Bridges

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Facts and Figures

- Migrant workers send home about US$100 billion a year, making remittances the single largest source of foreign exchange in many of the world's poorest countries. Between 1990 and 2003 India, China, the Philippines, Pakistan, Morocco, Bangladesh, Colombia, Egypt and Turkey were the largest recipients of remittances. The top sources were Saudi Arabia, Switzerland, Germany and France.

Source: World Economic Outlook 2005. IMF, April 2005.

- Higher oil prices in 2004 and stronger commodity prices improved the terms of trade of developing countries as a group, and in particular in the Middle East, Africa and Latin America. The share of the developing economies in world merchandise exports was 31 percent in 2004 – the highest level since 1950.

- Commodity prices increased faster than prices of manufactured goods in 2004. While prices for fuels and metals expanded by more than 30 percent, prices for beverages and textile fibres recorded only a marginal increase.

Source: World Trade 2004 and Prospects for 2005. WTO, April 2005.

Technical Negotiations Reveal No Progress on Key Doha Round Issues

Three months from now, WTO Members face a self-imposed deadline for agreement on the first drafts of negotiating modalities for agriculture and industrial goods. The modalities are to be adopted at the Hong Kong Ministerial Conference next December, but recent developments suggest that keeping the Round on track will be more difficult than foreseen only a few weeks ago.

For a start, negotiations on agriculture have hit a serious roadblock over the conversion of specific volume-based duties into 'ad valorem equivalents' (AVEs), that is tariffs expressed as a percentage of the good's value. While WTO officials speak of a genuine misunderstanding regarding the calculation method, Brazil's chief negotiator Clodoaldo Hugueney has openly accused the EU of reneging on a deal reached between the Five Interested Parties (FIPs), which also include Australia, India and the US. In a 22 April letter to senior officials of the other FIPs, the European Commission's Agriculture Director-General José Manuel Silva Rodriguez firmly denied this. The EU's initial acceptance of the conversion formula had been based on a fundamentally different understanding of the basis for AVE weighting, he wrote. This could be proved by the 'near farcical' results – an AVE of 2,954 percent instead of 80.3 percent in the most extreme case – thrown up by the method the other FIPs said was agreed. Ambassador Tim Groser, who chairs the agriculture talks, has told Members that it would be impossible for him to deliver a 'first approximation' of the agriculture modalities in July with a 'large hole' in market access (see page 7).

The disagreement over calculating AVEs has also thrown into question the way the negotiations are conducted. Switzerland, whose entire agricultural tariff structure is based on specific duties, has been particularly scathing about the re-emergence of the FIPs in the AVE context. The five countries played a key role in shaping the agriculture annex of the July Package, and many WTO Members complained at the time that the group was unrepresentative, leaned too much in favour of major agricultural exporters and was oblivious to the concerns of net food-importing countries. In his letter, Mr Silva Rodriguez proposed that the group be opened to wider participation and start putting its proposals and agreements in writing. First reactions to these suggestions have been lukewarm.

Bif Rift in Non-Agricultural Market Access

Agriculture is not the only issue in disarray. Developed countries have strongly objected to a proposal from Argentina, Brazil and India that industrial tariff cuts should be based on a Member's average tariff rate and reduced in a way that preserves the difference in average tariff levels between (mostly developed) low-tariff countries and (mainly developing) high-tariff WTO Members. In addition, the three countries effectively linked the reduction formula to parallel action in agriculture through suggesting that the coefficient to be used should reflect "ambition in other areas relevant to market access agreed to for this Round." According to the proponents, the proposal is equitable and faithfully reflects the principle that developing countries should make 'less than reciprocal commitments' in non-agricultural market access (NAMA, see page 9).

Referring to pre-Cancun negotiations on NAMA modalities, chief US market access negotiator Nancy Adams said the proposal was based on already rejected ideas. She stated emphati-

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cally that it would be "politically unsustainable for the United States to deliver on meaningful agricultural reform through elimination of export subsidies and significant reduction in domestic supports, or additional market access in agriculture, much less rules, without a significant commercially meaningful result in NAMA."

According to one trade source, some Asian countries, including Malaysia and the Philippines, said the proposal was not equitable for developing countries that had bound all of their tariffs, or that applied low tariffs even to unbound lines. They pointed out that only about 20 developing countries, India among them, had a high enough proportion of unbound tariffs to benefit from a formula that did not require unbound tariffs to be cut on a line-by-line basis.

Special and Differential Treatment Talks Unlikely to Meet July Deadline

Old disagreements have also revived regarding special and differential treatment (S&D). The last meeting of the Committee on Trade and Development was suspended after a number of developing countries, including Brazil, Egypt, China and India, refused the agenda, which in their view allotted too little time to agreement-specific amendment proposals compared to the broader systemic issues surrounding them (see page 12).

This setback makes it more than doubtful that the Committee will be in a position to "complete the review of all the outstanding agreement-specific proposals and report to the General Council, with clear recommendations for a decision, by July 2005" as the July Package instructed it to do. At an informal senior officials meeting on 18 April, the US, the EU, Canada and Australia reportedly indicated that they could go along with the agreement-specific approach advocated by developing countries, but none of them believed they could accept any of the outstanding demands.

Three deadlines have already been missed for 'clear recommendations' on ways to strengthen S&D provisions and make them more precise, effective and operational. Twenty-eight agreement-specific recommendations were sent to the Cancun Ministerial, but the collapse of the meeting left their fate unresolved. Their adoption would in any case have made little difference to developing countries.

Access to Medicines Debate Heats Up

Positions are now highly polarised regarding poor countries' access to medicines produced under compulsory license. Members failed to keep their 31 March deadline for adopting a permanent amendment to intellectual property rules to make it easier for countries with no manufacturing capacity to import generics (see page 10).

In December, the African Group tabled an amendment proposal that left out some of the detailed provisions of the August 2003 waiver with regard to measures aimed at preventing trade diversion of medicines imported under compulsory license. It also omitted any mention of the Chairman's statement, which offered further assurances about the waiver's 'good faith' implementation (Bridges Year 8 No.10, page 1).

At an emotionally charged TRIPS Council meeting held just before the deadline expired, the African Group, supported by many other developing countries, tried hard – but ultimately in vain – to secure approval for its amendment proposal. The US, Switzerland and other countries with large research-based pharmaceutical industries remained adamant that any amendment must incorporate the waiver and the statement as they stand.

Rwanda's Ambassador Valentine Rugwabiza explained that African policy-makers were concerned about the waiver's workability and had therefore put forward a proposal that would provide a "permanent, sustainable, secure and predictable" solution. Zambia's Ambassador Love Mtesa said that "this is not a matter of procedural debate for us, but rather an emergency on which depends the lives of millions of people. We urge Members to work for a permanent solution by the General Council meeting of May 2005." Kenya warned that a failure to solve the amendment problem could derail the Hong Kong Ministerial Conference in December.

Unraveling the Cotton Case

Tim Josling

The WTO case brought by Brazil against US cotton subsidies is the most wide-ranging legal challenge yet to the agricultural policies of developed countries. Coming at a time when further reform of these policies is under discussion in the Doha Round, the ruling has added another dimension to the process of restructuring farm subsidies to reduce their trade impacts.

Litigation and negotiation are now inter-twined and legislators are coming to realise the constraints put on domestic farm policies by the WTO Agreement on Agriculture and the other agreements that were reached in the Uruguay Round.

In March, the Dispute Settlement Body accepted the panel report, as modified by the Appellate Body, in the case of US cotton subsidies. The panel had found that several sections of the US cotton programme, as well as some related policy provisions, violated WTO rules. For many years, upland cotton has benefited from 'programme crop' support under US agricultural policy. Brazil competes in the same world market, and claims to do so without significant subsidies. When prices were particularly weak in 1999-2001, Brazilian cotton exporters found themselves losing market share to the US. They alleged that the continued high levels of production and exports from the US were the direct result of programme payments that enabled US producers to continue in business even when costs of production exceeded the market price.

Challenges to agricultural subsidies through the dispute settlement procedures of the WTO have been rare.[1] A WTO case against the US was considered a bold move by Brazil, intended to make full use of existing provisions of the agreements on subsidies rather than waiting until such subsidies were reduced by negotiation. If this increased the pressure on the US and other countries to offer reductions in negotiations then this would be a side-benefit. But the challenge also had the effect of emphasising the extent to which domestic policies are now constrained by multilateral agreements, and this could weaken the support for further constraints and even undermine the traditional support for trade liberalisation by US farm interests.

The Findings

The rulings of the panel are best summarised by considering the nine elements of the US programmes that were the subject of the challenge by Brazil (see table below). Five of these elements (direct payments, production flexibility contract payments, market loss assistance payments, counter-cyclical payments and marketing loan payments) relate to the major instruments of farm policy adopted for the 'programme crops' in the Farm Bills that cover the period 1999-2003.[2] Two more are specific to cotton (Step 2 subsidies and cottonseed payments), and the other two are of more general application (crop insurance and export credit guarantees). The panel ruled basically on two issues: whether these subsidies were allowed or prohibited and whether they caused 'serious prejudice' (even if allowed) to Brazil.

The two subsidies that were not price-related (and which had therefore been notified by the US as being in the green box) were found not to be the cause of 'price suppression' in world markets. They were, however, found to contain provisions that made them ineligible for the green box: specifically the restrictions on the alternative crops that farmers could grow on cotton land. These, the panel decided, could keep more acres in that crop than totally 'decoupled' payments would have done. The three subsidies that were price-related were found to have caused price suppression through their impact on keeping cotton production high in the US at a time of low world prices.

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US cotton programmes and main elements in the panel ruling

Programme	Panel/AB Ruling	Remedy
Direct Payments	Not eligible for green box because of restrictions on use of land. Do not cause significant price suppression on world markets.	By implication, re-notify domestic support for past years.
Production Flexibility Contract Payments	Not eligible for green box because of restrictions on use of land. Do not cause significant price suppression on world markets.	As above
Market Loss Assistance Payments	Caused significant price suppression on world market.	Take steps to remove the adverse effects or withdraw the subsidy.
Counter-Cyclical Payments	Caused significant price suppression on world market.	As above
Marketing Loan Payments	Caused significant price suppression on world market.	As above
Step 2 Payments	Caused significant price suppression on world market. For domestic users, payments were an import substitution subsidy. For export users, payments were export subsidies not included in the US Schedule.	Take steps to remove the adverse effects or withdraw the subsidy. Remove prohibited import substitution and export subsidies by July 2005.
Cottonseed Payments	Do not cause significant price suppression on world markets.	No action implied.
Crop Insurance	Do not cause significant price suppression on world markets.	No action implied.
Export Credit Guarantees	Credit guarantees for cotton (and several other products) are export subsidies not included in the US Schedule (rice export subsidy exceeded its scheduled level).	Remove prohibited export subsidies by July 2005.

Source: Author, based on WTO panel report

The panel ruled that the Step 2 subsidies paid to domestic users were prohibited under the Subsidies and Countervailing Measures Agreement (SCM) and the Step 2 subsidies available to export users were prohibited because they were not included in the US Schedule of subsidies. Moreover, the Step 2 subsidies also caused significant price suppression in world markets. Cottonseed subsidies and crop insurance payments were deemed not to have caused price suppression, and were not prohibited subsidies.

Finally, the panel ruled that the set of export credit guarantees available to US cotton producers when they sell into overseas markets where credit risks are a factor constituted an export subsidy. Since no such subsidy had been included in the US Schedule it was in effect prohibited.

Impacts on US Farm Policy

The panel ruling requires the US to end the prohibited subsidies within six months of the adoption of the report or by July 1, 2005 at the latest. This would apply to the Step 2 payments, to both domestic and export users, and to the export credit guarantees for cotton. The US could make these changes in legislation without having to await the next Farm Bill expected in 2007. Equivalent payments could be made to producers in a way that did not involve subsidies to processors. Export credits could be put on a commercial basis. But such quick action may be difficult to achieve in a programme that has powerful support in the US Congress.

More problematic for the US is how to adjust the programmes that the panel found to cause significant price suppression. Withdrawing the subsidy would require major changes in the US legislation and could not easily be done outside the context of the next Farm Bill. Taking steps to remove the adverse impacts on Brazil might seem easier to achieve. But with prices somewhat higher than they were in the period covered by the challenge, any attempt to restrict US cotton exports could prove difficult. Compensation to Brazil for lost export is politically implausible, and a deal to boost Brazilian exports of other commodities would also be unpopular. So the prospect is for no change in these aspects of US policy at least until 2007, at which time the policies may in any case be modified as a result of the Doha Round.

An interesting side issue raised by the panel report is the conclusion that the direct payments and production flexibility contract payments are not eligible for the green box. This would seem to indicate that countries might ask the US to resubmit notifications of domestic support for the years in question. This would almost certainly put the US in excess of its amber box limits, and raise serious problems with trading partners. Were this to be resolved by litigation (an easier task since no serious prejudice issues would be relevant) then the US would have to make major changes to its farm policy. But again, chances are that these issues will be resolved in the context of the Doha Round.

