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WTO RULES ON EU-INDIA MAILBOX DISPUTE

In a case identical to an earlier complaint brought by the U.S. against India's intellectual property regime, the WTO July 31 again ruled that India violated trade rules by failing to establish a so-called mailbox system for receiving patent applications for pharmaceutical and agro-chemical products. The EU brought the complaint to the WTO. Both the U.S. and EU argued that India had failed to meet commitments under the WTO Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement. These oblige the Indian government to establish a "mailbox" system under which the country could receive and date patent applications with the goal of granting patents in the year 2005 to those applicants which filed for them first under the system. Under the TRIPs agreement, established in the context of the Uruguay Round of the General Agreement on Tariffs and Trade, developing countries like India were given ten years to phase in their TRIPs obligations to provide full patent protections for pharmaceuticals and agricultural chemicals. India argued that it had established the mailbox system informally and that it should not be required to make legislative changes in order to carry out its TRIPs commitments.

The WTO panel ruled otherwise, stating that India is required to establish the mailbox system under Article 70.8(a); to notify the WTO of the system establishment under Article 63; and to provide a mechanism for granting future patent holders exclusive marketing rights under Article 70.9. Meanwhile, the Indian government continues to have internal difficulties agreeing how best to implement patent legislation in order to comply with the WTO ruling. The issue of implementation timing is quite divisive among Indian lawmakers, many of whom are opposed to any perceived infringement on its TRIPs phase-in period or who are opposed to TRIPs outright. Others in India's government want to make the necessary legislative changes to its intellectual property regime post haste, so as to make India a more attractive location for foreign direct investment.

The case has provoked urgent discussion within India on the intellectual property rights of indigenous communities, many of whose traditions and knowledge are highly desirable commodities to foreign and domestic firms competing in the high-value bio-products market. Noted Indian environmentalist Vandana Shiva is opposed to current intellectual property agreements for failing to protect such rights, making her point by considering the case of seed patents. "Diversity and perennality is our culture of the seed, but international property rights on seeds are criminalising our duty to the earth, and to each other, by making seed saving and seed exchange illegal. The attempt to prevent farmers from saving seed is not just being made through new IPR laws but also through the new genetic engineering technologies," according to Ms. Shiva. Ms. Shiva pointed out that many genetically engineered seeds patented by a division of Monsanto Corporation are engineered to ensure they cannot germinate on harvest, forcing farmers to buy seeds every season.

"WTO panel upholds ruling against India over lack of 'mailbox' patent system," INTERNATIONAL TRADE REPORTER, August 5, 1998; "The jinxed mailbox," DECCAN HERALD (India), August 3, 1998; "Biopiracy reaches epidemic proportions," IPS, August 6, 1998; "Kerala tribe accuses Indian biologists of stealing knowledge," PANOS, August 7, 1998.

WTO COMMITTEE ON TRADE AND ENVIRONMENT MEETS

The Committee on Trade and Environment (CTE) met on 23-24 July in Geneva. During this session, the CTE, chaired by Ambassador Chak Mun See (Singapore), held an information session with Secretariats of Multilateral Environmental Agreements (MEAs). It also briefly addressed the issues of domestically prohibited goods and of TRIPs.

The aim of the MEA information session was to deepen the CTE's understanding of the linkages between the multilateral environment and trade agendas. The Chair noted that the key question of concern to the CTE was the use of MEA-mandated trade measures against States who are not parties to multilateral environmental agreements.

Eight MEA Secretariats sent representatives to attend the session: the UN Framework Convention on Climate Change; UNEP Chemicals (which administers the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and the ongoing negotiations for a global treaty on persistent organic pollutants (POPs)); the UN Economic Commission for Europe (which administers the Protocol on Persistent Organic Pollutants and the Convention on Public Participation and Access to Information on Environmental Matters); the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal; the Convention on Biological Diversity; the International Tropical Timber Organization; the Intergovernmental Forum on Forests; and the International Commission on the Conservation of Atlantic Tunas.

