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LEAD STORIES

WTO RULES NEGOTIATIONS: DEEP DIVIDES PREVAIL ON HARMFULNESS OF FISHERIES SUBSIDIES

At a 16-18 October session of the WTO Negotiating Group on Rules, Members continued their debate over whether and, if so, to what extent WTO subsidy rules needed to be improved with respect to government support granted to the fishing sector. Korea argued that "no reasoned determination" had so far been made on the "causality between fisheries subsidies and the depletion of stocks". However, the US -- supported by 'Friends of Fish' Argentina, Australia, Iceland, New Zealand and Peru -- countered Korea's argument by pointing to the Plan of Implementation adopted at the World Summit on Sustainable Development (WSSD) in September, which it said called for countries to eliminate harmful fisheries subsidies "exacerbating the overexploitation of fish stocks". Also at the Rules talks, negotiations focused on antidumping and subsidies issues in general, with new submissions tabled inter alia by the US, India and Brazil.

Bad subsidies or bad resource management?

In its submission (TN/RL/W/17, downloadable at <http://docsonline.wto.org/>), Korea principally joined Japan in its argumentation put forward at the July Rules meeting (see BRIDGES Weekly, 10 July 2002, <http://www.ictsd.org/weekly/02-07-10/story1.htm>) that no special disciplines were required for the fisheries sector; that some 95 percent of all fish stocks would be harvested in exclusive economic zones (EEZ) anyway; and that it considered inadequate fisheries management to be "the principal cause of stock depletion". Therefore, Korea concluded, the existing WTO Subsidies Agreement was sufficient to deal with trade practices in fish and that the "burden of proof" was thus on the other side, trade sources reported. For its part, the US in its communication entitled "Adverse Trade and Conservation Effects of Fisheries Subsidies" (TN/RL/W/21) pointed to figures provided in studies conducted by the Organisation for Economic Cooperation and Development (OECD) as well as the Asia-Pacific Economic Cooperation (APEC) forum which showed that global fisheries subsidies amounted

to "between 15 and 20 percent of aggregate dock-side revenues." Moreover, it made the case that excess investments in harvesting capacity would "encourage a tendency to 'free ride' and 'cheat', which would serve to undermine effective [fisheries] management."

Japan reportedly said it supported the thrust of the Korean paper, but that, on the US paper, it was gravely concerned by the inclusion of the subject of fish stock depletion. This, according to Japan, was not covered by the Doha mandate. The EC -- which is currently working on reforming its common fisheries policy (CFP) to a more pro-environment and pro-development regime (see BRIDGES Weekly, 28 June 2002, <http://www.ictsd.org/weekly/02-05-28/inbrief.htm>) -- stated that it was still not persuaded about whether fisheries subsidies would really be the root cause of stock depletion. Canada, which is concerned that technical debates on fisheries subsidies could have "spillover effects" on its provincial softwood lumber programmes, said that it was still uncertain about the need for sector-specific disciplines. WTO newcomer China stated that aquaculture played an important part in sustainable development -- an aspect that must be recognised by the Rules Group, China said.

In anticipation of the Rules meeting, environmental NGO (non- governmental organisation) WWF renewed its call on governments to eliminate "the billions of dollars in wasteful subsidies that drive the depletion of the world's fish stocks". Offering "substantive solutions to government leaders," WWF released an issue brief entitled "Turning the Tide on Fishing Subsidies: Can the WTO play a positive role?" in which it set out six key principles for making the negotiated fisheries subsidy disciplines supportive of conservation and sustainable development. These include: phasing out harmful subsidies, while taking account of developing countries needs; including "fishing access agreements" in the negotiations; promoting inter-agency cooperation with the UN Food and Agriculture Organization (FAO) and the UN Environment Programme (UNEP); and to emphasise transparency and public participation.

Antidumping

The US -- for the first time in the Rules Group -- presented papers on antidumping (TN/RL/W/24, W25 and W27). In its submission "Basic concepts and Principles of the Trade Remedy Rules" (TN/RL/W/27), the US outlined four "core principles" to guide the Group. Here the US, which had originally been reluctant to include a WTO review of antidumping -- or trade remedy -- rules in the Doha mandate, made clear that "the strength and effectiveness of the trade remedy laws" should be maintained; that "trade remedy laws must operate in an open and transparent manner"; that the focus in the negotiations should be on the

"underlying trade-distorting practices"; and that dispute settlement panels and the Appellate Body should refrain from "impos [ing] on national authorities obligations that are not contained in the Agreements."

Addressing the US' emphasis on trade-distortive practices, a Chilean official stated, "there are saying that before you look at the trade remedy rules, you have to look at the trade-distorting practices," adding that "even for Chile, antidumping measure themselves are trade- distorting." The EC expressed doubt that going down the US road of examining "root causes" of trade remedies would be productive. Referring to the US' fourth "core principle" (standard of review), a Japanese official commented that, "we think that the panels and the Appellate Body have been working properly."

Chile and Japan are both members of an informal coalition favouring tougher rules constraining the use of antidumping measures dubbed the "Friends of Antidumping", which further comprises Brazil, Colombia, Costa Rica, Hong Kong, Israel, Mexico, Norway, Singapore, Korea, Switzerland, Thailand, and Turkey.

Subsidies

Partly based on earlier proposals tabled in the WTO Committee on Subsidies, Brazil tabled a comprehensive submission (TN/RL/W/19) calling for improving WTO rules on countervailing measures to the same level as the Antidumping Agreement. US, Norway, Japan, Switzerland, New Zealand, Chile, India, the EC, Australia, Canada and Mexico welcomed this first contribution on countervailing measures tabled at the Rules Group.

Background

The Negotiating Group on WTO Rules was established after Members agreed in Doha, Qatar last November to negotiate on the Antidumping and Subsidies and Countervailing Measures (SCM) Agreements together with rules on regional trade agreements in an effort to clarify and improve the respective disciplines and procedures (Doha Declaration paragraph 28). Para. 28 makes special mention of "disciplines on fisheries subsidies", which are further referred to in the negotiating mandate on trade and environment (para. 31). In addition, para. 28 provides that the rules negotiations shall take into account the special needs and interests of developing countries.