Impacts on WTO Jurisprudence

The signal importance of the cotton case for WTO jurisprudence is that it clarifies several aspects of the application of WTO rules to agricultural subsidies. The Peace Clause effectively dissuaded members from challenging agricultural subsidies under the SCM before 2004. Though the panel ruled that the Peace Clause did not provide shelter for the US subsidies in question, the case is best considered as the first 'post-Peace Clause' challenge to farm subsidies. The consistency of agricultural subsidies with the provisions of the SCM is a fertile ground for speculation. But the panel indicated that, at least in this case, these restrictions were both onerous and comprehensive. While the ruling on serious prejudice was based on the impact of US subsidies on world cotton prices, the same provision of the SCM also includes the effect of subsidies in impeding exporters in domestic and third country markets, as well as the impact on market shares. Moreover, though it was not found germane to this case, the SCM has provisions for cases where the 'threat' of serious prejudice exists.

The case may or may not usher in a flurry of similar litigation: much depends on the success of the Doha Round in reducing subsidies. But the panel report certainly gives encouragement to countries that have refrained from making challenges because they felt that panels would have difficulties in finding evidence of serious prejudice. In markets where many factors contribute to the export performance of a particular country, establishing causal relationships is problematic. But the panel seemed un-fazed by the conflicting opinions of expert witnesses on the magnitude and direction of the impact of US subsidies on world cotton prices; on the basis of a preponderance of evidence from economic studies, it ruled that production of cotton in the US had a significant impact on the world market price. Although the cotton panel avoided linking its decision to any particular study, it certainly paid more attention to such evidence than many previous ones, thus continuing the trend toward rulings based on economic reasoning and quantification as a way of bringing precision to terms such as 'substantial' and 'significant' that pepper the rules on the trade impacts of subsidies. The cotton case is likely to be cited in many panel reports in future years.

Implications for the Doha Round

The impact of the cotton case on the current Doha Round negotiations is ambiguous. On the one hand, many in the US (and in Europe) saw the act of bringing the case as an unhelpful complication. It engendered some of the same frustration that the two traditional agricultural superpowers felt when their joint paper of August 13, 2003 was countered by the formation of the G-20 to promote a more aggressive approach to reducing agricultural subsidies. Bargaining 'in the shadow of the law' is not comfortable for politicians, who see their room for compromise constrained by legal interpretations of political decisions. But on the other hand, some motivation for completing the Round is needed, and the prospect of a flurry of challenges through the WTO on established farm policies may concentrate the diplomatic mind.

Leaving aside the impact on the motivations and attitudes of negotiating partners, a good case can be made that the Round is the appropriate venue for clarifying the issues raised by the cotton ruling. The question of whether restrictions on planting alternative crops (and the issue of whether changing the historical base on which decoupled payments are made invalidates such payments) are natural topics for resolution within the framework of the agricultural talks.[3] The export subsidy component of export credit guarantees is already due to be eliminated, along with other such export incentives, as a part of the agricultural agreement. Changes to the US export credit guarantee programmes to conform to the panel ruling could be

coordinated with a schedule for export subsidy elimination. And the prospect of a deep cut in amber box payments could be consistent with an agreed reduction in the subsidies enjoyed by US cotton farmers, as well as being a contribution to the solution of the problems faced by the Cotton Sub-committee in ensuring that other cotton producing regions are satisfied.

The merging of the resolution of the cotton case and the outcome of the Round is not however likely to be without controversy. Brazil will argue that it should not lose at the bargaining table what it won in the panel ruling. The Round has to offer more disciplines on subsidies than the cotton case imposes, not less. And Brazil can argue that it has already paid (in the Uruguay Round) for the benefits that the panel ruling will give to its exporters. But the question arises as to whether the panel (and possibly other panels reporting on agricultural subsidy issues) is disturbing the delicate balance of advantages by interpreting the WTO agreements in ways that the negotiators did not intend or understand. For instance, the producers of fruit and vegetable in the US can reasonably claim that no one considered that the restrictions on land use in programme crop legislation had been bargained away as part of the Agreement on Agriculture. So there is a plausible argument that the WTO rulings need to be factored into the current talks in order to maintain the political balance of advantages. But the panel has certainly given some encouragement to those who seek to reduce developed country subsidies, and this may in the end be the dominant impact of the case.

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ENDNOTES

[1] One major case was the challenge to Canada's dairy policy. The success of that challenge led directly to the EU sugar case now under review by the Appellate Body. Another exception was the oilseed case brought by the US against the EU. The resolution of that case unlocked the door for the agreement on agriculture in the Uruguay Round.

[2] Production flexibility contract payments were authorised under the 1996 FAIR Act, and marketing loss assistance payments were added as emergency measures in 1998-2001. The FSRI Act (2002)replaced these with direct payments and counter-cyclical payments. Marketing loans for cotton have been in place since 1986 and Step 2 subsidies since 1990. The cottonseed payments are emergency payments authorised by the ARP Act in 2000. Crop insurance is authorised by the Federal Crop Insurance Act.

[3] The July Framework Agreement includes discussion of Green Box criteria.

What Next for the Cotton Trade? A View from Brazil

Pedro de Camargo Neto

The final ruling on the cotton dispute offers many lessons and creates a host of opportunities. Hopefully, the magnitude of this important victory will inform the efforts of developing countries seeking an equitable environment for international agriculture trade.

The first significant lesson is that yes, it is possible. A developing country can challenge the enormous distortions of agricultural trade and win. The rules-based multilateral system has proved it can deliver results not only for the most powerful.

It is true that the system still needs major improvements. Cotton provides an excellent example. Four least-developed African countries affected by rich country subsidies chose not to use the regular trade dispute route; the fact that they found it necessary to launch the Cotton Initiative instead proves that the multilateral dispute settlement system needs changes. The Appellate Body ruling gives an incentive to continue further improving the WTO.

The cotton case has many angles. With regard to Step 2, the decision shows that an obviously illegal programme was used, apparently without anyone noticing, for many years. The existence of Step 2 alone would have justified a dispute years earlier.

How could a programme so inconsistent with WTO rules go unnoticed? Why was this not tackled in the Trade Policy Review Mechanism meetings? Are there other illegal Step 2-type programmes in other products and countries? How can we avoid and future anticipate disputes? How can WTO staff assist developing countries in this type of analysis? Does the multilateral trading system require an independent body with analytical and enforcement capacities to ensure that agreements signed after years of hard negotiations are actually followed?

The cotton case preceded the opportunities opened by the expiry of the Peace Clause embodied in Article XIII of the Agreement on Agriculture. The breach of the forgotten 1992 subsidy limits created the chance to use the Agreement on Subsidies and Countervailing Measures (SCM) two years before the of the Peace Clause. Today, free of Article XIII restraints, all agriculture subsidies can potentially be challenged.

Are developing countries analysing the opportunities created by the end of the Peace Clause? Is 'serious prejudice to the interest of another Member' giving rise to action? Why do rice-exporting countries still tolerate the enormous US subsidies? How could the European Union even propose to increase wheat export subsidies? Will the distortions in the international dairy market finally be challenged?

Distorsions and Litigation

Litigation will never be a substitute for negotiation; it occurs in the absence of negotiation. The cotton case reflects the wrong route US domestic agricultural policy has taken in

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recent years, just as the sugar case reflects the lack of even minimum progress in sugar trade since the Uruguay Round.

We have been working on this for nearly two decades. This is the moment. The absence of a negotiated agreement will certainly widen the dispute route. To prove 'serious prejudice' is not a trivial enterprise. Constructing cases is expensive and time-consuming but it can be done, as the cotton case demonstrates. Today, subsidies – whether blue, amber, *de minimis* or supposedly green – are all subject to the SCM Agreement. This alternative never existed before.

The Immediate Next Steps

The Appellate Body decision gives us a bottom line. Progress can be made before the conclusion of the Doha Round negotiations. Self-declared Green Box subsidies that do not fully satisfy agreed criteria should be changed. Amber and Blue Box subsidies that can so easily cause injury should be lowered or challenged. It should be clear this is unfinished business from the Uruguay Round. These changes must take place – without any tradeoffs – before new commitments are undertaken as a result of the Doha Round negotiations.

Special attention should be paid to the implementation of the ruling. July 1st is close and we will see if the Step 2 programme will be terminated. The panel made perfectly clear both its illegality and the urgency of immediate change.

Implications for US Farm Policy

Prompt implementation is essential for the credibility of the Doha Round; it would be a major mistake to try and circumvent the panel decision – based on strong technical analysis – with political pressure and creative wording in the new agreement. Serious prejudice must never occur again.

US agricultural policy will need important changes. The cotton decision is a flag that Washington cannot ignore. Hopefully, the case will provide US policy-makers with the excuse they need to confront powerful lobbies. It is important to note that the panel did not challenge safety nets for farmers or policy instruments directed at environmental or consumer concerns. What it did condemn, however, was the power of developed country treasuries to artificially enhance competitiveness thus destroying international markets and development opportunities for poorer countries.

Decoupling Criteria Will Be Vital

The movement of developed countries toward less distorting trade policies through so-called 'decoupling' is important. But we should be careful to ensure that real decoupling occurs: recent changes in the US and in Europe fall short of this goal. The new direct payments are still based on a number of conditions that actually maintain the link between subsidies and production.

Direct payments are not automatically Green Box. While they may not be classic amber or blue support either, rigorous controls are required with regard to decoupling tied to production base areas or to a prohibition of certain crops, and direct payments linked to so-called environmental concerns. Decoupling cannot be done in a manner that continues to channel production to the same type of products, thereby re-coupling subsidies to production.

Implications for the Doha Round

We have been negotiating since 2000 as the Agriculture Agreement's built-in agenda obliged us to formally sit in the same room. It is now time to reach an agreement with actual progress in the still highly-distorted agricultural markets. Decoupled or not, developed countries cannot be allowed to boost exports with subsidies, of any colour.

What the dispute settlement system gave to cotton, the Doha Round should give to all agricultural products: strong subsidy reductions that eliminate illegal competition in the international market. This would require the US to accept that it cannot continue to export with subsidies still called 'internal support'.

The panel condemned what is popularly called dumping. Cotton dumping has to end immediately. The Doha Round should extend this victory for other products and other countries, without the need of further disputes. While negotiation would be far more preferable than litigation, a delay in the implementation of the cotton panel results is unacceptable and has absolutely nothing to do with the Doha Round.

The US Treasury has to leave the international cotton market. Brazilian, African and North-American farmers should compete with each other on an equal basis. Development opportunities for countries where production costs are lower should no longer be denied.

Pedro de Camargo Neto was Secretary of Production and Trade in the Ministry of Agriculture of Brazil when the cotton case was mounted and formal consultations initiated. Currently, he is an agriculture policy and trade consultant.

Lamy, Pérez del Castillo Still in Race for WTO Director-General

When this issue went to press, the results of the second round of consultations to select the WTO's next Director-General had just been announced. Former EU Trade Commissioner Pascal Lamy was reported to have gathered both the highest (first choice) and the broadest (second preference) level of support. Uruguay's former WTO Ambassador Carlos Pérez del Castillo had the second highest support. This led Jaya Krishna Cuttaree, the Foreign Affairs and Trade Minister of Mauritius, to bow out of the race, as Brazil's WTO Ambassador Luiz Felipe de Seixas Corrêa had done earlier when informed that he had garnered the least support in the first round of consultations.

A final round of consultations starting on 9 May should lead to the emergence of a single consensus candidate for the WTO's top job by 31 May. As the information received by General Council Chair Amina Mohamed in the previous rounds will no longer be valid, all Members will be at liberty to shift their support to one or the other remaining candidate. The consultation process is strictly confidential.

Agriculture Talks Falter Over Tariff Conversion Method

The April negotiating session on agriculture was suspended when it became apparent that a 'misunderstanding' had emerged among Members over the process for converting specific tariffs based on import volumes into their ad valorem equivalents (AVEs) based on product prices.

Prior to the final day of the negotiations, Australia, Brazil, the EU, India and the US – the 'five interested parties' (FIPs) that shaped the agriculture text of the July Package – thought they had an agreement that could be presented to the rest of the Membership for approval. Just before the meeting was due to start, however, it emerged that Members had different understandings about some of the calculation methods.

At the close of the meeting, India's WTO AmbassadorUjal Singh Bhatia expressed concern about the impasse, saying "we need a solution very quickly or we are in trouble." Members are working to come up with a 'first approximation' of agriculture modalities by July, with actual modalities – percentages of tariff cuts, reduction formulae, criteria for domestic support, deadlines, and transition timeframes – to be completed by the Hong Kong WTO Ministerial Conference next December.