UNEP posed four questions to the CTE. These concerned (i) what the CTE considers is implied by the term 'trade measures' in the context of MEAs; (ii) which MEA measures the CTE considers consistent with WTO rules; (iii) what the CTE views as sustainable trade policies and how these policies can help strengthen MEAs; and (iv) a request for guidance from the CTE, in co-operation with MEA Parties, to explore the possibility of a "framework" to clarify the relationship between MEAs and the WTO.

The latter point has been around in different forms for several years, and at the CTE's July meeting, a number of countries reiterated their 1996 positions, reinforcing the feeling that the CTE has made little progress on the MEA issue since then. Statements made in July's CTE meeting suggested that not only little headway is being made on the issue but that proposals regarding the WTO and MEAs continue to pose new conditions of policy constraint on MEAs. This underlines the importance for Convention Secretariats to take an active role in defining conditions for a framework with the WTO.

In the past, developing countries have regarded attempts to reconcile MEAs in the WTO as a northern issue and resisted any proposals that would entail changes of rules such as Article XX. While other delegations noted that the framework issue was worth pursuing, developing country reticences remain on the whole unchanged. Meanwhile, UNEP and WTO might move forward on institutional co-operation.

ICTSD Internal Files.

WTO TRANSPARENCY DISCUSSIONS - UPDATE

The question of transparency is currently of great importance for the WTO, as it is for NGOs working on trade and sustainable development issues. Given the current conjunction of three related elements, the moment is propitious for NGO activities aiming at improving WTO transparency and civil society relations. The three elements are :

- (1) The May 1998 Ministerial Declaration, which reflects the consensus of WTO members on the need to improve the WTO's public image and improve its transparency. The Declaration is serving as a basis for discussions between WTO Members on transparency and civil society relations.
- (2) The WTO's 1996 decision on document derestriction is up for review.
- (3) The WTO dispute-settlement understanding is currently under review, to be completed by the end of 1998.

The NGO collective message "Civil society statement on openness, transparency and access to documents in the WTO" prepared under the auspices of ICTSD, has now been endorsed by 102 organisations. In July this message was sent to Ambassador John Weekes of Canada in his capacity as Chair of WTO's General Council, as well as to representatives of all WTO member countries. No formal reaction has been received yet to the collective message, other than its acknowledgement by Ambassador Weekes.

During the July meeting of the WTO General Council the issues of transparency and WTO-civil society relations were discussed (see BRIDGES Weekly Trade News Digest, vol. 2, no. 27). These initial discussions were broad, and different country positions are expected to be more clearly enunciated in meetings this autumn. Although the exact schedule of forthcoming meetings in which transparency and civil society relations are likely to be raised is not yet known, one can expect them to be raised during the 24-25 September Special Session of the WTO General Council, intended mainly to discuss preparations for the 1999 Ministerial Meeting.

The Special Session will be preceded, on 18th September, by an informal General Council meeting. Both the informal session and the Special Session are expected to finish left-over work such as the

appointment of a new Director General, deciding on the WTO senior management structure and the issue of electronic commerce, before moving on to issues such as the Third Ministerial Meeting and transparency in the WTO.

Around the time of the General Council special session, senior CAIRNS group representatives from capitals are expected to be present in Geneva, and to discuss the issue of transparency at the WTO. Given its geographical composition and relative weight in world trade, a consensus amongst this group on the issue of transparency could be important.

The General Council will meet again in regular session this autumn, probably in October. Between early September and then, WTO Members are likely to discuss the issue of transparency as it relates to document availability, dispute-settlement and WTO-NGOs relations, although the format, timing, location and formality of these meetings are as yet undefined.

No dates have yet been fixed for the Dispute Settlement Review, but substantive discussions on issues submitted by member governments are likely to start towards the end of September or early October.

ICTSD Internal Files.

