



In Committee

BIAC PRIORITIES
FOR THE
WTO DOHA NEGOTIATIONS
AND
RECOMMENDATIONS TO THE OECD

25 February 2005

General Remarks

1. BIAC welcomes the July *Framework Agreements* that have revitalized the WTO Doha Development Agenda as recommended by the BIAC Presidents' May Statement. We salute the political commitments and flexibility of Member governments to move the negotiating process forward, particularly on the agricultural issue. Important frameworks and principles have been laid down. The agreements concluded at Geneva have helped to overcome the Cancun stalemate, restore confidence in the WTO process, and provide the basis for achieving BIAC objectives in the negotiation. It is essential that this momentum is maintained if substantive progress is to be achieved when WTO Ministers next meet in Hong Kong at the end of 2005.

2. At the same time, BIAC understands that the real negotiations on modalities and binding commitments are now underway and that the most difficult negotiations remain ahead. The general expectation that the negotiations must be completed by the end of 2006, to take into account the expiry of members negotiating mandates, provides a realistic and feasible deadline. BIAC therefore expects the modalities on all negotiating topics to be agreed at the Ministerial Conference in Hong Kong.

3. In view of the substantive progress reflected in the July frameworks, BIAC believes it is an appropriate time to update its priorities for the negotiations. For BIAC members, market access for goods and services remain among the most critical issues for achieving a successful negotiation, and negotiators need to focus on these areas to ensure they do not lag behind the work on agriculture. The acceptability of the final result to BIAC members will depend on reaching agreement on a complete package of substantial reforms, containing a.o. the following elements:

- Ambitious liberalization of industrial tariffs and market access for services, with meaningful participation of emerging markets and developing countries;
- Liberalization of agricultural trade; this remains a key issue in the negotiation, and it is an important BIAC objective as well;
- True reciprocity; this remains an essential outcome for BIAC members, as well as the main engine for bringing the benefits of the Round to developing countries;
- Improvement of "rules" as an important part of the Doha agenda recognizing that the WTO is a rules-based system;
- An agreement on trade facilitation.

4. As shown by the WTO's 2004 World Trade Report and OECD Studies, the countries that maintain some of the highest trading barriers are developing countries. This has the effect of reducing the magnitude of south-south trade. By "opting-out" or requesting lengthy transition periods the benefits that can accrue from trade between developing and least developed countries is restricted. The richer developing countries, for example, those leading the G20, should accept the common trade liberalization disciplines of the WTO system, which will benefit their own economies, as well as their trading partners, especially regional partners. BIAC recognizes that this kind of balance result must also address developing country priorities for liberalization.

5. One of the great achievements of the Uruguay Round was the improved participation of developing countries in common trade disciplines. It showed that the former approach to Special and Differential Treatment (SDT) for developing countries, which in practice often resulted in non-participation, had the perverse effect of impeding access to the benefits of trade and competitive markets. Clearly this negotiation faces great challenges in dealing with the “graduation” issue, which will be critical for the BIAC objectives of ambitious and balanced market access results. BIAC believes there is no objective basis for describing a monolithic group of developing countries. We support common trade disciplines for all WTO members. Special and differential treatment should be in the form of different time periods wherever possible, coupled with capacity building commitments where truly needed. The country- by- country and product- by- product approach embodied in the frameworks has merit for all but the poorest WTO member states.

6. A firm commitment to appropriate capacity building is one of the most important factors for the developing countries’ ability to formulate and implement commitments made in the WTO agreements. A coordinated plan for trade-related capacity building will be critical to ensure that developing countries continue to engage in the WTO process and benefit from trade through economic growth and poverty reduction. An emphasis on trade in development policy and sustained and adequate funding of these capacity-building activities in this area are therefore necessary.

Specific Recommendations

a) **Market Access**

Industrial Goods

7. Market access (including both tariff and non-tariff barriers) is a top priority for business in the WTO negotiation. Tariff reduction will greatly benefit developing countries as well as OECD members. BIAC regrets that governments were unwilling to commit to major BIAC objectives: the elimination of all industrial tariffs by a fixed date, and the use of applied rather than bound rates as the basis for negotiations. A very ambitious and balanced result will be needed to secure BIAC support. Wherever possible negotiators should still seek complete elimination of tariffs, even if lengthy transitions are needed for some items.

