

Behind the July failure of the WTO's Doha talks

by Martin Khor

The failure of the "mini-ministerial" negotiations at the World Trade Organisation (WTO) on 21-29 July has sent shockwaves throughout the world. This is because there is the feeling that this time it may have spelt the final collapse of the Doha Work Programme (the official name for what is now called the Doha Round).

As several ministers indicated to the media at press conferences after the talks failed, the United States' presidential elections campaign may make it impossible for any new serious negotiations to take place now, and it will be a year into the new president's term before the US can meaningfully engage again. By that time, many of the other key players may also no longer be in office, and the new commerce ministers and their leaders may not be committed to the basic elements in the emerging package on agriculture, non-agricultural market access (NAMA) and services that have been worked out by their predecessors. When the negotiations resume in earnest, some of the aspects already agreed to may no longer be acceptable or so acceptable. The Doha deal may unravel beyond repair, according to this view.

In the days immediately following the failure, many WTO members called for the preservation of the agreements already made, and for some technical work to be resumed in September, as a prelude to creating the conditions for another mini-ministerial that could perhaps still complete the "modalities" for agriculture and NAMA before the end of the year. There is now a desperate attempt to salvage the Doha Round from complete ruin. If the modalities (not the whole deal, which is now impossible) can be agreed to by all before year's end, then whoever is elected to the US presidency and the US Congress will face tremendous pressure to endorse these, since going against the multilateral consensus would throw a bad light on the new administration and Congress. And if the WTO modalities are incompatible with, for example, the 2008 Farm Bill, then the US would amend this bill to make it Doha-compatible.

So the argument goes. Others, however, believe that it is wishing for too much to expect a new president and a new Congress to simply agree to amending a farm bill that took so much political effort to draw up. Nor would the powerful agri-

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Address: 131, Jalan Macalister, 10400 Penang, MALAYSIA
E-mail: twnet@po.jaring.my **Website:** www.twinside.org.sg

Tel: 60-4-2266728/2266159 **Fax:** 60-4-2264505

culture lobbies simply keep quiet and accept the loss of the benefits they managed to gain, just so that the new administration will keep to the word of the previous administration, with which it has many disagreements.

Conclusive finish?

The Geneva collapse in July may thus prove to be the conclusive finish to the Doha Round's design. But that too is not certain, for Doha has survived many a collapse before (Cancun in 2003, the mini-ministerial in Geneva in 2006, the G-4 Potsdam meeting in 2007), only to rise again towards a new stage in the formulation of the modalities. The WTO's Director-General Pascal Lamy is now making visits to India and the US in a bid to get political leaders in these countries to try one more time to reach an agreement on the few issues that remain unresolved and that prevented a deal in Geneva.

The collapse of the Geneva talks had many sources. The process was one factor. In the tradition of the WTO, the configuration of players and participants of the drama was ever-fluid and ever-changing, causing not only confusion and instability, but also great frustration. It was a nine-day rollercoaster experience. Only 30-40 ministers (of an organisation of 152 members) were invited to the so-called "green room" meetings. Until today there is no publicly available list of which countries were in the green room, nor the criteria for their selection, nor how they were invited (by letter, or by phone call only?) or by whom.

All members were invited to the "informal Trade Negotiations Committee (TNC)" meetings each morning, where views could be aired. However, in the first two days, the real negotiations took place in the green room of 30-40 ministers. But as no progress was made, Lamy controversially created an inner group of seven members (G-7, comprising the US, European Union, Brazil, India, China, Australia and Japan), which then hijacked the negotiations, while for many days after the non-G-7 ministers were simply kept waiting in frustration. The mini-ministerial of 30-40 delegations had become a "micro-ministerial" of seven

ministers plus the WTO Director-General, as some diplomats put it.

The Lamy draft

Progress had been made on a number of issues, but on several of the key issues in agriculture and NAMA the talks had been stuck. A draft by Lamy on 25 July to the G-7 had a fragile status. While it was presented to the green room as having emerged from the G-7, the ownership and authorship was always in doubt. Indian Commerce Minister Kamal Nath told a G-33 meeting on 26 July that he had objected to the language on the Special Safeguard Mechanism (SSM) and was walking out of the G-7 meeting when he was persuaded to stay so as to avoid the impression the talks had failed.

