

Bold Development Box Proposals Meet with Stiff Resistance

On 25 March, 144 governments will start the final phase of the agricultural negotiations that are to conclude in 2005 as part of the 'single undertaking' multilateral trade talks launched in Doha.

The second phase of the negotiations concluded in early February with a meeting devoted to development concerns. In the Doha Declaration, ministers agreed that 'special and differential treatment for developing countries shall be an integral part of all elements of the [agriculture] negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development' (para. 13). At the February meeting, however, few WTO Members showed any enthusiasm for a significantly enhanced special and differential treatment regime (see page 10).

Development Box

Ever since the Seattle Ministerial Conference, developing countries have sought to introduce a 'development box' that would allow them more flexibility in implementing the Agreement on Agriculture. While anything entitled 'box' in the agricultural field instantly brings subsidies to mind, the concept in fact consists of an array measures – well beyond changes to subsidy rules – that would provide spaces for development-friendly policies.

Focus on Food Security

In an informal paper submitted to the February Special Session on agricultural negotiations, nine developing countries proposed the creation of a 'development box' focused on measures that would enhance food security and safeguard the livelihoods of rural communities.¹ They clearly spelled out that the proposal applied only to developing countries, and was designed to enhance flexibility rather than prescribe specific policies.

The proposal aims to respond to developing countries' need to:

- protect and enhance their food production capacity, particularly in key staples;
- safeguard employment opportunities for the rural poor; and
- protect small/marginal farmers from 'an onslaught of cheap imports'.

Among the key elements of the proposal was that basic food security crops, i.e. 'crops which are either staple foods in the country concerned or other crops which are the main sources of livelihood for low-income and resource-poor farmers', should be exempted from reduction commitments. According to the proposal,

such an approach could be implemented through a 'positive list', in which developing countries would designate the crops subject to support reductions while leaving out those deemed vital for their food security needs.

S&D: Smaller Cuts, Exemptions and Tariffs Raises Proposed

Another paper from the same group proposed similar action under the heading of 'special and differential treatment'.² In addition to exempting staple food crops from reduction commitments, this proposal argued that, as a special and differential treatment measure, developing countries should be able to reduce their bound rates by a smaller percentage than developed countries.

In a proposal focused on fighting drug trafficking, Bolivia argued that special and differential treatment should apply to 'alternative development programmes' aimed at substituting illicit crops with legal ones. Domestic support to such programmes should be exempt from reduction commitments, and products grown under them should be given quota- and tariff-free market access, as well as be exempt of safeguard measures.³

The countries behind the development box proposal suggested that, as an S&D measure, developing countries at or below the *de minimis* level of allowed domestic support,⁴ should be allowed to maintain 'appropriate' tariff bindings on their food security crops. The proposal that they should be allowed to raise, rather than reduce, bound rates if current bindings do not provide effective protection ran into serious opposition.

Subsidies: More Support for Poor Farmers

They also proposed that Article 6.2 of the Agreement on Agriculture be expanded to include the following measures of 'assistance geared towards addressing the problem of food security and for preserving the viability of rural employment':

- Support to promote the integration of low-income and resource-poor producers, including through subsidised credit and other capacity-building measures aimed at enhancing their competitiveness and marketing;
- Measures taken to increase domestic production of staple foods for domestic consumption; and
- Any spending on transportation of food security crops from surplus areas to food deficit areas of a country.

New Safeguards and Penalties

Other proposed development box measures included an 'appropriate' safeguard mechanism to respond to import surges of food security crops;

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a prohibition to dump agricultural products; and terminating the 'peace clause' for industrialised countries while keeping developing countries' green box measures or measures taken under Article 6.2 on special and differential treatment exempt from dispute settlement challenges.

In addition to allowing developing countries to take 'appropriate border measures' when dumped imports impact upon their food security concerns, the nine proponents urged Members to consider the adoption of 'certain penalty measures' if subsidised production displaces domestic production in developing countries or displaces their non-subsidised exports in third country markets.

Developed countries should also provide quota- and tariff-free access to products from low-income and resource-poor farmers from developing countries.

Lukewarm Support

Most developed countries at the February meeting showed at best partial support to these proposals. They agreed that special and differential treatment was legitimate, but argued that it should not lead to two different sets of rules for WTO Members.