8. BIAC supports various approaches toward this end, which are included in the framework:

- Use of a non-linear reduction formulae leading to substantial tariff reductions across the board for all products;
- Elimination of tariffs in agreed sectors by specified dates and expansion of participation in the zero for zero and harmonisation agreements of the Uruguay Round;
- Scheduled reductions of tariff peaks and extensions of tariff bindings and product coverage;
- Elimination of marginal tariffs, tariff escalation; and
- Early elimination of tariffs on all information and communications technology (ICT) products.

9. As these negotiations move forward it will be important to maintain the approach of no a priori exclusions, the binding of all tariff lines and the availability of sector zero-for zero approaches.

10. If full reciprocity is not possible, there should be substantial and meaningful reciprocity, meaning that flexibility and exceptions will have to be kept to a minimum.

11. To support this negotiation BIAC recommends that the OECD Trade Director use its tariff data base to calculate the country by country and sector specific effects of the main proposals for formulas and various coefficients. Sectors of particular interest to the OECD business community include automobiles, chemicals, electronics, machinery and plant construction and textiles and clothing. Third markets of particular relevance for OECD industries are Brazil, India and China.

12. BIAC welcomes the serious commitment to reduce NTBs, using both horizontal and vertical approaches. The WTO needs to be strengthened in its capacity to remove technical and other non-tariff barriers in a systematic manner through promoting simplified and harmonised national legislation and mutual recognition. Market access should be subject only to essential health and safety regulations based on sound science.

13. With respect to elimination of technical barriers to trade, negotiations should aim at making substantive progress in both implementing and further developing the WTO Agreement on Technical Barriers to Trade (TBT) to strengthen the obligations of least-trade restrictiveness in the next review of the TBT agreement and to bring about greater use of and effective implementation of international standards.

14. For example, many labelling schemes are unilateral, not transparent, and commercially driven. Non-product related process and production methods (PPM) labelling discriminates unfairly against identical like products and influences consumer spending and consequently market access. BIAC

supports application of the WTO TBT to address discriminatory labelling practices and we support OECD analysis on the trade impact of labelling schemes.

Services

15. BIAC continues its strong support for the liberalisation of trade in services across all sectors, which is a top BIAC priority in this negotiation. The GATS' major shortcoming is the limited number of scheduled commitments on market access and national treatment that go beyond the pre-Uruguay Round status quo.

16. Business priorities in these negotiations remain:

- Vastly improving and expanding market access commitments;
- Increasing transparency;
- Reducing the unnecessary burdens of domestic regulation on cross-border services trade and foreign direct investment in services;
- Easier temporary movement of natural persons, especially key business personnel;
- Addressing service liberalisation in the context of e-commerce;
- Development of pro-competitive regulatory principles in sectors where appropriate.

17. BIAC welcomes the framework agreement on the May 2005 deadline for revised offers on services commitments and again reemphasizes the need for more countries to table initial offers.

18. BIAC believes that OECD study on "The Case for Open Services Markets", continues to be very relevant, and encourages wide dissemination of this publication, and continued updates as necessary.

Agricultural Trade

19. BIAC welcomes the recently adopted framework for further negotiations on agriculture within the WTO Doha Round as important progress towards realizing further agricultural trade liberalization. In particular, BIAC supports the efforts of the negotiators towards eliminating all forms of export subsidies and agreeing to substantial reductions in trade-distorting domestic support, two important BIAC objectives. The elimination of all forms of export subsidies should be set for the earliest possible date.

20. BIAC recognizes that significant political challenges remain to ensure meaningful and balanced gains in market access, as negotiators begin to tackle modalities. Again, we regret the decisions to base tariff reductions on bound rates rather than applied rates. BIAC expects governments to achieve substantial overall tariff reductions as stated in the Framework that fulfill the objective of substantial market access improvements laid out in the Doha Declaration. To meet this objective, we recommend:

- An ambitious tariff reduction formula that increases market access substantially, with deeper cuts in higher tariffs.
- The elimination or substantial reduction of tariff peaks and tariff escalation;
- Liberalization of tariff rate quotas through commercially meaningful expansion of in-quota access; reduction of over quota tariff rates and elimination of in-quota tariffs.
- Adherence to the principle of substantial improvement in market access for every product, even sensitive products. To ensure that benefits of an open market system reach developing countries, it will be important to keep special treatment for sensitive products to

* This Paragraph has not been approved by BIAC's Japanese Member, Nippon Keidanren.

a minimum, and the preferred treatment for such products would be liberalization phased in over longer time periods.