The WWF paper is downloadable at http://www.worldwildlife.org/commerce/fishing_subsidies2.pdf.

ICTSD reporting; "Dumping: Proponents Welcome, Criticise US Paper For WTO Rules Negotiations on Antidumping," WTO REPORTER, 18 October 2002; "Dumping: US Challenges 'Friends Proposal On Reform Of WTO Antidumping Rules,'" WTO REPORTER, 21 October 2002.

DEVELOPED COUNTRIES SEEK TO RELEGATE MOST S&D PROVISIONS TO RELEVANT WTO BODIES

In an ongoing quest for 'progress' in the review of special and differential treatment (S&D) provisions, the WTO's Committee on Trade and Development (CTD) met in special sessions on 17, 18, 21, 22, & 23 October. Generally speaking, agreement-specific proposals were not responded to favourably by developed countries -- who reportedly made requests for further clarifications, commented on the inefficiency and/or impracticality of the solutions proposed, and suggested that the topics were best dealt with outside the CTD (i.e. in the relevant WTO bodies). Discussions covered the following agreements (date in brackets): Subsidies & Countervailing Measures (21st), Anti-Dumping (21st), Technical Barriers to Trade (TBT) (17th), Safeguards (23rd), and Services (23rd). Cross-cutting issues, including the latest proposal from Hungary, were addressed at the 18 October session, which also took up elements of the 7 October agenda (see BRIDGES Weekly, 9 October 2002, <http://www.ictsd.org/weekly/02-10-09/story2.htm>).

Ongoing discussions around a monitoring mechanism for S&D were taken up an informal 22 October session.

Members have been at odds with the issue of S&D since the first CTD meeting on the matter earlier this year. At the Doha Ministerial in late 2001, ministers agreed that "all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational." As such, Members were to examine how to make the provisions more effective and/or mandatory by 31 July 2002. However, Members failed to reach an agreement by that time (see BRIDGES Weekly, 6 August 2002, <http://www.ictsd.org/weekly/02-08-06/story2.htm>) and the deadline was extended to 31 December. In addition, cross-cutting elements were incorporated into the work programme, to the disgruntlement of most developing countries.

General comments on the process

According to one trade source, responses from the major trading powers (the US, EC, Canada, Switzerland, Australia & Japan) effectively implied

lengthy delays in proceeding with the mandated review of the S&D provisions. These Members held steadfastly to the belief that most of these issues were not mandated for the CTD and thus should be relegated to the relevant 'negotiating' bodies (whether the CTD special sessions are in fact a negotiating body is also debated by Members). The US reportedly repeated its statement that the CTD special sessions were not mandated to alter the WTO agreements.

Developing countries expressed great disappointment with what they view as the seemingly 'intractable' stance that developed countries have taken so far. Haiti, Kenya, Pakistan and Zambia adamantly stood by their position that the CTD was indeed the appropriate forum. In responding to a question regarding whether they felt movement was possible on any of the items under the 31 December deadline, one developing country delegate said, "it [was] still too early to speculate, while another offered personal sentiments that movement was 'unlikely', and alluded to the fact that if this were the case, the impact on the overall progress of the Doha round would be 'negative and strong'.

Subsidies & countervailing measures

In the discussions on subsidies and countervailing measures (SCM), two proposals from groups of developing countries were addressed: TN/CTD/W/1 & TN/CTD/W/3/Rev.2 (the first is available at <http://docsonline.wto.org/>, the other is not yet de-restricted). TN/CTD/W/1 involves removing the word 'may' from Article 27.1 of the SCM Agreement, which reads "Members recognise that subsidies may play an important role in economic development programmes of developing country Members," and lays down the basis for S&D in the SCM agreement.

Developed countries (Australia, US, Switzerland, Japan) raised numerous flags on this proposal, disagreeing with the assumption that subsidies are useful for development, and stating that it would change the rights and obligations of Members. Countering this argument, the delegate from Pakistan reportedly commented that he would certainly welcome such a position from the developed countries in the agriculture negotiations. The EC agreed in principle with their developed country colleagues, but indicated it would be willing to consider removing "may" if "certain" were included before the word 'subsidies'.

On the proposals found in the Africa Group submission (TN/CTD/W/3/Rev.2), relating to various mechanisms for subsidy reduction exemptions and/or extensions found in Article 27, most developed countries stated that sufficient mechanisms were already in place and that the proposed transition periods were too long to be

given to all developing countries. Developed country Members stated unequivocally that all of these elements belonged in the Negotiating Group on Rules and not the CTD -- to which most developing countries disagreed.

Anti-dumping

On anti-dumping (AD), Members dealt with 2 elements from the Africa Group proposal (TN/CTD/W/3/Rev.2) -- both related to Article 15 of the AD Agreement -- which broaches the special treatment that developed countries are to show developing countries before imposing anti-dumping duties. Here the proposal asks for substantive and procedural elaboration of the provision, and specifically for the definition of key terms.

Developed countries (EC, Switzerland, US) replied again that the proper forum for this was the Negotiating Group on Rules and/or the AD Committee. Switzerland also noted its belief that the proposals on this article were not very clear and would not contribute to the desired objective of operationalising the agreement. Zambia reportedly queried later in the discussions whether the CTD special session was merely there to discuss proposals without taking any action, and expressed frustration that it had nothing concrete to report to its least-developed country (LDC) constituents (Zambia is the current representative for LDCs).

Technical barriers to trade (TBT)

On the two proposals for discussion under TBT (TN/CTD/W/2 & W/3/Rev.2), developed countries felt that the first, on mandatory and preferential technical assistance for developing countries to meet technical standards, was unreasonable and undesirable. On the Africa Group requests for a new fund to provide technical assistance specifically for TBT obligations and for impact assessments of technical standards on developing countries before implementation, developed countries were opposed. Canada, Japan, and Norway were averse to a new fund, with Norway deeming the impact assessment proposal inappropriate, as it would 'alter the rights and obligations of Members'. Switzerland, Canada and the EC felt these matters were better taken up in the TBT Committee.