The United States, backed by the Cairns Group, said the food security proposal went against the mandate of the agricultural negotiations, citing *all* Members' commitment in Doha to 'comprehensive negotiations aimed at substantial improvements in market access', as well as the long-term objective of the Agreement on Agriculture to 'establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets.' Australia said categorically that it would not support a development box that would exempt countries from reducing trade barriers.

Quite a few developing countries also objected to the proposals, largely because the creation of several categories of products and countries that would enjoy special treatment would harm South-South trade, which the outcome of the negotiations should encourage. The European Union cautioned that 'it would [not] be in the interest of developing countries to [...] actually increase their tariffs' as 'the greatest potential for increase in agricultural trade lies in increasing demand in developing countries.' Instead of raising tariffs, some argued, developing countries could use countervailing duties against cheap subsidised exports from developed countries. Argentina, Chile and Thailand also noted that greater flexibility with regard to subsidy use was not in developing countries' interest due to their limited means to subsidise production or exports.

Developing countries, as well as other industrialised WTO Members, rejected arguments from Japan, Norway and some transition economies that they also needed flexibility to address food security and rural development concerns.

The second phase of the negotiations has now ended. The next tasks are to agree on formulas and other 'modalities' for countries' commitments by 31 March 2003, and to submit comprehensive draft commitments by the fifth WTO Ministerial Conference in 2003.

ENDNOTES

¹ Cuba, Dominican Republic, El Salvador, Honduras, Kenya, Nigeria, Pakistan, Sri Lanka and Zimbabwe: The Development Box, 1 February 2002

² Africa Group, Cuba, Dominican Republic, El Salvador, Honduras, Kenya, Pakistan and Sri Lanka: Special and Differential Treatment Provisions, 1 February 2002

³ Bolivia: Special and Differential Treatment: Alternative Crops, 5 February 2002

⁴ i.e. ten percent of the total value of production of a basic agricultural product or, for non-product-specific support, ten percent of the value of the Member's total agricultural production.



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Food Security and Rural Development: African Priorities in WTO Agriculture Negotiations

By Isabelle Mamaty

As the WTO negotiations on agriculture enter their third phase, the debate on how to address food security and rural development is becoming crucial. African countries in particular need to address these issues.

Agriculture lies at the centre of African economies. It accounts for more than 30 percent of the continent's gross domestic product (GDP) and represents a major source of foreign exchange. It supplies the bulk of basic food and provides subsistence and income for large rural populations, employing more than 60 percent of the labour force.

In almost all African countries, agricultural production remains underdeveloped both for the domestic market and for export. Although several factors have contributed to this situation – in varying degrees in different countries – two key factors stand out:

- the past policy bias against agriculture in these countries, and
- the high degree of distortions in world agricultural markets due to the protection and subsidisation of this sector in many developed countries.

The main domestic policy impediments have been greatly reduced since the late 1980s and early 1990s as many African countries have undertaken policy reforms, mainly in the context of structural adjustment programmes or as part of policy adjustments to implement regional trade agreements.¹ However, while progress has been made in recent years, much remains to be done both in Africa and importing countries.

What Policies to Address Food Security and Rural Development?

Appropriate incentives to farmers (access to credit, land and inputs), as well as a sound economic and institutional environment (e.g. stable prices, infrastructure, research, promotion of extension services) are necessary to ensure food security.

A broad range of instruments can be used to achieve this objective. A cost-effective policy mix may include direct (e.g. market support price) as well as indirect measures of support. Past experience suggests that 'coupled' support policies have been more effective in rapidly raising agricultural productivity and production than decoupled ones.²

A recent FAO study recognises that 'given the magnitude of the food insecurity problem in poorer WTO members, increased, rather than decreased support to agriculture in these countries is required for greater agricultural productivity and production growth'.³ In addition, given their economic weight and financial capacity, increased support in these countries is likely to have negligible effects on 'distortions in world agricultural markets'. According to the study, production incentives are likely to be more effectively implemented through border measures than by subsidising output prices. However, targeted consumption subsidies may be necessary to offset price increases resulting from border measures such as import tariffs. Production price subsidies aimed at domestic food staples are more effective than those focused on export commodities.

Keeping in mind the internal supply side constraints within most African countries, the following sections will examine whether

the Agreement on Agriculture enables countries to implement food security and rural development policies.

Market Access & the Special Agricultural Safeguard Mechanism

The table below shows that most applied tariffs in African countries are far below bound rates. Tariff systems in most African countries include tariffs, as well as other duties and charges for sensitive products, mainly food products. The use of simple tariffs is problematic as they may not be sufficient or the best instruments for protecting against external shocks and import surges.

