generally the same: to improve the efficiency of the world economy, raise living standards, lower prices for consumer goods, and increase the variety and quality of consumer goods.

Rules for Foreign Direct Investment

Foreign direct investment (FDI) is very important to the world economy and to the United States. In 1997 (the most recent year for which data are available), goods and services sold by foreign affiliates of multinational firms were about $9.5 trillion, more than total exports.[26] Most FDI is by the developed countries, and developed countries are the largest recipients of FDI, although developing countries are

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[25]EU Says It Will Not Support WTO E-Commerce Moratorium. *International Trade Reporter*. July 14, 1999, p. 1162.

[26]United Nations Conference on Trade and Development. *World Investment Report 1998: Trends and Determinants*. New York, United Nations, p. xvii.

attracting a growing share. The United States is both the largest foreign investor abroad and the largest recipient of foreign investment from abroad.

Foreign direct investment and trade are closely linked. Intra-firm trade accounts for about one-third of total world trade, with exports by multinational firms to non-affiliates accounting for another third.[27] Foreign direct investment can be either a complement to trade (as, for example, when a firm establishes a subsidiary abroad to distribute its exports) or a substitute for trade (when a firm produces abroad to sell abroad instead of exporting). Both FDI and trade are widely seen as improving the efficiency of the economy by allocating scarce resources more effectively and allowing firms to benefit from economies of scale. Moreover, foreign direct investment is seen by many economists as an important way in which technology is transferred from the investor to the recipient country.

Many of the barriers to foreign direct investment have been reduced or eliminated, partly as a result of existing agreements at a number of levels. The numerous bilateral treaties usually include most-favored nation and national treatment clauses, as well as provisions insuring the protection and security of investment. The North American Free Trade Agreement (NAFTA) among the United States, Canada and Mexico, includes investment rules. In the WTO, investment provisions are included in the GATS, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the TRIMS.[28] The OECD began negotiations towards a Multilateral Agreement on Investment (MAI) in 1995, but after intense opposition, ceased all negotiations in December 1998.[29]

Nevertheless, the need for comprehensive, multilateral rules is being discussed in the trade policy and business communities. Given the importance of FDI in the world economy, it can be argued that foreign direct investment should be subject to multilateral rules and disciplines just as trade is. All 134 WTO member countries would participate in the negotiations in the WTO, not just the OECD countries as is the case in the MAI. Thus, a WTO agreement might gain the support of the developing countries. Negotiations might focus on developing rules on the right of establishment for firms, national treatment, most-favored nation treatment, and transparency.[30] In addition, governmental tax and other incentives that encourage foreign direct investment to specific localities might also be addressed.

The developing countries have historically opposed investment negotiations, fearing competition from large, efficient multinational firms and possible infringement

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[27]World Trade Organization. Trade and Foreign Direct Investment. *Annual Report, 1996*, Vol. 1, p. 44.

[28]Under TRIMS (trade-related investment measures), measures such as requirements that foreign firms achieve a specified level of domestic content in their production or that imports be balanced by exports are being phased out.

[29]See CRS Report 98-569 E, *The Multilateral Agreement on Investment: A Brief Analysis of the Current Status*, updated February 2, 1999, by (name redacted).

[30]Ostry, Sylvia. *A New Regime for Foreign Direct Investment*. Group of Thirty, Washington, D.C. 1997. Occasional Paper 53, p. 12-16.

on their sovereignty. More recently, however, some developing countries have recognized the benefits that FDI can bring in terms of technology transfer and making their economies more competitive.

In the United States, foreign direct investment is a very controversial issue. Although most economists and the business community emphasize its economic benefits to both the home and host countries, domestic opposition to the MAI by labor unions, environmental organizations, and the general public was very vocal. A major criticism is that foreign investment is motivated primarily by lower labor costs abroad, which causes a loss of U.S. jobs. All agree that in specific instances this can happen. Most economists, however, respond with data showing that, in the aggregate, this is not the case. For example, at the end of 1996, more than 81% of U.S. direct investment abroad was in high-income countries, and 18% in middle-income countries; only 1% was in low-income nations,[31] suggesting that the primary motivation could not be lower labor costs. Moreover, these economists argue that the data suggest that U.S. direct investment abroad is associated with a change in the domestic composition of jobs (more high-technology jobs and fewer unskilled jobs), not a loss of jobs.