Cross-cutting issues

The brief 18 October session picked up where the 7 October session ended (see link above), and saw a quick introduction by Hungary of their concept paper on preferential trading schemes (TN/CTD/W/16, searchable at <http://docsonline.wto.org/>). Little discussion occurred on the issue of utilisation of current S&D provisions or the 'multi-tier vs. single-tier of rules' debate. In revisiting the principles & objectives

discussion, the US & EC reportedly commented that development was a dynamic process and thus required equally dynamic solutions.

At press time, no information was available on the informal 22 October session dealing with the monitoring mechanism, or the 23 October session on services and safeguards. Chair Ransford Smith (Jamaica) indicated at the 21 October meeting that he would start holding consultations as of 31 October, which is the deadline to submit detailed responses to the agreement-specific proposals.

ICTSD reporting.

OTHER NEWS

WTO STALEMATE PERSISTS OVER DEVELOPING COUNTRY IMPORTS OF GENERIC

Meeting last week from 14-17 October, delegates from both Geneva-based trade missions and capitals were unable to reach a compromise around compulsory licensing options for developing countries under the WTO's Doha mandate on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and public health. Despite a Chair's paper that aimed to reach convergence among Members' disparate views on the subject, a notable split remained between developed and developing countries (see BRIDGES Weekly, 25 September 2002, <http://www.ictsd.org/weekly/02-09-25/story2.htm>).

According to paragraph 6 of the Doha Declaration on the TRIPs Agreement and Public Health, the TRIPs Council must find a solution to the problems countries may face in making use of compulsory licensing (i.e. circumventing IP rights, for instance by producing generic versions of licensed pharmaceuticals) if they have too little or no pharmaceutical manufacturing capacity. The TRIPs Council is mandated to report to the WTO General Council on this by the end of 2002. Article 31(f) of the TRIPs Agreement says production under compulsory licensing should be predominantly for the domestic market. However, many developing countries facing public health problems are unable to produce pharmaceuticals with their existing domestic capacity.

Chair's proposal

At the meeting, TRIPs Council Chair Amb. Eduardo Pérez Motta (Mexico) tabled a proposal ("Possible elements of a Paragraph 6 Mechanism") that aimed to bridge the gap between Members' positions. Developing countries are seeking greater leeway in their ability to import pharmaceuticals from the cheapest source, while developed countries, particularly the US and Switzerland, are loathe to grant patent-free pharmaceutical access to all developing countries.

The Chair's proposal suggested, *inter alia*, that least-developed countries (LDCs) could have automatic access to the cheapest source of drugs, while other developing countries could use the system if they proved they did not have adequate pharmaceutical industries of their own. This was rejected by the Africa group of countries -- who were supported by Brazil and India -- who said all developing countries should have the right to use the cheapest source for drugs, regardless of patent rights.

According to sources, most developing countries objected to any Member being ruled ineligible in advance, and several objected to a decision that would create "new categories" of Members at the WTO. Countries such as Hong Kong and Singapore -- while classified as developing countries at the WTO -- said they would oppose criteria based on such things as income levels, while Hungary and Bulgaria expressed their concern that transition economies with lower incomes should not be excluded from access to cheap medicines.

For its part, Brazil was concerned that the talks were backsliding. "We're going backwards," said one Brazilian delegate. "They [the Quad group of Canada, the EC, Japan and the US] are trying to put in language that would be more restrictive than what now exists under TRIPs. It doesn't look very good." The delegate was referring, *inter alia*, to an attempt by the Quad to restrict foreign suppliers of generic medicines produced under compulsory licenses to those located only in developing countries. Developing country sources said the Quad proposal seemed aimed at restricting the ability of generic producers in industrialised countries to produce for developing countries, thereby reducing the possibility of medicines being illegally diverted to rich country markets.

While the chair said his paper was an effort to present a balanced basis for further work, Cuba, Ecuador and Venezuela said they felt the consultations had not been as transparent and inclusive as they would have liked. The Chair responded by saying that any delegation wanting to participate in the consultations was free to

contact him, and that this practice would continue, with the aim of producing a proposal by the next formal TRIPs Council meeting on 25-27 November (the last meeting scheduled for this year). A group of developing countries including Cuba, India and South Africa said it would also prepare a document for the discussions.

Although the issue is intended to be resolved by the end of this year, developing countries say the delay could stall overall negotiations.

The General Council, to which the TRIPs Council must report its progress on compulsory licensing, is scheduled to convene on 9-11 and 13 December.

For further information on TRIPs and pharmaceuticals, visit:

http://www.wto.org/english/tratop_e/trips_e/pharmpatent_e.htm. For the Doha mandate on TRIPs and Public Health, visit:

http://www.wto.org/english/tratop_e/dda_e/dohaexplain_e.htm - trips.

ICTSD reporting; "Developing Countries Accuse Quad Group Of Seeking New Bars on Access to Medicines," WTO REPORTER, 17 October 2002; "WTO members delay patent decision," IAFRICA.COM, 17 October 2002.

AFRICAN MINISTERS POINT TO TRADE-DEVELOPMENT LINKAGE AT NEPAD MEETING

On 19-21 October, African ministers met for three days in Johannesburg to discuss the implementation of the New Partnership for Africa's Development (NEPAD). Nearly 500 delegates attended the meeting that hosted, beside government ministers, central bank governors, academics and representatives from business and civil society groups. It was the largest meeting since the establishment of NEPAD during the inaugural meeting of the African Union in Durban in July (see BRIDGES Weekly, 10 July 2002, <http://www.ictsd.org/weekly/02-07-10/story6.htm>). The conference was convened by the UN Economic Commission for Africa (ECA).

According to the ministerial statement released upon conclusion of the meeting, "deeper integration into global markets remains a priority" for Africa. Ministers reaffirmed that "trade will continue to generate essential resources to finance development", and underscored "the need to rejuvenate agricultural exports, identifying ways to regain market share". The statement further elaborates, "while commending the efforts by the WTO to launch a development round of trade negotiations, more needs to be done for trade liberalisation. In this

respect, we urge our international partners to remove all further barriers to trade- particularly OECD [i.e. mostly developed country] agricultural subsidies, tariff peaks, and numerous non-tariff barriers." Ministers also called for the provision of duty-free and quota-free access for products originating from African countries and for the simplification and harmonization of rules of origin "to help ensure that African countries benefit from the market opportunities granted, particularly in value-added production".