AVE conversion represents a transparency exercise that will allow Members' tariffs to be classified into different brackets with different reduction requirements under the tiered tariff cut formula agreed in the July Package. The conversion is straightforward for some tariff lines. In these cases Members are set to use the 'unit value' method, basing the conversion on import volumes and notified import values in the WTO Integrated Database (IDB). Complications arise, however, with products such as sugar, where preferences or tariff quotas are involved. In such cases, IDB import prices often differ significantly from world prices as compiled in the UN commodity trade statistics (Comtrade) database. A higher base price could result in a lower ad valorem equivalent, which in turn could translate into a lower tier in the proposed formula and therefore a gentler tariff reduction.

Members discussed a formula for 'filtering' out cases involving significant gaps between import prices and world prices, based on comparisons between the IDB and Comtrade sets of data. In cases where the difference is less than 40 percent, it was agreed that Members would use the IDB data. For products where the difference is greater than 40 percent, AVE calculations would be made using both the IDB and Comtrade price estimates; if the calculations result in AVE tariffs where the difference is less than 20 percent, the IDB calculation would be accepted. If a product's price is 'caught in the filter', i.e. the IDB and Comtrade price estimates are too far apart, the AVE calculations would be made using both the IDB and Comtrade prices. It was further agreed that the conversion calculations for processed products caught in the filter would be weighted towards the IDB prices, while AVEs for more basic products would be weighted towards the Comtrade data.

It was only after all this was agreed that the 'misunderstanding' emerged. At issue was the point at which the weighted averages should be used to calculate the tariff conversion for products caught in the filter. Some Members, including the EU, had understood that the adjustment would be made by taking a price estimate between the IDB and Comtrade values first, and that this figure would subsequently be used to calculate the AVE. In contrast, the US, Australia, Brazil and India had understood that two AVEs would be calculated first, using the IDB and Comtrade price estimates, and then the appropriate weighted average between the two would be used. According to experts, the different interpretations could yield significantly different results.

This misunderstanding now has to be resolved. Chair Groser told Members to sort out the situation as quickly as possible and to accept that they did not need to spend too much time on detail since their positions in the next stage of the negotiation (the tariff formula itself) would be adjusted according to the outcome of this technical stage. He urged Members to resist the temptation to throw away the agreement, and added that it would be inconceivable for him to present a paper in July if there was still a large hole in market access.

No date has been set for the meeting to resume; the next agriculture week is scheduled to start on 30 May.

Food Aid

'Second readings' on two export subsidy issues, food aid and state trading enterprises, have allowed Ambassador Groser to start preparing ideas for the 'first approximations' he has proposed to issue in July.

In order to calm fears over proposed food aid disciplines, Chair Groser said that he would start drafting text on what the negotiations are not going to do: reduce genuine food aid to vulnerable countries. Other forms of food aid would be negotiated and not necessarily eliminated, he said. Chair Groser made his statement after hearing a number of countries – mainly recipients, but also some donors – express concern that some proposals could undermine efforts to provide food aid, both for short-term emergencies and for longer term nutritional and developmental purposes.

Countries seeking the most radical reform included Argentina, Australia, Canada, the EU, New Zealand, Argentina, Switzerland and Thailand, and to some extent India and Uganda (a recipient). They argued that food aid should only be in grant form (not on credit) and should be given in cash (to humanitarian organisations, as well as governments) instead of in kind, particularly for longer term purposes. Proposed new disciplines would prevent food aid being used as a channel for disposing of surpluses, and would require purchases to be made locally or in the region where the aid is to be given to avoid hurting local production.

The EU said that 'vested interests' (but not governments) were using 'scare tactics' to spread fears that these proposals would deprive poorer countries of needed aid. According to the EU and Switzerland, cash-

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based and more transparent provisions would allow more aid to be given. The US complained that some comments were 'naïve', cautioning that there was no guarantee that reforms would lead to commitments on the amounts of aid to be given.

State Trading Enterprises

Ambassador Groser told Members that three points made by the US would provide a good starting point for drafting text on state trading exporting enterprises (STEs), particularly as the main countries targeted in the STE negotiations – Canada and, to a lesser extent, New Zealand and Australia – could accept them. The three points were that (1) export subsidies granted to exporting state enterprises would be subject to the same limits as ordinary export subsidies and would have to be eliminated at the same time (Argentina, supported by several others, said subsidies to STEs already came under export subsidy commitments); (2) an end to government financing or refinancing that gives STEs preferential access to capital; and (3) an end to the underwriting of losses.

Ambassador Groser added that the final outcome would also reflect suggestions from other Members, including the EU, which has already indicated its wish to include further issues. In addition, the 'first approximation' draft will include the argument of some developing countries (namely, Mauritius, Barbados and Guyana) that special and differential treament should reflect the fact that their exporting enterprises are small, do not distort world markets and serve social objectives, such as combining the outputs of small farmers.

Blue Box

There was only a brief discussion on the criteria for Blue Box domestic support as time ran short. Predictably, G-20 and Cairns Group members argued strongly for disciplines to ensure that Blue Box support remains less distorting than Amber Box subsidies. Among the means to achive this, they proposed some limits on payments for each product; ensuring that the new Blue Box (which does not require production, but can be related to price, as in the US counter-cyclical payments) does not entirely shield farmers from price fluctuations; and either banning the use of the Amber and Blue Boxes simultaneously on a product (G-20) or requiring Amber Box payments to fall by at least as much as any increase in Blue Box payments (Cairns Group).

Equally predictably, the EU and Switzerland, representing the G-10 group of net food-importering countries, said that the suggestions would move the Blue Box too close to the Green Box. The two blocs made it clear that they could not accept product-specific spending caps or links between the Blue Box and the Amber Box. The US argued that the counter-cyclical payments now covered by the Blue Box were completely 'decoupled' from production, and therefore production decisions were not based on expectations of payment. The US also said it was willing to discuss the Cairns Group/G-20 proposals but questioned the need for the additional measures. All speakers broadly agreed that governments should supply more information (on acreage, heads of livestock, yields, etc.) on the Blue Box so that all could see how much of a Member's production receive payments.

Agricultural Safeguards

A 'first reading' on safeguards for developed countries revealed no changes in Members' positions. The G-20, the US and Cairns Group members wanted the current special agricultural safeguard terminated, while the EU and Switzerland argued that it was a necessary safety valve for countries opening their agricultural markets. Canada proposed that the special safeguard should be kept as a negotiating tool – if tariff reductions and quota expansion proved ambitious, it might be justified; if not, the safeguard should go.

Sub-Committee on Cotton

At its second meeting on 22 March the Sub-Committee agreed on a work programme, resolving earlier differences over its scope and paving the way for substantive discussion. Members heard reports from the WTO Secretariat on the development aspects of cotton, and from the IMF, UNCTAD and the EU on their cotton-related development activities.

The EU said that due to its current aid programmes it could not contribute to a proposed new cotton fund, advocating the elimination of distorting subsidies first. This led Benin (supported by Burkina Faso, Kenya and Senegal) to point out that African cotton producing countries were not in search of handouts from WTO Members but needed help to recover from problems caused by others. Benin emphasised that Africans wanted a solutions to distortions in the cotton trade that would enable them to benefit from their own hard work.

Chair Groser noted that it was 'inconceivable' that there would be a result in the agriculture negotiations without serious reform in domestic support for cotton. He predicted that ultimately the work of the Sub-Committee and the agriculture negotiations would be brought together, and that development assistance would be needed to help countries adjust.

EU, US at Odds Over Early Harvest in Cotton

Speaking in Mali on 19 April, European Trade Commissioner Peter Mandelson proposed that WTO Members agree to an early end to cotton subsidies in the Doha Round agriculture negotiations. Mr Mandelson said that although the EU had hitherto favoured a "comprehensive, all-embracing deal" in agriculture, it now stood ready to "make an exception for these vulnerable countries in this particular sector." To this end, he called on the WTO membership "to fast track cotton in each of the so-called three pillars of the agriculture negotiations." Mr Mandelson added that the single undertaking "would contain commitments to tackle different issues at different speeds. Cotton should be first in the queue."

The newly-confirmed US Trade Representative Robert Portman expressed surprise at the EU's change of approach and said he would work with Congress to ensure that no 'early harvest' occurs in cotton or any other specific commodity. Commissioner Mandelson, on the other hand promised African cotton producers Europe's "full political support and commitment" to fighting for the fast track initiative in the WTO. He also asked whether it would be "too much to hope that the leaders of the world's richest countries could commit to this, when they meet in the G-8 at Gleneagles in July?"

Developing Countries Offer an Alternative NAMA Vision

Argentina, Brazil and India have proposed that countries with higher average industrial tariff levels should be allowed to make lower cuts in the Doha Round negotiations on non-agricultural market access (NAMA).

Generally speaking, developing countries maintain much higher average tariffs than industrialised countries. Many of them consider that a single Swiss-type formula aimed at cutting high tariffs more steeply than lower ones would not only affect them disproportionally but also run counter to the Doha Declaration's principle that the NAMA negotiations "shall take fully into account the special needs and interests of developing and least-developed country participants, including through less than full reciprocity in reduction commitments." Brazil and India have vigorously criticised some other tariff reduction formula suggestions for not adequately incorporating the principle of 'less than full reciprocity'.

In their long-awaited proposal (TN/MA/W/54, issued on 15 April), Argentina, Brazil and India stressed that 'less than full reciprocity' and special and differential (S&D) treatment for developing countries were two separate issues. The first must be 'an in-built component of the [tariff reduction] formula', while S&D should pertain to the application of that formula.

This approach is consistent with a widely-held view among developing countries that S&D should permeate all elements of any modalities eventually agreed. It does, however, contrast sharply with the US position that a gentler tariff reduction formula for developing countries would automatically entail their giving up some of the S&D flexibilities offered under the July Framework, such as applying less than formula cuts to a certain percentage of tariff lines, or keeping some tariff lines unbound (Bridges Year 9 No.2-3, page 11).

Proposal Revives Girard Tariff Reduction Formula

Argentina, Brazil and India based their proposal on the draft elements for NAMA modalities put forward by then-Chair Pierre-Louis Girard in May 2003 (TN/MA/W/35, Bridges Year 7 No.4, page 12). The distinguishing feature of this approach is that – unlike a simple Swiss formula – it links the level of tariff cuts to a country's average tariff rate. The higher the original average, the higher it will remain after the formula is applied. According to the proponents, this would reflect the principle that developed countries should make more important commitments than developing countries. They also explicitly stated that "harmonising customs tariffs amongst countries with differing industrial/economic structures and with varying societal needs is not desirable and would not deliver the development objective of the Round." Nevertheless, the formula they proposed would have the effect of compressing national tariffs into a flatter range.

Another key element of the three-country proposal is that the coefficient to be used in the formula would be determined through negotiations to "reflect the ambition in other areas relevant to market access agreed to for this Round." This creates an effective link between the tariff negotiations in agriculture and industrial goods.

Argentina, Brazil and India noted that once the formula was agreed upon, Members would need to address the "particular sensitivities of developing countries [through] longer implementation periods, less than formula cuts for some tariff lines and the exclusion of some tariff lines from any formula cut. The figures related to those flexibilities would have to be negotiated after an agreement on the formula itself." These provisions, the three said, would be "the minimum necessary to meet the development goals of the developing countries."

Ironically, both developed and developing countries were dissatisfied with the Girard formula in 2003. Most industrialised countries argued that it would not deliver an ambitious enough outcome in terms of opening key developing country markets. Some developing countries, on the other hand, felt that it was going too far, too quickly. Its revival is likely to give rise to a lively debate when the NAMA group hold its next session in late April.

Treatment of Unbound Tariffs

To address developing country concerns about having to bind and reduce tariffs in sensitive sectors, Argentina, Brazil and India proposed first multiplying the average tariff applied to unbound tariff lines by a to-be-negotiated factor of 'x,' and then using this newly marked-up figure as a basis for tariff reduction. This too is based on the Girard formula, although that called for a factor of only two.

Furthermore, the proposal specified that the tariff reduction formula would not be applied to unbound tariffs on an item-by-item basis, but only to the marked-up average. This would allow countries to maintain high tariffs in sectors of particular interest to them, so long as they ensure that the average tariff does not exceed the permissible level.

Fate of Sectoral Component Still Unclear

WTO Members continue to disagree over whether the NAMA negotiating mandate includes an obligatory sectoral component, which would eliminate (or at least greatly reduce) tariffs for specific sectors.[1] Most developing countries maintain that it does not, and many of them also oppose a plurilateral approach that would not oblige all Members to take part in such initiatives. On the other hand, the US, the EU and several other industrialised countries consider the sectoral component a key element of the market access negotiations on par with the general tariff reductions to be achieved through formula cuts.