EU ANTI-DUMPING THREAT PROVOKES INDIA, EGYPT

India last week opened proceedings at the WTO against the EU over the EU's move to impose permanent anti-dumping duties on imports of unbleached cotton fabrics. The European Commission (EC) has proposed replacing existing anti-dumping duties on unbleached cotton from India, China, Pakistan, Egypt and Indonesia with minimum price undertakings. However, if the countries do not comply with the minimum price scheme, which the five countries have indicated they would not, duties ranging from 4 to 15 percent could be imposed. Anti-dumping measures are intended to eliminate or discourage foreign firms from selling goods in export markets at below production costs or at a loss in order to out-sell local manufacturers.

The move by India is intended to put heavy pressure on the EU Council of Ministers to vote against the imposition of permanent anti-dumping duties. The EU is currently divided on the issue: Italy, France, Spain and Portugal favour the duties. The U.K., Ireland, the Netherlands, Austria, Denmark, Finland, Germany and Sweden lashed out against an EC decision to impose duties, calling the EC proposal "regrettable" and warned of "doubtful consequences" should permanent duties be imposed. The UK estimated that 7,000 jobs could be lost if the duties were imposed. Meanwhile in Cairo, Egypt, where Egyptian and EU officials are meeting on a proposed partnership agreement, a top trade official said the threat of permanent duties could "poison" partnership talks between the two sides. The negotiator noted that the EU is yet to technically prove its case that Egypt or the other four exporters are actually dumping goods into Europe.

In related news, China last week announced plans to abolish purchasing price controls over cotton next year, which could bring China's cotton prices much lower and encourage Chinese textile producers to buy domestic rather than imported cotton. The move is intended to bolster China's textile industry, which in recent years has suffered heavy losses. However, the end of price controls could have devastating consequences for China's cotton farmers. In Australia, the government announced last week that it would freeze wool sales from its stockpile in an effort to bolster falling

wool prices on the international market. Trade observers warned that the move could both threaten Australia's credibility as a reliable wool supplier - opening the door to competitors, and perhaps encouraging buyers to shift to cheaper synthetic fibres for the long term.

"India takes EU to WTO over 'dumping' of cotton fabrics," JOURNAL OF COMMERCE, August 7, 1998; "Cotton plans 'may cost thousands of jobs,'" FINANCIAL TIMES, July 30, 1998; "EU cotton duties 'poison' partnership talks-Egypt," REUTERS, August 3, 1998; "China to end controls over cotton prices," FINANCIAL TIMES, August 3, 1998; "Australia limits wool sales to bolster prices," FINANCIAL TIMES, August 6, 1998.

BRAZIL SPEAKS OUT ON AGRICULTURE

Brazilian officials last week again pledged to make agriculture a focal point for free trade between it and trading partners. "I have no doubt," Brazilian Industry and Commerce Minister Jose Botafogo said, " that at our next meetings with the European Union and over the Free Trade Area of the Americas (FTAA), our attitude will be much stronger with regard to the dismantling of protectionist barriers to commodities and other agricultural goods." Brazil and its Southern Cone Common Market (MERCOSUR) partners Argentina, Uruguay and Paraguay feel they have a competitive advantage in agriculture given excess regional capacity to produce farm goods. The bloc wants access to the EU and U.S. markets and a chance to compete fairly in the global market, which MERCOSUR and a number of developing economies argue is hampered by agricultural subsidy programs in the EU and U.S. For the EU, which must finalise a negotiating framework for free trade talks with MERCOSUR, the issue of expanded access for less expensive MERCOSUR agricultural imports is a serious threat to talks as a number of EU countries fear the effects of agricultural liberalisation for EU farmers.

In other Latin American news, the pressures of globalisation threaten to disrupt a major Brazilian ecosystem. In the Pantanal region of Fazenda Rio Negro, Mato Grosso do Sul, a thriving ecosystem, home to a number of endangered species, is under threat from expanded soya bean production on the surrounding plateau. Pesticides and silt runoff harms the rivers and wildlife. At the same time, MERCOSUR wants to build export capacity by dredging and straitening the Rio Negro so to make it easier to get soya beans to market, which would significantly alter the Pantanal ecosystem. In addition, a group of international companies is looking to build a gas pipeline across the Pantanal to connect the Bolivian gas resources to the Paraguay market.

