



INTERNATIONAL CENTRE FOR
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DEVELOPMENT

BRIDGES

Weekly Trade News Digest

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TABLE OF CONTENTS

- India Loses WTO's First Intellectual Property Dispute
- WTO Confirms EU Banana Regime Violates Rules
- Corn Syrup: Sticky Issue for Mexico
- Fast-Track Delayed: Clinton Builds Muscle For Congressional Support
- Mini-Davos Celebrates Success of Mercosur
- The Big Five to Take Center Stage in Trade
- Events/Resources

INDIA LOSES WTO'S FIRST INTELLECTUAL PROPERTY DISPUTE

A World Trade Organization dispute resolution panel ruled in favor of the United States over India on September 5, finding that India had not adhered to the Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement. This was the first time an intellectual property case went through the WTO dispute resolution process.

The U.S. brought the complaint against India in July 1996, saying that India failed to set up a TRIPs mandated "mailbox" system for filing for patent protection. Under the agreement, during the ten year phase-in period (1995-2005), developing countries that do not have patent protection in place for pharmaceuticals and agricultural chemicals were to set up a system by which companies could file patent applications to be reviewed when patent protection is in place in the country of application. This "mailbox" system allows companies to preserve their original filing dates to substantiate the novelty of the product for which the patent is being sought.

The U.S. complained successfully to the WTO that India had failed to set up its "mailbox." India contended that it had set up an effective "mailbox" system for receiving and dating patent applications, and had in fact received applications in that "mailbox" from many, including U.S., patent applicants.

The WTO panel found that the Indian system failed to adequately inform the public of their intellectual property rights and that India's system "failed to establish a mechanism that adequately preserves novelty and priority" of patent applications, thus violating Article 70.8 of TRIPs. The "mechanism" in this case, the panel felt, had to be legislative: India failed to change its existing law requiring that chemical and pharmaceutical patent applications be ignored and nothing in existing law provided for the acceptance of foreign patent applications. India's argument that there was nothing in the Agreement specifying that the mechanism could only be "legislative" was ignored, when, in fact,

Article 1 of TRIPs allows countries to use both their "legal system" and "practice" as means of compliance with the Agreement.

"The message from the panel is clear: for developing countries benefitting from the phase-in of TRIPs obligations, the phase-in will not be a free ride," U.S. Trade Representative Charlene Barshefsky said of the panel's findings.

The panel found that India also violated Article 63 of TRIPs, dealing with transparency, and Article 70.9 for failing to provide for exclusive marketing rights. On the other hand, the Agreement does not require transparency provisions for "mailboxes," and no patents have yet matured for exclusive marketing rights in India.

"WTO panel finds in favor of U.S. in TRIPs dispute with India," *INSIDE U.S. TRADE*, September 12, 1997;

"Barshefsky hails WTO "precedent" in drug patent dispute with India," *INTERNATIONAL TRADE REPORTER*, September 10, 1997.

WTO CONFIRMS EU BANANA REGIME VIOLATES RULES

The WTO Appellate Body last week upheld an earlier decision by the Dispute Settlement Body that the EU banana import regime violates world trade rules. The EU regime grants preferential treatment to African, Caribbean and Pacific (ACP) developing countries, allowing a quota of their banana imports to enter the EU market tariff-free, while assigning more stringent licensing requirements to some Latin American imports than to ACP product. The U.S., prompted by Chiquita Brands International (a U.S. company with banana operations in Latin America), brought a complaint against the regime last year. The other complainants were Ecuador, Mexico, Guatemala and Honduras.

Although the report has not been made public, informed sources say the Appellate Body upheld the DSB's key findings. "It has been completely confirmed that the European Union's banana import regime violates WTO rules," a statement from the Honduran Industry, Trade and Tourism Ministry said. EU officials said more time was needed to study the decision before making comment.

The EU now faces difficult choices on how to deal with the Appellate Body's finding, which cannot be appealed further. If the EU maintains the regime - the option reportedly favored by the U.K., France and Spain - it could face compensation claims of up to US\$2 billion (according to U.S. estimates) between the five countries which brought the complaint. Other EU member states, led by Germany, would like the regime dismantled to make way for cheaper bananas in Europe.

The U.S. last month floated an informal idea to the EU, suggesting deficiency payments to Caribbean producers and a possible aid package to the least competitive producers in the Windward Islands. The idea has not yet been formally offered or considered. The U.S. has said that it and the four complaining Latin American countries would be willing to accept a regime in which ACP countries were given preferential (lower) tariff treatment, and added that a higher tariff on Latin American bananas would also be accepted. Alfredo Pinoargote, Ecuador's ambassador to the EU, noted that Ecuador should take the lead role in talks with the EU, as the U.S. does not grow or export bananas.