The US has proposed basing negotiations on a 'critical mass' approach, which would involve enough WTO Members to cover most trade in a given sector. Ahead of the late April negotiating session, the US and Canada circulated a new proposal on the practical steps involved in creating a 'critical mass' sectoral initiative, such as a definition of the sector and the identification of key countries in terms of current and potential shares in world trade (TN/MA/W/55).

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Last November, the US suggested that participating developing countries might retain a certain tariff level (no figure proposed) while industrial countries would eliminate theirs entirely. The negotiated rates would be applied at a most-favoured-nation (MFN) basis so that even Members outside the initiative would benefit. One major concern in this regard is the identification of the "key countries that would need to participate in order for potential participants to be willing to go to the sectoral harmonisation rate (zero or other) without concerns about major free riders receiving the MFN benefits." According to the US, Canada and Hong Kong, the following sectors would be of particular export interest to developing countries: chemicals, non-ferrous metals, electrical and non-electrical appliances, fish, leather goods, gems and jewellery.

The United Arab Emirates is one of the few developing countries to have expressed keen interest in the sectoral approach. On 21 April, it submitted a proposal suggesting the elimination of import duties on a number of specific four-digit tariff lines for raw materials, including several petroleum products, minerals, gems and metals.

Members have agreed in principle to aim at concluding a 'first approximation' of the NAMA negotiating modalities by next July. The next step would be the adoption of the full modalities with numbers at the Hong Kong Ministerial Conference next December. Considering the wide gaps in positions, these are ambitious goals.

ENDNOTE

[1] Para. 7 of the July Framework's Annex B on Non-agricultural Market Access states: "We recognise that a sectoral tariff component, aiming at elimination or harmonisation is another key element to achieving the objectives of paragraph 16 of the Doha Ministerial Declaration with regard to the reduction or elimination of tariffs, in particular on products of export interest to developing countries. We recognise that participation by all participants will be important to that effect. We therefore instruct the Negotiating Group to pursue its discussions on such a component, with a view to defining product coverage, participation, and adequate provisions of flexibility for developing-country participants."

No Solution Yet on Access to Medicines

After prolonged and heated debate, WTO Members failed to meet their 31 March 2005 deadline for adopting an amendment to the TRIPS Agreement allowing the export of generic medicines to countries that do not have the capacity to manufacture them locally.

The Doha Declaration on TRIPS and Public Health mandated Members to find, before the end of 2002, an 'expeditious solution' to the difficulties faced by countries with insufficient or no pharmaceutical manufacturing capacities in making effective use of compulsory licensing under the TRIPS Agreement. In August 2003, WTO Members finally agreed on a temporary waiver allowing the export of generics under compulsory license subject to stringent conditions, mostly intended to prevent the re-export of such drugs to developed country markets (Bridges Year 7, No. 6, page 9). After the latest deadline for turning this waiver into a permanent provision in the TRIPS Agreement was missed in March 2005, Members agreed to aim for the 26-27 May General Council session. However, the differences on this issue remain so profound that few expect a solution to emerge by then.

The latest impasse centres on the African Group's December 2004 amendment proposal, which neither spells out the complex anti-diversion provisions of the waiver, nor makes any mention of the Chair's statement associated with it (Bridges Year 8, No. 10, page 1). Many developing countries support the African position, while most developed countries, including the US, the EU, Korea, Canada, Japan and Switzerland, continue to insist that the amendment must contain both the waiver and the statement as presented in August 2003.

TRIPS and Biodiversity

In March, Members again considered the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), but positions on this long-standing agenda item remain largely unchanged. A new submission from Brazil, Bolivia, Cuba, Ecuador, India, Pakistan, Peru, Thailand and Venezuela (IP/C/W/442) focused on the need to provide evidence of benefit-sharing in patent applications, complementing previous proposals on disclosure requirements and prior informed consent. With regard to the legal effects of non-compliance by a patent applicant with the obligation to provide such evidence, the latest submission distinguishes between the pre- and the post-grant phase. Failure to provide evidence before the grant of the patent should result in a discontinuation of the application procedure, combined with penalties, time limits and eventually the withdrawal of the application. Failure to provide evidence after the grant of the patent could result in the revocation of the patent and/or criminal and administrative sanctions, including punitive damages.

Several developing countries consider that the TRIPS Agreement should be amended to prevent the granting of patents involving undisclosed genetic material or traditional knowledge (TK), and to ensure that the communities that are custodians of such resources get a share of benefits arising from their commercialisation. The US, Canada, Australia and Japan remain unconvinced that the TRIPS Agreement needs amending, arguing that TRIPS and the CBD support each other and that both can be implemented consistently. These countries also tend to favour addressing questions related to intellectual property rights, genetic material and TK in the Intergovernmental Committee of the World Intellectual Property Organisation (WIPO).

Spirits and Wine Register

The Doha Declaration mandated Members to negotiate the establishment of a multilateral system of notification and registration of geographical indications (GIs) for wines and spirits by the WTO's fifth Ministerial Conference. After the Cancun collapse, often heated – but so far futile – negotiations have continued on the issue. The debate is increasingly tied with fundamental differences between 'old world' and 'new world' countries on extending strong GI protection to other products other than spririts and wine in the TRIPS Council and on certain countries' attempts to place the issue on the agricultural negotiating agenda. The next TRIPS Council meeting is scheduled for 14-15 June.

Brazil Brings S&D to the Rules Group's Fisheries Agenda

Fisheries subsidies and anti-dumping provisions dominated the discussions at the April session of the Negotiating Group on Rules.

Members considered a Brazilian proposal on ways to incorporate special and differential treatment (S&D) for developing countries into the fisheries subsidy disciplines under discussion in the Rules Group (TN/RL/W/176). Brazil suggested that developed countries should assume a "higher level of responsibility and bear the greatest part of the burden resulting from a broader prohibition on fisheries subsidies aimed at restoring stocks or keeping them at a sustainable level of exploitation." The proposal specified that new disciplines should take into account the economic difficulties facing poor economies, and assist developing countries in establishing a sustainable fisheries sector. Brazil also said that developing countries should be allowed capacity-enhancing subsidies so long as they neither extended beyond a level compatible with sustainable exploitation nor provided incentives to illegal, unregulated and unreported fishing.

Another suggested form of S&D would be considering fees paid by other governments to access a developing country Member's waters, as well as assistance to disadvantaged regions dependent on fisheries, as permissible subsidies. In addition, the submission advocated exempting financial support to fishermen struck by natural catastrophes. Brazil also put forward an exhaustive list of permissible 'green box' subsidies including financial contributions to management services and support for the adoption of environmentally-friendly fishing equipment and compliance with safety standards.

Several developing countries supported the strong S&D provisions and the attention paid to the importance of fisheries for livelihoods and development. Tsunami-stricken Sri Lanka particularly appreciated the section on natural disasters. The EU, China and the 'Friends of Fish' (Argentina, Australia, Chile, Ecuador, Iceland, New Zealand, Norway, Peru, the Philippines and the US) welcomed the paper. In contrast, Japan, Korea and Taiwan – traditionally wary about integrating fisheries subsidies into the WTO – had many reservations.

Other Fisheries Proposals

Members also discussed an EU paper on mechanisms for enforcing WTO fisheries subsidy disciplines (TN/RL/W/178). The EU suggested that enforcement could be enhanced by domestic control systems that formalise all fisheries subsidies in national law and make information about all subsidies awarded available to WTO Members. Alternatively, Members could notify the WTO before granting fisheries subsidies, and subject the notification to review by other Member states. Taiwan noted that WTO Members might be reluctant to cede sovereignty in this manner. Many countries said they needed more time to study the proposal closely.

Another proposal discussed was New Zealand's submission on subsidies to management services in the fisheries sector (TN/RL/GEN/36). It is generally acknowledged that these subsidies are harmless, and therefore should be allowed under WTO rules. However, some countries disagreed on the categories of subsidies for research and development (R&D) that could come under the rubric of management services. The Friends of Fish may also make a submission on subsidies to infrastructure (such as ports, cold storage, etc.).

Anti-dumping Provisions

Members discussed an Egyptian proposal on 'material retardation', a term that refers to the effect that the dumping of foreign goods can have on the development of a domestic industry (TN/RL/W/175). Article 3 of the Anti-dumping Agreement (ADA) provides for trade sanctions against dumping if it 'causes or threatens material injury to an established industry' in the importing country or 'materially retards the establishment of a domestic industry', but leaves the concept of 'material retardation' undefined.

The submission highlighted the problems faced by developing countries that have underdeveloped industries. The ADA does not allow companies that have not begun to make a particular product to request an anti-dumping investigation against dumped competing goods. Egypt argued that 'material retardation' should not be limited to new domestic suppliers, but should extend to all domestic industries characterised by a limited level of development. While Members acknowledged that the ADA should be clarified with regard to material retardation, they raised a number questions. Egypt said it would come back with more precise definitions at a later stage.

The Friends of Anti-Dumping Negotiations (FAN) presented a proposal on 'public interest' (TN/RL/W/174). Drawing attention to the widespread economic impacts of anti-dumping measures, the group called for all concerned stakeholders, such as consumer groups, producers and importers, to be involved before a decision to impose anti-dumping measures is taken. The EU strongly supported the proposal, but Peru, Brazil, India and the US were concerned about its cost and time implications. The US also questioned the impact that such a policy would have on the affected domestic industry.

Finally, Members considered a Brazilian paper (TN/RL/W/177) on the treatment of government support for export credits and guarantees under the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Brazil claimed that current OECD arrangements on export credits could potentially come into conflict with WTO obligations, and proposed specific language for the SCM Agreement that would prevent export credits from hurting developing country Members.

Mediation Group Formed

The EU, Australia, Brazil, Canada, Mexico, New Zealand and Turkey have formed an informal group to start considering which anti-dumping proposals could be acceptable for the membership as a whole. According to some negotiators, the polarisation between some of the FAN's positions and those of the US makes such an exercise almost impossible in the Negotiating Group on Rules. The EU is keen to submit a preliminary text for consideration at the Hong Kong Ministerial Conference, but the US has indicated that text-based negotiations should only take place after the event.

S&D Talks Held Up Over Work Plan Disagreement

Differences have re-remerged in talks over how to organise work on proposed changes to existing rules providing special and differential treatment for developing countries.

In April, the formal Special Session of the WTO's Committee on Trade and Development (CTD) was cut short after India, supported by 13 other developing countries, rejected the work plan proposed by Chair Faizel Ismail of South Africa. As a means of breaking a long-standing deadlock over special and differential treatment (S&D), the Committee has been considering an approach floated by Chair Ismail based on 'situational flexibilities'.

While not rejecting the new situational flexibilities approach *per se*, several developing country Members objected to the proposed work plan for its operationalisation, as well as the suggestion that they should take as a starting point for negotiations the 28 'watered-down' agreement-specific proposals prepared for Cancun.

According to delegates present, Chair Ismail put forward a plan to organise work on S&D according to two broad categories – flexibility and capacity-building. The scheduling of negotiations under the proposed work plan would have had the April meeting focus on proposals in the 'flexibility' category, with the first day devoted to agreement-specific proposals and the second day to cross-cutting issues.[1] The agenda would have dedicated the next Special Session, scheduled for the week of 10 May, to the agreement-specific and cross-cutting issues that fell into the 'capacity-building' category.

Several developing countries, including India, Malaysia, Mexico, Colombia and Peru, said that they had not been adequately consulted about this classification, and expressed fears that structuring work along those lines would shift negotiations towards cross-cutting issues instead of ensuring that Members focus their attention on the agreement-specific proposals. They argued that the July Package requires concrete recommendations for the problems highlighted in the agreement-specific proposals by July 2005, while the mandate for cross-cutting issues only calls for 'reporting' to the General Council at an unspecified date.

Other Members, including several developed countries, continued to argue that the cross-cutting issues were central to the negotiations and as such had to be included either before or at the same time as talks on agreement-specific proposals. Canada suggested a 'middle way' under which Members would move forward with negotiations on agreement-specific proposals but with the freedom to propose cross-cutting solutions.

Background to the Situational Flexibilities Approach

The Chair's situational flexibilities approach evolved from more than three years of wide-ranging consultations aimed at developing innovative ways for addressing S&D in the WTO. Potentially offering a timely solution to the impasse, it derives from two broad concepts: (i) *development situations* – the identification, according to criteria agreed by WTO Members, of sets of problems and constraints developing countries may face in advancing their development interests in specific sectors and/or sub-national regions; and (ii) *policy spaces* – flexibilities built into WTO agreements designed to address the specific development problems of any country finding itself in a development situation.

Proponents of the situational flexibilities approach suggest it would allow Members to address a variety of developing country-constraints and problems, as well as reflect the internal heterogeneity of development within all developing countries, rather than the diversity and differentiation among them.