21. BIAC encourages continued OECD work addressing issues relevant to the negotiations including quantitative analysis of the impacts of further liberalization of agricultural trade.

b) Trade Facilitation

22. BIAC is greatly encouraged by the agreement to include negotiations on trade facilitation. It believes that trade facilitation, in particular customs facilitation, is a very important issue. Delays caused by inefficient customs and logistics procedures constitute a major non-tariff impediment to trade and a restriction on market access in the expansion of global trade and investment.

23. Binding WTO rules that build on existing WTO agreements and principles, on recommendations in the revised World Customs Organisation (WCO) Kyoto Convention, and on other specialised agencies, will secure many of the key elements of trade facilitation. Rules will simplify trade procedures; promote internationally agreed standards, and benefit governments and business in all WTO member countries. Modern procedures that promote facilitation will also improve overall customs efficiency increasing capacity to address enforcement missions such as security.

24. BIAC believes that this negotiation involves a win-win situation for all parties, and that developing countries stand to benefit the most, as indicated in recent OECD[†] and World Bank studies. Therefore we strongly believe that all WTO members should undertake a significant set of core commitments, and that special and differential treatment should be in the form of longer phase in periods and capacity building assistance for those with implementation difficulties.

25. Part of the significant value of WTO disciplines for trade facilitation is to provide the political will to actually implement the needed modernization and reforms, and to provide the discipline to make such changes durable and globally uniform or compatible. For these reasons we believe that implementation of the resulting rules should be subject to objective assessment and enforcement through the WTO dispute settlement process and policy review mechanism, recognizing that it is impractical to apply dispute settlement to individual transactions.

26. We understand the uneasiness that some less developed countries have about the costs of capacity building. Where warranted, such situations should be addressed in negotiations on commitments for assistance. At the same time, we believe the costs of capacity building in the customs area to be relatively moderate, particularly in view of the potential revenue gains from increased trade flows and reduction of existing costs of inefficiencies and delays. OECD could provide valuable insight by comparing the actual costs of modernization, and the impact of modernization on customs revenue and existing costs in case studies of the recent modernization efforts in selected countries.

27. BIAC urges OECD to continue analysis demonstrating the advantage of WTO commitments in trade facilitation and urges the OECD and its members to support capacity building efforts for this area under the auspices of the WTO Integrated Programme. The OECD has already produced sectoral as well as horizontal studies on the benefits of trade facilitation, including benchmarking exercises between OECD and non-OECD countries. More work in this area is needed to provide effective support for the Geneva process.

[†] TD/TC/WP(2003)10; TD/TC/WP(2003)31.

c) WTO Rules

28. BIAC recommends that the OECD analyse the use and effects of anti-dumping and countervailing duty laws, in support of negotiations to clarify and improve these disciplines, while preserving their basic concepts, principles and effectiveness. The aim should be to reduce market-distorting trade practices. Taking into account the differing views that exist in this field and the imperative to make at least some progress in Hong Kong, such OECD analysis should become available soon.

29. BIAC urges WTO members to enhance the disciplines on Regional Trade Agreements (RTAs). WTO members must make sure that RTAs are a complementary way to liberalize trade and do not undermine the relevance of the multilateral system.

d) Trade and Environment

30. BIAC continues to support efforts to clarify the legal relationship between WTO rules and MEAs, recognising that WTO Panel rulings have already produced greater certainty in this area.

31. BIAC urges WTO members to adhere closely to the mandate on trade and environment that was agreed upon at Doha and resist any effort to broaden that effort. BIAC also favours increased co-ordination and co-operation of trade and environmental issues among international institutions such as OECD, UNEP, UNCTAD, and others.

32. BIAC opposes any effort to weaken or reopen Article 5.7 of the SPS Agreement or to introduce into the WTO a broader precautionary approach and urges the use of a risk based, sound science standard.

33. BIAC believes that the WTO should only establish a list of goods that can be considered environmental goods or services, for the purpose of reducing or eliminating tariffs and non-tariff barriers, if certain conditions can be met. These conditions should ensure that definitions of these goods and services is non-discriminatory, are product focused (rather than based on PPMs) and do not lead to the splitting or creation of new tariff lines. The "like product" concept should be maintained. Also, the current customs classification should not be made more complicated than it is which would be contrary to the purpose of promoting trade in environmental goods and services.