It had always been understood that India had not agreed to the Lamy draft. Within a few days it was also clear that China was not in agreement. The "breakthrough" of that draft was that Brazil, perhaps the leading advocate of concluding the modalities within that week and the Doha Round this year, was clearly backing it. The talk in the corridors (and in the press) was that it had "broken ranks" with India (its old G-4 partner), and also with its Mercosur partner Argentina (known to be a major critic of the NAMA text).

Meanwhile, frustration was building up among the 30-plus non-G-7 ministers who were specially invited by Lamy to the green room, only to find themselves waiting for days by the wayside while the G-7 kept meeting at odd hours of the day and night, and with hardly a trickle of news on what was happening. Many of the ministers complained strongly at a TNC meeting that they had been invited to Geneva to do important work, only to be "kept in the dark" in the waiting room. Several ministers left, with one complaining that "I have a government to run back home". The meeting could not continue indefinitely. Thus, while progress was reportedly made on some issues, there were still too many unresolved after nine days. The Geneva week, which had extended into three extra days, collapsed under its own weight.

Special Safeguard Mechanism

When the end came, the major developed-country players, especially the US, pinpointed the SSM in agriculture as the sticking point of the entire negotiations. This is a new safeguard that a majority of the developing countries, led by the G-33 grouping, had advocated to allow them to raise tariffs above the bound levels in the event that the volume of imports rises above a certain level or the prices of imports fall below a certain level.

The SSM was seen by the developing countries as essential to protect their food security and farmers' livelihoods from import surges that in the past had already damaged the local agriculture sector as local products ranging from tomato and onion to rice and chicken lost out to cheaper imports. What was more galling was that many of the imports are artificially cheapened by the huge agricultural subsidies granted by developed countries.

Under the normal safeguard (the WTO's Agreement on Safeguards), a country has to prove serious injury or threat of serious injury before it is allowed to take action (raise the tariff above the bound level). For agriculture, this is inappropriate; once damage is done, it is difficult to get farming going again, unlike industry. Hence the need for a special safeguard, where action can be taken before there is serious damage. There is already a special safeguard (SSG) for agriculture set up in the Uruguay Round, but it is mainly used by developed countries as the condition is that it can be used only for products that underwent a "tariffication process" in that round. The developing countries wanted the use of a special safeguard to be extended to them, through the SSM.

While all the WTO members have agreed to the principle of the SSM, most developed countries, led by the US and Australia, and a few agricultural-exporting developing countries have been fighting the G-33 on the terms of the SSM. The former want to impose stringent conditions for the trigger (the degree to which prices or volumes change before the SSM can be used) and the remedy (the extent to which duties can be raised), so

stringent as to make the instrument ineffective. The call by the G-33 was thus for an "effective SSM", with fair rather than absurd conditions. The G-33 proposed a set of triggers and ranges of tariff increases above the bound rates. In their latest compromise they were even willing to set limits to the degree to which the extra tariff could exceed the bound levels of the previous round (i.e., the Uruguay Round, or the levels when countries like China acceded to the WTO).

The US Trade Representative Susan Schwab tried to take the high ground by proclaiming that the US was preserving the past 5, 10, 30 years' gains of the trading system from the protectionists led by India and China, which it accused of wanting to hike up agricultural tariffs above what they had already agreed to in the Uruguay Round.

It was part of a concerted attempt by the US to shift the blame of any collapse onto India and China, by portraying them as selfishly seeking new protectionist devices. Its unexpected and strong attack, especially on China on 28 July morning at the informal TNC meeting, gave an inkling to some observers that the US did not want a deal, and was already preparing the ground to shift blame from itself.

Insiders from India and China at the G-7 meeting were surprised at the tenacity of Schwab in insisting on an extra trigger if a country wanted to impose a duty that went beyond the rate of the Uruguay Round. This would make it much more difficult to use the SSM. In the text on modalities issued by the chair of the agriculture negotiations on 10 July, there is no such extra trigger; only the normal triggers would apply. Besides, the US wanted this extra trigger to be set at an unreasonably high level of 150 per cent (of the base import volume) before the SSM could be allowed to raise duties above the pre-Doha bound levels.