With regard to flexibilities, Chair Ismail has described an emerging post-July 2005 convergence among Members that "[e]nhanced flexibilities in WTO rules, with appropriate transitional arrangements, should enable the development of developing countries. These flexibilities should be made available to those members that are in need of these flexibilities to address particular development challenges whilst ensuring that there is no *a priori* exclusion of any developing country from such a situational flexibility. There should be Multilateral Monitoring of the use of these flexibilities."

Adopting a situational approach to S&D in the CTD does not necessarily imply postponing consideration of agreement-specific proposals in favour of cross-cutting issues. In fact, provision of flexibilities in *development situations* arises from assessment of the 88 proposals: three-quarters of them demand *policy spaces*. The only cross-cutting issue inherent to an approach based on *development situations* is the abandonment of the idea of further differentiation or the creation of new categories of developing countries.

The principles or guidelines accompanying the *development situations* concept could be used for addressing the whole review of WTO provisions (agreement-specific proposals). Employing the principles as a framework for re-phrasing these proposals, or sets of proposals, could be pivotal in moving towards a solution. This exercise, however, would not necessarily imply taking the 28 proposals prepared for Cancun as a starting point.

Informal consultations were to take place to find common ground prior to the next formal negotiating session scheduled for 12 May.

ENDNOTES

[1] 'Agreement-specific proposals' refer to 88 recommendations for changes to existing S&D provisions under a number WTO agreements, made by a large number of developing and least-developed countries. 'Cross-cutting issues' refer to discussions on the principles and objectives that should govern the adoption and operation of S&D provisions.

Public Morals Defence Upheld Over Trade Obligations

On 7 April, the WTO Appellate Body released its report on US Internet gambling restrictions challenged by Antigua and Barbuda. The ruling could have implications for the Doha Round services negotiations, as well as the relationship between trade rules and sustainable development concerns.

Both Antigua and the US claimed victory over the report due to mixed findings on substantial claims. In the first of these, the AB upheld the panel's ruling that the US had agreed to open gambling services to foreign competition. In the second, it essentially overturned the panel's rejection of the 'public morals' defence evoked by the US.

The US Did Commit to Opening Gambling Services

The Appellate Body agreed with the panel's conclusion that US market access commitments on 'other recreational services (except sporting)' under the General Agreement on Trade in Services (GATS) did indeed include gambling services. The AB further upheld the panel's findings that restrictions on several means of supplying gambling services outlined under three federal laws resulted in the US failing to offer services and service suppliers from Antigua treatment 'no less favourable' than that set out under its GATS schedule of commitments. However, in a blow to Antigua, the AB disagreed with the panel's findings that some eight state laws were also inconsistent with the US GATS commitments. According to the panel, "Antigua failed to identify how these [state] laws operated and how they were relevant to its claim of inconsistency" with GATS market access provisions.

Partial Reversal of the Public Morals Ruling

Second, the US had argued that the remote supply of gambling and betting services raised significant concerns relating to the maintenance of public order and the protection of public morals, a defence available under the GATS and also reflected under the General Agreement on Trade and Tariffs (GATT). On this point, while the original panel agreed that the challenged US federal laws constituted measures to protect public morals or public order, it nevertheless found that they were not 'necessary' due to the fact that the US had not explored and exhausted reasonably available alternatives, such as engaging in bilateral and multilateral consultations with Antigua to determine the possibility of addressing its public morals concerns in a WTO-consistent manner.

The Appellate Body disagreed with the panel's reasoning that the US refusal to enter into consultations with Antigua meant it had failed the 'necessity test' outlined under the 'chapeau' of GATS Article XIV (General and Security Exceptions). According to the AB "engaging in consultations with Antigua… was not an appropriate alternative for the panel to consider because consultations are by definition a process, the results of which are uncertain and therefore not capable of comparison with the measures at issue in this case." The Appellate Body further reasoned that the "only inconsistency" that the panel could have found with the US defence under the GATS public morals clause stemmed from the fact that the US did not demonstrate that the prohibition embodied in the measures applied to both foreign and domestic suppliers of remote gambling services. The Appellate Body based this latter conclusion on just one federal law – the Interstate Horse Racing Act (IHA) – which appeared to permit domestic service suppliers to supply remote betting services for horse racing.

Implications for the Services Negotiations and WTO Jurisprudence

The GATS uses a 'positive list' approach to scheduling market access commitments: Members are only vulnerable to legal challenge in those services sectors and modes of delivery where they have taken on binding specific commitments. In contrast, market access conditions can be changed for unbound (or 'un-scheduled') sectors. This approach is generally considered much friendlier to national policies than the 'negative list' approach, under which all services sectors and sub-sectors are considered bound open unless they have been explicitly carved out.

At a time when Members are pressed to make market opening offers in the services negotiations, the Appellate Body's finding that the US had indeed agreed – if only inadvertently – to open gambling services makes some Members question whether the positive list approach does in fact offer sufficient protection against committing similar 'scheduling errors'. Members are more aware of the need to *explicitly* exclude what they consider to be sensitive sectors from their Schedules of commitments. As the gambling case demonstrates, this can be a perilous exercise, particularly in fields undergoing rapid technological change, such as new developments in Internet-based services.

In contrast to the uncertainty created regarding the services negotiations, the AB's reversal of key aspects of the panel's ruling on the US public morals defence argument goes to prove that a WTO Member can exclude even a scheduled services sector from liberalisation if it can thoroughly justify this exclusion under GATS Article XIV. More importantly, without the IHA, the US would have passed the strict legal requirements of the introductory clause or 'chapeau' of Article XIV, which requires such measures not to be discriminatory or arbitrary.

One practical implication of this aspect of the ruling is that once the US addresses the IHA, it will presumably be able to keep out foreign gambling service providers for the protection of public morals. Acting US Trade Representative Peter Allgeier noted that "by reversing key aspects of a deeply flawed panel report, the Appellate Body has affirmed that WTO Members can protect the public from organised crime and other dangers associated with Internet gambling."

Calling the ruling a 'landmark victory', lawyers from the small island of Antigua, on the other hand, said that the report would "pave the way for new ... opportunities for Antiguan gaming operators."

If the AB had not overturned the the panel's public morals findings, the US would in all likelihood not have implemented the ruling. This illustrates the difficulty faced by small developing countries in compelling powerful developed countries to comply with WTO rulings – a systemic problem that several developing countries have sought to address in the ongoing review of the WTO's dispute settlement rules.

WIPO Members Refine Development Agenda Proposal

Developing countries have submitted a new proposal calling for the World Intellectual Property Organisation to become more development-focused. While raising important issues for WIPO, the paper reflects the trend for 'mainstreaming' development issues evident in many international fora.

The 14-member Friends of Development (FoD) group[1] submitted the proposal at the Intergovernmental Meeting on a Development Agenda for WIPO (IIM) held in April. The IIM was convened to continue discussions on Brazil's and Argentina's September 2004 proposal for a WIPO Development Agenda (Bridges Year 8 No.9, page 21). Members decided to hold two further IIMs before 30 July 2005, the deadline for a final submission by the IIM to the WIPO General Assembly.

A Paradigm Shift for WIPO?

The FoD's new proposal (IIM/1/4) expands four of the themes included in Argentina's and Brazil's original proposal, i.e:

- a review of the mandate and governance of WIPO;
- the promotion of pro-development norm-setting in WIPO;
- the establishment of principles and guidelines for WIPO's technical assistance work and evaluation; and
- the provision of guidelines for future work on technology transfer and related competition policies.

The FoD submission argues that countries at different stages of economic, social and technological development will benefit differently from IP protection, and that ongoing patent harmonisation efforts fail to take this into account. Accordingly, it calls for special and differential treatment that meets the needs of developing countries to be integrated across all of WIPO's activities and bodies, to the extent of changing the institution's mandate and governance structure.

Clearly, this goes far beyond a mere increase in technical co-operation, which would be limited to direct support for the development of national IP legislation or the setting up of national IP offices, and executed via existing bodies, such as the Permanent Committee on Co-operation for Development Related to Intellectual Property (PCIPD). While the more modest ambitions of the latter approach are favoured by a number of developed countries,[2] the FoD proposal calls for a shift in the nature of technical co-operation from implementation and enforcement to integrated development impact assessments of IP standards in conjunction with initiatives to raise awareness of existing flexibilities in international IP law. Mexico essentially argued for preserving the *status quo*.[3]

A Process Embedded in a Broader International Trend

The call for change derives legitimacy from the fact that WIPO became a specialised UN agency in 1974. Article 1 of the Agreement between the United Nations and WIPO states the institution's responsibility for "*…promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development.*"

Seen from a broader perspective, the FoD proposal in favour of WIPO adopting a development agenda fits into a wider international political framework. With the UN Millennium Declaration, nearly 200 heads of state endorsed the Millennium Development Goals in an expression of international commitment to addressing the challenges faced by developing countries. The 'mainstreaming' of development concerns is also reflected in the current Doha Round of multilateral trade negotiations, the Programme of Action for LDCs 2001-2010, the Monterey Consensus, the Johannesburg Declaration on Sustainable Development and the UNCTAD XI São Paulo Consensus, among others.

Not Necessarily a North-South Divide

The presence of many public interest groups at the IIM's first session indicates that the current debate at WIPO goes beyond pure development concerns. Organisations concerned about the increasing privatisation of the public domain and related technical and scientific data have stressed the need for care in harmonising IP laws due to their impact on the advancement of knowledge and innovation. Rather than just a concession to developing countries, many see in the establishment of the IIM an opportunity to make WIPO more transparent and responsive to the needs of all of its members. It has also been pointed out that the concerns raised by the FoD are equally relevant to stakeholders in developed countries, such as consumers, small and medium-sized enterprises and technology users.

The IIM process has opened a political window that could reorient WIPO's objectives towards including development concerns. It remains to be seen, however, whether this will ultimately result in a clarification of how the changes would be implemented in practice.

The next session of the IIM is scheduled for 20-22 June and another three-day meeting will be held in July. Proposals for consideration of member states can be submitted to the WIPO Secretariat up to the June meeting.

ENDNOTES

[1] Argentina, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela.

[2] Including the US, whose submission to the IIM (IIM/1/2)proposed addressing the development dimension through the establishment of a WIPO Partnership Programme that would, *inter alia*, provide an Internet-based database that would help match developing country institutions' IP assistance needs with available donor support from various agencies.

[3] Mexico (IIM/1/3) stressed that it would be essential for WIPO to "to carry out activities allowing the intellectual property system to be fully integrated into society; however, [Mexico] will support any other initiative designed to promote the development of peoples, provided that this does not entail harm or failure to observe the international standard-setting framework currently in force, or give rise to negotiations in addition to those currently being conducted either in WIPO or in various fora such as the WTO."

Access to Knowledge: Time for a Treaty?

Peter Drahos

Knowledge underpins everything, including economies. As the World Bank observes: 'We now see economic development as less like the construction business and more like education in the broad and comprehensive sense that covers knowledge, institutions, and culture'.[1]

Despite the importance of knowledge, few key multilateral organisations are seriously addressing the issue of how institutions of knowledge might be better designed to meet the goals of achieving basic freedoms and economic development for the world's poor. The current work of the WTO on intellectual property is modest to say the least. The meandering discussion on the relationship between intellectual property rights, biodiversity and traditional knowledge continues in WIPO and the WTO. Reports from the CBD about the progressive extinction of traditional people and the loss of traditional knowledge come and go.[2] The WTO's agreed text on what is ironically called the paragraph 6 solution to the problem of compulsory licensing and access to medicines is full of the kind of uncertainties in which lawyers delight and which commercial people avoid.[3] Developing country claims receive symbolic attention and soft law solutions wrapped in the polite language of false concern. Western powers solve their problems through hard treaty law that is born of realist maneuverings in a world where commercial and security interests have been united.

But profound shifts in the governance of knowledge are taking place. Bilateral agreements on intellectual property, services and investment are securing standards that would have been thought unattainable during the course of the Uruguay Round (1986-1993). This process is making use of the efficiency savings of the MFN principle. Each new bilateral agreement that sets higher standards of intellectual property is picked up by Article 4 (the MFN clause) of the Agreement on the Trade-Related Aspects of Intellectual Property Rights. The savings of MFN become significant as more states enter into agreements with the US. With, for example, thirty states only 29 bilateral agreements are needed to spread the same IP standards amongst all the states. Without MFN, 435 agreements would be needed. A set of US-EU defined standards of intellectual property protection are rapidly encircling the globe.

Developing country resistance to this emerging paradigm of globalised intellectual property rights is essentially a story of failure. International organisations in which developing countries have been influential such as UNCTAD and UNESCO have not been able to make significant gains in terms of international treaty making on key developing country issues such as technology transfer, the control of anticompetitive conduct or, more broadly, an economic framework that addresses the deep structural inequalities of the world economy.[4] Political landmarks of the 1970s like the New International Economic Order have drifted into the footnotes of history. Comparatively modest multilateral gains like the Doha Declaration on TRIPS and Public Health have all too easily been bilaterally given away. A different concrete world order has come striding out of the shadows of globalisation, one in which developing countries continue to remain bit players.

