

The Monterrey Consensus: A Minor Contribution to Development Financing

Despite multiplying calls for a 'coherent', 'integrated' and 'innovative' approach to development and poverty elimination, the International Conference on Financing for Development looks set to add little to countless previous attempts to come up with adequate funds to reach these goals.

According to a draft final statement agreed on 28 January, the purpose of the summit-level meeting scheduled for 18-22 March in Monterrey, Mexico, is to 'eradicate poverty, achieve sustained economic growth and promote sustainable development as we advance to a fully inclusive and equitable global economic system.'

This is certainly a worthy goal. Unfortunately, the 14-page document is long on analysis but short on commitments to actually increase development financing. Like the outcomes of other fora before it, the 'Monterrey Consensus', as the draft final statement is called, stresses that 'each country has primary responsibility for its own economic and social development, and the role of national policies and development strategies cannot be over-emphasised.' It identifies a host of measures that could and should be taken to strengthen domestic economies, as well as to encourage foreign direct investment and technical co-operation. It has sections devoted to official development assistance; debt relief; enhancing the coherence and consistency of the international monetary, financial and trading systems in support of development; and, of course, trade.

International Trade as 'Engine for Development'

In the Monterrey Consensus – if it emerges intact from the conference itself – heads of state reaffirm their commitment towards trade liberalisation and, welcoming the decision to 'place the needs and interests of developing countries at the heart of the WTO Work Programme', commit themselves to its implementation.

In a fine example of the descriptive nature of the Consensus, the document 'acknowledges the issues of particular concern to developing countries', such as trade barriers, trade-distorting subsidies and other trade-distorting measures; the abuse of anti-dumping measures; technical barriers and sanitary and phytosanitary measures; trade liberalisation in labour intensive manufactures and agricultural products; trade in services; tariff peaks, high tariffs and tariff escalation, as well as non-tariff barriers; the movement of natural persons; the lack of recognition of intellectual property rights for the protection of traditional knowledge and folklore; the transfer of knowledge and technology; the implementation and interpretation of the TRIPS

Agreement in a manner supportive of public health; and the need for special and differential treatment provisions for developing countries in trade agreements to be made more precise, effective and operational.

The leaders' response to this list consists of an encouragement to implement the outcome of the Doha Ministerial, an undertaking to facilitate the accession of all developing countries, particularly the least-developed, as well as a promise to 'implement the commitments made in Doha to address the marginalisation of the least-developed countries in international trade as well as the work programme adopted to examine issues related to the trade of small economies.' The heads of state further 'recognise' the importance of enhanced and predictable access to all markets for the exports of developing countries and 'call on developed countries that have not already done so to work towards the objective of providing duty-free and quota-free access for all LDC exports', adding that 'consideration of proposals for developing countries to contribute to improved market access for LDCs would also be helpful.' Nothing here goes beyond positions already stated at numerous occasions, not least at the WTO itself.

Technical Co-operation

Technical assistance is clearly the flavour of the first decade of the second millennium. The Doha Ministerial Declaration laid an unprecedented emphasis on the issue, which also gets a large showing in the Monterrey Consensus. For instance, the heads of state invite multilateral and bilateral financial and development institutions 'to expand and co-ordinate their efforts, with increased resources, for gradually removing supply-side constraints; improve trade infrastructure; diversify export capacity and support an increase in the technological content of exports; strengthen institutional development and enhance overall productivity and competitiveness. To this end, we further invite bilateral donors and the international and regional financial institutions, together

with the relevant UN agencies, funds and programmes, to reinforce the support for trade-related training, capacity and institution building and trade-supporting services.'

Beyond this general 'invitation', the document only 'urges' governments to give 'special consideration' to the poorest developing countries through such mechanisms as the WTO's Integrated Framework for Trade-Related Technical Assistance to Least-developed Countries, the Joint Integrated Technical Assistance Programme, the Doha Development Agenda Global Trust Fund, as well as the International Trade Centre.

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Finally, without actually committing themselves to anything specific, the heads of state 'underscore the importance of effective, secure and predictable financing of trade-related technical assistance and capacity building', and note that in support of the process launched in Doha, 'immediate attention should go to strengthening and ensuring the meaningful and full participation of developing countries, especially the LDCs, in multilateral trade negotiations.'

ODA, Debt and Investment

Other sections of the document follow similar lines. The heads of state 'note', 'acknowledge' and 'recognise' but rarely commit themselves to concrete goals. On official development assistance (ODA), which has been steadily falling for more than decade, they 'urge' developed countries to 'make concrete efforts' to reach the United Nations ODA target of 0.7 percent of GNP, and invite donors to harmonise operational procedures, untie aid, use 'development frameworks which are owned and driven by developing countries', and improve ODA targeting to the poor. In a commitment of sorts, the heads of state promise to ensure sufficient long-term resources to the international financial system to 'allow them to adequately support sustained economic and social development, technical assistance for capacity-building, and social and environmental protection schemes.'

The section on external debt emphasises the role of the IMF's Heavily Indebted Poor Countries Initiative but steers clear of new commitments. Donors are encouraged to provide debt relief in a manner that does not detract from ODA resources, while the World Bank and the IMF should 'consider any fundamental changes in countries' debt sustainability caused by natural catastrophes, severe terms of trade shocks, or conflict, when making policy recommendations.'

'A central challenge is to create the necessary domestic and international conditions to facilitate direct investment flows, conducive to achieving national development priorities', the heads of state note. They lay out several conditions that enhance the attractiveness of a country as an investment destination, including a 'transparent, stable and predictable investment climate, with proper contract enforcement and respect for property rights'. In addition, special efforts are required in 'such priority areas as economic policy and regulatory frameworks for promoting and protecting investments, including the areas of human resource development, avoidance of double taxation, corporate governance, accounting standards, and the promotion of a competitive environment.' Businesses are urged to take into account 'the developmental, social, gender and environmental implications of their undertakings'.

Systemic Issues

One of the aims of the Monterrey conference is to enhance the coherence and consistency of the international monetary, financial and trading systems in support of development. However, most of the recommendations are addressed to the institutions separately rather than as part of a coherent whole. Thus, the WTO should ensure that its consultations are 'representative of the full WTO membership and participation is based on clear, simple and objective criteria', and the relationship between the WTO and the UN should be improved, particularly in order to strengthen their capacity to provide technical assistance.

Conclusion

The Monterrey Consensus was elaborated in four intergovernmental preparatory meetings, as well as numerous regional governmental and stakeholder consultations. The result correctly identifies many actions that – if acted upon – would assist developing countries in addressing some of the 'development deficit' which currently plagues international relations between the haves and the have nots. However, the lack of concrete commitments will almost certainly make this document 'a reference book for future summits', as Israel put it in the early stages of the preparatory process. This does not augur well for the emergence of a new international development financing architecture or for the next major occasion to review the issue, the World Summit on Sustainable Development in Johannesburg on 26 August to 4 September 2002.



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Capacity-building and Technical Assistance for Developing Countries After Doha

By Henri-Bernard Solignac Lecomte

The Doha Declaration stresses the importance of ‘well-targeted, sustainably financed technical assistance and capacity-building programmes’ and reiterates the commitment of WTO Members to help the weakest among them to participate effectively in the multi-lateral trading system. But what does this mean in practice? What is the objective of trade capacity-building? Who should provide this assistance and how? Is it all gain for developing countries or could it entail risks? A recent paper by the European Centre for Development Policy Management tries to provide some answers, based on the review of several trade capacity-building projects and programmes administered in African and Caribbean countries.¹

A Trickier Business than It Seems

That trade-related capacity in poor countries is extremely weak is widely acknowledged. Therefore, strengthening the capacity of the poorest WTO Members to participate in the global trading system may seem at first glance a rather straight-forward and uncontroversial way of promoting their interests, and those of the system as a whole. A closer look reveals, however, a more controversial side of trade capacity-building. Money tops the list: in spite of repeated pledges at the last three Ministerial meetings, actual financial commitments remain small or at least well below the rhetoric (see related article on page 11).

One may want to go a step further and ask where trade-related technical assistance fits within the political economy of trade negotiations. Is it aimed at rebalancing relations in the WTO? Or is it, as some in developing countries fear, merely the promise of a sweetener to help them swallow bitter prospects in terms of market access? Last, but certainly not least, the question of whose immediate interest should prevail deserves some attention. Should capacity-building aim to widen the scope of actual economic policy choices for developing countries? Or should it be limited to helping them cope with the burden of commitments they have taken on – sometimes lightly, it has turned out – for the benefit of their more developed partners?

Issues in trade-related capacity-building and technical assistance (TCB) are diverse, complex and in constant evolution. For a start, the links between trade, development and poverty (through the former’s impact on growth and income distribution) are not clear for everyone.² Moreover, the technical aspects of trade policy-making are increasingly complicated due to ‘new’ issues such as services, intellectual property, TBTs, e-commerce entering the picture, particularly for countries whose trade policy for decades has mainly consisted of granting import licenses.

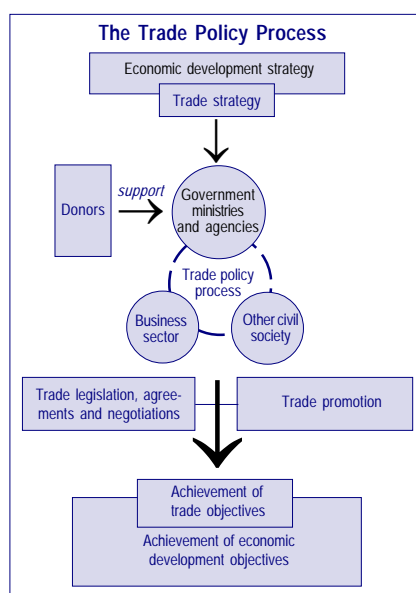
As a result, there is not yet a clear common understanding of the scope of TCB or, even more importantly, of the objectives of this type of assistance. Until very recently, few attempts had been made to define what TCB in poor countries entails, and very little practical guidance existed as to how capacity in that field can best be developed and strengthened. The first comprehensive attempt of that sort was made by the OECD Development Assistance

Committee, which published last year its *Guidelines on Capacity Development for Trade in the New Global Context* (www.oecd.org/dac/trade).³ One of its virtues is an effort to look into the core of the matter: what *kind* of capacity should we aim to build or strengthen? If the answer, as the guidelines suggest, is that a whole *process* of trade policy-making must be engineered in those countries, then there is a wide scope for improvement in current TCB practices.

Trade Capacity-building: Are we missing the point?

Many factors can explain why a country succeeds or fails in using international trade as a vehicle for its development strategy. As evidenced by the experience of countries that have successfully done so – for instance, Mauritius⁴, several East Asian developing countries and, indeed, the developed countries – efficient trade

policy-making may be best described in the context of this paper as a process by which: (i) the country’s *trade interests* are clearly identified in the framework of its overall development strategy; (ii) these interests are translated into *policies and negotiating goals*; (iii) *roles* are distributed – either explicitly or implicitly – and *resources* are allocated to implement these policies, and to promote these interests, reactively or actively, in the various negotiating fora (at the multilateral, bilateral and regional levels).



The diagram opposite depicts such a process in a very simplified manner. Best practice reveals three critical elements of an efficient trade policy process: *government leadership*, *institutional capacity* and the *inclusion* of all actors, including the relevant ministries (not just those in charge of ‘trade’), the business sector, trade promotion and regulation bodies, think tanks and other civil society organisations.

Supporting the structuring and the sustainability of this process in countries where it is inefficient or close to non existent is what donors should aim at. Evidence shows that they do so to some extent, but generally in a dispersed manner, and very rarely with a comprehensive approach. Capacity-building initiatives in the area of trade policy often aim primarily at *helping developing countries to cope with the obligations* they contracted within the trade agreements they have signed; they also mostly refer to *technical assistance and training*; and they are largely directed at *trade administrations and officials*.

What’s wrong with that? First, it is restrictive to describe developing countries’ needs in the area of trade policy as the set of information and know-how necessary to implement the commitments made under the multilateral system, or as part of other agreements (e.g. within the ACP-EU co-operation framework). As said above, any trade agreement is necessarily a subset of a trade policy, which itself is part and parcel of a country’s own development strategy. The purpose of trade-related capacity-building therefore necessarily depends on the country’s own objectives, thus calling for particular attention to be devoted to ownership and context-specificity.