Ministers further stated that more needed to be done to improve African representation in global trade talks. In this context, they gave their support to an initiative by the ECA to open an office in Geneva in order to support African delegations to the WTO and to strengthen African negotiating positions.

During the meeting, there was a special focus on the issue of country peer reviews, which are considered to be vital to the success of NEPAD. Ministers said peer reviews would be crucial in attracting foreign direct investment, and could replace part of the financial surveillance that is now done by international organisations such as the IMF and World Bank. However, concrete decisions on the peer reviews were not taken at the meeting, and it remains unclear how NEPAD will be implemented at the country level.

Heads of state from 15 African countries are scheduled to meet in November to further discuss NEPAD.

For further information on the conference of ministers, as well as the ministerial statement, visit <http://www.uneca.org/conferenceofministers/>.

"Experts Bullish On Promise of Africa's Economies," ALLAFRICA.COM, 17 October 2002; "Still No Clear Way Forward for NEPAD," ALLAFRICA.COM, 21 October 2002; "African Ministers Meet to Hammer Out NEPAD Economic Plan," DEVNEWS, 21 October 2002; "NEPAD: economic development put in spotlight," EC, DG DEVELOPMENT NEWS, 21 October 2002; "Africa: Meeting Set to Discuss Implementation of NEPAD," UNWIRE, 17 October 2002.

TBT CONVENES ON TECHNICAL ASSISTANCE, LABELLING & IMPLEMENTATION

At a 17 October meeting of the WTO Committee on Technical Barriers to Trade (TBT), delegates inter alia held active discussions on matters relating to technical assistance for developing countries. Many interventions were based on a Secretariat document (G/TBT/W/186, available at <http://docsonline.wto.org/>) that summarised

responses received to a questionnaire circulated to Members in July 2002. The Secretariat questionnaire was designed to prioritise the technical assistance needs of developing countries.

In its submission on capacity-building (G/TBT/W/189), Mexico emphasised that assistance to developing countries be directed at advising them on the creation of a quality assurance system -- such as that based on the International Standardization Organisation ISO -- saying that the most critical problem in the area is the high turnover of staff in departments responsible for implementing the TBT Agreement. The EC also submitted a list of technical assistance activities funded by the European Commission and by EU member states (G/TBT/W/188). Members agreed to hold a technical assistance seminar in March, while technical assistance will also be the theme of the next TBT Committee scheduled for 18 and 20 March 2003.

Labelling

A large part of the meeting was given over to a debate over the EC's new directive (#753) on wine labelling, due to enter into force on 1 January 2003. Many new-world wine producers, such as the US, Mexico, New Zealand, Argentina, Paraguay, Canada, Australia, Peru and Uruguay expressed concern about the proposed regulation, which would tighten rules around the use of terms such as 'chateau' for wine sold in the EU. Complaining Members requested further delay in the implementation of the regulation or its complete withdrawal.

There was little discussion on eco-labelling, despite the fact that many Members had told an 8-9 October meeting of the Committee on Trade and Environment that issues brought forward by Switzerland on labelling for environmental purposes should be discussed in the context of the TBT Committee (see BRIDGES Weekly, 17 October, <http://www.ictsd.org/weekly/02-10-17/story4.htm>). Members did agree to hold a 'learning event' to discuss labelling issues later on in 2003.

Implementation

Referring to tirets 33 and 34 of the Doha Decision on Implementation, India brought forward two implementation concerns. Firstly, that Article 11 of the TBT Agreement shall be made obligatory so that technical assistance and cooperation is provided to developing countries. Secondly, that acceptance by developed-country importers of so-called 'self-declaration' regarding adherence to standards by developing-country exporters. Some developed countries resisted the first concern, saying it was a moot point, as technical assistance is already a standard part of TBT Committee work. On the second

concern, Canada said it had a case study on self-declared adherence and would present it during the Third TBT triennial review next year, while the EC said it had some experience on self-declared adherence, some good and some bad.

The European Communities (EC), Norway and Australia supported the observership of the Convention on Biological Diversity (CBD); however, no decision was taken on this as Members agreed to await further consultation of the General Council.

The next TBT meeting will take place on 18 and 20 March 2003.

ICTSD reporting.

IN BRIEF

CARIBBEAN ISLANDS MAKE PROGRESS ON S&D IN FTAA

According to sources, on 14 October, Caribbean countries obtained what some officials have termed a "breakthrough" in the process of seeking special and differential treatment (S&D) in the Free Trade Area of the Americas (FTAA). At a conference in Trinidad between US and Caribbean trade negotiators, the small island states gained recognition of their special situation vis-à-vis other larger members of the 34-member area, around which negotiations are set to conclude in 2005. "The US is fully aware that Caribbean countries face very special problems," said US Trade Representative Robert Zoellick after the meeting. "They are generally small economies. They are island economies. We want to bring them along the process of growth of openness and trade, but if we are going to do that effectively we have to recognise the special problems and challenges, and be able to design solutions for them." A US official at the Trinidad meeting said that ultimately about 24 of the 34 countries in the FTAA could be granted derogations, though he stated this could impede implementation of the agreement as countries negotiated concessions. Central American countries are also seeking S&D, and requests for similar treatment from countries such as Bolivia and Ecuador was also highly possible, said one Caribbean government official.

FTAA trade ministers are set to meet in Quito, Ecuador on 1 November to review progress in the FTAA negotiations.

"Caribbean states struggle to make size count," FT, 14 October 2002.