The table opposite – on the G-20, ex-G-20, the Cairns Group members that have FTAs with the US – shows that the Roman maxim, *divide et impera* has lost none of its truth for the practice of empire. Two observations are particularly worth noting. First, the leaders of the G-20 (the countries in bold) that proved to be an effective oppositional force to the US and the EU at the WTO Cancun Ministerial in 2003 are being progressively isolated. Second, the terms of a possible deal on agriculture in the WTO are being shaped by a series of FTAs in which leaders of agricultural exporting nations like Australia are willingly participating.

Key factors that explain the negotiating failures of developing countries are a lack of trust amongst developing country groups, a myopic focus on single issues rather than the game in aggregate, insufficient political support from the capitals for negotiators, inadequate technical analyses of issues, a failure of co-ordination across and within bilateral and multilateral fora and, finally, a lack of boldness of vision.[5]

All of these factors can, of course, be changed. Of those on the list it is perhaps the last that needs to be addressed first. Whatever the deep determinants of radical change, rarely in history is it not accompanied by an act of inscription in which words carry visionary ideals in defiant flight of established authority. Martin Luther's writings did not cause the Reformation and Thomas Paine did not through his writings cause America to achieve independence, but

Continued on page 16

Country	G-20	Ex G-20	Cairns Group	FTA with US?
Argentina	Y		Y	
Australia			Y	Y
Bolivia	Y		Y	Proposed
Brazil	Y		Y	
Canada			Y	Y (NAFTA)
Chile	Y		Y	Y
China	Y			
Colombia		Y	Y	Proposed
Costa Rica		Y	Y	Y (CAFTA)
Cuba	Y			
Ecuador		Y		Proposed
Egypt	Y			
El Salvador		Y		Y (CAFTA)
Guatemala		Y	Y	Y (CAFTA)
Honduras				Y (CAFTA)
India	Y			
Indonesia	Y		Y	
Malaysia			Y	Proposed
Mexico	Y			Y (NAFTA)
New Zealand			Y	
Nicaragua		Y		Y(CAFTA)
Nigeria	Y			
Paraguay	Y		Y	
Pakistan	Y			
Peru		Y		Proposed
Philippines	Y		Y	
South Africa (SACU)	Y		Y	Being negotiated
Tanzania	Y			
Thailand	Y		Y	Being negotiated
Uruguay	Y		Y	
Venezuela	Y			
Zimbabwe	Y			
	20	**7**	**17**	

both helped to inspire people to talk about and fight for independence of different kinds.

For developing countries the coming century of knowledge-based growth raises two basic development priorities. The first is that these countries must give more urgent attention to encouraging investment in human capital and this essentially translates into investment in health and education. The second basic priority is to think creatively about models of governance for the production of knowledge that maximise the participation of developing countries in the processes of innovation, that maximise the spillover benefits of knowledge and that minimise the social cost of accumulating knowledge.

One strategy for meeting the second priority is to draft a framework agreement that contains guiding principles on access to knowledge.[6] Framework agreements have proved to be surprisingly effective over the decades as means of getting states to agree to general principles that then evolve into more specific and enforceable obligations.[7]

A framework treaty on access to knowledge would be a tough test of developing country cooperation over the long distance of an international negotiation. Intellectual property rights along with terrorism, narcotics and people trafficking are the four key targets for the US in any international negotiation. On intellectual property the US has only been prepared to negotiate higher standards of protection. Calls by organisations like the World Bank to 'rebalance' TRIPS have been drowned out in US corridors of power by the footfalls of corporate lobbyists bearing cheques for campaign re-election. With their epicenter in Washington, waves of intellectual property protection race like distant tsunamis towards the shores of developing countries.

Despite the projection of US invincibility on the issue of intellectual property a framework treaty on access to knowledge is still worth fighting for. Such a treaty would at least offer developing countries some longer term vision of their development interests, as well as an opportunity to build a coalition around the issue of knowledge and development. Developing countries have numbers, but not unity and co-ordination. Creating another opportunity for these two things to emerge is in itself a worthwhile goal.

An initiative to produce a draft of a treaty on access to knowledge is currently being led by a coalition of civil society actors. This initiative flows out of a WIPO General Assembly decision to examine proposals for a development agenda that were put forward by Argentina and Brazil in 2004.[8] A treaty on access to knowledge was a key part of those proposals. Civil society actors have pushed the treaty initiative along by suggesting some topics that the treaty should cover.[9] In February 2005 a meeting of interested parties in Geneva had a wide-ranging discussion about the standards that such a treaty might contain. Out of the discussions thus far have come a variety of proposals on matters such as the implementation of the Doha Declaration on TRIPS and Public Health, the need for entrenched exceptions in copyright and patent law to ensure access for various groups and rules for the promotion of access to publicly funded research.

As the civil society coalition around the draft treaty builds, more and more proposals will find their way into the draft. The treaty might end up taking the form of a comprehensive and detailed set of rules written from multiple perspectives and goals. Detailed intellectual property rules typically create winners and losers and so veto coalitions are more or less certain to form. There is also the complication that as states become parties to an increasing number of treaties that cover intellectual property their capacity to entrench treaty-based exceptions to higher standards of intellectual property lessens. Finally, there is the basic geo-political reality that the US and EU have concentrated and influential industry interests that benefit from increased intellectual property protectionism and so both have reasons to support protectionist intellectual property policies.

A detailed rules-based treaty is not, of course, the only option. Another possibility is to draft a simple treaty containing a few general principles built around the rights to health and education and the commitment to open source innovation. This part of the treaty could essentially be declarative in nature, drawing on the existing human rights framework and restating principles already widely accepted.

The many complex issues raised by intellectual property, public goods, research and development and innovation could each become the subject of an annex in the treaty. So, for example, there could be an Annex on technical standards and intellectual property, an Annex on open source innovation in software, an Annex on education, libraries and copyright, an Annex on open source innovation in the life sciences, an Annex on technology transfer and so on.

The responsibility for the development of the standards in each annex would rest with a group of technical experts in the relevant field. Representation in these groups would not be state-based, but rather based on a commitment to a genuine evidence-based approach to development and intellectual property. This last criterion is vital since what has passed for intellectual property policy and development over the decades has in the main consisted of organisations like WIPO sending missionaries to convert the 'uncivilised' economies of the South. The time to end this faith-based approach has well and truly arrived.

The standards in each annex could, at least in the beginning, simply be issued in the form of recommended practices. (The International Civil Aviation Organisation, for example, issues some of its standards as recommended practices.) This would leave states with the freedom to choose those standards that were consistent with their overall treaty obligations. It would also provide them with expert guidance as to the kind of norm-setting they should be contemplating in order to maximise their chances of innovation-based growth and the social welfare of their populations. This softer approach would be one way of maximising support for the treaty process. Over time the recommended practices might become binding standards by means of, for example, an opt out procedure in which the standards applied to a state unless it opted out. The binding nature of the treaty's standards, in other words, is something that could be built over time.

Although the treaty proposal arises in the context of an emerging development agenda for WIPO, its future course is not necessarily tied to what happens there. In one view, WIPO is an organisation that has been irredeemably compromised by western powers bent on making trade gains from intellectual property. If WIPO proves an inhospitable forum then developing countries should consider an alternative, even if it means using the treaty to constitute a new one. There is much to gain from the adoption of a deep US cultural value – self-reliance. A remarkable historical opportunity is presenting itself. If one looks at the technologies of the 19th and 20th centuries such as radio, telephone and telegraph, standards-setting was dominated by the US government regulated private monopolies such as ATT and the public monopolies of the European post, telephone and telegraph system. Developing countries were simply not players in international organisations like the International Telecommunication Union. Open source innovation is about networked innovation by a geographically distributed community that works with a technology and seeks to build collectively a better technology. That approach to innovation is inherently more participatory and one that advantages developing countries that have low-cost, highly-trained knowledge workers.

Finally, it should be said that the success of a treaty on access to knowledge depends profoundly on the involvement of business, especially that segment of business entrepreneurship that sees in open source innovation the possibility of business models that will drive the knowledge markets of the 21st century. Much of that new entrepreneurship resides in the US. A treaty on access to knowledge should, through its committees of technical experts, draw on the insights of that entrepreneurship and foster the growth of networks that stretch across developed and developing countries.

The fate of the treaty will depend heavily on the leadership of a few. The moral strength and determination of Nelson Mandela strides across the landscape of the twentieth century, a brilliant reminder of what a real leadership of values can accomplish against injustice. If developing countries are to take a stand on the governance of knowledge and make laws that address the structural injustices of the present regime, much will depend on the creative energies of Brazil and President Lula and thoughtful multilateral diplomacy of the kind practiced by Norway. Even more important will be China's beliefs about the rights and duties of owners of knowledge.

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ENDNOTES

[1] Joseph Stiglitz in Gerald M. Meier, 'Introduction: Ideas for Development', Gerald M. Meier, Joseph E. Stiglitz (eds), Frontiers of Development Economics, OUP, Oxford, 2001, 1,2.
[2] See Composite Report on the Status and Trends Regarding the Knowledge, Innovations and Practices of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biodiversity, UNEP/CBD/WG8J/3/4, p.6.
[3] See Brook K. Baker, 'Arthritic Flexibilities for Accessing Medicines: Analysis of WTO Action Regarding Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health', 14 (2004) Indiana International & Comparative Law Review, 613.
[4] P. Drahos, 'Developing Countries and International Intellectual Property Standard-Setting', ' 5 (2002) Journal of World Intellectual Property, 765.
[5] For a general discussion see P. Drahos, 'When the Weak Bargain with the Strong: Negotiations in the World Trade Organisation', (2003) 8 International Negotiation, 79.
[6] A proposal for a draft treaty is to be found in P. Drahos, 'The Global Ratchet for Intellectual Property Rights: Why it Fails as Policy and What Should be Done About It'.
[7] J. Braithwaite and P. Drahos, Global Business Regulation, Cambridge University Press, Cambridge, 2000, 620.
[8] See General Assembly Decision on a Development Agenda, October 4, 2004. The proposal by Argentina and Brazil is in document WO/GA/31/11, August 27, 2004.
[9] See Civil Society Coalition Statement on WIPO General Assembly Decision on a Development Agenda, October 4, 2004 available at http://www.cptech.org/a2k/

CAFTA Update

The Bush Administration is aiming to submit the US-Central America/Dominican Republic Free Trade Agreement (CAFTA-DR) to Congressional vote in late May. April House and Senate hearings indicated continued strong opposition from many Democrats to the agreement's labour provisions, which they consider too lax, as well as bi-partisan opposition from key sugar producing states. While the sugar industry has been presenting the CAFTA as having 'devastating' effects on US producers, the combined sugar quotas of the six countries involved amount to less than one percent of US sugar consumption.

Among those rooting for CAFTA's passage are many processed food manufacturers, grain farmers, textiles importers and companies that sell raw materials to Central American apparel makers, as well as pharmaceutical exporters. Under CAFTA, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua agreed to protect clinical test data for pharmaceutical products for five years after it had been submitted (data for agricultural chemicals is protected for 10 years). A number of Democrats have criticised the data exclusivity provisions, saying they could delay the introduction of affordable generic versions of brandname drugs.

US-CAN Update

Negotiators for the Andean Free Trade Agreement between the US, Colombia, Ecuador and Peru are yet to resolve major outstanding issues, including telecommunications, intellectual property rights and agriculture.

In addition, the negotiating partners are still waiting for Ecuador's new President Alfredo Palacio to confirm the country's official position toward the FTA amid reports of the new government's planning to conduct a review of the agreement's public policy implications and submit the continuation of the process to a popular referendum.

Some Implications of India's New Patents Act

Priti Radhakrishnan

On 23 March, the Indian Parliament passed a new Patents Act, which brought the country into compliance with its WTO obligations. Heavily politicised amendment negotiations secured the continuation of pharmaceutical exports to least-developed countries, as well as the right to oppose patent applications on a number of grounds. However, some flexibilities under the TRIPS Agreement were lost.

The TRIPS-plus provisions of the Act can be attributed to a number of factors, not least the government's desire to spur economic liberalisation. This resulted in a lack of political will to incorporate the flexibilities confirmed in the Doha Declaration on TRIPS and Public Health.

The Act is likely to significantly impact access to medicines in India and across the world. The amendments incorporate ambiguous language and include loopholes that may benefit patent holders. Most notably, access to medicines may be affected as the entry of generic medicines is delayed through lengthy waiting times and arduous procedures. The affordability of medicines could be affected due to increased market dominance by a handful of drug companies, in addition to increasing the end cost and delaying drug production through royalties and related litigation. The key provisions and their potential impact on access to medicines are analysed below.