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Second, it is inadequate to consider capacity needs as merely a sum of information and know-how which are lacking, and which TCB can transfer from donors to recipients. Poor trade performers not only need to learn the theory of trade policy-making, but also to engage in the practice of managing information, networking with stakeholders, conducting negotiations, etc. Trade-related technical assistance programmes targeted at middle-rank officials will have little impact as long as awareness at higher levels and the institutional setting for trade policy-making are inadequate.⁵ This will at best enhance the capacity of individuals, who may then be tempted to leave the civil service for more lucrative positions in the private sector, for instance as consultants. Year on year, a string of training sessions for officials brings together people who may benefit individually, but who will most likely not be listened to when they go back to their capitals, and who have few incentives to share the acquired knowledge within their institutions, let alone with other Ministries or private sector associations. A feasibility study conducted by the London-based Overseas Development Institute on a scheme for building the capacity of African trade officials by placing them temporarily in administrations in Europe, highlighted the risks associated with de-coupling *individual* capacity development from *institutional* capacity development.

Finally, potential beneficiaries of TCB aid at the policy level include more than just the government, although the latter obviously has the central role. Indeed, 'trade policy-makers' have arguably ceased to be a confined group – if they ever were – since international trade affects virtually all aspects of social and economic life.⁶

Engineering an efficient, sustainable and inclusive trade policy process is not an easy task. One common shortcoming of trade capacity development projects is that they end up being biased, one way or another, in favour of donors rather than recipients.

The Risk of Biased Aid

Capacity building in the area of trade is risky business. As the development objectives of developed countries (as donors) overlap with their commercial interests (as trading powers), they may be prone to four types of biases that have been identified as applying more or less exclusively to the area of trade capacity-building, by contrast with other areas of development assistance.

Negative discrimination

Since competition is the name of the trade game, the efficiency of TCB is bound to be measured by the extent to which poor countries eventually increase their shares of world markets, and succeed in protecting them. This may naturally entail mirroring 'losses' from developed countries (in the mercantilist sense). However, there are few cases of donor projects promoting the recipient country's trade interests against their own. Understandably, donor countries may be reluctant to provide assistance to activities they perceive as hurting their own short-term interests, for instance by creating or strengthening capacity to handle anti-dumping measures taken by third countries ... including the donor countries themselves.

Positive Discrimination

Donors may also be tempted to 'discriminate positively' in favour of trade-related assistance which they see as generating benefits for their own economies or firms, at the expense of other interventions that would generate benefits mostly for recipients. What looks like generous support at first glance can turn out to be

a disguised form of protectionism. The case of agricultural exports from Morocco and Tunisia to Europe is telling: the EU imposed quota restrictions on vegetable imports from these countries during the season when European producers grow them, while using part of its financial aid and technical assistance to build green houses for counter-season production. Obviously, the equipment would have to be bought from the EU (see also box below).

Tied aid

In trade-related projects, good old tied aid – whereby most benefits are captured by the suppliers of equipment and technical assistance – is alive and well. Many donor-sponsored activities presented, and in some cases accounted for, as development aid, see 'contractors', NGOs and consultants from the donor country pocket the bulk of sometimes sizeable budgets, with little guarantee that they are the most efficient suppliers, or that the project itself corresponds to a development priority. Such cases can be found, at the enterprise level, in many schemes fostering 'North-South' partnerships between firms, which almost systematically require for a certain amount of equipment to be purchased from a supplier of the donor country (the French *clause d'origine*, or purchasing requirements in Dutch or German schemes). Bilateral ODA funds are still used for such activities under the assumption that 'mutual interests' (of both parties) are pursued. While short-term benefits may accrue to recipients in the form technology transfer to a firm, the overall impact on the economy remains extremely limited. At the policy level, aid tying also surfaces in projects with a high content of built-in technical assistance from the donor country.

Buy-off

Another, less direct, potential impediment to aid efficiency in TCB is that donor support to enhance the negotiating capacity of the recipient country in various fora may alter the negotiator's goals and incentives. For a given country, efficient negotiation capacity means the capacity to formulate and defend its own trade interests. Being supported in this by a donor country who is also sitting at the table of negotiations (for instance in the WTO) is no less than a contradiction in terms. Let us take a look at a few examples.

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**Multilateral Trade Rules for Consumer Protection:
the richer, the safer**

One of the most successful TCB projects in Senegal involved upgrading fisheries production processes to increasingly tight safety and quality norms imposed by European donors. Looking at the bigger picture, this may be seen as donors giving priority to projects that help accommodating the restrictions they are themselves imposing on accessing their market.

Remarkably, however, assistance programmes aimed at ensuring compliance with health and quality requirements for products exported to OECD markets usually leave the question of the protection of consumers in the developing countries untackled. Minimal safety and hygiene requirements for imported and domestically traded goods are largely left out of donors' trade-related assistance objectives. For instance, little or no effective regulation or control is implemented on imported food or pharmaceutical products sold and consumed locally. Capacity to monitor these issues is lacking at the national level: consumer associations have been set up by individuals but lack representativity, and hardly any research, data or indicators are available.

Choice of Chair and Procedural Issues Delay Decisions at Trade Negotiations Committee's First Meeting

On 28 January, WTO Members suspended the first meeting of the Trade Negotiations Committee (TNC) which, according to the Doha Ministerial Declaration, should supervise the overall conduct of the broad-based negotiations that were launched last November.

Although precedents exist from previous trade rounds, Members need not follow prior practice in determining the TNC's procedures or the functioning of any other bodies that may be required to manage the complex post-Doha negotiating agenda. Indeed, as this issue of Bridges went to press, Members were far from agreement over both the organisational structure and the leadership of the new negotiations.

The WTO's Musical Chairs

Prior to the TNC's abortive first meeting, which only lasted a few minutes, Members' main focus was on who should chair the Committee and any working groups it may set up. General Council Chair Stuart Harbinson requested delegations to stay on stand-by while he conducted further consultations.

During past trade rounds, the TNC has been chaired by the WTO Director-General in an *ex officio* capacity, while ambassadors from Member countries, serving in their personal capacity, chaired the negotiating groups. With very few exceptions, these individuals stayed in their posts until the round's conclusion. Quad countries (i.e. the EU, the US, Japan and Canada) support a similar arrangement for the new negotiations. Thailand and other ASEAN countries are also in favour of the Director-General chairing the TNC for the duration. Under this scenario, the current DG Mike Moore would chair the TNC until next September, when Thailand's Panitchpakdi Supachai would take over in his capacity as the new WTO chief.

In contrast, some influential developing country Members have expressed a clear preference to have all groups presided by a Geneva-based ambassador, assisted by a vice-chair who would automatically take over after a year. The distribution of chairs and vice-chairs between developed and developing countries should reflect the current composition of the WTO. These Members have made it clear that they wish to keep both the WTO Director-General and the Secretariat at arm's length in the negotiations.

To complicate matters further, the selection of the chairs is likely to be linked with the annual process of appointing chairs for all other official WTO bodies. As this issue of Bridges went to press, it nevertheless looked likely that the DG would chair the TNC, and the focus of the discussion had shifted to finding the right balance between the Committee and the General Council.

Keep the General Council in Driver's Seat, Developing Countries Say

According to paragraph 46 of the Declaration, the TNC shall operate under the authority of the General Council. Some developing country and least-developed country Members are pushing hard to have this hierarchy explicitly recognised and respected. They favour the General Council as a decision-making forum since it operates according to previously agreed-upon procedures including consensus, while the TNC may decide on different decision-making procedures. Guidance from the General Council would also ensure that the negotiating process stays under 'the supervision of the membership'.

The next question is: should working group chairs have the right to submit texts under their own authority or to convene meetings not open to all Members?

Speaking on behalf of the WTO's LDC Members, Ambassador Ali Mchumo of Tanzania told the General Council in December that all final decisions should be made by the General Council, rather than by the TNC. Thirteen developing country Members of the Like-minded Group proposed in a document circulated to the 28 January meeting that the TNC should work in accordance with direct instructions from the General Council, which should approve negotiating procedures, structures and chairpersons for the TNC and sectoral negotiating groups. In addition, 'all negotiations, informal or formal ones, should be conducted only in meetings that are open to Members', and the chair of any negotiating group should only be allowed to submit negotiating texts which 'have the consensus of the group and not texts prepared under his own authority'. Several industrialised countries said the last two demands were unacceptable as they would make the process too cumbersome. If Stuart Harbinson had had to follow these guidelines in the run-up to Doha, 'we would never have had an agreement', an EU official said.

In addition, the LMG has proposed that before the end of the negotiations 'an evaluation be undertaken, under the supervision of the General Council, on the extent to which special and differential treatment objectives have been attained and the balance in the outcome of the negotiations has been taken into account.'

Subsidiary Bodies and the Implementation Dilemma

One of the most important tasks of the TNC will be to establish the negotiating structure for the 'Doha Round'. Most sources consulted for this story expected that sectoral working groups would be set up on rules and industrial tariffs, while other issues, including the environment, would be negotiated in special sessions of the relevant WTO bodies. The latter is the preferred choice of many developing country Members.

It remains somewhat unclear how those implementation issues that do not fall into these categories will be fit into this framework. The Doha documents do contain some specifications: most concerns related to the sectoral single undertaking issue areas – agriculture, services, industrial tariffs, rules (i.e. subsidies, anti-dumping, regional trade agreements and dispute settlement) and the environment – will be addressed as part of those negotiations. Ministers also designated 'homes' and deadlines for some other elements of the work programme either in the Ministerial Declaration or the Decision on Implementation-related Issues and Concerns.

The Compilation of Outstanding Implementation Issues Raised by Members (JOB(01)/152/Rev.1) lists many more concerns that should be addressed by the 'relevant WTO bodies', which should report to the TNC for 'appropriate action' by the end of this year (see Bridges Year 5 No.9, page 7). While the overlapping mandates and different timeframes give rise to confusion, Members are unlikely to set up a working group on implementation issues *per se*, largely due to strong resistance from the Quad and the US in particular (special General Council sessions on these concerns in the run-up to Doha yielded few immediate results).

Some sources also expressed uncertainty as to where negotiations on fisheries subsidies, mandated under both 'rules' and 'environment', would take place. In contrast, it seemed clear that discussions on the controversial 'new issues' would continue in existing working groups set up after the Singapore Ministerial Conference.

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Training. In the run up to the Seattle Ministerial meeting in 1999, a US-funded training package for policy makers and private sector actors in Senegal strongly emphasised issues which the donor country had made its own priorities (the need to do away with agricultural subsidies), while deliberately overlooking issues where the interests of Senegal might well conflict with that of the US (intellectual property rights). Similarly, the promotion by EU members of the ‘multifunctionality’ concept – a catch-all phrase used to gather support against proponents of agricultural trade liberalisation – in the seminars given to aid recipients, illustrates how blurry the border can be between assistance and propaganda.

Technical assistance to administrations in charge of trade policies is arguably necessary where capacity is weak or absent, but direct support to, or involvement in drafting negotiating positions (as observed in European aid to Namibia, ahead of ACP-EU trade negotiations) contradicts the basic principle that trade policies should be owned by the country, and defined in coherence with its overall development strategy.

Financial support to the ACP Secretariat in Geneva by the EC – effective from January 2002 – may arguably shift the accountability of the former further away from ACP countries towards the EC. Here again, the argument of mutual interests in the WTO between the EU members (soon to be even more diverse as the Union expands) and the 77 ACP countries (which already represent very diverse interests in many trade areas) seems, at best, extremely weak.

Ways Forward

Does it mean that trade-related capacity-building and technical assistance are so biased in essence that they eventually do more harm than good? Not necessarily, it seems. For one thing, the ECDPM study found cases where donor assistance clearly seemed to strengthen the capacity of the recipient country to take independent views on trade issues: in Ghana, for instance, a report to the government on the implications of UEMOA’s newly implemented common external tariff turned out to be very critical of this initiative, although it was commissioned, funded and put out by the EU, itself a strong supporter of UEMOA. Similarly, in Senegal, France funded the provision of some material – put together by independent researchers and not necessarily reflecting France’s positions or interests – to prepare for the WTO’s Seattle Ministerial Conference. Finally, ACP experts and negotiators in the run-up to the ACP-EU negotiations deemed useful research commissioned by the EU from independent institutions, due to its demand-led and neutral nature.⁷

Besides, while some bias in trade capacity-building may seem unavoidable, there is scope for reducing, or at least monitoring it. For instance, some donors make provisions in technical assistance contracts to ensure that the material produced to support negotiating strategies remains confidential to the recipient government. Similar provisions remain to be defined on technical assistance content, or on rules for the use of ODA funds in TCB projects.