To cater to the US, Lamy in his 25 July draft proposed an extra trigger, to be set at 140 per cent. This was rejected by India, China and the G-33 (and several other supporting groups of developing countries) as being far too high and indeed absurd as it would render the SSM toothless and

useless in all but name. The normal safeguard (the Agreement on Safeguards) and the existing SSG do not impose any such restrictive condition that the bound levels of the previous round cannot be exceeded, or that there must be a specially high trigger in case they are exceeded.

Lamy then tried to break the SSM deadlock in the G-7 (between US-Australia and India-China) by proposing a new set of principles which threw out the SSM model and replaced it with what seemed similar to the normal safeguard. The new Lamy text required that there be “demonstrable harm” to food security, livelihoods and rural development before the SSM could be used, which undermined the rationale of a special safeguard (that action can be taken before serious harm occurs). Its fast-track binding dispute procedure of 60 days also made the proposed new SSM far less attractive than the usual dispute system (which would take much longer than 60 days to complete) under which the normal safeguard operates.

Despite these major negative elements, the Indian Commerce Minister Kamal Nath told the media that he had accepted the new Lamy text (at least as the basis for negotiations), but that the US had rejected it. On 29 July, officials of the G-7 laboured for three hours to produce an alternative SSM model, which they agreed to, and presented to the G-7 ministers. According to Nath, it was Schwab again who rejected the new draft. That final rejection by the US sank the talks.

Cotton issue

Many ministers, officials and diplomats have been speculating that the SSM was not the real issue that was irreconcilable. In the most widespread view, the US really did not want to face the cotton issue, which would have been the next item on the G-7 agenda once the SSM was settled. Since the US had agreed to cut its overall trade-distorting domestic support by 70 per cent (see below), it would have to agree to reduce cotton subsidies by more than that as the mandate is that these subsidies be cut more deeply and faster than the normal or the average rate.

The 2008 US Farm Bill having planned that cotton subsidies be maintained or increased in the next five years, it would have been difficult politically or diplomatically for Schwab to offer a plus-70 per cent cotton subsidy cut. The failure of the Geneva talks would then have been placed squarely on the US, and it would really have been seen as a villain protecting the wealth of a few thousand cotton farms while millions of African cotton farmers would continue to languish in poverty under the continuing unfair rules of the trading system epitomised by the US Farm Bill.

This suspicion that the US wanted to avoid the cotton embarrassment is the backdrop to the comments made by several ministers of developing countries in their press conferences that the SSM could not have been the real cause of the talks breaking down, but rather the scapegoat picked on by a major player in an attempt to shift the blame onto another issue and other countries.

After all, despite Schwab’s portrayal of the protectionist potential of the SSM, the US itself is a frequent user of the existing SSG on which the G-33’s SSM proposal is based. The WTO data show that in the eight years from 1995 to 2002, the US invoked the SSG on a total of 396 tariff lines. The European Commission in the same period used the SSG on 296 tariff lines. Fewer than 30 developing countries qualify to use the SSG and they hardly make use of this facility. Neither India nor China is eligible to use the SSG. On top of this, the US has also used the normal safeguard, for example, on textiles imports. When the US Trade Representative chastised India and China for wanting to use the SSM to protect their farmers, it was a case of the pot calling the kettle (or rather the potential future kettle, since the SSM does not even exist yet) black. As the Indonesian Trade Minister Mari Pangestu, coordinator of the G-33, put it: “It is like accusing us of a crime that we did not commit.”

Violation of NAMA mandate

Although media attention has focused on the SSM and to some extent the cotton issue, these were by far not the only outstanding issues when the talks collapsed. In particular, the NAMA is-

sue was far from being settled, with at least four major contentious elements still outstanding and ready to boil over. These were the coefficients in the “Swiss formula” for cutting tariffs, the flexibilities from the full application of the formula for developing countries, the “anti-concentration clause” that would further constrain the already meagre degree of flexibilities, and the “sectoral initiatives”.

Argentina, South Africa and Venezuela were the leading countries objecting to the coefficients in the Swiss formula for developed and developing countries proposed by Lamy in his 25 July draft, which would translate into very steep tariff cuts on industrial products for developing countries while the reduction rates are milder for developed countries. This would turn the principle of “less than full reciprocity (LTFR) for developing countries” on its head, becoming a reverse form of special and differential treatment for the developed countries.