Competition Policy

Competition policy refers to laws that regulate trade-restricting practices by private firms. Such practices include cartels (agreements to fix prices and control output), predatory pricing (selling at below-cost prices to drive out competitors), price fixing, vertical or horizontal integration, abuse of dominant power, and mergers and acquisitions (if they result in trade restriction). About 70 countries (including most major industrial countries) have competition (or antitrust) laws, but in some cases, the laws contain a number of exemptions, and in other cases, the laws are not adequately enforced.[32] A significant number of countries have no competition laws at all.

In recent years, trade-restricting practices by private firms have attracted attention for several reasons. First, as government barriers to trade (e.g., tariffs and import quotas) have been reduced in previous GATT/WTO negotiations, other types of barriers have become more visible. When high tariffs were restricting trade, little thought was given to private business practices that inhibit trade, but such practices are now viewed by some as a major barrier facing multinational firms. Second, the rapid increase in foreign direct investment abroad and trade in services have made competition problems more of an issue.

Third, competition policy is being addressed in regional agreements and, in specific instances, in the WTO. For example, Chapter 15 (Competition Policy, Monopolies, and State Enterprises) of the NAFTA requires, in part, that the United

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[31]Graham, Edward M. Trade and Investment at the WTO: Just Do It! In *Launching New Global Trade Talks: An Action Agenda*. Jeffrey J. Schott, Ed., Washington, D.C., Institute of International Economics, September 1998, p. 155.

[32]World Trade Organization. Trade and Competition Policy. *Annual Report, 1997*, Volume 1, p. 31.

States, Canada and Mexico maintain antitrust measures and cooperate in enforcing competition law. It also requires each country to impose some specific disciplines on its monopolies. In the WTO, both the GATS and the TRIPS contain provisions on government actions regarding private business practices that restrict competition. For example, one provision of the GATS requires WTO governments to supervise the behavior of firms they designate as monopolies. Furthermore, the recent WTO telecommunications agreement included pro-competitive regulatory principles.

Finally, several disputes involving private restrictive business practices have received considerable publicity and suggest that multilateral rules might be helpful. In 1995, the United States brought a case to the WTO dispute settlement process in which it argued that Japanese automakers dealt exclusively with Japanese firms when purchasing auto parts. More recently, the Kodak-Fuji film case was partly about an exclusive relationship between Fuji and the four largest wholesale distributors of photographic film products in Japan.[33] In another issue, the Boeing-McDonnell Douglas merger illustrated how the extraterritorial application of competition law can lead to disputes.

Devising multilateral rules for competition policy might be difficult since the issue is quite complex. For example, in some cases, business practices that are anti-competitive may actually improve economic welfare; this might be true of mergers where a firm benefits from economies of scale.

A wide variety of approaches have been discussed by economists to address competition policy. At one extreme, a supranational authority might be established to make rules for competition policy. At the other extreme, cooperation among national competition authorities, which already exists to some extent, might be enhanced. There are many options in between. For example, an agreement could focus on specific goals, such as controlling cartels or requiring notification of proposed mergers and acquisitions that affect other countries.

Even though competition policy is included in specific instances in the WTO, some argue that more comprehensive WTO rules are now needed.[34] In the United States, multinational firms support broader WTO rules for competition policy. The Administration recently suggested exploring the possibility of including pro-competitive regulatory principles in services negotiations.[35] The European Union (which has a supranational competition authority) supports WTO negotiations on competition policy. Developing countries generally oppose such discussions.

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[33]For more information, see CRS Report 98-442 E, *The Kodak-Fuji Film Case at the WTO and the Openness of Japan's Film Market*, by Dick Nanto.

[34]For example, see Graham, Edward M. and J. David Richardson. *Competition Policies for the Global Economy*. Washington, D.C., Institute for International Economics. November 1997.

[35]Barshefsky, Brittan Take Stab at Fleshing Out New Trade Initiative. *Inside U.S. Trade*, September 25, 1998, p. 3-4.