At the end of the day, consensus needs to be built among donors on the purpose of TCB. There can be only one ultimate objective: to *empower* developing countries in the multilateral trade system, and help their products penetrate OECD and other world markets. It is in the interest of donors to have informed trade partners to negotiate with, just as it is in their interest that developing countries trade more.

As for the recipients side, several trade officials have argued that the best antidotes to biased TCB assistance were awareness and leadership: where trade interests and related objectives are clearly identified at the country level in the first place, the room for third parties to unduly influence trade policy lessens considerably.

How Much Does TCB Really Matter?

So, we need fairer and better TCB, and there are ways of getting it. But how solid is the case for TCB altogether? With poverty alleviation heralded as the overarching goal of international co-operation, TCB arguably has a ‘legitimacy problem’. Most donors are indeed struggling to reconcile trade and investment promotion programmes with the development and poverty alleviation agenda. Seeking immediate returns from TCB programmes in terms of poverty alleviation is not the answer and can even be counterproductive. Dissipating the mixed feelings on the role of TCB is therefore important: provided attention is paid to some critical risks, of which this article tries to highlight a few, it can legitimately help developing countries improve the coherence and impact of their development policies, and ultimately improve the lives of poor communities and individuals. Conversely, it is crucial to consider what the potential consequences of *not* strengthening the capacity of poor countries’ to trade are for the poor.

Nevertheless, for the TCB case to be made convincingly, it must be recognised that, while the positive impact of trade liberalisation and export promotion on growth and income distribution in the medium to long term are fairly well established, the direct and indirect links between trade policy and poverty at the micro level are less clear in the short run. Short term impacts must be carefully anticipated in the inception phase of such programmes. More importantly, as the development challenges confronting poor countries are many, it is critical to pay attention to the balance of resources that they should mobilise to address them. A risk actually exists of putting too much emphasis on trade and investment at the expense of other sectors. In the words of Dani Rodrik:

By focusing on international integration, governments in poor nations divert human resources, administrative capabilities, and political capital away from more urgent development priorities such as education, public health, industrial capacity, and social cohesion.⁸

A much quoted figure in this regard is the cost that poor countries would have to bear in order to implement WTO requirements under three of its agreements,⁹ which World Bank trade economist Michael Finger estimated at US\$150 million, i.e. the equivalent of a year’s development budget for many LDCs... This is clearly not feasible, nor desirable. As summed up by another World Bank official: ‘The aim is not to over-emphasise the importance of trade, but to make sure it is not neglected.’¹⁰

Henri Bernard Solignac Lecomte has conducted trade-related technical assistance studies for the Overseas Development Institute and the European Centre for Development Policy Management.

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‘Capacity-building and Technical Assistance for Developing Countries After Doha’ is the second in a series of in-depth articles intended to provide a broader context for the sustainable development challenges facing the multilateral trading system as WTO Members tackle the work programme mandated by the Doha Ministerial Conference.

Liberalising Environmental Services: the Ultimate Win-Win?

In the last couple of years, the OECD and other institutions have produced several documents that point to the 'win-win' potential of liberalising trade in environmental services for the promotion of environmental protection and economic development.¹

In effect, while ever increasing population and economic activity growth are putting pressure on the environment and one half of the world's population lacks adequate sanitation, liberalising trade in environmental services could help address these problems in an economically efficient way. Generally cited beneficial effects include enhanced technology transfer, lower costs and thus increased availability of these services in particular to developing countries, as well as a general gain of quality and efficiency.

The Doha Ministerial Declaration provides the official consecration of this analysis, identifying environmental services as a possible pillar of harmonious relations between trade and environment: *'With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on...(iii) the reduction, or as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services'* (emphasis added).

However, liberalising trade in environmental services raises a number of questions. First and foremost, there is no generally accepted definition of what activities environmental services actually encompass, or should encompass. There is also growing concern regarding the issue of the supply of drinking water, which, mainly through pressure from European multinationals, could be brought within the ambit of environmental services as defined under the GATS. Other services, such as the exploitation of waste dumps and waste incineration,² can have serious environmental implications, thus raising (once again) the question of Members' latitude to regulate under the GATS. More generally, the 'win-win' scenario will neither be fulfilled without carefully designed domestic policies, nor without losers.

What Are Environmental Services?

That is the question. The response varies from country to country; there is no consistent view, for instance, on whether such activities as the supply of drinking water and the collection of household refuse should be classified as environmental services. Furthermore, the sector is in the process of rapid and profound evolution.

Environmental services fall within the ambit of the GATS to the extent of the sectors and sub-sectors included in the WTO Services Sectoral Classification List.³ Increasingly, however, it appears that the list's coverage of environmental services, i.e. traditional 'end of pipe' activities that capture pollutants from the output stream,⁴ no longer corresponds to recent developments, in particular in OECD countries. The principal reasons underlying the evolution and expansion of environmental services are the increased privatisation of services traditionally provided by the public sector, such as water and waste treatment, and a shift in regulatory emphasis towards cleaner products and production processes.

While several WTO Members have tabled proposals in the current services negotiations that seek to extend the GATS coverage of environmental services,⁵ the OECD and the Statistical Office of the European Communities (Eurostat) have adopted a common and more comprehensive classification of the environment industry. The

OECD/Eurostat definition includes services provided 'to measure, prevent, limit, minimize or correct environmental damage to water, air, soil, as well as problems related to waste, noise and ecosystems.' Contrary to the OECD/Eurostat definition, the current GATS classification does not include the supply of drinking water. The issue is set to become increasingly hot as the EU is pushing for its inclusion, while several non-governmental organisations are reluctant, to say the least, to see this increasingly scarce natural resource governed by a commercial agreement.

Winners and Losers

As all proposals on environmental services tabled so far within the GATS negotiations point out, the sector undoubtedly has important implications for sustainable development and presents 'win-win' potentials, the realisation of which will largely depend on the implementation of appropriate domestic environmental and commercial regulations and policies.

The inclusion of the supply of drinking water in environmental services is an increasingly hot issue.

The fact that the liberalisation of trade in environmental services is likely to lead to increased availability of advanced know-how and environmental technologies at a lower cost would seem to primarily benefit developing countries, which face compelling environmental problems and severe budget restraints. Most of them are still in need of basic environmental services such as water and waste management and have increasingly opened up these sectors to private participation in order to attract foreign direct investment and ease the financial burdens on governments.

However, past experiences have not always proved encouraging. Privatisation has often led to sharp increases of prices, ranging from 30 to 50 and sometimes even to 300-400 percent. Furthermore, while European multinationals are the leading corporation in water supply and management – which is why the EU wants these services included under the GATS – their track records are not always glorious. For instance, several UK multinational water corporations were cited by the UK's Environment Agency as the country's most polluting companies based on the number of appearances in court and prosecutions during 2000.

So, are environmental services the promised 'win-win' land? Arguably, and as established in the OECD study cited elsewhere in this article, privatisation and liberalisation in environmental services can bring about positive implications for development and the environment, but local circumstances need to be taken into account, the regulatory environment must be suitable and the selected approach must respond to the concerns of those affected.

ENDNOTES

¹ OECD. 2000. *Environmental services: The 'win-win' role of trade liberalisation in promoting environmental protection and economic development*, COM/TD/ENV(99)93/FINAL; WTO. 1998. *Environmental services, Background note by the Secretariat*, S/C/W/46

² Dale Andrew, *Services Trade Liberalisation: Assessing the Environmental Effects*, OECD, October 2000.

³ MTN/GNS/W/120

⁴ The GATS currently covers four environmental services sectors: sewage services, refuse disposal services, sanitation and similar services and 'other' environmental services.

⁵ In particular, the EC (S/CSS/W/38) and the US (S/CSS/W/25).

Dispute Settlement News

Panel Established in Lumber Dispute

At its 5 December session the Dispute Settlement Body approved Canada's request to establish a panel to examine US countervailing duties imposed in the context of the ongoing US-Canada softwood lumber dispute. Canada has also asked the WTO Director-General to appoint the panelists as the two sides still were unable to agree on who should hear the case in late January.

Canada argues that a US Department of Commerce preliminary countervailing duty determination of 9 August 2001 – imposing 19.3 percent duties on Canadian wood products – violated a series of provisions in the WTO Agreement on Subsidies and Countervailing Measures (SCM) and in the GATT. The US decision was based on allegations from US lumber producers that Canadian exporters were subsidised through low provincial cutting fees for Crown timber – known as stumpage. After the failure of government-to-government talks aimed at finding a solution to the conflict outside WTO litigation, the US Department of Commerce on 31 October announced another preliminary determination to impose an average of 12.6 percent anti-dumping duties on Canadian lumber. The dumping duty would be added to the 19.3 percent countervailing duty if confirmed by the Department of Commerce's final determination in March 2002.

The lumber dispute has been going on for almost 20 years, during which time US softwood lumber producers have repeatedly alleged that the stumpage fees levied by provincial governments were below market value and therefore constituted a subsidy to Canadian lumber producers. The dispute flared up again after the 1996 Softwood Lumber Agreement between the two parties expired last March. The Coalition for Fair Lumber Imports, the US petitioning industry for the countervailing and anti-dumping investigations, maintains that at least 50 percent of Canadian timber rights should be subjected to competitive bidding in order to establish a market-based baseline for determining stumpage fees. So far, British Columbia where half the country's exports originate, has offered to put 13 percent of its timber rights to auction. In addition, the Canadian logging company Canfor Corp. has launched a \$250-million lawsuit against the US government under the North American Free Trade Agreement (NAFTA).

Albeit for different reasons, US environmentalists, joined by indigenous tribes, have also petitioned the US Commerce Department for countervailing duties on lumber from British Columbia (BC) and Quebec, arguing that the BC provincial government and logging industry have refused to implement federal law protecting fish habitat and land use.

US Corporate Tax Breaks Condemned Again

As expected, the United States lost its appeal of the WTO's condemnation of the replacement legislation for the foreign sales corporation (FSC) regime, which offers tax breaks worth billions of dollars to corporations. According to the Appellate Body, the tax benefits under new Extraterritorial Income Exclusion Act continue to be export-contingent and thus violate the Agreement on Subsidies and Countervailing Measures. US and EU officials are currently exploring possible solutions that would avert the imposition of massive trade sanctions – evaluated at more than US\$4 billion by the EU – on US exports.

EU, Japan Ask Right to Adopt WTO-Illegal Dumping Law

After Ecuador's innovative attempt – authorised by the WTO but never actually put into practice – to cross-retaliate in the intellectual property rights sector in the now-concluded banana war (Bridges Year 4 No.4, page 3), the European Union and Japan on 18 January requested the WTO to approve another unorthodox retaliation measure that may have wider systemic consequences. Instead of seeking the right to impose trade sanctions, i.e. punitive import duties on goods exported by the United States, they requested the right to adopt legislation similar to the US 1916 Anti-dumping Act, which was condemned by the Appellate Body in August 2000. The US had until 1 January 2002 to bring the legislation into conformity with WTO rules but failed to do so. The Act, which allows monetary damages and even criminal charges in certain anti-dumping cases, violates the WTO Anti-dumping Act, under which Members may only impose duties to counter anti-dumping violations.

While no monetary damages have ever actually been awarded under the Act, the EU and Japan claim that US lawsuits have affected sales and involved their firms in costly legal procedures. As the value of lost trade would be difficult to assess, the two complainants propose to suspend 'other concessions' than straight market access by adopting 'mirror' legislation that would apply only to US importers found to be dumping in their markets. However, Brazil (and some other WTO Members) have already pointed out that as the Act has been found WTO-inconsistent, it is 'not unthinkable that this mirror solution would reflect deleteriously on the whole system, thus distorting its fundamentals of good faith and compliance with its rules.'