MERCOSUR MOVES TOWARD FREE TRADE ARRANGEMENTS WITH OTHER REGIONAL AREAS

According to Brazilian minister of development, industry and foreign trade Sergio Amaral, South American trade bloc Mercosur is drafting a preferential tariff agreement with the Caribbean Communities (Caricom) and the Central American Common Market (MCCA). Amaral met with representatives of the Caribbean and Central American trade blocs in Brazil on 22 October to establish a schedule for talks. It has been proposed that Mercosur concede a 30 to 40 percent reduction on its import tariffs on goods from Caricom and MCCA. Amaral said this could be the first step toward a free trade zone treaty joining the three regions of the American continent. Meanwhile, negotiations between Mercosur and the Andean Community towards a free trade agreement are reaching their final stages. The two blocs are aiming to conclude negotiations before the end of 2002. Mercosur encompasses Brazil, Argentina, Uruguay and Paraguay while Chile and Bolivia are associated members. The MCCA encompasses El Salvador, Nicaragua, Costa Rica, Honduras and Guatemala, while the Caricom bloc brings together 15 Caribbean nations, among them Jamaica, the Bahamas and Haiti. The Andean Community consists of Bolivia, Colombia, Ecuador, Peru and Venezuela.

"S. American trade bloc seeks accord with C. America, Caribbean," KYODO NEWS, 23 October 2002.

NAFTA TRIBUNAL FINES CANADA 6 MILLION OVER LAW BANNING TOXIC WASTE EXPORTS

On 21 October, a North America Free Trade Agreement (NAFTA) dispute panel awarded damages of over CDN 6 million (plus interest) to US investor S.D. Myers, resulting from a temporary Canadian government ban on the export of hazardous polychlorinated biphenyl (PCB) wastes in 1995 (rescinded in 1997). S.D. Myers filed the claim in 1998 -- one year after the US government enacted its own ban on the import of such materials. Under NAFTA's controversial investor-to-state dispute mechanism (found in Chapter 11 of the agreement), any foreign investor from Canada, Mexico,

or the US can bring a lawsuit directly against any of the other two governments in the agreement (i.e. these rights are not available for domestic investors). The damage award comes after a November 2000 NAFTA ruling that found the Canadian government in breach of two of Chapter 11's clauses: National Treatment (1102) and Minimum Standard of Treatment (1105). In February 2001, Canada asked the Federal Court to set aside the tribunal's decision on the grounds that elements of the decision exceeded the tribunal's jurisdiction and were made in conflict with Canada's public policy. The Canadian Federal Court has yet to make a final ruling, and Canada's Trade Minister Pierre Pettigrew alluded to the importance this ruling might have on the final outcome, stating "[it] is particularly important to [study the ruling closely] in light of the fact that we have asked the Federal Court to review this case." Canadian watchdog group, the Council of Canadians, alleges that the ruling contravenes Article 4.9 of the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which commits parties (of which both countries are, though the US has not yet ratified) to only export such wastes should the state of export not have the ability to deal with the waste in question. Canada, the Council of Canadians point out, does have such facilities for recycling PCB's.

"NAFTA Tribunal Awards Damages in S.D. Myers Case," GOVERNMENT OF CANADA PRESS RELEASE, 21 October 2002; "NAFTA trade rules trump environment - again" COUNCIL OF CANADIANS, 21 October 2002.

WTO IN BRIEF

MORE JOIN THE FRAY ON AUSTRALIA-BRAZIL VS. EC SUGAR SUBSIDIES

16 countries -- mostly members of the African, Caribbean and Pacific (ACP) group -- have requested third-party status in the simmering dispute between Australia and Brazil, on the one hand, and the EC, on the other, over the latter's export subsidies for sugar (see BRIDGES Weekly, 2 October 2002, <http://www.ictsd.org/weekly/02-10-02/story1.htm>). In addition to providing export subsidies to European sugar producers, the EC imports approximately 1.6 million tonnes of sugar per year from the ACP at preferential market access rates: an arrangement that ACP states see as potentially under threat from the dispute. Australia and Brazil say that the high prices for sugar produced in the EC's domestic market allow

European producers to sell out of quota sugar on the world market at prices below the cost of production. Brazil further charges that the EC's export subsidy programme effectively transfers the cost of the ACP preferential trade arrangement to other countries like itself. In the event the dispute is not resolved by the end of November, Brazil and Argentina will have the right to initiate a dispute with a WTO dispute settlement panel. Colombia has joined on the side of Brazil and Australia, while Barbados, Belize, Congo, Cote d'Ivoire, Fiji, Guyana, Jamaica, Kenya, Madagascar, Malawi, Mauritius, Swaziland, Tanzania and Zimbabwe have sided with the EC. Due to its concerns in export subsidies, Canada has also indicated its interest as a third party to the dispute.

"More states take sides in WTO sugar battle," REUTERS, 18 October 2002; "WTO Sugar Dispute Attracts Interest As 16 Countries Request to Participate," WTO REPORTER, 21 October 2002.

US UNLIKELY TO FILE AG DISPUTES AFTER 'PEACE CLAUSE' EXPIRATION

According to sources, US officials said on 17 October that their government had no plans to formally challenge trading partners' WTO non-compliant agricultural subsidies after the expiration of the so-called 'peace clause' at the end of 2003. The 'peace clause' [Article 13 of the Agreement on Agriculture (AoA)] provides that under certain circumstances, farm subsidies that comply with AoA disciplines are exempted from being challenged under WTO agreements -- i.e. the Subsidies and Countervailing Measures Agreement -- until 31 December 2003. However, senior trade advisor at the US Agriculture Department (USDA), Robert Spitzer, pointed out that his department continued to be concerned about certain Members' agricultural subsidies, as in the case of China for its cotton subsidies. Nevertheless, no specific subsidy practices had so far been identified which were to be addressed after the 'peace clause' expiration, officials pointed out. Sources indicate the US is likely to urge other WTO Members to agree to let the 'peace clause' expire as provided for in the AoA. Other Members such as the EC, however, are advocating for an extension of the clause. Several members of the Cairns Group of agriculture exporters -- notably Argentina and Brazil-- have been stressing that they may initiate dispute settlement proceedings against the subsidy programs of the EC et al. after 2003 unless the WTO agriculture negotiations make sufficient progress. Brazil has currently requested formal consultations with

the US under the WTO dispute settlement mechanism on the latter's subsidies to its cotton producers, while both Australia and Brazil have requested consultations on the EC's export subsidies for sugar.