The Lamy draft basically used the coefficients and flexibilities of the 10 July text issued by the chair of the NAMA negotiations. This text is extremely imbalanced and violates the LTFR principle, which was mandated in the Doha Ministerial Declaration. It requires the developing countries to undertake tariff reductions by more than developed countries. It also cuts the developing countries’ bound tariffs very deeply, thus reducing many applied tariffs and/or seriously reducing policy space to make use of tariffs for industrial development.

The Lamy draft proposed a coefficient of 8 for developed countries, which would mean that the average bound tariff of the three major developed countries would be reduced by about 28 per cent (i.e., the EU by 33 per cent, the US by 29 per cent, Japan by 22 per cent).

It proposed that developing countries could choose between three options in coefficients, each coefficient being linked to a particular set of flexibilities (i.e., that a percentage of tariff lines be excluded from tariff cuts, or that another, higher percentage of tariff lines be cut by half of the formula cut). In this scheme, coefficient 22 was the central

coefficient in the Lamy draft; it would reduce the average tariff of developing countries like India, Brazil, Indonesia and Venezuela by about 60 per cent. Thus, these developing countries would have double the tariff reduction rates of the three major developed countries.

For this central coefficient, the flexibility is very little: either (1) 10 per cent of NAMA tariff lines to be cut by half of the normal formula cuts, but restricted to 10 per cent of the value of NAMA imports; or (2) 5 per cent of NAMA tariff lines are exempted from any tariff cut, but this is also restricted to 5 per cent of the total NAMA import value.

Another contentious issue was the anti-concentration clause. This issue arose very late in the negotiations, appearing only in the NAMA chair’s text of 10 July. The developed countries (the US, EU, Japan) insisted that the already restricted flexibilities for developing countries be further limited so that developing countries could not exclude a sector or too much of a sector from the full force of the formula cut. The Lamy draft proposed that 20 per cent of tariff lines with at least 9 per cent of the total import value in any sector or Harmonised System (HS) chapter must be subjected to the full formula cuts. Within the G-7, India and China objected to the figures, and outside the G-7 there was also a lot of resentment.

“Sectorals” was another controversial and unresolved NAMA issue. The developed countries have been pressing for sectoral initiatives in which a “critical mass” of countries agree to reduce their tariffs to zero in various sectors. It is not mandatory for developing countries to participate in these initiatives. However, the developed countries were particularly pressurising large developing countries like China, India and Brazil to take part and thus open their markets in the auto, chemical and electrical/electronic sectors. In the preceding months’ negotiations, developed countries had pressed for the linking of participation in sectorals to the degree of flexibilities or even to extra points in the coefficients. This was objected to by India, among others. However, this linkage was maintained in the Lamy draft. But an even greater

sticking point was that the Lamy draft for the first time also included the new obligation that certain countries (listed in an Annex Z) were committed to participate in negotiations in at least two sectoral tariff initiatives. This seemed to contradict the “non-mandatory nature of sectoral initiative”, which was also stated in the paragraph of the draft. In the G-7 meeting, India and China were being pressurised to agree to participate in key sectors in the sectoral initiatives.

Agricultural subsidy controversy

Another big issue was the level of commitment of the developed countries, particularly the US, to cut their agricultural domestic subsidies, particularly their overall trade-distorting domestic support (OTDS).

At the start of the week, the US announced it would offer to cut its allowable OTDS to \$15 billion. This was dismissed by many developing countries, including India and Brazil, as being inadequate, because the actual applied OTDS of the US had already dropped to about \$7-8 billion in 2007. A ceiling of \$15 billion would allow the US the policy space or “water” to double its current OTDS. Kamal Nath had famously called on the US to effectively cut its domestic subsidies by agreeing to reduce its OTDS to \$7 billion minus one dollar.

Susan Schwab angered the developing countries by conditioning her “offer” of \$15 billion on acceptance by the other WTO members of a kind of “peace clause”, whereby the US application of its domestic support cannot be challenged through litigation in the WTO. This appeared to be a demand not only for a revival of an earlier “peace clause” (which has expired, thus opening US subsidies to legal challenge at the WTO), but even for an expanded scope in the new peace clause. Critics pointed out that this would have allowed the US to manipulate its subsidies and the placement of them in various “boxes” or categories with impunity.