Thailand Challenges EU Preference Scheme

Thailand has requested consultations with the European Union with regard to the latter's Generalized System of Preferences (GSP) scheme (WT/DS242). The scheme contains a special regime that extends market access benefits beyond the ordinary GSP concessions to countries fighting illegal drugs production and exports. According to Thailand, the programme unfairly affects Thai exports and violates GATT Article (most-favoured-nation treatment) and the Enabling Clause, i.e. 1979 GATT Decision on Differential and More Favourable Treatment of Developing Countries, which requires GSP benefits to be 'generalised' and 'non-discriminatory' and 'not to raise undue difficulties for trade of any other contracting parties.' Costa Rica, Guatemala, Honduras, Nicaragua and Colombia have requested to be joined in the consultations as third parties.

If the dispute settlement procedure concludes, it would be the first time that the WTO would have ruled on the compatibility of any Member's GSP with global trade rules. Many countries have preferential programmes that contain conditionalities and whose benefits can be unilaterally granted, as well as withdrawn (see related article on page 12). In July 2001, the EU settled a similar case with Brazil, which had alleged that its soluble coffee exports to European markets had been adversely affected by the preferences extended to countries of the Andean Community and the Central American Common Market under the drug fighting programme (Bridges Year 5 No.6, page 6). Pakistan was admitted to the scheme in December 2001 (see page 12).

Agriculture and Services Talks Technically on Schedule, but Substantive Differences Remain Unchanged

The WTO Committee on Agriculture held its last negotiation session of 2001 in December. Members addressed support for agriculture that serves environmental purposes; food aid; and preferential market access for agricultural goods from developing countries. While the agriculture negotiations have so far been taking place independently of other talks in the WTO in line with the 'built-in agenda', they are now part of the single undertaking launched at the fourth WTO Ministerial Conference in November. Members have not yet decided whether to establish a new working group for the negotiations or whether the process should continue in special sessions of the Committee on Agriculture (see page 5).

In December, the debate on the environment focused principally on whether some degree of trade distortion was legitimate in cases where states support farmers whose agricultural activities fulfil environmental purposes. Norway argued that, for non-trade concerns such as biodiversity and land conservation to be addressed appropriately, a minimum degree of domestic production needed to be secured, perhaps through support outside the framework of the current 'green box', which requires that support payments be either de-coupled from production or specifically tailored and targeted so as to create no, or at most minimal, trade distortion. At the other end of the spectrum, the Cairns Group reiterated its position that agricultural trade liberalisation was the best guarantee for positive environmental development as industrialised countries' trade- and production-distorting subsidies had negative impacts on developing countries' agricultural exports, contributing to poverty – a major cause of environmental degradation in itself.

Members discussed how to target food aid without jeopardising both the domestic production in recipient countries as well as exports from competing suppliers. In addition, the debate included the problem of possible circumvention of export subsidy commitments via food aid programmes. The EU and most developing countries have long argued that aid should be provided in grant form only, but the US resists this approach. Many developing countries also called for making donor countries' commitments binding and predictable; increasing food aid volumes in times of high world market prices; providing aid on a demand-driven basis; as well as increased technical and financial assistance to help countries to improve agricultural productivity and related infrastructure instead of becoming dependant on food aid.

On trade preferences, most developed and developing countries agreed that preferential market access schemes are crucial for poorer countries, but acknowledged that progressive liberalisation through general tariff reductions would lead to an erosion of trade preferences, so that countries benefiting from preferential treatment may need help in adjusting their economies. Some small island developing countries argued that they might need long-term preferential treatment due to their significant lack of competitiveness, and that because of their negligible share in world farm trade, other countries would not be harmed by preferences remaining in place. Australia questioned the effectiveness of preferences, arguing they would prevent diversification in the preferentially treated countries and would hinder other countries from supplying those products falling under the preferential scheme.

Animal welfare – one the EU's most controversial non-trade concerns – could also be addressed through labelling, the EU and

Switzerland said, although both agreed that the green box of minimally trade distorting subsidies should be re-examined in order to enable states to compensate their farmers for costs incurred due to higher national animal welfare standards. Most other WTO Members continue to be extremely critical of this proposal.

The next negotiating session, scheduled for 4-8 February 2002, is expected to cover proposals for the creation of a 'development box', single commodity producers, special and differential treatment, small island developing countries and 'other issues'. A formal special session on 7 February will conclude the current phase of the talks.

Cairns Group gives short shrift to environmental non-trade concerns, while services negotiations stall on the emergency safeguard mechanism.

After that, negotiations should be structured to take into account the mandate provided by the Doha Ministerial Declaration, which commits Members to 'comprehensive negotiations' – albeit without prejudging their outcome – aimed at substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. Special and differential treatment for developing countries must form an 'integral part

of all elements of the negotiations', which must also take account of these countries' food security and rural development needs, as well as non-trade concerns of all Members. The negotiations are slated to conclude in 2005 together with the other mandates under the single undertaking agreed in Doha.

Services

Two deadlines loom for the WTO's work on services. The first falls on 15 March 2002, by which date Members are to decide whether or not to establish an emergency safeguard mechanism (ESM) for services. The second is 30 June 2002, when initial requests in the services negotiations are to be submitted.

While a number of developing countries have conditioned opening up their services markets on the creation of an ESM, the US, the EU, Japan and Mexico remain strongly opposed. India also fears that emergency safeguards might be used against developing countries, in particular in the supply of services by natural persons (mode 4). Argentina, Chile, Costa Rica and Switzerland, which occupy a middle ground, are not convinced that 'a clear case' has been made in favour of an ESM, but are willing to compromise, as they feel the adoption of safeguard measures is important to many developing countries and thus necessary for the success of market access negotiations. The Working Group on GATS Rules made no concrete progress on the issue at its session on 29 November. Instead, trade sources reported more polarised positions after debate on an informal US paper which conditioned detailed discussion on an EMS on improved market access commitments in the services sector. The defenders of the emergency safeguard mechanism found this 'down payment' approach unacceptable and drafting of the instrument was yet again delayed, although Members still hope to make the 15 March deadline (see also Bridges Year 5 No.7, page 4). On an other track of rule-making, Members made little progress on domestic regulation in the services sector.

During the WTO's latest 'services week' in early December 2001, Cuba, Senegal, Tanzania, Uganda, Zimbabwe and Zambia introduced a comprehensive paper on assessment (S/CSS/W/132)

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Developing Countries Seek Subsidy Extensions

Under revised extension procedures adopted at the Doha Ministerial Conference, twenty-five developing country WTO Members have recently submitted requests to the Committee on Subsidies and Countervailing Measures to extend various forms of subsidy programs related to investment incentives, tax breaks, export processing zones, and other tax or duty relief concessions.

Under the existing rules of Article 27.4 of the WTO Agreement on Subsidies and Countervailing Measures (SCM), countries could seek an extension to the phase-out deadline (1 January 2003), as long as the request was submitted one year prior to the expiration date. This extension was then eligible for renewal based on annual consultations with the SCM Committee, taking into account 'all relevant economic, financial and development needs' of the requesting Member.

The procedures adopted at Doha (see document G/SCM/W/471/Rev.1) allow for an extension mechanism that can run through to the end of 2007 for export subsidy programmes provided by developing country Members whose share of world merchandise export trade was not greater than 0.10 percent and whose total Gross National Income for the year 2000 was at or below US\$20 billion. Under the new procedure, the annual review process will still occur; however, it will be in the form of further notifications submitted by the requesting Member to ensure that certain transparency and 'standstill' requirements are met. By standstill, the procedure refers to the requirement that the subsidies do not exceed their 1 September 2001 level, and were notified to the SCM Committee no later than 28 February 2002. Furthermore, other Members can now request additional details and clarifications as part of the notification process of ensuring standstill.

Another modification to the review process endorsed in Doha comes out of paragraph 10.6 of the Implementation-related Decision (WT/MIN (01)/W/10), according to which the SCM Committee must take into account 'the relative competitiveness in relation to other developing country Members who have requested extension of the transition period following these procedures [...] when considering extension requests. Para. 10.6 notes that the aim of this clause is to avoid a situation where Members at a similar stage of development and having a similar magnitude of world trade are treated differently in terms of receiving extensions. This provision was agreed in Doha after lengthy negotiations almost exclusively due to concerns expressed by Colombia, which would not have been eligible for an extension under the old procedures. Anticipating Colombia's obligation to cut the subsidy programmes in question at the end of this year, foreign direct investment was already starting to desert Colombia in favour of countries qualified for an extension for similar programmes.

All but six of the submitting Members (76 percent) were from either Latin America or the Caribbean – with only two from Africa and Asia respectively. Least-developed countries are also absent from this list, as they are exempt from this subsidy reduction requirement under SCM Article 27.2(a).

The following Members have submitted requests: Antigua and Barbuda, Belize, Bolivia, Barbados, Colombia, Costa Rica, Dominica, Dominican Republic, Grenada, Guatemala, Honduras, Jamaica, Jordan, Kenya, St. Kitts & Nevis, Saint Lucia, Sri Lanka, Mauritius, Panama, Papua New Guinea, El Salvador, Suriname, Thailand, Uruguay, St. Vincent & the Grenadines. To view the applications document, search for G/SCM/N/74 in the WTO's document database at http://docsonline.wto.org/gen_search.asp

Services, continued from page 9

pointing out problems that developing countries continue to face, such as the large discrepancies between developed and developing countries' export capacities, and the difficulties in competing with multinational corporations. However, the EU, the US and Switzerland in particular continue to question any allegation that the GATS has had negative impacts on developing countries. Developing countries call for other bodies such as UNCTAD to get involved in conducting the assessment on services liberalisation.

A group of mainly Latin American and Asian Members put forward a paper on autonomous liberalisation (S/CSS/W/130). According to trade sources, discussions on granting credit for services liberalisation outside the negotiating process revealed a new flexibility to overcome the present impasse as to whether credit should only be given to developing countries, or also, to a certain extent, to developed country Members. Pakistan orally introduced a paper on the implementation of GATS Article IV (increased participation of developing countries in services trade), which stressed the importance of the provision as an integral part of special and differential treatment (S&D) for developing countries.

Among new sectoral proposals, Colombia's communication on environmental services underscores that liberalisation in the sector, above all through the commercial presence of foreign companies, could be favourable to developing countries in terms of technology transfer and improving environmental quality. However, the proposal says, in negotiating commitments account must be taken of the level of development of each Member. Colombia also stresses that the current classification of environmental services is not an appropriate basis for negotiations, as it does not contain new services in the sector. Furthermore, the communication says that in order to have a balanced outcome of liberalisation in environmental services, developing countries must be granted market access for the movement of natural persons providing environmental services at the international level (see related article on page 7).

Another Colombian proposal stresses the importance of tourism for developing countries in terms of foreign exchange earnings and employment. It calls for the removal of economic 'needs tests' in relation to market access for tourism services, and points to the importance of adequate visa legislation. The proposal stresses the problems developing countries are facing in relation to anti-competitive practices by tour operators in dominant positions, but makes no mention of the Annex to the GATS on tourism, proposed by the Dominican Republic and others in order to address the problem.

Costa Rica and Mercosur also tabled tourism-related proposals (S/CSS/W/128 and S/CSS/W/125). Both emphasise the economic and sustainable development elements such as the creation of employment, conservation of natural resources, and development of infrastructure, as well as attraction of foreign direct exchange earnings. To counter anti-competitive practices in tourism services, Costa Rica – one of the few developing country *demandeurs* for multilateral competition policy rules – also calls for calibrating services negotiations with the future WTO negotiations on competition policy.

Members agreed to postpone a decision on the future work programme until March 2002, when they are scheduled to hold a stocktaking exercise on the results of the GATS negotiations. For the next six months they will mainly focus on preparing initial liberalisation requests, which according to the Ministerial Declaration must be tabled by June 2002.

WTO Boosts Technical Assistance Budget

On 19 December, the WTO's General Council approved the organisation's most ambitious budget to date, and established the Doha Development Agenda Global Trust Fund with a proposed core budget of 15 million Swiss francs. The fund will serve for the implementation of next year's commitments on technical assistance as mandated in the Doha Ministerial Declaration.