ICTSD reporting; "Agriculture: US Not Planning to Launch WTO Ag Cases Following Lapse of 'Peace Clause' Next Year," WTO REPORTER, 17 October 2002.

BRAZIL AND INDIA ARGUE FOR FLEXIBILITY FOR DEVELOPING COUNTRIES VIA INVESTMENT AGREEMENT AMENDMENTS

In a 9 October submission to the Council for Trade in Goods and the Committee on Trade-Related Investment Measures (TRIMs) (G/C/W/428, available at <http://docsonline.wto.org/>), Brazil and India advocate for amending the TRIMs Agreement with in order to incorporate specific provisions that will provide developing countries with the necessary flexibility to implement development policies. Their submission is in the context of the mandated review of the TRIMs Agreement, as referred to in tiret 40 of the Doha Decision on Implementation. Their paper proposes extending the range of situations in which developing countries are allowed to deviate temporarily from the provisions of TRIMs Article 2 (national treatment). India and Brazil put forward a list of seven instances in which developing countries should be able to use TRIMs, including to "stimulate environment-friendly methods or products and contribute to sustainable development". The next meeting of the Council for Trade in Goods is on 8 November.

ICTSD reporting.

EVENTS & RESOURCES

EVENTS

For a more comprehensive list of events in trade and sustainable development, please refer to ICTSD's web calendar at: <http://www.ictsd.org/cal/index.htm>. If you would like to submit an event, please email events@ictsd.ch.

Coming Up This Week: 24-30 October

23-24 October, Los Cabos, Mexico: ASIA-PACIFIC ECONOMIC COOPERATION (APEC) FORUM TRADE MINISTERS MEETING. To be followed by the APEC Economic Leaders meeting. For further information, contact the APEC Mexican secretariat, tel: (52) 55 54 88 28 60; fax: (52) 55 54 88 28 54; Internet: <http://www.apec2002.org.mx/>.

23-25 October, WTO, Geneva, Switzerland: FARMERS' SUMMIT ON WTO NEGOTIATIONS. Farm leaders from Asia, Europe, Africa and America will gather to discuss the objective of achieving "fair and equitable agricultural trade rules at the WTO." Among the participating organisations are Norges Bondelag, COPA-COGECA, the Canadian Federation of Agriculture, JA Zenchu, ROPPA, Federated Free Farmers (Philippines) and the Union Suisse des Paysans. For further information, contact Peter Ungphakorn, WTO Information and Media Relations Division, WTO, Geneva, Switzerland; tel: (41-22) 739-5412.

25 October, Los Cabos, Mexico: ASIA-PACIFIC ECONOMIC COOPERATION (APEC) FORUM BUSINESS LEADERS MEETING. For further information, contact the APEC Mexican secretariat, tel: (52) 55 54 88 28 60; fax: (52) 55 54 88 28 54; Internet: <http://www.apec2002.org.mx/>.

26-27 October, Los Cabos, Mexico: 10TH ASIA-PACIFIC ECONOMIC COOPERATION (APEC) FORUM ECONOMIC LEADERS MEETING. Inter alia, participants will discuss APEC's contribution to the WTO Doha mandate, including building support for Doha's timeline and deadlines, trade facilitation, and corporate governance measures. For further information, contact the APEC Mexican secretariat, tel: (52) 55 54 88 28 60; fax: (52) 55 54 88 28 54; Internet: <http://www.apec2002.org.mx/>.

29-30 October, Harare, Zimbabwe: REGIONAL WORKSHOP ON 'INTERFACE BETWEEN TRADE AND REGIONAL PARTNERSHIP AGREEMENTS- WTO, COTONOU, AGOA AND NEPAD: ARE THEY CONFLICTING OR COMPLIMENTARY?' The objectives of the workshop are to bring out the myths and realities of the above agreements as part of the initiatives of demystifying policy debate for the benefit of stakeholders. The workshop will examine the linkages between the WTO and other partnership agreements from the point of view of people-centred development in Africa. It is being jointly organised by CUTS-Africa Resource Centre, Institute for Global Dialogue, and MWENGO. For further information, contact: Sajeev K.S. Nair; email: cutsarc@zamnet.zm or Thomas Deve,

MWENGO; email: Thomas@mwengo.org.zw; tel: +260-1-224992; Internet: <http://www.cuts.org/>.

29-30 October, Ciespal, Diego de Almagro Avenue N32-133, Quito, Ecuador: FORUM: TOWARDS SUSTAINABILITY IN THE AMERICAS. Organised by the Ecuadorian Center for Environmental Law -- CEDA with the support of Fundacion Futuro Latinoamericano - FFLA. Discussions on key issues related to sustainable development within the framework of the Free Trade Area of the Americas (FTAA) will be held. Discussions will cover investment, intellectual property rights and biodiversity, market access, sustainability assessments, and civil society participation and transparency. These discussions will take place prior to the 1 November FTAA Ministerial meeting, with the objective of providing negotiations with some of the major civil society concerns regarding the sustainability impacts of the hemispheric trade integration process. For further information, contact: CEDA - CENTRO ECUATORIANO DE DERECHO AMBIENTAL; Eloy Alfaro 17-70 y Rusia, tercer piso; Telefaxes: (593-2) 2231-410/1; (593-2) 2238-609; email: ceda@uio.satnet.net; Internet: <http://www.ceda.org.ec>.

1 November, Quito, Ecuador: FREE TRADE AREA OF THE AMERICAS (FTAA) 2002 FTAA MINISTERIAL MEETING. The Government of Ecuador will host the seventh FTAA Ministerial Meeting. Trade Ministers from the 34 FTAA member countries will meet to review the progress achieved to date and to give guidance to negotiators for the final phase of the negotiations. The Ministerial meeting will be preceded by the twelfth meeting of the FTAA Trade Negotiation Committee (TNC), which will take place on 28-31 October, also in Quito. Other events being held in Quito in parallel with the official meetings, are: the Americas Business Forum (ABF); "Towards Sustainability in the Americas" organised by the Ecuadorian Centre for Environmental Law (CEDA); and "Another America is Possible" organised by the Hemispheric Social Alliance. For further information on the conference or these other meetings, visit http://www.dfait-maeci.gc.ca/tna-nac/civil_society-e.asp.