Scope of Patentability

The new definition of 'inventive step' allows for the criteria to be met if the invention is a 'technical advance' *or* has 'economic significance'. The latter requirement is problematic, as it undermines the basic conceptual underpinnings of patenting, i.e. that innovation and inventiveness, not economic justification alone, should be the grounds for protection. Economic significance, left undefined, should not be the sole (or primary) criteria for patentability. Using economic criteria, such as a 'commercial success' standard, without simultaneously examining the technical advance itself widens the scope of patentability and allows for weak or questionable patents.

The second issue of concern is the patentability of an 'enhancement of the known efficacy' of a known substance. This may allow for ever-greening. The explanation to this provision states that isomers, salts, ethers, combinations and the like may be patentable if they 'differ significantly in properties with regards to efficacy'. The purview of patentable medicines is thus potentially increased.

To illustrate, the highly controversial anti-cancer drug Gleevec (imatinib mesylate), produced by Novartis, is a beta isomer of an already known alpha isomer. The beta isomer's anti-cancer properties differed from the alpha isomer's known use, and under the new Act, it is arguable that these isomers 'differed significantly in properties with respect to efficacy'. In India, after exclusive marketing rights were granted to Novartis, the price of Gleevec has increased from roughly US$230 to US$2,740 per annum, making the drug unaffordable for most patients requiring it.

Compulsory Licensing

According to the Act, Indian drug companies will have to wait three years after the grant of a patent to even apply for a compulsory license, and a further six months before the Patent Controller can intervene. Such intervention occurs if the application and ensuing negotiations fail. Additionally, the procedures to obtain a license from the Controller are unduly cumbersome. Finally, there is no ceiling on the royalty rate due to the patent holder. As demonstrated by the South African experience of licensing Pfizer's HIV drug Diflucan, a lack of clarity on royalty ceilings may lead to protracted litigation or high royalties to the patent holder, both of which restrict access and increase the end cost of the medicine.

These obstacles to compulsory licensing could cause lengthy delays before desperately required drugs are made available. However, Section 92 of the Act allows for immediate compulsory licensing for national emergencies, extreme urgency and public non-commercial use, as determined by the Patent Controller. It is important to note here that many necessary medicines are not for 'emergencies' – medicines for diabetes, asthma and other common, ongoing health conditions will not be available for immediate licensing. Additionally, Section 92 allows for immediate compulsory licensing for cases including public health crises relating to HIV/AIDS, tuberculosis or malaria. To date, this provision has never been exploited in India, and it is now up to the Patent Controller to ensure its optimal use.

Exports to LDCs

Importantly, the Patents Act was amended regarding the export of generics to least-developed countries (LDCs), which is now allowed without requiring the importing country to issue a compulsory license. However, there is one insertion that should be noted as a potential concern: an LDC must now – either through notification *or* the issuance of a compulsory license – allow importation of the drug. The question arises as to why the option of the importing country issuing a compulsory license was retained. This provision must be monitored to ensure that companies do not demand that LDCs that have created patent regimes earlier than 2016, often under bilateral pressure, be mandated to issue a compulsory license: notification alone should be sufficient.

Continued Generic Production

Under the new law, companies can continue generic production of drugs for which patent applications were filed during the transitional period, which expired on 1 January 2005. Nevertheless, this continued production is subject to an ambiguous clause requiring 'significant investment' on the part of the company producing the generic version, leaving open the question of whether the generic producer only has to pay royalties when it has made a prior significant investment in the drug, or whether the company must demonstrate significant

investment in order to continue production. The ambiguity in this clause may impact access by holding up the production of generic versions due to royalty negotiations or differences in legal interpretation.

The Commerce Minister has instituted a six-member Technical Experts Committee to look at two issues: whether it is TRIPS-compatible to define patentable new entities as 'new chemical entities' and whether micro-organisms may be excluded from patentability.

Conclusion

As the rules supporting the Act are yet to be finalised, the impact of the new law remains to be seen. Ultimately, there is wide latitude for interpretation, and it will be up to the Patent Controller to determine how to precisely define patentability in a way that guarantees licensing of drugs in a timely, efficient and fair manner. Advocates will have to undertake a drug-by-drug, case-by-case fight to ensure that access to affordable medicines remains a reality for people in India and abroad.

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Impact of India's Patent Law on the Generics Industry

D. G. Shah

The last-minute changes to the Patents Act are significant in so far as they provide against patenting of trivial changes and allow automatic licensing for all drugs commercialised before 1 January 2005. Both these measures will ensure continued availability of medicines currently in production and will let the generic industry supply these drugs to least-developed and developing countries under appropriate authorisation.

This also means that India's generic industry can continue to work on its ambitious target of six-fold growth in its export business to US$20 billion by 2010. The export driven growth will spur significant domestic investment in the manufacturing sector, creating new jobs for educated youth and making India a dominant player in the global generics market. The surplus generated from exports will also help fund increased investment in research.

However, new drugs that were not commercialised before 1 January 2005 will remain beyond the generic industry's reach until after the expiry of patents. This is so because of the government's reluctance to invoke the compulsory license mechanism for fear of retaliation and the cumbersome and unworkable procedures and rules under the new law.

Section 92A, introduced in the Indian Patents Act to incorporate the 30 August Decision of the TRIPS Council, was amended to exclude a provision related to the grant of compulsory licenses by LDCs. However, Rule 97 stipulates that the Controller General of Patents will determine whether the application by a generic company to manufacture solely for export shall be approved or refused. In other words, an officer in India will sit judgement on another country's sovereign government before permitting a domestic company to manufacture and export the product.

In this, the Indian law not only exceeds the country's obligations under the TRIPS Agreement but also violates the sovereignty of the importing country. First, India need not have taken upon itself the responsibility of checking the importing country's decision; and second, it has no jurisdiction or basis to determine the veracity of health problems in the importing country.

The procedure for granting a compulsory license for the domestic market is also mired by rules that will allow the right-holder to litigate the application to the point of defeating the very purpose of compulsory license. Why would a generic company devote its resources to an activity that is *prima facie* futile and non-productive?

There are more substantive issues related to the production of a new drug under a compulsory license. As the necessary products are still readily available from India's pre-2005 patent regime, the significance of the time and cost of developing generics is not yet fully realised. Typically, bringing a generic version of a product to the market will take at least three and a half years.

Nor is it just a question of time: the cost of development and approval of regulatory agencies is estimated at US$2 million per product. Furthermore, even after investing time and money, a generic producer has no certainty of success. The risks involved are daunting:

- the compulsory license may be rejected by the exporting country, i.e. India;
- regulatory approval may not be granted by the importing country;
- the rights-holder may offer a price reduction to the importing country;
- the discovery of a new drug may render the licensed drug obsolete; and
- the size of the potential market under compulsory license may be too small.

Thus, a generic company will have to evaluate whether the production of a new drug under a compulsory license is economically and commercially viable in light of the risks associated with the activity. The dice seem loaded against the working of the compulsory license provision, but time alone will prove it. But by then, for those suffering from disease time may have run out.

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Commission for Africa Calls for Bold Doha Outcome

Chris Stevens

The Commission for Africa[1] issued its report on 11 March, calling for "more and fairer" trade for the continent. The 450-page study highlights the challenges facing Africa and outlines recommendations on how they can be addressed by both Africa and the developed world.

On improving Africa's trade capacity, the report recommends massive investment in infrastructure and reform of the regional barriers that are stifling intra-African trade. Both these supply-side trade constraints need to be addressed if Africa is to become more self-reliant. In terms of rich country (and especially EU) responsibilities, the report's recommendations fall under three themes: improving effective market access for Africa's exports; ensuring a sufficiently radical outcome to the Doha Round such that Africa does not lose out; and introducing a 'development test' for new health standards imposed on imports from developing countries and for WTO rules.

Among the report's targets are the EU's current trade policy negotiations with Africa and its restrictive rules of origin. In 2007 the Cotonou trade regime is due to expire and be replaced by a set of regional Economic Partnership Agreements (EPAs). Currently under negotiation, the EPAs are widely seen as an attempt by the EU to force liberalisation on Africa while giving away very little in return. The report argues strongly that trade agreements should never be used to force unwilling governments to liberalise their trade policies, if only because it doesn't work. It proposes that EPAs should require only limited liberalisation by African states over a period of up to 20 years, if necessary facilitated by the amendment of WTO rules.

Improving Market Access

The report proposes improving African access to the European market in two ways: by extending preferences to cover all products and through reform of the rules of origin 'small print', which has stymied African processed and manufactured exports for three decades. Extending preferences is straightforward. Cotonou provides all sub-Saharan states with duty-free (or reduced duty) access for most goods – but not for all. Under the Everything But Arms (EBA) scheme the EU already offers least-developed states (including those in Africa) duty-free access on everything (but arms). The report adds its voice to the often heard demand that the EU offer all African states access as good as that under EBA. As for the reform of rules of origin, the Commission recommends that rich countries should require a minimum of only 10 percent value added in Africa. It also proposes allowing African states to use inputs imported from any source, so-called 'global cumulation'.

A Bold Outcome for Doha

The report states explicitly that Africa stands to lose if the Doha Round fails to go beyond the positions of the EU and the US at Cancun. Only a round that effectively scraps OECD agricultural protectionism stands a chance of benefiting Africa. Even then substantial assistance to the region will be required both to help with adjustment and to boost supply capacity so that Africa can take advantage of the opportunities opened.

The report proposes that rich countries commit to cutting tariffs on agricultural products to very low levels. This is very radical, going far beyond anything to which either the EU or Japan have committed in the Doha negotiations so far. Most importantly, it sets a benchmark of what real liberalisation would mean. Any outcome of Doha that falls far short of this is not real 'liberalisation'.

A 'Development Test'

Africa's capacity to continue exporting agricultural products to Europe is in jeopardy because of increasingly onerous sanitary and phyto-sanitary (SPS) standards. The results could be quite disastrous for Africa while not leading to any corresponding improvement in levels of European public health. To avoid this outcome, the report suggests that EU officials be required to work closely with African governments and the private sector when framing their regulations. In addition, it proposes that any such standards be required to meet a 'development test', to demonstrate a measurable and significant improvement in European consumer safety that could not be produced through alternative means more supportive of development in Africa.

A major concern of African governments in the current Round is that they will be encouraged to sign-up to commitments that leave them vulnerable to action taken by other WTO Members via the dispute settlement system. This fear has contributed to the impasse in the Doha Round. The report proposes a 'development test' such that any action by a developing country could only result in WTO-approved penalties if demonstrated to be unnecessary for development purposes.

On trade, the Commission's success will be judged less by what the report recommends than by whether it galvanises action. The problem policies of the EU and other rich countries could be dealt with speedily if there were the political will to act. Without radical change under Doha, however, Africa's problems will continue to carry less political weight than the concerns of sugar farmers, clothing producers and consumers in developed counties.

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ENDNOTE

[1] The Commission for Africa was created by UK Prime Minister Tony Blair in February 2004 to provide a coherent set of policies to accelerate progress toward a strong and economically prosperous Africa. The initiative is taking place in the context of the UK's 2005 chairmanhips of the G8 and, in the second half of the year, the EU. The full Commission for Africa report is available at: http://www.commissionforafrica.org/english/report/thereport/cfafullreport.pdf

Environment and Development Thirty Years After Stockholm

Yash Tandon

It is ironical that present-day environmentalists nostalgically look back to the 1992 Rio Earth Summit as a landmark event, whereas at the time it was already regarded by many as a compromise between the high ideals of the 1972 Stockholm Conference on the Human Environment and the mercantile interests of the rich countries.

Stockholm, not Rio, was what pushed the evidence of the toll that the consumption and production system had taken on the environment – gathered over decades by scholars and activists – onto the agenda of the UN. During the 20 years between the two conferences, many events took place that were to have a generally retrogressive impact on the environment and development movements. The most significant of these was the coming to power of Thatcher and Reagan. With them began the present phase of 'globalisation'. Faced with recession in the 1980s, they deregulated the economy and expanded it into the social, natural resource and environmental domains. Globalisation is not a gravity-like 'natural phenomenon' as some of its ideologues would have us believe. It is an act of conscious government policy of Western countries, starting with the UK and the US, the two powers that have ruled the world in tandem close to a quarter century (from Reagan/Thatcher to Bush/Blair).

Since Stockholm, business has triumphed in the battle between marketeers and the environmental idealists who sought to create a world where nature and humanity intertwined in harmony. The idealists reached their nadir at the 2002 World Summit for Sustainable Development in Johannesburg, where private-public partnerships reigned supreme and environmentalists were pointedly ignored and marginalised.