Contributions to fund are voluntary, although some Members pushed to have technical assistance funds allocated as part of the organisation's regular budget. Sources say one reason for this is the burden it may have on least-developed countries, which would thus paradoxically have to contribute more as part of their annual dues to the WTO. Also, some developed countries, such as the US and Germany – both have already pledged US\$1 million to the fund – have little room for manoeuvre with regard to committing more money in a formal manner. They and other developed country Members are 'strongly encouraging wider participation from the larger developing countries,' said one developed country source.

Some technical assistance initiatives, however, are accounted for in the regular budget. These include support for a WTO Training Institute for developing country trade officials and 'Geneva Week' sessions for Members without permanent representation to the WTO in Geneva. These two items have only CHF 276,000 allocated between them, however, a sum one WTO official said was unlikely to be sufficient to run the programmes (the 'Geneva Week on its own costs 700,000-800,000 francs to run).

Questions remain over what form the technical assistance financed by the Trust Fund will take. The amount pledged will be based on a plan endorsed by the Committee on Trade and Development (CTD). However, due to the tight timeline imposed in Doha, Members have not agreed on what parts of a global technical assistance package the WTO itself can deliver on.

The Doha Declaration contains a host of technical assistance provisions, and emphasises co-ordination with other agencies and donors. A full program of technical assistance, particularly on capacity-building and supply side issues, must involve other agencies such as the World Bank and UNCTAD, trade officials say. Morocco's former WTO Ambassador Nacer Benjelloun-Touimi has been appointed Special Advisor to the WTO Director-General to co-ordinate coherence between the WTO, other international institutions and donors involved technical assistance activities (see related article on page 3).

WTO Symposium Planned for May

According to WTO Director-General Mike Moore, 'a major Symposium is planned for May 2002 to address 'the concerns expressed by some Ministers at Doha on our relations with the public.' Proposed agenda items include trade and debt; trade and finance; the digital divide; participation and the problems of capacity-constrained missions; the functioning and financing of the WTO; external relations; issues of social justice; and the social, economic, environmental and political impacts of globalisation. Funding for the Symposium, estimated to cost from 400,000 to 500,000 francs had previously been allocated under the regular technical assistance budget, but opposition from Pakistan and some other Members will now mean that the Symposium must be funded from voluntary contributions instead.

Development Committees Struggle with Work Programmes

Discussions at the Committee on Trade and Development's (CTD) 22 January meeting centred mainly on a draft Annual Technical Assistance Plan (ATAP) for 2002 prepared by the Secretariat (WT/COMTD/W/95). The Plan for 2002 sees itself as one out of four levels of action being taken on TA by the WTO, alongside the Integrated Framework (inter-agency plan to assist least-developed countries on trade-related matters); co-ordinated delivery with the OECD; and other inter-agency collaborations, especially on the 'Singapore Issues' of investment, competition policy, government procurement and trade facilitation.

Draft technical assistance plan's heavy emphasis on Singapore issues leads some to doubt the demand-driven nature of the WTO's future TA activities

The plan's stated focus is integrating the demands of the Doha Ministerial Declaration. While it stresses its 'demand-driven' nature, the CTD agreed to perform further editing. One delegate from a developed country indicated that this was due to the need to 'better accommodate all the elements of the Doha Declaration' and because of concerns that the plan was not demand-driven enough. One source noted that the 'Quad' group of Canada, the EC, Japan and the US was 'trying to dictate and limit the scope for developing countries to design

a TA plan that was best suited to their needs', citing as evidence the plan's heavy focus on the Singapore issues. Another draft of the ATAP is expected in the next few weeks.

At its first post-Doha meeting in November, the CTD considered – but failed to agree on – a work programme on special and differential treatment (S&D) for developing countries, a long-standing item on the committee's agenda, as well as a much-emphasised element in many of the post-Doha negotiating mandates. The Decision on Implementation-related Issues and Concerns instructs the CTD to look further into the legal and practical implications of making S&D clauses mandatory and other ways of making them more effective. The committee is to report to the General Council with 'clear recommendations for a decision' by July 2002. Apparently, a work programme was adopted at a subsequent meeting (WT/COMTD/36, still restricted at press time).

Meeting on 25 January, the Sub-Committee on Least-developed Countries came to a quick halt as no consensus could be found on the adoption of the proposed work programme for this year (WT/COMTD/LDC/W/23). The current proposal includes, *inter alia*, seminars on trade policy reviews and technical assistance, trade-related aspects of intellectual property rights, trade policy courses, and a joint seminar on the Integrated Framework in addition to two more official sessions of the Sub-Committee. The General Council is to consider the 2002 work programme on 13 February.

Very Briefly

- On 20 December 2001, the WTO General Council formally accepted Mexico's offer to host the fifth WTO Ministerial Conference in 2003, expected to take place in the middle of that year.
- Most of the WTO Development Division has been merged with the Economic Research and Analysis Division. Headed by Patrick Low, the new Development and Economic Research Division will service the CTD and the Informal Group of Developing Countries. In addition, through merging the separate Council and Ministerial Sessions Divisions, a new Council and Trade Negotiations Committee Division has been established under Evan Rogerson. The new Division will service the Dispute Settlement Body, as well as the General Council and the TNC.

Pakistan Reaps Benefits from New European GSP Scheme

A new and more generous European Generalised System of Preferences (GSP) came into force on 1 January 2002. According to the European Commission, the main thrust of the redefinition is to: 1) restore preferential margins which have been eroded by ongoing reduction of MFN duty rates; 2) enhance the effectiveness of GSP as a tool of sustainable development; and 3) simplify the management of the scheme, harmonise procedures, clarify rules and enhance predictability.

On 11 December, the EU announced the admittance of Pakistan into a special preferential regime that grants tariff concessions to countries fighting the illegal drug trade, originally targeted at Central American countries (Thailand has challenged the scheme as a violation of the most-favoured-nation principle, see page 8). The programme's intention is to help states move away from drug production by offering a five percent tariff cut in addition to the 3.5 percent cut under the revised GSP scheme. In particular, Pakistan's admission to the drug-fighting programme will result in the elimination of a seven percent EU tariff on Pakistani textile and clothing products and increase the respective European import quota by 15 percent on a one-off, across-the-board basis. In return, Pakistan will reduce its duties in the textiles and clothing sector by five percent across the board off of 2001 levels, as well as bind these rates at the WTO before July 2002. Pakistan stands to gain •150 million a year through the elimination of duties, as well as additional concessions worth •1 billion. Pakistan may reap another reward for its support in the 'war on terrorism', if the US Congress approves a vast increase in Pakistani textiles imports proposed by the Bush Administration. The proposal has, however, run into serious opposition from the powerful US textiles lobby.

The EU's GSP reform has sparked concerns that providing duty-free access to a much larger spectrum of developing countries erodes the effectiveness of the Everything But Arms initiative, which provides duty-free and quota-free access to goods from least-developed countries. Another controversial element of the redefined GSP scheme is the increased significance of special incentives for the protection of the environment and labour rights – 'meant to foster sustainable development'. Countries will now be eligible for an additional five percentage point tariff reduction (on top of the 3.5 percent reduction stemming from the general arrangement) should they apply strict environmental norms, or meet eight core conditions developed by the International Labour Organisation. To date, most countries have been unwilling to apply for the additional tariff reductions, as they are suspicious of linking these sensitive issues.

Environmental Review Procedures Adopted for Export Credit Agencies

In spite of US refusal to accept what it regards as a weak agreement, export credit agencies from Europe, Japan and Canada have decided to implement new international rules for environmental reviews of their lending initiatives – the biggest source of government financing for large infrastructure projects in the developing world – following approval of the rules by 24 of the 26 countries involved. While the US has advocated establishing such rules in the OECD for almost five years after implementing national requirements for environmental reviews, which US companies claim have put them at a competitive disadvantage, it opposes the voluntary nature of the agreement. The US also regards recommendations for public discussions as falling far short of its calls for allowing public discussion of a project's environmental impacts before any government support is approved.

EU to Address GMO Ban at Barcelona Summit

On 8 January 2002, officials from both the US and the European Commission indicated that they hoped a March meeting of European Union leaders would result in expediting the removal of the EU's 1998 de facto ban on approving new genetically-modified products. Many EU member states insist that rules for traceability and labeling of GMOs be in place prior to resuming the approval process. A recent EC 'Eurobarometer' poll suggests major support for this precondition, with 94.6 percent of EU citizens wanting the right to choose over GM foods. As one impediment to moving the agenda forward, one US official cited the fact that 'individual member states will continue to be able to hold the approval process hostage to political concerns.' The US has called to the European Commission to take the members to the European Court of Justice over the biotech issue. EU officials say they will frame the debate at the March meeting around the concern that keeping the ban puts European companies at a competitive disadvantage.

Environmental and Trade Concerns Cause EU to Revise the Common Fisheries Policy

On 17 January, the European Parliament adopted a report from its Fisheries Committee on the European Commission's Green Paper on a new Common Fisheries Policy (CFP). The Fisheries Committee principally found that it was necessary to strike a balance between the interests of European fishermen and the need to conserve fish stocks. The Committee also said that the approach to be taken in the forthcoming CFP should be based on modernising fleets, ensuring safety, proper inspection, and aid for the industry. The European Commission is now preparing a draft proposal of a reformed Common Fisheries Policy to be adopted by the Council before the end of this year. In December 2001, EU ministers set the total allowable fish catches (TACs) for this year. While below 2001 levels, the catches are higher than those recommended by the Commission, which had advocated a 14 percent reduction.

The Doha Ministerial Declaration launches WTO negotiations on fisheries subsidies, which the EU sought to avoid for many years, and Japan and Korea still oppose. On 12 February, UNEP's Economics and Trade Unit will organise a Fisheries Subsidies Reform Workshop aimed at building understanding and consensus on policy reform in that sector, including subsidy reform that will contribute to the sustainable development of fisheries.

In related news, the EU has come under fire for substantial incoherencies between its fisheries and development policies. As the EU has tightened control over its own fish stocks, it has moved toward fisheries in developing countries, much to the dismay of environmental groups such as the Worldwide Fund for Nature, which welcomed the EU's failure to obtain a new fisheries agreement with Senegal. According to WWF, this development was a 'positive sign' that developing countries were becoming more prudent in weighing short-term economic gains against protecting their natural resources. A recent UN Environment Programme (UNEP) report, which contains case studies from Senegal and Argentina, indicates that the eventual costs, in terms of loss of income for local fishermen, environmental damage and the depletion of native fish stocks, can far outweigh the short term financial gains generated from foreign governments and fleets.

Further reading: WWF. *Put Environment at the Heart of European Fisheries Policy*; UNEP. *Economic Reforms, Trade Liberalisation and the Environment: A Synthesis of UNEP Country Projects*; Eurostep. *Fishing for Coherence: Promoting Complementarity between EU Fisheries Arrangements and Development Policy*.

Trade Concerns Loom in Implementing the Kyoto Protocol

By Aniket Ghai

Last November in Marrakesh, despite the withdrawal of the United States, climate change negotiators agreed on detailed operational rules for the Kyoto Protocol, which is expected to pave the way for countries to move ahead with ratification. The 'Marrakesh Accords' do not introduce trade measures, either for environmental purposes or to enforce compliance. The agreements do, however, bring countries a major step closer to implementing the Protocol, and so also to searching for ways of reconciling resulting trade and environment concerns.

Although the Protocol seeks to minimise adverse impacts on international trade, implementation will undoubtedly have economic impacts, and probably also affect patterns of international trade. The Protocol's cap on developed country emissions of greenhouse gases will have the effect of raising the price of carbon emissions in one part of the world, while leaving it unregulated in another. The price differential will be offset to some extent by the Protocol's three flexibility mechanisms, but with corresponding transfers in capital. Depending on policy design, negative competitiveness effects could be expected on developed country energy-intensive exports, exportables and importables. Developed country climate change policies may also have negative trade impacts on developing country imports.

Several papers have argued that there are cases where WTO members might challenge domestic measures introduced by developed countries to implement climate change commitments. Such measures include mandatory product energy efficiency standards, 'subsidies', especially to the energy producing sector, border tax adjustments on imports to offset carbon or energy taxes, or eco-labelling schemes. Trade impacts may also possibly arise with respect to the Protocol's three flexibility mechanisms, emissions trading, joint implementation (JI) and the Clean Development Mechanism (CDM).