However, the Internet could play a role in saving the Pantanal region from these threats. First, local residents can sell products over the Internet that support sustainable economic development, such as naturally fed beef and eco-tourism packages. Second, the Internet now allows environmental groups in countries around the world to exchange information about corporate practices and projects in each other's countries on an almost immediate basis. The result, according to Glenn Prickett with Conservation International's corporate program is that, "Customers, regulators and shareholders everywhere can now reward or punish companies for what they do in faraway places like the Pantanal."

"Brazil vows to take tougher stand in trade talks," REUTERS, August 4, 1998; "A Brazilian ecosystem meets globalisation," NEW YORK TIMES, August 8, 1998.

LABOUR AND ENVIRONMENT MOVES

The Clinton administration plans to continue its effort to get the World Trade Organisation and other fora to consider environmental and labour issues, Andrew Samset, deputy undersecretary for labour, Bureau of International Affairs, said last week. Samset, speaking at the American Bar Association's annual conference, said the Clinton administration will be watching implementation of the June 1998 ILO Declaration on Worker Rights (see BRIDGES Weekly Trade News Digest, vol. 2, no. 23), which established new reporting and monitoring procedures. Samset said that labour issues were at play in different international institutions, including the Organisation for Economic Cooperation and Development and the Free Trade of the Americas' negotiations, but that he thought that it would take a generation or so before multilateral consensus would be reached on how the labour/trade question should be dealt with on a world-wide basis.

At the same meeting, Jonathan P. Hiatt, general counsel for American Federation of Labour-Congress of Industrial Organisations (AFL-CIO) pointed out that the effects of globalisation are causing problems for workers in developed and developing countries. His group and others are working to ensure that binding worker rights linkage be built into any U.S. fast-track renewal measure.

In related news, a report released last week by the International Confederation of Free Trade Unions (ICFTU) found that the number of illegal workers in the world is growing by more than six million people per year, currently accounting for 30 million people world-wide. Also according to the report, there are more than 42 million legal migrant workers in the world, the composition of whom are becoming "more temporary and more female," according to the ICFTU. The majority of migrant workers are moving between countries of the South and not into industrialised countries, the report found: it said that migrant workers provide "a source of substantial profit for both their country of origin and the host country." The exploitation of migrant labour, ICFTU general secretary Bill Jordan said last week, "is a challenge for solidarity and the trade union movement. Globalisation of the economy is fostering competition between workers, and driving down worker conditions and wages."

"Illegal migrant workers increasing by 6m a year," FINANCIAL TIMES, August 4, 1998; "Clinton administration committed to labour/environment link in WTO", INTERNATIONAL TRADE REPORTER, August 5, 1998.

CFC SUPPORTING PRODUCERS

The Amsterdam-based Common Fund for Commodities (CFC) is proving itself to be a highly effective international financial institution. The CFC - with 106 member countries plus three institutional members, funds smaller scale projects than other international finance institutions like the World Bank and African Development Bank, but does so in manner hailed by observers as unrivalled for cost effectiveness and, more important, social effectiveness. CFC projects - such as developing improved shipping methods for commodities or combating coffee wilt disease threatening coffee crops in African countries, are only undertaken if the CFC is convinced that the project will improve the socio-economic development of commodity producers in the developing countries in which it operates.

CFC projects focus on taking cost out of commodity production, essential in the current environment of deteriorating commodity prices. According to CFC managing director Rolf Boehrke, "[CFC] has to be an idea-generating, facilitating organisation. Our target is the improvement of the economic basis of commodity producers, many of whom belong to the poorest straits of the population, and to enhance the competitiveness of commodities." CFC intends projects to benefit more than one country via expertise and best practices: for example, earlier this year CFC held a workshop for participants from 17 African countries studying ways to turn cassava from a subsistence crop into a marketable export crop. "We are keen to ensure that the gains of one country are not at the expense of another," Mr. Boehrke said. CFC projects have focused on a number of commodity crops, including cotton, sugar, zinc, bananas, olive oil and jute.