WTO Events

An updated list of forthcoming WTO meetings is posted at: http://www.wto.org/english/news_e/meets.pdf. Please bear in mind that dates and times of WTO meetings are often changed, and that the WTO does not always announce the important informal meetings of the different bodies. Unless otherwise indicated, all WTO meetings are held at the WTO, Centre William Rappard, rue de Lausanne 154, 1211 Geneva, Switzerland.

24-25 October, Geneva, Switzerland: WTO COMMITTEE ON ANTI-DUMPING PRACTICES.

24 October, Geneva, Switzerland: WTO GATS COMMITTEE ON SPECIFIC COMMITMENTS. Issues to be discussed are incorporation of new commitments into the Members' Services schedules and scheduling additional commitments under Article XVIII of the General Agreement on Trade in Services (GATS).

25 October, Geneva, Switzerland: WTO COUNCIL FOR TRADE IN SERVICES. Issues to be discussed include transitional review under paragraph 18 of the protocol of accession of the People's Republic of China and re-opening of the fifth protocol for acceptance by the Republic of Bolivia.

28 October, Geneva, Switzerland: WTO COMMITTEE ON SAFEGUARDS.

28 October, Geneva, Switzerland: WTO SPECIAL SESSION OF THE COUNCIL FOR TRADE IN SERVICES.

29-30 October, Geneva, Switzerland: WTO SUBSIDIES NOTIFICATION SEMINAR.

30 October, Geneva, Switzerland: WTO COMMITTEE ON BUDGET, FINANCE AND ADMINISTRATION.

31 October, Geneva, Switzerland: WTO COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES. Issues to be discussed during the meeting include new and full subsidy notifications submitted previously.

Other Forthcoming Events

4 November, London, England: THE JOHANNESBURG SUMMIT: WHAT HAPPENED AND WHAT DO WE DO NEXT? Organised by the Royal Institute of International Affairs. This meeting will discuss what was (and what was not) agreed about the future of international co-operation on sustainable development at the Johannesburg Summit. The speakers will examine how the agreements made can best be taken forward by national governments and by all the other actors (including businesses, NGOs, scientists, inter-governmental organizations and local governments) who were at the Summit and whose involvement is vital if sustainable development is to move from being on the world's wish list to being a concrete reality. For further information or to register, contact the Royal Institute of International Affairs, London, England; email meetings@riia; tel: +44 20 7957 5732 / 22.

7 November, Bern, Switzerland: ACCESS TO GENETIC RESOURCES AND FAIR AND EQUITABLE SHARING OF BENEFITS ARISING OUT OF THEIR UTILIZATION. The goal of this workshop, organised jointly by the Swiss Federal Office for Agriculture and the Swiss Agency for environment, forest and landscape, is to allow the participants to become familiar with the topic of resource genetics through a good knowledge of the International Treaty on Plant Genetic Resources and the Bonn guidelines, as well as to define more precisely the stakes and implications related to the access and sharing of benefits for the different partners at the national and international level. Deadline for registration is 25 October. For further information, visit http://www.umwelt-schweiz.ch/buwal/eng/fachgebiete/fq_biotechnologie/information/meeting/ABS/index.html.

7 November, Geneva, Switzerland: FORUM ON SMALL ISLAND DEVELOPING STATES AND AGRICULTURAL TRADE LIBERALIZATION. Organised by UNCTAD/Commercial Diplomacy Programme. Meeting will be host to a number of different topics in this area including: Challenges facing small island LDCs; Challenges facing single-commodity exporters; and Economic adjustment process and agricultural liberalisation. The forum will take place in the Palais des Nations, Conference Room XXV. For further information, contact: Ms. Miho Shirotori, UNCTAD, Geneva, Switzerland; fax: (41-22) 917 0247; email: miho.shirotori@unctad.org.

15-16 November, Mexico City, Mexico: SOCIAL MOVEMENTS MEETING IN PREPARATION FOR THE 5TH MINISTERIAL OF THE WORLD TRADE ORGANIZATION/CANCUN. Meeting will discuss social movement strategies with regard to the WTO. Issues will include: social movements towards a central, protagonist role in the process; devoting more time to working sessions (discussions and working groups) than to speeches in plenaries; opening discussion of topics, analyses, tactics and proposed action plans; and space for participation by the diverse sectors critical of, and impacted by, the WTO, including rural peoples, indigenous peoples and those of African ancestry, unions, environmentalists, anti-privatisation groups, fisherfolk, urban movements, etc. Meetings will be held at the Hotel Bamer, Mexico City; tel: (52-55) 55 21 90 60 70. For further information on this conference, contact Operational Secretariat, Vía Campesina, Honduras: viacam@gbm.hn.

26 November, Amsterdam, The Netherlands: LINKAGES: HOW DO WE BRIDGE THE GAP [ON TRADE, ENVIRONMENT AND LABOUR]? The purpose of this meeting is to conduct a dialogue between protagonists and antagonists on the contentious issues of labour and environmental

standards in trade agreements. Trade diplomats, representatives of inter-governmental agencies, civil society organisations, academia, research institutions, trade unions and media are requested to participate. Similar meetings have been organised in the past at London, Washington D.C., Geneva, Brussels and Nairobi. For further information, visit <http://www.cuts.org/linkages-index.htm>.

9-13 December, Geneva, Switzerland: SIXTH MEETING OF THE CONFERENCE OF THE PARTIES TO THE BASEL CONVENTION ON THE TRANSBOUNDARY MOVEMENT OF HAZARDOUS WASTES (COP-6). The meeting will provide an opportunity for sharing ideas and building partnerships between governments and organisations focused on the control of transboundary movements of hazardous wastes and their disposal. Exhibition stands will also be available to groups that wish to present material pertaining to the subject matter. For further information, visit <http://www.basel.int/>.