A first question that may be posed is whether WTO rules apply to internationally traded emission allowances, or comparable credits generated under the other flexibility mechanisms (emission reduction units and certified emission reductions). The same may be asked of services related to the trade in these 'commodities'. If one assumes that WTO rules do not apply (since the rules on trading are being developed under the Climate Change Convention), competitiveness concerns nevertheless arise when considering the design of the different schemes.

Emissions Trading

A proposal has recently been developed for an EU-wide emissions trading scheme (2005-2007) in advance of the Protocol's global emissions trading scheme scheduled to begin in 2008.¹ The discussion that has taken place within the EU on this proposal hints at possible tensions under WTO rules, although it should be noted that the competition and trade rules in place within the EU and EFTA are more detailed than those of the WTO.

The way in which emission allowances are initially allocated at the national level before trading can begin can have impacts on competitiveness, by according advantages to a specific sector or

industry. Two principle alternatives exist for allocation of allowances: by auction or by 'grandfathering', the latter being the free distribution of allowances to firms according to historic emissions.

The 'free' allocation of the grandfathering approach has been compared to a one-time lump-sum payment to firms, affecting wealth but not the marginal cost of companies (unit production cost), and, theoretically, therefore not competitiveness. But opting for such a system may be viewed as according an advantage to one's domestic firms, as compared to countries where comparable firms are obliged to purchase the allowances, especially if the allocation occurs on an annual basis, rather than once only with allowances valid for all time.

'Over-generous grandfathering', or allocating more allowances than a sector is likely to need, may amount to subsidy, since 'extra' allowances may be sold on the market.

Allocation by grandfathering also creates barriers to new entrants, unless provision is made for providing additional allowances, for example from a special reserve. Conversely, if firms holding allowances go bankrupt or relocate, plant closure could result in extra 'windfall' allowances becoming available to other firms in the sector, which would grant them an advantage. 'Over-generous grandfathering', or allocating more allowances than a sector is likely to need, may amount to subsidy, since these 'extra' allowances may be sold on the market.

The alternative of 'auctioning' of allowances could add significant new costs to an industry, although these costs could be neutralized by recycling the revenues to the industry in other ways. However, auctioning more allowances than are needed by a sector under 'business as usual' scenarios could also be viewed as a providing a subsidy to that sector.

Superimposing any emissions trading system on existing climate change policies and measures, such as carbon taxes or energy efficiency standards, may create too great a burden on some sectors. Although the few countries implementing carbon and energy taxes provide tax exemptions to energy-intensive export industries, there may nevertheless be pressures to harmonize taxation patterns across countries.

Joint Implementation and the Clean Development Mechanism

JI and the CDM allow countries to earn credit through projects that mitigate greenhouse gas emissions, in Annex I countries and outside, respectively. The Marrakesh Accords establish that JI and CDM projects that have begun in 2000 may be eligible for validation. The crediting period can begin from 2000 under the CDM, but only from 2008 for JI. However, additional modalities and definitions need to be established before these mechanisms can become fully operational.

Projects that are implemented now are subject to risks arising from uncertainty in the definitions that have yet to be specified (for example, on afforestation and reforestation) thereby affecting eligibility or amount of reductions earned, and also whether or not the Protocol will ever enter into force. At the same time, there are significant early entrant advantages, including in the form of "low-hanging fruit" or projects that will earn large emissions reductions for relatively small amounts invested.

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Convention on Plant Genetic Resources Adopted

On 3 November, the FAO Conference finally adopted the revised International Undertaking – now International Convention – on Plant Genetic Resources for Food and Agriculture after seven years of difficult negotiations. The new Convention is the first binding international instrument to deal specifically with the conservation and sustainable use of plant genetic resources for food and agriculture (PGRFA); for background, see *The International Undertaking on Plant Genetic Resources in the Context of TRIPs and the CBD* by Robert Lettington in Bridges Year 5 No.6, page 11).

The purpose of the revision of the International Undertaking was to harmonise it with the UN Convention on Biodiversity (CBD). In its original form as a non-binding agreement, dating from 1983, the IU was based on the principle that PGRFA should be ‘preserved [...] and freely available for use, for the benefit of present and future generations’ as part of the common ‘heritage of mankind’. The CBD requires that commercial benefits arising from the use of genetic resources be shared with those who have conserved them.

Agreement on IPRs Despite US and Japan Opposition

One of the most contentious final points of the revision related to Provision 13.3(b) of the agreement, i.e. whether ‘genetic parts and components’ received from the Multilateral System (MS) should be patentable (the MS refers to a system for established under the Convention to facilitate access and benefit-sharing). The adopted text provides that ‘recipients shall not claim any intellectual property or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, or their genetic parts and components, in the form received from the Multilateral System’. Japan and the US opposed this formulation and consequently abstained from the final vote. The US noted in a statement during the final plenary that it would be unable to ratify the Convention due to the restrictions it places on innovations. Some observers have questioned the treaty’s usefulness if the US – as one of the key countries involved in plant breeding and genetic engineering – is not bound by its provisions.

Canada and Japan also expressed concerns regarding the consistency between the IC and the WTO’s TRIPs Agreement and in particular its Article 27.3(b), which requires Members to grant patents on micro-organisms and non-biological and micro-biological processes, and to establish some kind of intellectual property protection for plant varieties. Some observers noted that the IC might provide an important precedent for the unresolved discussions on the review of Article 27.3(b) at the WTO.

Another overlapping area concerns the IC provisions on benefit-sharing, which provide for monetary contributions derived from the commercialisation of products developed from PGRFA accessed under the MS. The payment is mandatory when the commercialisation of the product restricts the product’s availability for use in further research and breeding, and voluntary when the product is freely available for such purposes. While the IC does not explicitly discriminate between IPR holders – who are by definition conferred exclusive rights under TRIPs – and others, some observers speculate that it does so in practice due to the different rules for products available for further research and breeding and those that are not. Depending on how governments incorporate the IC’s provisions into their IPR regulations, they might be challenged in the WTO on the basis that they violate TRIPs obligations under Articles 27.1 and 29 by imposing additional conditions for IPR protection.

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Schemes where governments guarantee to buy credits irrespective of outcomes might be considered a form of subsidy, or risk underwriting, since the associated costs are not borne by the entities that undertake the projects. The question arises as to whether such purchases are bound by the WTO Agreement on Government Procurement. Further, the purchase by a government of credits from its national entities at a price higher than the prevailing market price could be viewed as a form of subsidy.

The European Commission’s revised guidelines on state aid for environmental protection spell out in detail the criteria for determining whether aid is compatible with the Common Market. The guidelines cover measures such as energy tax reductions to certain sectors, transitional investment aid for SMEs to adapt to new standards, investment in renewable energy, energy efficiency and combined heat and power, waste management, etc. The EC Treaty also identifies criteria for determining when state aid is not compatible. These regulations have been extended to cover all EFTA states. The EU enlargement policy also requires candidate countries to adopt state aid and competition legislation similar to that in place in the EU.

Within the EU, where state aid scrutiny applies also to JI and CDM projects receiving government assistance, a controversial case has already arisen: a Dutch bus manufacturer embarked on an AIJ pilot project with Peru, under which financial assistance from the Dutch government was accorded to replace 15 local buses with higher efficiency Dutch ones. Concerned that the environmental benefits of the AIJ project are not sufficient to justify the advantages gained in terms the Dutch company’s penetration of the Peruvian market as compared to European competitors, the European Commission has opened a procedure on the matter.

In general, the credits earned by private sector entities that engage in CDM projects could be expected to lead to an heightened WTO scrutiny of tariff, non-tariff and investment barriers to trade between developed and developing (host) countries in the relevant environmental services and goods.

A Co-ordinated Approach?

In general, the flexibility mechanisms will mitigate competitiveness effects since they lower the cost of compliance with targets. However, specific design issues are key to ensuring that the system generates these benefits. In developing the architecture of an EU-wide scheme, efforts have been made to implement climate change policies while maintaining fair competition among EU members.

It remains to be seen whether this approach will be mirrored in international negotiations on climate change, as governments further elaborate the functioning of the flexibility mechanisms. If a coordinated approach is not followed, instead countries will seek to achieve their targets without a ‘competitiveness rulebook’ in ways that are least costly to their export industries. Such a scenario would be more likely to lead to action under the WTO on the grounds of unfair support. However, countries must first ratify the Protocol, with or without the United States. But will they do so without guarantees that the playing field will remain level?

Aniket Ghai, Geneva Environment Network. The views expressed in this article should not be attributed to any organisation.

¹ See papers at <http://europa.eu.int/comm/environment/climat/eccp.htm>

The Protection of Geographical Indications

By Alexandra Grazioli

Why is there so much discussion on the subject of protecting names such as Basmati, Darjeeling, Havana, Champagne and Tequila? What exactly are geographical indications? What lies behind these names? Why do some countries want them to be protected while others do not?

Internationally, the fiercest debates on the subject are currently happening at WTO. A number of countries, both developing and industrialised, are fighting to obtain truly effective international protection for geographical indications. Why are they doing it? In what way is the present protection inadequate? What does improving protection involve? The purpose of this article is to provide answers to these questions.

A geographical indication is a sign used on products that have a precise geographical origin and qualities or a reputation as a result of that place of origin. It often consists of the name of the place of origin of the products. The geographical indication may also serve to highlight the specific qualities of a product that are due to specific local geographical factors (such as climate and soil) and to human factors present at the place of origin of the products (such as certain manufacturing techniques or a traditional production method).

To gain an idea of the importance of these geographical indications, one need look no further than the names used to identify agricultural products such as tea (Darjeeling), cacao (Chua) and wines (Bordeaux, Chianti), as well as other products such as carpets (Bakhar, Kashmir), watches (Switzerland) and porcelain ("émaux de Limoges"). These few examples are enough to point out the enormous range of products for which the use of a geographical indication can have a role to play.

The purpose of the geographical indication is to identify a product. It also carries a message from the producer to the consumer about the features and qualities of the product to which it is attached. Properly used, a geographical indication can therefore constitute a very worthwhile marketing tool for producers. Furthermore, geographical indications may prove to constitute useful instruments for the protection of traditional knowledge, which is of great interest for many developing countries.

It is because of all these qualities inherent in geographical indications that it is necessary to ensure that they obtain sufficient protection. The development of a reputed geographical indication and its positioning on the market require considerable investments in human and economic terms that deserve proper protection.

The abusive use of a geographical indication by an unauthorised third party with a view to exploiting its reputation is damaging for both consumers and legitimate producers. Consumers are misled into thinking that they are buying an authentic product with specific qualities and features, whereas they are in fact merely buying an imitation. The legitimate producers, for their part, suffer by losing the benefit of lucrative commercial operations and because the reputation of their products is damaged.

The damage is not merely theoretical; according to today's protection granted at international level, it happens frequently

that producers launch quality products on the market that are identified by geographical indications they have developed at the cost of considerable investment and following a long tradition. These products have unique features that are the result of their geographical origin.

Whether it is tea, rice or carpets, or indeed any other product, the problem remains the same – the product is put on the market and, if it becomes popular with consumers and gains in reputation, the range of products on offer rapidly expands to include similar products bearing the same geographical indication but produced in other regions. To allow such an improper use of the geographical indication, it is sufficient to add a corrective at the geographical indication (such as "American type basmati rice"). Consumers' behaviour can be easily influenced by such an improper but nevertheless legal use of geographical indications.

Products marked in this way cannot, however, offer the same qualities or characteristics as the original product, since they do not come from the region specified. Consumers therefore cannot rely on the geographical indication shown on the product when making their choice. The legitimate producers, for their part, lose a considerable share of the market as a result of this pillage, since their typical products are reduced to the same level as dozens of other products bearing the same name and reaping the benefit of their reputation even though they do not have the same qualities or characteristics. The negative consequences of these commercial manoeuvres are considerable on the economies of every country, and perhaps particularly for developing countries, as they deprive countries that are already poor of a source of income.

Should such practices continue to be tolerated? Is there no way of preventing this form of pillage?

There are international treaties designed to protect geographical indications¹. The most promising tool at the moment, which could, in future, make it possible to ensure effective protection at the international level for geographical indications is WTO's Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPs Agreement). TRIPs already covers the international protection of geographical indications. It represents real progress compared with the situation that existed before it came into force. Nevertheless, at present it has the major disadvantage of providing two levels for the protection for geographical indications – a higher level of protection for wines and spirits (Article 23) and a lower one for all other products (Article 22).