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The leaders of the four Windward Islands - for whom banana exports comprise more than half the total export revenue - were to meet this past weekend for an emergency summit on the WTO

ruling. "We have to be proactive, and we have to take decisions to ensure that our bananas continue to enjoy the benefits of the markets in which we are operating," said Edison James, Prime Minister of Dominica. Marshall Hall, Chairman of the Caribbean Banana Exporters Association (CBEA) commented last week that "The decision represents a failure by the WTO, in its blind pursuit of free trade, to take into account the interests of small developing countries. . . If, as a result of this ruling, the EU banana regime were undermined, the Caribbean could be forced out of the banana business with devastating consequences for the economic and social stability of these states." The CBEA urged the EU last week to seek an extended waiver for its banana regime.

The next meeting of the Dispute Settlement Body is on September 25, at which time the Appellate Body report is likely to be adopted. The EU will then have 30 days to reveal its plan of action - either to comply or compensate the U.S. and the other complaining countries. The U.S. is insisting on compliance: Informed sources say this is because it is quite difficult to assess compensation for trade damages to the U.S. since it does not export bananas to the EU.

"L'OMC condamne le regime europeen de la banane," LA TRIBUNE, September 9, 1997;

"U.S. seeks talks on EU banana regime as WTO confirms U.S. win," INSIDE U.S. TRADE, September 12, 1997;

"EU split on response to WTO banana ruling," FINANCIAL TIMES, September 10, 1997;

"Honduras celebrates WTO banana ruling against EU," REUTERS, September 8, 1997;

"Caribbean banana growers urge EU to seek waiver," REUTERS, September 9, 1997.

CORN SYRUP: STICKY ISSUE FOR MEXICO

The United States announced on September 4 that it has asked the WTO for consultations with Mexico over anti-dumping duties imposed this summer on U.S. imports of high fructose corn syrup (HFCS). To avoid WTO action, the Mexican Commerce Department (SECOFI), sugar industry officials and bottlers have apparently reached a deal with soft drink manufacturers to limit the use of HFCS in soda production over the next three years.

The deal would place a voluntary cap on the annual use of HFCS at 350,000 tons per year, and provide soft drink manufacturers such as Coke and Pepsi a discounted price on domestic sugar, estimated at a 20% savings over other commercial users. Manuel Perez Bonilla, secretary general of the National Association of Sugar Cane Growers, said the move was necessary to protect Mexican sugar producers from imports of U.S. HFCS. Perez said the government was not involved in any negotiations and that the deal was a "mutual business agreement between sugar cane growers and workers and the National Association of Soft Drink Manufacturers." Informed sources say that the National Sugar Chamber is quietly backing the deal.

U.S. Senate Agriculture Chair Richard Lugar (R-Indiana) and Senators Tom Harkin (D-Iowa) and Bill Barrett (R-Nebraska) wrote separate letters to Mexican Commerce Secretary Herminio Blanco Mendoza, asking for an explanation of reports that he and other Mexican government aides were promoting the quota. Senators Lugar and Harkin said such a move was a violation of the "letter and intent" of the North American Free Trade agreement (NAFTA). Senator Barrett warned that any kind of circumvention of NAFTA would cast doubt on renewed fast-track authority for the Clinton Administration. Barrett asked for a witness to be supplied for fast-track hearings to discuss the matter.

"Mexico sugar industry near deal with soda makers;" "U.S. lawmakers alarmed at new Mexico corn syrup plan," REUTERS, September 9, 1997.

FAST-TRACK DELAYED: CLINTON BUILDS MUSCLE FOR CONGRESSIONAL SUPPORT

The long-awaited fast-track proposal, expected to be presented by the Clinton Administration on September 10, was delayed until sometime this week. The "basic reason" given for the delay by Administration officials was that the White House needed time to consult with Senate and House Democrats, whose support the Administration desperately needs for passage of fast-track negotiating authority. Fast-track authority would grant the Administration the right to negotiate free trade agreements without subjecting them to congressional amendment before going to a vote.

The Administration faces a tough fight from a number of Democrats for renewing fast-track, the most vocal being Senate Minority Leader Tom Daschle. Mr. Daschle asked the Administration to submit with its fast-track proposal a Statement of Administrative Action (SAA), outlining how the President intended to negotiate with respect to a number of issues, chief among them labor and environment, as well as currency fluctuations.

Senator Daschle said last week that labor and environment were "very high on our priority list and need to be included in the fast-track debate." Daschle is looking for a commitment from potential trading partners that they will raise wages for workers, which could erode a main source of competitive advantage for less developed countries. Inclusion of such a labor provision is strongly opposed by Congressional Republicans.

Daschle wants greater enforcement of environmental laws to be tied to any free trade agreement. He cites the example of Mexico with respect to the enforcement of environmental provisions included in the North American Free Trade Agreement. "Just look at the towns along the Mexican border. Nothing has happened. There has been no cleanup," Daschle said last week.