"CFC ploughs cash into fertile ground," FINANCIAL TIMES, August 8, 1998.

IN BRIEF- WTO ACCESSION UPDATE: NEPAL, CHINA-TAIWAN; AFRICA DEBT-FOR-NATURE SWAP; METHYL BROMIDE BAN

Nepal has formally applied for membership of the World Trade Organisation. Govind Prasad Regmi, in charge of preparation for WTO membership said his country had submitted a memorandum on its foreign trade regime to the WTO last month. A Nepal Commerce Ministry statement said membership of the global trade organisation would remove the uncertainty that dogs Nepali trade and secure transit rights of the landlocked Himalayan kingdom. Nepal currently benefits from the generalised system of preferences (GSP) for its exports of ready-made garments and hand-knotted woollen carpets in Western markets. "Nepal pursues formal request for WTO membership", REUTERS, August 6, 1998.

President Joaquim Chissano has suggested a debt-for-nature swap under which Africa's foreign debt would be converted into special funds to be allocated to nature conservation programmes, including coastal areas. President Chissano was speaking on 23 January during the opening of a three day conference in Maputo of African Environment Ministers, part of the "Pan African Conference on the Integrated and Sustainable Management of the African Coast". Chissano added that "given the close links between the conservation of natural resources and the macro-economic situation in our countries, it is important to find more innovative and practical ways to ensure that the exploitation of coastal resources does not have negative and irreversible impacts on the environment". Chissano expressed the Mozambican government's concern over the vulnerability of the country's 2,500 kilometres coastline. The country's coastal waters were victim to maritime accidents, pollution, and illegal fishing, often practised by foreign ships, equipped with internationally forbidden fishing systems. "Mozambique's President proposes debt-for-nature swap", CENTER OF CONCERN, August 5, 1998.

With China failing so far to make an acceptable offer to join the WTO, officials in Geneva have been talking - quietly of course - about backing away from a deal that keeps Taiwan from joining the WTO before mainland China. The 1992 understanding stipulated that Taiwan « should not accede » to the WTO before the People's Republic of China. But that understanding is running up against impatience with China, as well as the view that Taiwan should be rewarded for its market-opening offers. This is a controversial idea, given China's resolute claim to sovereignty over Taiwan. "WTO may ignore deal and let Taiwan join before China", JOURNAL OF COMMERCE, August 4, 1998.

The European Commission has approved a proposal to ban use and production of the toxic, ozone depleting substance methyl bromide by 2001, bringing Europe in line with the U.S. phaseout date. This is earlier than required under the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. The proposals, which will form part of a new European Union regulation on ozone depleting substances, must now also be approved by the European Parliament. Since the U.S. and Europe are the major users of methyl bromide, this new proposal means that much of the worldwide use of this pesticide will end in less than three years.

"Europe Proposes to Ban Methyl Bromide in 2001", PESTICIDES ACTION NETWORK NORTH AMERICA, August 3, 1998.

EVENTS & RESOURCES

• EVENTS

WTO/UNEP CONFERENCE ON SUSTAINABLE TOURISM ON SMALL ISLAND DEVELOPING STATES: This meeting will be held from 7-10 September 1998 in Mauritius. For information contact: UNEP IE; tel.: (33 1) 44 37 14 50; fax: (33 1) 44 37 14 74; e-mail: jaloisi@unep.fr

CONFERENCE ON WORLD TRADE AND THE ENVIRONMENT: This symposium will be held on 10 September 1998 from 7:00 - 9:00 pm. in the Stimson Room of the House of the Association of the Bar of the City of New York, 42 West 44th Street, New York, New York. For more information contact the New York Law School: tel.: (1 212) 431 2893.

COMMISSION ON INVESTMENT, TECHNOLOGY AND RELATED FINANCIAL ISSUES (third session). This UNCTAD Meeting will be held in Geneva, from 14-18 September, 1998. For information, contact UNCTAD, tel: (41 22) 917 4533, fax: (41 22) 917 0057.