34. BIAC recommends that a primary focus of OECD work on trade and environment should be achieving an appropriate balance between securing environmental objectives and preserving the role of the multilateral trading system in driving economic growth. We were concerned to see that OECD questions and seems to summarily dismiss the environmental effectiveness of voluntary actions and agreements. We believe that voluntary actions can supplement regulations, and help reduce both compliance and enforcement costs. We strongly believe that OECD has an important role in helping governments to encourage companies to initiate voluntary approaches and play their role in achieving environmental improvements.

e) Telecommunications and Electronic Commerce

35. Ensuring infrastructure for e-commerce is key to diffusing innovative technologies that support sustainable growth across all sectors including both services and more traditional sectors such as manufacturing and agriculture.

36. BIAC recommends four core principles for trade negotiations relating to telecommunications and electronic commerce:

- Promote the development of the domestic and global infrastructure that is necessary to conduct e-commerce while avoiding barriers that would hinder such development;
- Promote full implementation of existing commitments and seek increased liberalisation for all basic telecommunications, value-added and computer and related services;
- Promote the development of trade in goods and services via e-commerce; and
- Promote effective protection for intellectual property made available over digital networks.

37. BIAC recommends that the OECD actively continue its work related to the “new economy,” addressing the potential for expansion and distribution of benefits brought by innovation to all economies.

f) Other Singapore Issues

38. BIAC understands that it was not possible to reach agreement on negotiations on transparency in government procurement, investment and competition in this Round. These issues are importantly linked to trade. Governments should seek ways to make progress in these areas toward liberalization and more support for open markets. BIAC continues to support actions in these areas. The WTO should continue to include these issues in its work program.

f.1) Government Procurement

39. An estimated five percent of world GDP is estimated to consist of government procurement not subject to transparency disciplines. Introduction of such disciplines has a vast potential to encourage competition, and to ensure the most efficient and proper use of government spending. In this way transparency for government procurement builds taxpayer confidence and supports increased investment from domestic and foreign sources that otherwise would be reluctant to invest in local producers, service providers and joint ventures. BIAC encourages continued OECD assessment of the benefits that can accrue to nations through the adoption of transparent procedures in the field of government procurement.

f.2) Investment

40. For business, trading and investing are reciprocal strategies for market participation and the deployment of resources.

41. Global provisions for the treatment of foreign investment are essential and inevitable to maximise the benefits of growth in the global marketplace for all countries. At a time when governments everywhere are keen to attract investment, governments should give priority to developing a set of comprehensive rules that will increase market access, provide high standards for investor protection, and open up sectors for investment on a non-discriminatory basis.

42. BIAC understands that there is insufficient political commitment to address this issue on the Doha negotiations but that does not change its vital importance in the reality of business operations and decisions. Governments should explore other ways to move this issue forward. And because investment is so inextricably linked to trade it is important that WTO continue to study the issue outside the negotiation process to maintain WTO's relevance to the global marketplace. One place to start would be to examine the common elements of existing bilateral investment treaties.

43. The OECD should continue to pursue its analytical work on the relationship between trade and investment, including analysis of existing architectures, drawing upon the lessons and expertise gained through efforts to develop OECD investment instruments.

f.3) Competition

44. With the success of WTO disciplines on border barriers to trade, it is necessary to address public and private actions as well as other non-competitive practices that may impede entry.

45. With this goal in mind, and with a view to enabling consensus necessary to go forward, BIAC supports the work of the WTO Working Group on the Interaction between Trade and Competition to study the issues identified in the Doha Declaration including provisions on hard core cartels; core principles of transparency non-discrimination and procedural fairness; modalities for voluntary co-operation; and capacity building.

46. BIAC also recommends that the OECD continue to pursue its valuable work on the relationship between trade and competition policy.

g) Dispute Settlement

47. Agreement in the negotiations on improvement and clarification of the DSU are long overdue. These negotiations should have been concluded already in May 2003. They are part of the DDA, but not of the Single Undertaking. As the consequences of trade disputes heavily affects companies, as recent experiences have amply shown the rapid conclusion of these negotiations is imperative.

General Conclusion

48. The world trading system and the open markets that it promotes are essential to sustainable economic growth, supporting and diffusing innovation and technology, and reducing poverty by creating wealth. Multilateral trade policy has an important complementary role in helping countries absorb and capitalise on the growth and development potential of a rapidly changing global marketplace. For over 50 years, the disciplines of the GATT/WTO system have made a major contribution to economic growth and improved living standards around the world. On this basis, the business community of the OECD member countries continues to support broad-based, balanced, trade negotiations under the WTO "Doha Development Agenda" as a matter of high priority.