The main difference between these two levels of protection – and it is an important one – is that, in order to prevent the incorrect use of a geographical indication under the ordinary protection, the party that considers itself wronged must furnish proof that the wrongful use of the geographical indication is misleading for the public or constitutes unfair competition. This results in different protection for the same geographical indication in different countries, thereby creating serious legal insecurity. All protection is thus based on the knowledge or ignorance of the consumers and the discretion of the judge...

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Wider geographical indications coverage would correct discrimination between wine-producing and other countries.

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On the other hand, the situation is different for geographical indications for wines and spirits: according to Article 23 TRIPS Agreement, the incorrect use of geographical indications is simply prohibited, without the need to furnish the proof mentioned earlier. The use of a corrective is also prohibited (for example it is not possible to use 'Napa Valley wine, *produced in Argentina*'). Here, protection is automatic and objective, and this is a considerable advantage when trying to obtain real protection for a geographical indication and to enforce the right contained in it.

Although the TRIPS Agreement, because of this two-level-protection, is unable to provide truly effective protection for geographical indications for products other than wines and spirits, it does, however, already contain the key to the solution of this problem. Members provided already in the Uruguay Round for further work to be done on the improvement of protection for geographical indications by the TRIPS Agreement. In the Agreement (Article 24.1), the WTO's member states agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23.

Such an improvement of protection at international level could be achieved by simply extending the already existing level of protection for geographical indications of wines and spirits to other products as well. All countries, and not only those that produce wines and spirits, would thus at last have at their disposal an effective tool to ensure the protection of their geographical indications. The time has come for this imbalance to cease, and for the commercial strength of geographical indications for all products to be recognised and protected effectively.

It is to fight this incoherent, discriminatory situation that for some years now a number of countries, among others Bulgaria, Cuba, the Czech Republic, Egypt, Iceland, India, Jamaica, Kenya, Liechtenstein, Mauritius, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Turkey and Venezuela, have been fighting at the WTO for the geographical indications of all products to have the benefit of the same level of protection.

The Ministerial Declaration, as adopted at the WTO Ministerial Conference, in Doha (9 to 14 November 2001) addresses the issue of extending the protection of geographical indications provided for in Article 23 to products other than wines and spirits. While many Members interpret the relevant text in the Declaration to be a clear cut mandate to launch negotiations on this in the TRIPS Council, other delegations are not in favour of such negotiations.

Next year's work of the TRIPS Council will show whether WTO Members will be able to agree on a more effective protection of geographical indications.²

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ENDNOTES

¹ In particular, the Paris Convention for the Protection of Industrial Property, the Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

² Geographical indications are on the agenda of the next TRIPS Council meeting scheduled for 5-7 March 2002.

Objections to GI extension

WTO Members disagree on whether the Doha Ministerial Declaration mandates negotiations on extending geographical indications protection (Bridges Year 5, No.9, page 6). While this is not essentially a North-South issue (there are developing and developed countries in both camps), a number of developing countries strongly oppose extension. Here are some of the main arguments they put forward.

At a fundamental level, many developing countries believe that intellectual property protection should not be part of the WTO's mandate, and extending the coverage of TRIPS would only serve to entrench it more firmly in the multilateral trading system.

More specifically, even if some developing countries could come up with products that would benefit from geographical indications protection, the cost might outweigh the benefits, as WTO Agreements carry obligations as well as rights.

GIs already enjoy 'ordinary protection' under TRIPS Article 22, which obliges Members to provide interested parties with the legal means to prevent the designation/presentation of a good's geographical origin in a manner that misleads the public or any use which constitutes an act of unfair competition within the meaning of the 1967 Paris Convention Article 10 bis. Geographical indications for wines and spirits are more strongly and specifically protected under TRIPS Article 23, which does not include the public policy criteria of not misleading the public or engaging in anticompetitive practices. To include more products under Article 23-type protection would enhance the role of TRIPS as a means to essentially protect private property and diminish the treaty's public policy dimension.

Furthermore, for most developing country products the trade value of enhanced GI protection remains theoretical rather than quantified, and the legal and administrative systems for such protection domestically are lacking. Only a few, mainly European, countries have such systems in place and can thus enforce geographical indications protection in their own territories. Should this become a worldwide obligation, developing countries would be likely to lose rather than gain.

The following arguments against extension were made in a TRIPS Council paper (IP/C/W/298) by Argentina, Australia, Canada, Chile, Guatemala, New Zealand, Paraguay and the United States:

- the costs of implementing new laws and administrative mechanisms that would be necessary to fulfil new TRIPS obligations;
- the administrative and financial burden of providing 'additional protection' to a large number of other Members' GIs;
- possible closing-off of future market access opportunities for emerging industries, and uncertainty concerning the continued use in existing markets;
- differential impact on Members (and industry), particularly Members that do not already have elaborate TRIPS-plus systems in place;
- consumer confusion caused by re-naming and re-labelling of products; and
- heightened risk of disputes over GIs between WTO Members and between producers in WTO Members

As one Southern expert summed up, for developing countries the extension of GI protection is 'much ado about' (a) nothing, (b) very little (c) theoretical/uncertain gains.

Sustainability Challenges of Paragraph 51 of the Doha Declaration

By Alhagi Marong and Markus Gehring

In the recently adopted Doha Ministerial Declaration, WTO ministers reaffirmed their commitment to the objective of sustainable development as contained in the Preamble to the 1994 Marrakesh Agreement. In what could be a significant first step to the realisation of this commitment, paragraph 51 of the Declaration requires that the WTO Committee on Trade and Development and the Committee on Trade and Environment:

shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.

With the adoption of this paragraph, the WTO has, for the first time, put in place a mechanism to evaluate the negotiation of trade rules and their possible impacts on the environment and development. While the paragraph could contribute to the integration of social and environmental concerns into the trade regime (alongside the predominant economic focus), and thus contribute to sustainable development, the real indicator of progress lies in the process that will be adopted by the two committees in carrying out their new mandate. This article attempts to discuss the form that such a process might take.

First, the language of paragraph 51 is disappointing because it envisages that the two committees shall continue to work separately 'within their respective mandates' as if trade, environment and development were mutually exclusive. We wish to suggest that the social and environmental aspects of trade policy are so effectively interlinked with their economic aspects, that the thematic and structural distinction drawn by the declaration is unwarranted. Instead, we recommend that the two committees adopt a holistic and integrated discursive process in their effort to reflect the objective of sustainable development in the trade negotiations. From an international sustainable development legal perspective, the Committees on Trade and Development, and Trade and Environment, should develop a common strategy for the analysis of 'sustainable development issues' arising from the trade negotiations, instead of the parallel but separate discussions which, in our view, are envisaged by paragraph 51. One way forward would be for the two committees to sit in joint session as the *WTO Committee on Trade and Sustainable Development* for the purpose of carrying out the mandate under paragraph 51. There is precedent for such 'metamorphosis' of committees within the WTO; the General Council for example sits as the Dispute Settlement Body and as Trade Policy Review Body, albeit with a different Chairperson, Art. IV:3 and 4 WTO Agreement.

While the Declaration does not request the use of assessment technologies, we believe that mechanisms to assess the social and environmental impact of trade rules must be a key component of the implementation of paragraph 51. The two committees can build upon individual Members' efforts to assess the impact of changes to trade rules on the environment or to conduct sustainability impact assessments (SIAs). Canada, the United States, the European Union, Norway, and the Czech Republic have undertaken such studies.¹ Existing integrated assessment procedures and methodologies are still diverse, and any step in this direction would have to be requested by WTO Members.

Environmental impact assessments were first introduced in the United States in the 1970s. As a procedure to determine possible effects of a project on the environment and on communities, EIA usually includes a preliminary scientific or information gathering phase, and a technical report on the basis of which a decision is made whether to proceed with the project as originally designed, to do so with amendments or mitigation measures, or not to proceed at all. The 'no-action' alternative is considered to be an important element of the EIA process. The procedure now enjoys broad acceptance among developed and developing countries, international development organizations, as well as non-

governmental organizations.² This increasing acceptance has led some to argue that international law may now require environmental impact assessments of projects, as a method of achieving sustainable development.³ Despite the appellation EIA, impact assessment requirements are now generally perceived to go beyond the consideration of environmental issues. Interlinkages between economic, environmental and social issues, particularly in developing countries, have made it imperative in many situations that projects be analyzed for their impacts on nature

and upon people. As a result, there is a gradual shift towards the more integrated concept of 'sustainability impact assessments' which seek to address the so-called 'triple bottom line', i.e. social, environmental and economic aspects in decision making.⁴ As the product of state and civil society collaboration, SIA instruments apply to policies, plans and programmes as well as projects, and seek strategies for longer term sustainability. Already, they have been applied at the national level by governments and NGOs in the Netherlands, Philippines, Indonesia and in the United States. At the regional level, they have been conducted in relation to the European Commission's transport strategy.

To operationalize SIAs, attempts have been made to identify a set of sustainability indicators. Two broad categories exist: the first (empirical) set of indicators involves expressing sustainable development in terms of a set of targets to be achieved at a specified future time. The second (more normative) set, are called process indicators. These relate to the soundness of institutional planning and management processes including mechanisms for the meaningful involvement of stakeholders. It is in the utilization of the latter set that we think the Committees on Trade and Development and Trade and Environment can make a contribution to the achievement of sustainable development at the WTO. The crucial question is how should they go about fulfilling this task?

We have suggested above that the two WTO committees should adopt a holistic and integrated discursive process in order to fulfill the new mandate conferred by paragraph 51 of the Ministerial Declaration. The holistic aspect of this process implies the integrated consideration of social, environmental and economic impacts and implications of international trade rules, rather than their separate thematic treatment.

In the interests of legitimacy, the process should be inclusive, transparent, and participatory. There is emerging international consensus that norms generated through inclusive processes of decision-making are perceived to be more legitimate, and therefore

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enjoy a greater degree of compliance.⁵ Thus, we suggest that not only should the two committees sit together as the Committee on Trade and Sustainable Development and include representatives from both industrialized and developing countries, but also that the proceedings should be open to, and could benefit from, input by appropriate stakeholders like international organizations with interest or expertise in environment and/or development issues. Examples include UNCTAD, UNEP, the World Bank and UNDP, within their respective areas of operation. Especially in the light of para. 6 of the Doha Ministerial Declaration, that welcomes the WTO's continued cooperation with UNEP and other inter-governmental environmental organizations and encourages efforts to promote cooperation between the WTO and relevant international environmental and developmental organizations, this input appears to be most appropriate. Many serious and reputable NGOs and individuals could also offer advice and expertise on matters for which the WTO lacks specific capacity. The Committee on Trade and Environment is already benefiting from such NGO collaboration. Moreover, the proceedings of the new committee should be available to the broader public.

We believe that these suggestions for greater internal and external transparency and public participation are consistent with many provisions of the Uruguay Round Agreements, with paragraph 10 of the Doha Ministerial Declaration, and the practice of the Committee on Trade and Environment.

In carrying out the task conferred by the Doha Declaration, the Committees on Trade and Development and Trade and Environment would, in effect, be considering and debating the potential impacts of trade law and policy on the environment, on societies, communities, and upon people. We believe this process could most effectively be carried out through a transparent, participatory and integrated process involving a variety of stakeholders to make the trade negotiation process more legitimate, and more acceptable to a broader spectrum of international society.

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¹ The USA first raised the issue in 1996 and called for national environmental reviews, see WT/CTE/W/37 (23 July 1996). In discussions in the CTE during 2000, countries described their various efforts, WTO document WT/CTE/M/23, 5 April 2000.

² Article 17 of the Rio Declaration requires national environmental impact assessments for activities that are 'likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority'. EIAs are also required included in the 1991 Protocol to the Antarctic Treaty on Environmental Protection, UNCLOS 1982, as well as some projects funded by the World Bank; see World Bank Operational Directive 4.01 (1991).

³ S. Nooteboom & K. Wieringa, *Comparing Strategic Environmental Assessment and Integrated Environmental Assessment*, J. of Env'tal and Assessment Policy and Management, (1999) Vol. 1, No. 4 at 441-457; also P.N. Okowa, *Procedural Obligations in International Environmental Agreements* (1996) Brit. Y.B. of Int'l Law 275.