Social Dimensions of Trade Policy

Environmental and labor concerns and their relationship to trade differ from the other issues discussed in this report. Including the environment and labor rights in trade negotiations is not aimed at improving economic efficiency and at raising productivity. Instead, the goals, supported by various groups and countries, are to insure that trade liberalization does not come about at a cost to the environment, and contributes toward higher environmental and labor standards. In other words, the goals focus on sustainable development, health, and improving working conditions for labor. While most agree that these are important goals, opinions vary widely as to whether or not multilateral trade negotiations are the most effective way of achieving them.

One reason these issues are being discussed in the WTO is that there are no broad environmental or labor organizations with powers to enforce their agreements. A number of multilateral environmental treaties have been negotiated covering specific issues, such as endangered species, but enforcement generally relies on trade sanctions. The International Labor Organization, the traditional multinational forum for labor issues, has no enforcement mechanism.

Some precedents exist for including labor and the environment in the WTO. The NAFTA is accompanied by side agreements which focus on improving labor standards and environmental cooperation. The WTO already allows for some exceptions to the trade rules, as long as they are not arbitrary or unjustifiable discrimination among countries and are not disguised barriers to trade. For example, the environment is addressed indirectly in Article XX, which permits measures necessary to protect human, animal, or plant life or health, and measures relating to the conservation of exhaustible natural resources. Another provision of Article XX allows measures relating to the products of prison labor.

Environment and labor are controversial issues in the United States. Historically, linking environmental and labor issues to trade agreements was supported by environmentalists and labor unions (and a growing segment of the public), and opposed by economists and much of the business community.

The Clinton Administration continues to support linking labor and the environment to trade negotiations.[36] In the Congress, a difference of opinion over the extent to which environmental and labor standards should be negotiated in trade agreements was the main reason the fast-track bill was withdrawn before the House vote in the fall of 1997. In both H.R. 2621 and S. 1269, the use of the fast-track process would have been limited to provisions that were either "necessary" to implement a trade agreement or were "directly related to trade."[37] As a result,

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[36]Clinton Administration Committed to Labor/Environment Link in WTO. *International Trade Reporter*, August 5, 1998, p. 1351.

[37]See CRS Report 97-879 ENR, *Fast-Track Trade Authority: Summary of the Clinton Administration Proposal*, by (name redacted), and CRS Report 97-943 E, *Fast-Track Trade Authority Proposals: Which Environmental Issues are Included in the Principal*

(continued...)

provisions that are aimed primarily at improving the environment would have been ineligible for implementation via the fast-track process. A substantial number of Members who supported environmental and labor provisions in trade agreements opposed the bills, while those who argued against such provisions supported the bills. Since it appeared the House bill would not pass, the vote was postponed in November 1997. As mentioned earlier, H.R. 2621 was rejected by a House vote on September 25, 1998.

Including environment and labor in trade agreements is also divisive among the WTO members. Generally, the United States and a few industrial countries support discussions in the WTO, while the developing countries are opposed.

Environment

The relationship between the environment and trade is complex and involves a number of issues. One question is the relationship between the WTO and multilateral environmental agreements (MEAs) that include trade sanctions. Governments have negotiated several MEAs that rely on trade sanctions as a means to enforce environmental agreements. A second issue is ecolabeling (the process of attaching a label to a product providing consumers with environmental information). If well designed, ecolabels can be an effective instrument of environmental policy. Some are concerned that trade sanctions to enforce MEAs or ecolabeling might be used as disguised barriers to trade.

Environmental standards raise several questions. If domestic health, safety, and environmental product and produce standards are stricter than those of foreign countries, could federal or state standards be weakened if trade rules oblige parties to harmonize and adopt international standards? Would stricter standards be successfully challenged in the WTO dispute settlement procedure as nontariff trade barriers? Could lower foreign environmental standards (or lax enforcement) provide a competitive advantage (and implicit subsidy) to foreign investment? Analysts respond that each country has the right in the WTO to establish its own standards, provided they are not used as disguised barriers to trade. Moreover, many trade proponents believe that allowing each country to take advantage of its comparative advantage (in which they include lower standards) will raise world income, and ultimately lead to higher standards in foreign countries.

Environmental concerns were important during the negotiations for both NAFTA and the Uruguay Round Agreement. After much discussion and compromise, the NAFTA and a side agreement addressed issues such as enforcement of environmental standards in the three NAFTA countries, safeguarding stricter U.S. standards, and addressing border pollution.[38]

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[37](...continued)
Negotiating Objectives? by Arlene Wilson.