RESOURCES

If you have a relevant resource (books, papers, bulletins, etc.) you would like to see announced in this section, please forward a copy for review by the BRIDGES staff to resources@ictsd.ch. Submissions of publications to ICTSD's documentation centre would also be welcomed (see mailing address below).

PUTTING HEALTH FIRST: CANADIAN HEALTH CARE, TRADE TREATIES AND FOREIGN POLICY. A summary report prepared by the Canadian Centre for Policy Alternatives consortium on globalisation and health for the Commission on the Future of Health Care in Canada, October 2002. The report urges Canadian governments to act quickly on health care reform before trade- treaty obstacles make such reforms more difficult and expensive. It discusses the implications of Canada's trade obligations (including NAFTA and the WTO) for health care reforms affecting health insurance, access to home care, and coverage of prescription drugs. It includes recommendations for health-care-reform measures, changes to Canada's trade policies and new approaches to strengthening coherence among Canadian health, trade and foreign policies. Principal authors of the summary report are Matthew Sanger and Scott Sinclair. To obtain a copy of this publication, visit <http://www.policyalternatives.ca/> or <http://www.healthcarecommission.ca/>.

"Long-term sustainability between environmental and man-made goods," in JOURNAL OF ENVIRONMENTAL ECONOMICS AND MANAGEMENT 44 (2, 2002): 329- 345. By Reyer Gerlagh B. C. C. van der Zwaan. Substitutability

between environmental and man-made goods plays a major role in the sustainability debate. The notion of substitutability covers a continuous spectrum, with perfect substitutability at one end and poor substitutability at the other. In this paper, it is shown that if economic growth sustains, a sharp distinction emerges between perfect and poor substitutability, without any intermediate interpretation of substitutability. If poor substitutability prevails, environmental resources will eventually constitute the major part of total consumption value. We relate our results to "Baumol's disease," and assess the implications of this phenomenon for the compensation of environmental losses.

TRADE-RELATED TECHNOLOGY DIFFUSION AND THE DYNAMICS OF NORTH-SOUTH AND SOUTH-SOUTH INTEGRATION (World Bank Paper WPS# 2861). By Maurice Schiff, Marcelo Olarreaga and Yanling Wang. June 2002. This paper examines the impact on total factor productivity of North-South and South-South trade-related research and development (R&D) spillovers. It is the first to do so at the industry level for developing countries. The main findings are: North-South and South-South R&D flows have a positive impact on total factor productivity, though the former is larger; R&D-intensive industries benefit mainly from North-South R&D flows, while low R&D-intensive industries benefit mainly from South-South R&D flows. These results have implications for dynamic comparative advantage and for the dynamics of North-South and South-South regional integration. To obtain a copy of this paper, visit <http://www.worldbank.org/research/trade/archive.html>.

"Environment's New Role in the U.S. Trade Policy," in **TRADE, EQUITY, AND DEVELOPMENT** Issue 3, September 2002, Carnegie Endowment for International Peace. By John Audley. The Trade Policy Act of 2002 integrates environmental policies into U.S. trade negotiations. This will require increased involvement by the Congress to ensure that the policies reflect the broad interests of American society. Working together, Congress and the administration must demonstrate leadership and win back public opinion for trade agreements that reflect American values that include respect for worker rights and the protection of the environment.

WTO Resources

Unless otherwise specified, WTO documents announced in this section can be downloaded from the WTO website at: <http://docsonline.wto.org/>.

REVIEW OF ARTICLE 27.3(B) OF THE TRIPS AGREEMENT, AND THE RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION

ON BIOLOGICAL DIVERSITY (CBD) AND THE PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE, "A CONCEPT PAPER"(IP/C/W/383). WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPs), Communication from the European Communities and their member states, 17 October 2002. This text addresses the issues dealt with under paragraph 19 of the Doha Declaration, which instructs the TRIPs Council to continue the review of Article 27.3(b) of TRIPs (on patenting of life forms), and to examine the relationship between TRIPs and the CBD and the protection of traditional knowledge and folklore, and other relevant new developments. It reflects the EC's stated willingness to commit to this process in a spirit of openness, with the aim of finding ways of interpreting and implementing the TRIPs agreement in a way to support the objectives of the CBD.

WTO NON-AGRICULTURAL MARKET ACCESS (TN/MA/W/9). Communication from Canada, 17 October 2002. In this submission, Canada sets down some goals for trade liberalisation for the next round of negotiations. In addition to advocating a combination of approaches in negotiating modalities (including sectoral agreements, formula-based approaches and the request-offer process), Canada supports an increased liberalisation of trade in the areas of environmental goods and non-tariff barriers. It also calls for an approach to this liberalisation that would be specific to each country according to its level of development and tariff structures.

MEAS: INFORMATION EXCHANGE AND OBSERVER STATUS (TN/TE/W/15). Submission by the European Communities, 15 October 2002. This paper argues that a number of multilateral environmental agreements (MEAs) and the UN Environment Programme (UNEP) should be given observer status to the Committee on Trade and Environment despite ongoing debate on observership at the General Council/Trade Negotiations Committee level. The submission argues that these groups have a direct interest and competence in this trade area.

SUBMISSIONS FOR CLARIFICATION OF PARAGRAPH 22 OF THE DOHA DECLARATION (WT/WGTI/W108 to WT/WGTI/W147). At its third meeting since the Doha Ministerial on 16-18 September, the Working Group on Trade and Investment completed its review of paragraph 22 of the Doha Declaration. Altogether 39 contributions were made by Members involved in the discussions, including nine by the WTO Secretariat. To view these submissions, visit http://www.wto.org/english/tratop_e/invest_e/invest_e.htm#news.

Electronic Resources

WTO SITUATION REPORT: OCTOBER 2002. Prepared by the Agency for International Trade Information and Cooperation. Provides a review of negotiations since the Doha Ministerial, including legislative measures that countries inside the WTO have taken in their own governments and where the negotiating process currently stands. The report also gives information concerning what is in store for the coming months before the fifth Ministerial in Cancun in September 2003. To view this paper, visit http://www.acici.org/aitic/documents/notes/note22_eng.html#6.

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