49. The OECD has a key role to play in building confidence in and support for the global trading system. It generates important analytical work to enhance the understanding of complex issues dealt with in the WTO, as a base for the negotiations outlined in the Doha Declaration. The OECD studies "Open Markets Matter" and "The Case for Open Services Markets" present evidence of the tangible benefits of market liberalisation for employment, income distribution, and environmental protection, and clarifies the relationship of trade rules to national sovereignty. BIAC urges the OECD to reiterate these findings in all facets of its work.

50. In addition, the OECD's outreach programmes provide skilled resources for improving the technical capacities of the developing countries in the field of trade policy. Encouraging and participating in this process is fundamental for the OECD.

51. Building support for results on these issues across all stakeholders will be critical to a successful completion of the negotiations. In many fields there is a strong convergence between the interests of developed and developing countries. What matters most is to ensure that the mechanics, dynamics and benefits of further trade liberalisation are positively perceived and understood by all. OECD is important in developing fact-based analysis to support the development of policies that underpin open markets and their benefits. The BIAC business community played an active role leading up to and during the July WTO meetings, and will remain engaged throughout the negotiations.



In Committee

**Statement by the Business and Industry Advisory Committee
to the OECD (BIAC) on**

**GENERAL INDUSTRY OBJECTIVES FOR TRADE NEGOTIATIONS
RELATING TO TELECOMMUNICATIONS AND ELECTRONIC
COMMERCE**

July 2002

Industry proposes four core principles for trade negotiations:

- Promote the development of the domestic and global infrastructure that is necessary to conduct e-commerce while avoiding barriers that would hinder such development;
- Promote full implementation of existing commitments and seek increased liberalisation for all basic telecommunications, value-added and computer and related services;
- Promote the development of trade in goods and services via e-commerce; and
- Promote effective protection for intellectual property made available over digital networks.

1. To promote the development of the domestic and global infrastructure that is necessary to conduct e-commerce, industry seeks:

- elimination of duties on all ICT products broadly defined, including commitments at the broadest possible level for categories 84, 85 and 90. These commitments will be important to ensure that all countries have access to the hardware and software necessary to deploy and access the e-commerce infrastructure;
- full market access and national treatment commitments for the sectors that are associated with the infrastructure needed for business-to-business and business-to-consumer e-commerce; and
- an open, competitive market for electronic commerce, including commitments not to impose new barriers to the development of the e-commerce infrastructure.

2 To promote full implementation of existing commitments and seek increased liberalisation for all basic telecommunications, value-added and computer and related services, industry seeks:

- market access and national treatment commitments in all modes of supply for all service sectors without limitation;
- earlier implementation dates;
- monitoring and enforcement of commitments;
- reductions or elimination of measures such as foreign ownership restrictions and discriminatory licensing procedures that serve to restrict access by foreign competitors;
- adoption of and adherence to the "Reference Paper" for basic telecommunications; and
- full implementation of measures consistent with obligations contained in the General Agreement on Trade in Services (GATS) Annex on Telecommunications for access to and use of public telecommunications networks for the provision of services, including computer and related services and value added services, for which countries have made commitments.

3 To promote the development of trade in goods and services via e-commerce, industry seeks:

- recognition that current commitments under the General Agreement on Tariffs and Trade (GATT), the GATS and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) apply to e-commerce. This is essential given the fact that electronic commerce is not a new form of trade but rather a new medium for conducting trade in goods and services and delivery of intellectual property.
- trade treatment and classification of an electronic deliverable that is no less favourable than the treatment applied to the underlying good, service, or intellectual property;
- Scheduling of commitments at the highest level possible, including, the adoption of an approach in which parties make full market access and national treatment commitments such that all sub-sectors are covered for appropriate service sectors;
- an agreement that the interpretation of classifications under existing international classification schemes such as the GATS, is sufficiently flexible to capture technological progress and evolution in the delivery of services.
- an agreement that valuation of digitisable products delivered on a physical medium, including software pursuant to GATT Decision 4.1 on Valuation of Carrier Media Bearing Software for Data Processing Equipment, for customs purposes, be based on the value of the carrier medium only; and
- the continuation of the practice of not applying or imposing customs duties and/or border measures on electronic transmissions.

4 To promote effective protection of intellectual property made available over digital networks, industry seeks:

- Effective and timely implementation and enforcement of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). With the rapid development of digital technologies and electronic services, the need for effective protection and enforcement of intellectual property rights is imperative. The TRIPs Agreement plays a very important role insofar as it provides minimum standards for such protection and enforcement; and
- Timely ratification and implementation of the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty in a manner which balances the rights and obligations of network operators, service providers, content providers, and users.