[38]See CRS Report 97-291 ENR, *NAFTA: Related Environmental Issues and Initiatives*, by (name redacted).

Although the Uruguay Round Agreement addressed a few environmental concerns, the major issues were referred to a WTO Committee on Trade and the Environment, established in January 1995. The Committee has been meeting periodically to address the ten items on its agenda, including transparency of trade measures used for environmental purposes, exports of domestically prohibited goods, ecolabeling, and trade sanctions to enforce MEAs. The Committee issued a report in November 1996, summarizing its discussions and analysis, but made no major recommendations. The Singapore Ministerial Declaration stated that the Committee on Trade and Environment has made an important contribution towards fulfilling its mandate, and directed the Committee to continue its work under the existing terms of reference.

Labor Standards

A major argument for including labor standards in trade agreements is humanitarian. Some argue that workers in all countries deserve to work under conditions that protect their health and safety, which might be better achieved if trade agreements required basic labor standards. Others, however, maintain that the best way to raise labor standards is to allow developing countries to produce and export more, thereby raising incomes and ultimately leading to higher wages and improved worker rights.

Another argument is that multinational firms will shift production to those countries with lower labor standards which, it is argued, is unfair competition Not only would this hurt domestic workers, it is suggested, but it might force countries with higher standards to lower their standards in order to compete. As mentioned earlier, the data suggest that lower labor (or environmental) standards abroad are not a major motivation for multinational firms' decisions on plant location.

The link between trade and labor was the most controversial issue discussed during the Singapore Ministerial.[39] The United States and a few other industrial countries supported the establishment of a working group to discuss labor rights in the WTO. Developing countries were strongly opposed, arguing that such a working group might lead to inclusion of labor rights in trade agreements. That, in turn, would weaken their ability to export by reducing their comparative advantage in production of goods whose labor costs are low. Moreover, it was argued that labor rights might be used as protectionist tools.

The Singapore Ministerial Declaration supported the observance of internationally recognized core labor standards, but stated that the ILO is the competent body to set and deal with those standards. Additionally, the Ministers "believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards."[40] No

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[39]See CRS Report 97-272 E, *Worker Rights and U.S. Trade Policy: WTO Singapore Ministerial and Fast-Track Extension*, by (name redacted).

[40]Singapore Ministerial Declaration, Adopted on 13 December 1996. *WTO Focus*, January 1997, p. 7.

working group was established to discuss labor rights in the WTO, but the Declaration noted that cooperation between the WTO and the ILO will continue.

Implications for Congress

Fast-track negotiating authority is important for multilateral negotiations on agriculture, services, and the other agenda items since foreign countries are unlikely to make the necessary compromises without such authority. Also, rules for foreign direct investment and competition policy, now being studied by WTO working groups, may be a topic for negotiations in the not-too-distant future. Some observers believe the United States has much to gain from reaching agreement on all of these issues.

Should the Congress decide to act on fast-track legislation, it would be able to influence the negotiations in several ways. First, Congress could participate in setting the agenda for negotiations through the objectives specified in fast-track legislation. For example, in H.R. 2621 and S. 2400, the principal negotiating objectives included reducing specified barriers in services, foreign investment, intellectual property, and agriculture.

Second, the fast-track process requires that the Administration consult with the Congress at a number of points in the negotiating process: before negotiations begin, during the negotiations, and before the Administration enters into an agreement. Congress can request consultations frequently, if desired. If the Administration fails to consult adequately with Congress, either House of Congress may pass a resolution denying use of the fast-track procedures to an implementing bill submitted with a trade agreement.

Proponents of fast-track legislation may seek a compromise on the extent to which labor and the environment are the subject of negotiations. In both H.R. 2621 and S. 2400, the principal negotiating objectives included the following:

- to ensure that foreign governments do not lower or waive existing environmental and labor standards to gain a competitive advantage in trade or investment; and

- to require that U.S. negotiators take into account U.S. domestic objectives, including protection of legitimate health, safety, environmental, consumer, and employment opportunity interests.

The 1998 rejection of fast-track in the House shows the diversity of views on the environmental and labor objectives. Fast-track bills in the 105th Congress were not successful, partly because these principal negotiating objectives were not strong enough to satisfy the goals of labor, and, to a lesser extent, environmentalists.