Lamy responded to the US offer of \$15 billion by basically accepting it. His draft said that the al-

lowable OTDS for the US was to be cut by 70 per cent. This is mid-point within the range in the agriculture chair’s paper of a 66-73 per cent cut. Thus the present \$48.3 billion level would be cut to \$14.5 billion (which is mid-point in the chair’s range of \$13-16.4 billion). The \$14.5 billion level was just a little below the \$15 billion US offer, and still far above the estimated 2007 actual OTDS of \$7-8 billion. The US’ actual or applied OTDS level was also \$7 billion in 1996-97 before rising to \$19 billion in 2005 (according to US data notified to the WTO) and then dropping to \$11 billion in 2006 and \$8 billion in 2007 (according to G-20 estimates). Thus the Lamy-proposed \$14.5 billion allowable level was double the 2007 level, allowing the US to have a lot of “water” to increase from the present \$7-8 billion.

However, Brazil agreed in the G-7 to the \$14.5 billion figure. Since it is the leader of the G-20, the group of developing countries that has championed the cutting of agricultural subsidies, that took the wind out of the sails of potential opposition to this part of the Lamy draft. India originally signalled it could accept this figure. However, in later statements to the TNC, both India and China criticised the US for practising double standards, when it insisted on having a bound level that was twice its actual spending on agricultural domestic subsidies, while insisting that developing countries cut their bound tariffs in NAMA or agriculture until they went below the applied levels.

Under the Lamy draft, the allowable OTDS for the EU was to be cut by 80 per cent. This was in line with what the EU had said it would do (i.e., to be 10 points higher than the US). This was also mid-point in the 75-85 per cent range in the chair’s paper. The EU’s present allowable OTDS is 110.3 billion euros. A cut of 80 per cent would bring it to 22 billion euros. (This is mid-point in the chair’s range of 16.5-27.6 billion euros.) In 2004 the EU’s applied level was 57.8 billion euros (according to simulations in a WTO paper). The Common Agricultural Policy (CAP) reform of the EU is already scheduling to drastically reduce its OTDS within a few years (through changing the nature of subsidies and expanding the Green Box category of subsidies). During the Geneva week

of negotiations, the EU negotiators indicated that the Lamy proposal of an 80 per cent cut would be in line with what the EU had planned under the CAP reform. Thus, the EU would not have to make an additional effort. The cut to 22 billion euros, though it appears to be large, would be comfortable for the EU.

The lowering of the allowable and applied OTDS would also be accompanied by a rise in the Green Box support (which is not part of the OTDS). A large part of the domestic support of the US and EU has shifted to the Green Box, which is supposed to be non-trade-distorting and on which there is no limit placed. The EU subsidies are rapidly shifting from the OTDS to the Green Box under the CAP reform. While actual OTDS is cut, subsidies are shifted to the Green Box and total domestic support may not decline. Recent studies (e.g., by the United Nations Conference on Trade and Development (UNCTAD)) have shown that the Green Box support can also be trade- and production-distorting. As trade expert Bhagirath Lal Das (2006) has pointed out: "The really significant escape route is the Green Box which amounts to \$50 billion and 22 billion euros in 2000 respectively in the US and EU and the possibility of unlimited increase in future... Thus the Green Box, particularly its window of 'decoupled income support' (Paragraph 6 of Annex 2 of the Agreement on Agriculture), will continue to be the route to give farmers unlimited amounts as subsidies." The Lamy draft did not even mention the Green Box, while in the agriculture chair's text of 10 July there is no limit proposed on the amount of Green Box support.

Thus the cuts in allowable OTDS for the US and EU may appear large (70 per cent, 80 per cent) but in fact will not reduce applied or planned reductions in the OTDS, and moreover, these will be offset by an increase (in the case of the EU) in the Green Box. The subsidies should not be there in the first place due to the distortions they cause, and their reduction should not be "paid for" by developing countries through the high price in market access in NAMA and agriculture and services being demanded of them. In particular, the \$14.5 billion level should not have been used as a "trigger" to

demand such high obligations from developing countries in agriculture, services and NAMA.

Services and TRIPS

While the G-7 and the green room only focused on agriculture and NAMA modalities, there were also the sideshows of services and trade-related aspects of intellectual property rights (TRIPS) during the Geneva talks.