BUSINESS STRATEGY AND THE ENVIRONMENT: This event, to be held from 17-18 September 1998 in Leeds, UK, focuses on what industry is doing to improve its environmental performance, and covers strategic environmental management, eco-efficiency, supply chain management, and sustainable development. For information, contact: Conference Manager, ERP Environment, P.O. Box 75, Shipley, West Yorkshire BD17 6EZ, UK; tel.: (44 1274) 530 408; fax: (44 1274) 530 409.

UNEP FOURTH INTERNATIONAL ROUNDTABLE MEETING ON FINANCE AND THE ENVIRONMENT: This meeting will be held at Queen's College, Cambridge, UK, from 17-18 September 1998, with the theme "Profitability and Responsibility in the 21st Century." For information contact: D. Vorhies, tel. (41 22) 917-9288; fax (41 22) 796-9240; e-mail: vorhiesd@unep.ch or L. Descano; tel. (1 212) 783 6928, e-mail: Linda.Descano@ssb.com Web-site: www.unep.ch/eco/

COMMISSION ON TRADE IN GOODS AND SERVICES, AND COMMODITIES (third session). This UNCTAD Meeting will be held in Geneva from 28 September - 2 October, 1998. For information contact UNCTAD, tel: (41 22) 917 5747, fax: (41 22) 917 0057.

• RESOURCES

"Recent Testimony from the U.S. General Accounting Office," Federal News Service, July 1998. This testimony reviews all the assets available to the International Monetary Fund and explains the accounting tactics that enable the U.S. Treasury Department to claim the Fund has only approximately \$10 billion available. It is crucial information for those trying to rebut Clinton administration claims that the Fund is starved for money. Available from: Office of Public Affairs, General Accounting Office, 441 G Street NW., Washington, DC 20548, USA, tel: (1-202) 512 4800, web: www.gao.gov

"Developing countries are combating climate change - Actions in developing countries that slow growth in carbon emissions." Energy Policy, 1998, No. 3, pp.233-237. W.V. Reid and J. Goldemberg (US and Brazil) observe that levels of greenhouse gas emissions from developing countries are projected to exceed those of developed countries by 2020. They review recent policy changes in developing countries and find that these countries are already taking little appreciated steps that reduce the rates of growth in carbon emissions. Indeed, since the 1992 signing of the UNFCCC, carbon emissions savings in developing countries may be greater than those attained in industrialised countries.

"Joint Implementation and the question of 'additionality' - a proposal for a pragmatic approach to identify possible joint implementation projects." Energy Policy, 1998, Vol. 26, No. 4, pp. 275-279. H. Rentz suggests that the theoretical concept of joint implementation and the idea of reducing GHG emissions at least cost is "still charming" and, at least for economists, no revolution. However one of the most critical aspects regarding joint implementation is the question of 'additionality'. Some argue that a 'real' joint implementation project may not have any commercial value at all, others propose that the value of emissions reduction credits shall bring about a positive return on investment where otherwise it would have been negative.

"Green businesses: Perspectives from management and business ethics." Society and Natural Resources, 1988, Vol. 11, No. 3, pp. 259-266. D.B. Johnson (US) notes that management scholars, business ethicists and social scientists are challenged to conceptualise and measure characteristics of the "green" business and the sustainable corporation. The article discusses two approaches identified in recent management literature on the "greening" phenomenon and places these approaches in context with major components of social science literature on green businesses. A set of 16 empirically tested hypotheses describing the "new ecological paradigm organisation" is included as a started point for future research.

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Comments and suggestions are welcome and should be directed to: Ricardo Meléndez-Ortiz, Executive Director, ICTSD, Geneva Executive Center, 13 chemin des Anémones, 1219 Châtelaine, Geneva, Switzerland; email: ictsd@iprolink.ch; voice: (41-22) 979-9492; fax: (41-22) 979-9093. BRIDGES Weekly Trade News Digest© can be found at the ICTSD web page: <http://www.ictsd.org/html/mailbox.htm>.

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