The launch of the Uruguay Round negotiations in 1987 coincided with the publication of the Brundtland Report on environment and development, which led to the convening of the Earth Summit in Rio five years later. The Uruguay Round agreements were primarily negotiated between the US, Europe, Japan and Canada; developing countries had very little influence over the final outcome. Indeed, they were led to believe that by compromising on matters such as intellectual property rights, they would get market access for agricultural products and textiles, a 'concession' that proved to be illusory. While Africa simply did not matter in the negotiations, the agreements that transformed the GATT into the World Trade Organisation were signed in the African city of Marrakesh in 1994.

The WTO set a regime of global trade liberalisation, bringing within its ambit not only agriculture, but also diverse matters including transport, communications, education, energy, water and waste collection (under the General Agreement on Trade in Services), as well as trade-related intellectual property rights (TRIPS) that effectively put monopoly control over intellectual property (patents, copyrights, etc.) into the hands of large private corporations. Only they have the capital clout to undertake and apply research in areas such as pharmaceuticals, agricultural seeds, pest control, fertilizers and now bio-genetics.

The WTO also established a sanctions-wielding dispute settlement mechanism and a consensus-based decision-making system that effectively put leverage in the hands of those countries (mainly the US and the EU) that could engineer a 'consensus' by combined carrot and stick measures over smaller countries. The big players moved quickly from trade liberalisation in goods and services towards demanding the liberalisation of public procurement and the removal of all restrictions on the movement of capital, including national treatment for the owners of capital. As one deft observer put it, the Uruguay Round outcome was a 'freedom charter' for big capital to move around the world uninhibited.

The 'special and differential' (S&D) treatment clauses in the Uruguay Round agreements soon became matters of further 'negotiation'. These principles now lie in a closed box of the WTO in conjunction with the so-called 'implementation issues'. Developing countries made efforts at reviving them at the WTO's 1999 Ministerial Conference in Seattle, and again in Doha two years later, but these were effectively rebuffed (in the meantime, larger issues with profound consequences for developing countries, such as the four Singapore issues, came to the fore).

Most developing countries have little time, energy, skill or capacity to remain united to fight off the burgeoning agenda of the WTO, leave alone defend the ignored principles like S&D and the now all but forgotten 'best endeavour' development provisions of Chapter VII of the GATT.

The WTO also gave the European Union the means to change its long-standing relationship with the African, Caribbean and Pacific (ACP) group of countries, most of which are former colonies. Until the 1990s Europe was mainly interested in cheap ACP raw materials and the Yaounde-Lomé Conventions provided for that. After the 1990s, the EU has sought to dismantle all barriers to trade liberalisation in the ACP countries. The Lomé Convention was replaced by the Cotonou Agreement, based on 'reciprocity' in conformity with, the EU argued, the 'WTO principles'.

Lessons from the Last Thirty Years of Experience

There is little doubt that between Stockholm in 1972 and Johannesburg in 2002, the tables were turned against the environmentalists' vision. We are back to *before* Stockholm, back to the unmitigated, even callous, exploitation of nature to satisfy the profit drive of corporations, and the greed of the rich consumers. The neo-liberal ideology is globally triumphant (for now). It has put the global market at the centre of all things – trade, finance, development, water, health, education, energy consumption, the atmosphere, the hydrosphere, the biosphere and the environment generally.

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The globalised market, however, does not function on its own. There are powerful interests behind it. This is the empire of the transnationals backed by the power of the US, Europe and Japan, and by institutions such as the World Bank, the IMF and the WTO. They pay lip service to development and the environment.

However, all is not lost. For example, the Kyoto Protocol on Climate Change is a significant gain, even if in the short run it is unlikely to change the pattern of consumption and commodification of energy. The market for 'energy credits' is designed to enable the rich countries to continue to consume energy as before. With the 'free energy market', the carbon cycle – forest, wetlands and, arguably, air – is commoditised.

The last thirty years have also provided deeper insights into the character of the UN. We now know that the UN is not world government. It is a forum for compromises, mirroring the global balance of forces. When push comes to shove, the most powerful nations dictate the terms. This is what happened in Rio, Johannesburg and Doha. On the other hand, the powerful do not have their way all the time. When the smaller nations unite (not often enough) they can make a significant impact on the decisions of the UN and the WTO. Universality – even if often discounted – is an important principle that gives weaker nations and peoples' movements a stamp of legitimacy. It also gives the UN and other institutions of global governance a measure of credibility.

On the positive side, the South has become bolder, especially in the WTO context. The fact that the big players have to manipulate the processes of decision-making in the WTO and use the heavy armoury of threats and blackmail is a sign of weakness undermining their legitimacy. At Doha, the South was forced (against the background of 9/11 and the 'war on terror') to agree to put on the agenda the four Singapore issues, as well as the issue of environmental goods. This was done largely under pressure from the EU, which wanted market access on environmental goods to placate its own industrialists. However, very little has moved on either the environment or the development front since Doha.

> Without a radical shift in the pattern of consumption and production, humanity is heading for an environmental catastrophe. That message must be made part of the vocabulary of the masses of people. The link between the environment and development movements must be also further consolidated. Joint campaigns against the inequity of the global system are still too few and too weak.

Other encouraging signs include the rise of peoples' and NGO movements. Both in the North and in the South they regularly challenge the ruling orthodoxy of the market, and pull down security scarecrows raised by their governments. Many Northern NGOs are coming down from their moral high-ground environmental isolationism to linking environment with development. They now have a better understanding of the nature of the system they are up against, and are seeking alliances in the South. Many have shifted ground from environmental purity to values such as equity and justice in the global trading system. Thus, despite the collapse of the Stockholm spirit, we now have a better and more widely-shared perspective of what can be done to challenge the hegemony of capital-led globalisation. 'Justice' in trade is now linked with an environmental perspective.

Things, however, do not look too good from the environmental or developmental perspectives. The past cautions us to not expect much from such initiatives as the Millennium Development Goals (MDGs) or the Africa Commission set up by the UK government (see related article on page 20). The ritual incantation of 0.7 percent of rich countries' GNP to development aid is just that. The global situation is depressing. Reason is on the retreat. Militarism has taken the place of civilised discourse in the UN. The international legal order based on centuries of evolution is now at the mercy of unilateralist interpretation by a single nation. Europe, which at times offered the possibility of a counter-force, has fallen in line with the US. In turn the US is now represented in the UN and the Bretton Woods institutions by its most hawkish warriors.

Alternative Visions

But things look the worst in times of change. Matters are congealing at the global level for a backlash against the empire. This is a slow process. In the meantime, what can be done?

First, although the environmental movement is considerably weakened and marginalised, its message remains clear and poignant. Unless there is a radical shift in the pattern of consumption and production, humanity is heading for an environmental catastrophe. That message must be reiterated and made part of the vocabulary of the masses of people. The movement still remains largely elitist, especially in the developing countries.

Second, the link between the environment and development movements must be further consolidated. It is still in its beginnings. Joint campaigns against the inequity of the global system are still too few and too weak.

Third, the poverty programmes of the rich countries must be unmasked. The leaders of poor countries pay lip service to the MDGs and rich countries' poverty-reduction programmes. Their innocence or wilful ignorance must be ruptured. The sooner they grasp the reality of global political dynamics, the better chances they have to listen to the voices of their own people.

Finally, alternative visions to capital-led globalisation are emerging in the interstices of the non-formal economies where people are experimenting with alternative survival strategies. They may not amount to much for now. They may not offer a grand design. But the idea that 'there is no alternative' to capital-led globalisation is daily challenged by thousands of mini-alternatives at the ground level that one day will merge into the next big movement of history. In the wilderness of militarism and unilateralism, there is hope that reason and good sense will finally prevail.

Yash Tandon is the Executive Director of the South Centre in Geneva. The views expressed here are personal and should not in any way be attributed to the South Centre. This article draws on a longer paper written by the author for ICTSD's Southern Agenda on Trade and Environment, available at http://www.trade-environment.org/output/southernagenda/s-e-africa/seafrica_thinkpiece.pdf.

A Holistic Approach to Fisheries, Trade and Sustainability

Fishing communities and fish stocks face unprecedented threats and challenges to their existence and sustainability. A further significant depletion in stocks and catches would jeopardise the food security of nearly a billion people for whom fish is the primary source of protein.

The increasing demand for fish products is matched by soaring production (primarily from aquaculture), with almost all the growth in supply and demand accounted for by developing countries. Seafood is now one of the most traded commodities in the world, flowing primarily from developing to developed countries.

Inadequately designed subsidies to fishing industries are widely recognised as one of the key economic drivers of over-exploitation of fisheries resources. Moreover, certain subsidies have contributed to market distortions by reducing developing countries' ability to compete. Negotiations are now underway at the WTO as part of the Doha Round to addresses some of these concerns (see p. 11).

Disciplining fisheries subsidies, however, will not be sufficient to ensure that fisheries trade will contribute to meeting sustainability objectives. There is a need to broaden the debate towards a more holistic approach to the fisheries/trade interface. For the poor of the developing world, sustainable fisheries exploitation and effective participation in the international market are closely linked to their livelihoods and economic development. Understanding about these linkages and constraints, however, remains limited. This has undermined developing countries' efforts to formulate their domestic and regional strategies in this area, and their ability to defend them in bilateral, regional and multilateral negotiations.

ICTSD has recently expanded its work in this area with a new phase of its project on Fisheries, International Trade and Sustainable Development, which aims to contribute to the crafting of multilateral and regional trade rules that are supportive of sustainable development in fisheries. To this end, the project will work towards supporting disadvantaged stakeholders to engage more effectively in the ongoing WTO negotiations on fisheries subsidies. It will also endeavour to generate knowledge, creative thinking and innovative solutions towards a holistic approach to addressing the linkages between the objectives of trade policy, fisheries management and sustainable development. In the longer term, the project will aim to strengthen analytical capacities at the national and regional levels in support of more coherent policy formulation at the interface of these areas.

Among resources expexted to be generated by the project, five studies will be commissioned on the priorities and concerns at the intersection of trade, fisheries and sustainability, identified in close co-ordination with a wide range of stakeholders engaged in the debate. In light of the urgency presented by the Doha mandate in the run up to the December WTO Ministerial Conference in Hong Kong, the studies will identify policy implications and options in direct relation to the ongoing negotiations, including on fisheries subsidies, market access, the multilateral environmental agreement-WTO relationship and eco-labelling. In addition, the studies will provide a comprehensive assessment of other issues at the fisheries-trade interface, such as the use and effectiveness of trade measures for fisheries management purposes, and the effects of bilateral access agreements and aquaculture on market structures, trade flows and resource availability.

The research findings will be discussed at a policy dialogue in autumn 2005 and synthesised into a policy paper for dissemination at the Ministerial Conference in December. These analyses will serve as a practical tool for policy-makers and influencers at the international, national and regional levels to identify potential policy options and how to advance them in ongoing negotiations and discussions on trade and fisheries.

For further information on this project, contact Heike Baumüller, Programme Manager – Environment and Natural Resources at hbaumuller@ictsd.ch. Additional resources can also be found at http://www.trade-environment.org/

The International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit organisation that aims to contribute to a better understanding of development and environmental concerns in the context of international trade.

ICTSD upholds sustainable development as the goal of international trade and promotes participatory decision-making in the design of trade policy. ICTSD implements its information, dialogue and research programmes through partnerships with institutions around the globe.

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Meetings of WTO Bodies*

May 2-4 Negotiating Group on Trade Facilitation

May 9-10 Dispute Settlement Body, Special Session *

May 10 Council for Trade in Goods

May 11-13 Committee on Trade and Development, Regular Session followed by Special Session *

May 17-18 Negotiating Group on Rules (regional trade agreements)

May 19 Dispute Settlement Body

May 19 Trade Negotiations Committee

May 23 Committee on Trade and Development

May 26-27 General Council

May 30 to June 3 Committee on Agriculture, Special Session*

May 30 to June 2 Negotiating Group on Rules

June 3 Committee on Agriculture, Regular Session

June 6-10 Negotiating Group on Market Access

June 13-14 Negotiating Group on Rules (regional trade agreements)

June 13-14 Negotiating Group on Trade Facilitation

June 16-17 Committee on Technical Barriers to Trade

June 16-17 Council for Trade-related Aspects of Intellectual Property Rights (TRIPS), Special Session*

** Special Sessions denote negotiations mandated in the Doha Ministerial Declaration.*

Other Meetings

May 2-6 Punta del Este, Urug. First Meeting of the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants http://www.pops.int/meetings/

May 3-4 Paris OECD Ministerial Council http://www.oecd.org

June 10-11 London G-8 Finance Ministers Meeting http://www.g8.gov.uk

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Dispute Settlement. 7 April 2005. United States – Measures Affecting the Cross-border Supply of Gambling and Betting Services. Report of the Appellate Body (WT/DS285/AB/R)

Negotiating Group on Market Access. 15 April 2005. Market Access for Non-agricultural Products. Communication from Argentina, Brazil and India (TN/MA/W/54)

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