⁴ The phrase 'triple bottom line', is attributed to John Elkington, Chairman of SustainAbility, the London and New York based strategic management consultancy, who introduced it in his 1997 book *Cannibals with Forks*.

⁵ J. Brunnée & S.J. Toope, *International Law and Constructivism: Elements of an Interactional Theory of International Law*, 39 Columbia Journal of Trans'l Law 19, (2000).

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¹ See full report *Building Capacity to Trade: A Road Map for Development Partners*, ECDPM Discussion Paper 33, at http://www.ecdpm.org/pubs/dp33_gb.htm.

² Bussolo, M. and H.B. Solignac Lecomte, 1999, "Trade Liberalisation and Poverty", *ODI Poverty Briefing No.6*, London:ODI. (<http://www.odi.org.uk/briefing/pov6.pdf>); Winters, A.L., 1999, *Trade, Trade Policy and Poverty: A Framework for Collecting and Interpreting the Evidence*, Global Development Network (<http://nt1.ids.ac.uk/eldis/winter.htm>).

³ See also Pengelly, T. & M. George, 2001, *Building Trade Policy Capacity in Developing Countries and Transition Economies – A Practical Guide to Planning Technical Co-operation Programmes*, International Trade Department, London:DFID.

⁴ And to some extent by that of CARICOM's Regional Negotiating Machinery (RNM).

⁵ At an INZET meeting organised in preparation of UNCTAD's LDC III conference in The Hague in May 2001, African trade civil servants were reported as saying they were being 'seminared to death' by donors.⁵

⁶ The main reason for this is the gradual shift of trade regulation from border issues (mostly tariffs) to non-border issues (including TBTs, TRIMs, etc.). The point was made by A. Dunkel, during the OECD DAC's Workshop on Good practices for donors on capacity development for trade (Paris, 29-30 May 2000).

⁷ Gonzales, A., S. Page and M. Tekere, 2000, *Helping the ACP Integrate in the World Economy – An Agenda for Research and Support*, ECDPM-ICTSD Discussion Paper, Maastricht:ECDPM. (<http://www.oneworld.net/ecdp/en/events/20009/index.htm>)

⁸ Rodrik, D., 2001, 'Trading in Illusions', *Foreign Policy*, March-April. (www.foreignpolicy.com/issue_marapr_2001/rodrik.html)

⁹ On customs valuation, sanitary and phytosanitary measures, and trade-related intellectual property rights.

¹⁰ Presentation of the Integrated Framework at the Business Roundtable organised by ITC, during the LDC III conference in Brussels (16/05/01).

IN MEMORIAM

Anil Agarwal, Chairperson of the New Delhi based Centre for Science and Environment, and Editor of Down To Earth, India's premier science and environment magazine, passed away after a prolonged illness on 2 January 2002. Anil, who was also a highly valued member of ICTSD's Programme Advisory Board from 1995 to 2000, began his journalistic career as a science correspondent for the Hindustan Times in 1973. He wrote for several international publications including the London-based journals *Earthscan* and *New Scientist*. In addition, he has written and edited more than 20 books on science and environment in India. In 1980, Anil founded the Centre for Science and Environment, which grew to be a vital non-governmental player in India and internationally. From 1983 to 1987, he chaired the world's largest network of environmental NGOs, the Nairobi-based Environment Liasion Centre.

In 1987, the United Nations Environment Programme elected him to its Global 500 Honor Roll for his work in the national and international arena. The Indian Government has also honored him with Padma Shri and Padma Bushan for his work in environment and development.

New Trade and Sustainable Development Resources from ICTSD

- In December 2001, ICTSD launched IPRsonline, a new internet portal on intellectual property rights and sustainable development (<http://www.ictsd.org/iprsonline>). The site provides an integrated one-stop resource with material emanating from ICTSD projects, mainly its capacity-building joint venture with UNCTAD (see below), as well as documents from – and links to – the broadest possible spectrum of other organisations working on the subject matter. This is the space to watch for news, government proposals and an up-to-date calendar of relevant meetings.

ICTSD's and UNCTAD's joint capacity-building project on intellectual property rights and development was launched in August 2001. The project's central objective is to build capacity among negotiators and other decision-makers from developing countries to effectively participate in rule-making through research, information exchange and stakeholder consultations regarding this cutting-edge area of trade policy-making. A comprehensive and updated *Literature Survey on IPRs and Sustainable Human Development* (December, 2001), as well as the first draft of a *Policy Discussion Paper on IPRs and Development* have recently been posted on the project's website (<http://www.ictsd.org/unctad-ictsd/>). Forthcoming resources include a paper on *Indicators of the Relative Importance of IPRs in Developing Countries* by economists Sanjay Lall and Manuel Albaladejo. This study presents an innovative attempt to empirically understand and approach the technology aspects of the TRIPs Agreement in diverse development conditions.

Four case studies and policy briefs are also under production on *food security, nutrition and IPRs*; on the *development economics of geographical indications*; on *experiences in the use of compulsory licenses*; and on *mechanisms and policies for technology transfer*. The site also contains links to related projects, such as UNCTAD BioTrade Initiative and ICTSD's *BRIDGES Trade BioRes* (see below), as well as an archive of relevant news articles that have appeared in various ICTSD publications.

- We are very pleased to have launched the long-expected *BRIDGES Trade BioRes – Trade and Biological Resources News Digest*, a fortnightly electronic publication, produced in collaboration with IUCN and its Commission on Environmental, Economic and Social Policy (CEESP). *BioRes* aims to build bridges between the diverse and often insulated communities (including policy-makers and those in civil society) working on issues related to biological resources, trade and sustainable development. *BioRes* is available on the ICTSD and IUCN websites (www.ictsd.org/biores/index.htm and <http://www.iucn.org/>), as well as by electronic mail (see back page).
- In addition, ICTSD is looking forward to the release of the first issue of *Trade Negotiations Insight*, a new quarterly publication intended to assist negotiators and others in keeping abreast of developments regarding the major issues faced by all African and the ACP countries in their international trade negotiations at the WTO and with the EU in the context of the Cotonou Agreement. The publication forms part of ICTSD's Africa Trade Programme and will be co-produced by the European Centre for Development Policy Management (ECDPM) in Maastricht and the Overseas Development Institute (ODI) in London. In addition to paper and electronic copies, the *Trade Negotiations Insight* will be available on ICTSD's new Africa sub-portal (<http://www.ictsd.org/issarea/africa/index>).

This site also contains official documents from a variety of sources, as well as links to relevant news stories from ICTSD's regular publications. Forthcoming postings will include a policy paper by Dr. A. O. Adede (Kenya) on *TRIPs and Sustainable Development: Streamlining Africa's Responses to the Impact of Review and Implementation of the Agreement*, and an *Agricultural Negotiations Policy Brief* by Congolese economist Isabelle Mamaty.

The International Centre for Trade and Sustainable Development (ICTSD) implements its programme of information, dialogues and research through partnerships with institutions around the globe.

The *BRIDGES* series of publications includes:



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MEETINGS

All WTO phone and fax numbers start with (41-22) 739.

Only extensions are provided in this list.

Please contact the Secretariat for confirmation of dates.

For these and other meetings, see: <http://www.ictsd.org/cal>

| | |
|------------------------------|--|
| Jan. 28 - Feb. 8 New York | 2 nd Preparatory Committee Meeting for the World Summit on Sustainable Development Contact: Johannesburg Summit Secretariat, e-mail: dsd@un.org |
| February 1 Geneva | WTO Dispute Settlement Body Contact: Nuch Nazeer, tel: 5393, fax: 5458 |
| February 7 Geneva | WTO Committee on Agriculture Special Session Contact: Peter Ungphakorn, tel: 5412, fax: 5458 |
| February 13 Geneva | WTO General Council Contact: Nuch Nazeer, tel: 5393 fax: 5458 |
| February 14 Geneva | WTO Committee on Trade and Development Contact: Lucie Giraud, tel: 5075, fax: 5458 |
| February 19-20 Geneva | WTO Committee on Regional Trade Agreements Contact: Hans-Peter Werner, tel: 5286, fax: 5458 |
| February 20-21 Geneva | WTO Textiles Monitoring Body Contact: Luis Ople, tel: 5374, fax: 5458 |
| February 21 Geneva | WTO Committee on Government Procurement Contact: Luis Ople, tel: 5374, fax: 5458 |
| March 4-8 Yokohama | 3 rd Session of the Codex Intergovernmental Task Force on Biotechnology Contact: John Riddle, Media Relations, tel: (39-6) 5705-3259, e-mail: John.Riddle@fao.org, |
| March 5-7 Geneva | WTO Council for Trade-related Aspects of Intellectual Property Rights Contact: Peter Ungphakorn, tel: 5412, fax: 5458 |
| March 8 Geneva | WTO Dispute Settlement Body Contact: Nuch Nazeer, tel: 5393 fax: 5458 |
| March 11-22 Geneva | WTO Council for Trade in Services Contact: Nuch Nazeer, tel: 5393 fax: 5458 |
| March 14-15 Geneva | WTO Working Group on the Interaction between Trade and Competition Policy Contact: Hans-Peter Werner, tel: 5286, fax: 5458 |
| March 14-15 Geneva | WTO Committee on Technical Barriers to Trade Contact: Luis Ople, tel: 5374, fax: 5458 |
| March 18 Geneva | WTO Council for Trade in Services Contact: Nuch Nazeer, tel: 5393, fax: 5458 |
| March 18-22 Monterrey | UN International Conference on Financing for Development Contact: Ffd Secretariat, tel: (1-212) 963-2587, e-mail: ffd@un.org, web: www.un.org/ffd |
| March 21-22 Geneva | WTO Committee on Trade and Environment Contact: Hans-Peter Werner, tel: 5286, fax: 5458 |

WTO DOCUMENTS

Canada – Export Credits and Loan Guarantees for Regional Aircraft. (WT/DS222/R). 28 January 2002. Report of the Panel

Committee on Trade and Development. 5 October 2001. The Generalised System of Preferences: A Preliminary Analysis of the GSP schemes in the Quad. (WT/COMTD/W/93) Background note by the Secretariat

United States – Tax Treatment for Foreign Sales Corporations. Recourse to Article 21.5 by the EC. (WT/DS108/AB/RW). 14 January 2002. Report of the Appellate Body

OTHER PUBLICATIONS AND RESOURCES

Haufler, Virginia. 2001. A Public Role for the Private Sector: Industry Self-regulation in a Global Economy. Carnegie Endowment for International Peace. Washington D. C.

UNEP. 5 November 2001. Economic Reforms, Trade Liberalisation and the Environment: A Synthesis of UNEP Country Projects. United Nations Nations Environment Programme. Geneva

UNEP. 5 November 2001. Enhancing Synergies and Mutual Supportiveness of Multilateral Environmental Agreements and the WTO. UNEP. Geneva

World Business Council for Sustainable Development. October 2001. The Business Case for Sustainable Development. WBCSD. Geneva

NEW FROM ICTSD

Dutfield, Graham. 2001. Intellectual Property Rights and Development. Comments are sought on this draft Policy Discussion Paper prepared by Graham Dutfield for the joint ICTSD/UNCTAD Project on TRIPs and Development Capacity Building. The aim is to produce a readable and accessible document that can contribute to a better understanding of the key issues regarding the TRIPs Agreement and development by national authorities and other stakeholders.

Kostecki, Michel. 2001. Technical Assistance Services in Trade Policy. The objective of this ICTSD Resource Paper is not to advocate any specific model of technical co-operation but rather to pave the way for a much-needed international debate on trade policy-related technical assistance, doubly important in the WTO's post-Doha work programme, in which enhanced capacity-building is a central element.

BRIDGES Trade BioRes is a new electronic newsletter produced bi-weekly by ICTSD in collaboration with IUCN – The World Conservation Union, and its Commission on Environment, Economic and Social policy. This publication aims to raise awareness of trade issues relevant to the conservation community. To subscribe, send a blank email to: subscribe_biores@ictsd.ch. *BRIDGES* Trade BioRes is also available at <http://www.ictsd.org> and <http://www.iucn.org>