The SAA request also asked for the matter of "consultations" and "corrections" to be outlined and submitted with the proposal. It is reported that some senators would like a consultation process which would allow changes to be made to agreements that have been initialed but not signed. As for corrections, Senator Bob Kerry said that the fast-track proposal should include provisions for corrections to be made to an agreement in cases when it is acknowledged by one or both sides that a particular point was not intended to be part of an agreement.

The Administration at present is between a rock and a hard place: while the votes it needs to win fast-track approval are tied to labor and environmental linkages, many trading partners have already said they would refuse to include such linkages in any free trade agreement the Administration hopes to negotiate.

In related news, it is possible that a bill to expand trade between the U.S. and sub-Saharan Africa could be packaged with the fast track legislation in Congress. There is also the possibility that another attempt at NAFTA-parity for Caribbean countries could be packaged with fast-track as well. The Administration is expected to submit its proposal no later than September 17, according to the U.S. Trade Representative.

"Clinton prepares for fight over "fast track" negotiation powers,"REUTERS, September 9, 1997;
"Senate Democrats prompt delay of fast-track bill until next week;" "Matsui sees possibility for including Africa bill with fast track," INSIDE U.S. TRADE, September 12, 1997;
"Clinton and fast-track," FINANCIAL TIMES, September 10, 1997.

MINI-DAVOS CELEBRATES SUCCESS OF MERCOSUR

Government and business leaders from the Mercosur countries met last week in Sao Paulo for the Mercosur Economic Summit. The summit was promoted as a "mini-Davos" in reference to the annual World Economic Forum held in Davos, Switzerland. The Mercosur regional trade agreement links the southern cone countries of Argentina, Brazil, Uruguay and Paraguay. Chile and Bolivia, associate members of the trading group, also attended.

The summit was intended to highlight the success of Mercosur since its inception in 1995: However, the celebration was marred somewhat by tiffs within the trading group. Argentina's congress passed a law earlier this month subjecting Brazilian sugar imports to the same tariffs as non-Mercosur sugar imports, upsetting Brazil. This was expected to be an important topic for some discussion at the usually informal meeting of business and government leaders.

Resentment towards Brazil within Mercosur is also cause for some tension. As the bloc's biggest economy with an annual US\$700 billion GDP - over twice that of Argentina, it is Mercosur's anchor. "For Argentina, Uruguay and Paraguay, Mercosur is a question of survival. For [Brazil] it is an exercise in globalization," a Brazilian business leader said. Brazil has been accused by its trading partners of being insensitive to how even minor adjustments to its economic policy can have a huge impact on other Mercosur economies.

Conflicts aside, Mercosur is regarded as a large success. Since 1995, trade among Mercosur countries has surged from US\$4 billion to US\$15 billion a year. Imports from non-Mercosur countries have increased to US\$55 billion, up from US\$25 billion in 1990, due in large part to economic reform and Mercosur-related trade liberalization.

"LatAm leaders to meet in Brazil at 'mini Davos'," REUTERS, September 8, 1997.

THE BIG FIVE TO TAKE CENTER STAGE IN TRADE

The World Bank released a report on September 9 saying that China, India, Indonesia, Brazil and Russia would "redraw the economic map of the world" in the next 25 years. The report, "1997 Global Economic Prospects And The Developing Countries," said that the "Big 5," which today combined account for only eight or nine percent of international trade, would by 2020 account for 22 percent of world trade. The World Bank estimates a growth rate of 5.8 percent a year for the Big 5, compared to a 2.5 percent growth rate forecasted for developed nations. Developing countries as a whole are expected to almost double their share of international trade, from 15.7 percent in 1992 to 29.1 by 2020. The Middle East, North Africa, sub-Saharan Africa and Latin America are expected to benefit from the emergence of the Big 5, as demand for primary commodities increases in the five nations.



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"Les cinq grands pays émergents vont transformer l'économie mondiale," LA TRIBUNE, September 9, 1997;

"Five developing countries will redraw global economy, according to World Bank,"
INTERNATIONAL TRADE REPORTER, September 10, 1997.

EVENTS/RESOURCES

1997 Global Economic Prospects And The Developing Countries (see above): Published by The World Bank. US\$20. To order write The World Bank, PO Box 7427-8619, Philadelphia, Pennsylvania, 19170-8619, USA. Ph: +01/ 703/661/1580; Fax: +01/703/661/1501; E-mail: books@worldbank.org.

Competition Policy in the Global Economy: Modalities for Corporations. Edited by Leonard Waverman, William S. Comanor and Akira Goto. Routledge, 1997.

Press Conference on the World Investment Report 1997: Transnational Corporations, Market Structure and Competition Policy. At the Palais des Nations in Geneva, Room 111, on September 18, 1997, at 10.30 a.m. For more information contact: Carine Richard-Van Maele, Senior Press Officer, UNCTAD, Geneva, Switzerland. Ph: +41/22/907/5806; Fax: +41/22/ 907/0043; E-mail: press@unctad.org.

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