A half-day "services signalling conference" took place on 26 July, attended by about 30 countries. Developed countries had insisted on this conference so that they could gauge the level of commitment of selected developing countries (whose markets they were interested in) to give better offers, especially in Mode 3 (commercial presence). India was also eager to have this conference so that it could gauge the developed countries' commitments on Mode 1 (supply of service from the territory of a member into the territory of another member) and Mode 4 (movement of natural persons). The major countries came out of the services meeting with satisfaction, with the US, EU and India stating there had been "positive signals" in areas they were interested in. Thus, services was not used by any side as a reason not to provide offers or compromises in agriculture or NAMA.

The minister of Norway was asked to coordinate negotiations on three issues relating to the WTO's TRIPS Agreement: the register for geographical indications for wines and spirits; proposed extension for geographical indications; and the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD). There was not much progress in these areas. In the TRIPS/CBD issue, about a hundred developing countries, led by India and Brazil, had proposed a system of disclosure of country of origin, and evidence of prior informed consent and benefit-sharing, to accompany patent applications involving genetic resources and associated traditional knowledge. Textual language was provided for all three issues on how to move the negotiations forward. The language for the disclosure issue had been watered down considerably in an attempt to get the support of the EU while in return the countries

advocating the disclosure proposal would support the EU to have textual language on negotiations on the geographical indications issues. The possible outcome was always uncertain as the US made clear it was opposed to advancing negotiations on the geographical indications and disclosure issues. With the present cloud over the agriculture and NAMA modalities, there is unlikely to be any progress on the TRIPS issues for the foreseeable future.

Conclusions

While India, Brazil and China were in the spotlight by virtue of their membership in the exclusive G-7, other developing countries also played significant roles. Indonesia, which coordinates the G-33, held the group together as its issue, the SSM, took centre stage. Developing-country groupings – the African, Caribbean and Pacific (ACP) countries and the group of small, vulnerable economies (SVEs) – played a pivotal role at a crucial turning point of the negotiations. As the heat increased on India and Indonesia over the SSM issue, these groupings joined the G-33 to issue a joint statement criticising the Lamy draft on the SSM and providing their own proposals. With this statement by about a hundred developing countries, the Indian minister strengthened his hand in the G-7 and with the media, dispelling the portrayal of India as the only country blocking the talks.

Brazil showed its priority was in getting a deal done. Its acceptance of the Lamy figure of \$14.5 billion for the US OTDS deflated the movement for the US to go down to at least \$13 billion or below. Its acceptance of the Lamy draft on the SSM dismayed India while its acceptance of the NAMA portion reduced the strength of its allies in the NAMA-11 grouping, with countries like Argentina and Venezuela feeling let down.

After the talks collapsed, the Brazilian minister and the EU trade commissioner said it was difficult to believe that the negotiations could have

got stuck on an issue like the SSM while progress had been made on more complex and important issues like NAMA and agricultural subsidies. This reveals an underestimation of the importance that a majority of developing countries place on their defensive interests, since they also have little or nothing to gain from having increased access to others' markets. In recent years, there has been an upsurge in the interest of these developing countries in defending and promoting their food security and farmers' livelihoods. For India, as for China, Indonesia, Kenya and many other countries, the defence of the concepts of "Special Products" and SSM, and the effective use of these mechanisms, were of paramount priority.

The immediate future of the Doha Round negotiations has come under a cloud. It is unlikely that there will be a suspension of all negotiations (as happened for many months after the collapse of the mini-ministerial in July 2006). But it is also unlikely that serious negotiations on key issues will take place until after the new US administration settles in. Low-intensity discussions on various issues are likely to take place in the meantime, until an opportunity is taken to restart the serious negotiations. The Doha negotiations have suffered a serious setback, but these talks have a habit of springing back to life sometime or another. It is too early to write off the Doha Round.

Meanwhile, developing countries would do well to review the key proposals on the table. The deal, as proposed in the two chairs' texts of 10 July, and in the Lamy draft of 25 July, is basically imbalanced and unfair and goes against the developing countries' interests. The "rate of exchange" between what the developing countries will get and what they have to give up, is unequal. There is still time to change the equation.

Martin Khor is Director of the Third World Network. The above is reproduced with permission from *Economic & Political Weekly* (Vol. 43, No. 33, August 16-22, 2008).