With regard to import surges, the non-availability of a special agricultural safeguard mechanism (SSG) can be a problem as other general WTO safeguards (e.g. Agreement on Safeguards, the Agreement on Subsidies and Countervailing Measures and related GATT Articles⁴) are cumbersome. This underlines the urgent need for an appropriate safeguard mechanism that would allow developing countries to introduce safety measures to respond to import surges, particularly in food security crops.

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Table 1. Selected African countries' tariff bindings for agricultural products

Country	WTO status	Average rate of bound tariffs (%) ¹	Average applied tariff rate (%) ²
Countries with very high tariff bindings:			
Benin	LDC	119	13
Burkina Faso	LDC	150	
Cameroon	Developing (NFIDC)	310	
Côte d'Ivoire	Developing	215	17
Gabon	Developing	260	
Kenya	Developing (NFIDC)	100	44
Lesotho	LDC	200	
Madagascar	LDC	280	
Mauritius	Developing (NFIDC)	122	17.7
Mozambique	LDC	400	
Nigeria	Developing	230	47
Senegal	Developing (NFIDC)	180	44
Tanzania	LDC	240	
Zimbabwe	Developing	160	23
Countries with moderately high tariff bindings:			
Chad	LDC	80	
Ghana	Developing	85	22
Guinea Bissau	LDC	65	
Mauritania	LDC	90	
Rwanda	LDC	80	
Uganda	LDC	80	21
Countries with low tariff bindings:			
Botswana	Developing (NFIDC)	40	7
Congo	LDC	30	
Egypt	NFIDC	48	19
Guinea	LDC	40	
Namibia	Developing	40	7
South Africa	Industrial	40	7
Swaziland	Developing	40	7

¹ Calculated as simple average of the tariff bindings for the major agricultural products.

² Taken from the latest WTO Trade Policy Reviews of the respective countries and from Kent, Wilcock and Gwynn (1997), *Likely Impact of the GATT Agricultural Agreement on African Agricultural Trade and Development*, ARAP II Research Report No. 1024, USAID. 'Policy Issues and Options for African Countries in the Forthcoming Multilateral Trade Negotiations on Agriculture', document prepared by FAO, ESCP, September 1999.

Food Security, continued from page 3

Domestic Support: AMS at Zero Does Not Work

For African countries, the claim of a zero – or even negative– Aggregated Measure of Support (AMS)⁵ may be a constraint in the future in case there is a need to introduce additional subsidies for a specific product above the current *de minimis* level of ten percent. Most importantly, in correcting the implicit taxation of their agricultural sectors, they may increase their AMS only up to the authorised levels. This is an important point to raise when the main objective of the structural adjustment plans is to remove the implicit taxation of the agriculture. With an AMS equal to zero or negative, a newly-introduced non-exempt subsidy exceeding the *de minimis* level will be translated into positive values of Current Total AMS, which current WTO rules do not allow. That is to say, as most of African countries have their AMS bound at zero level, their only option of using additional non-exempt support is under *de minimis* or ‘special and differential treatment’.

The only subsidies allowed for poor farmers are input subsidies. Subsidies for credits, water supply and electricity can not be used by African – or other developing – countries unless there are under the *de minimis* level. In addition, the only protection for poor farmers are bound tariffs which, as noted earlier, may not be sufficient in the case of low international prices.

Export Subsidies: The Need for a Level Playing Field

The main feature in the export subsidy area was that while export subsidies were disallowed in the WTO under the Agreement for Subsidies and Countervailing Measures (SCM Agreement) they continued to exist within the Agreement on Agriculture, although they were subject to reduction commitments. Since the majority of African countries did not use export subsidies when the Agreement was concluded, they were not allowed to use them in the future, while developed countries were allowed to maintain 64 percent of the base level of export subsidy outlays.

However, African WTO Members may use export subsidies for transportation and marketing assistance due to their developing country status. This special and differential treatment is useful since high-cost of transport is one of the main impediments to the promotion African exports.

SPS: Still a Problem for Africa

Adoption of international standards implies high adaptation costs that African countries cannot afford without appropriate technical and financial assistance. A World Bank study estimates that implementing just three of the Uruguay Round Agreements (on TRIPs, customs valuation, and sanitary and phytosanitary regulations) could cost more than a year’s development budget for the poorest countries.⁶

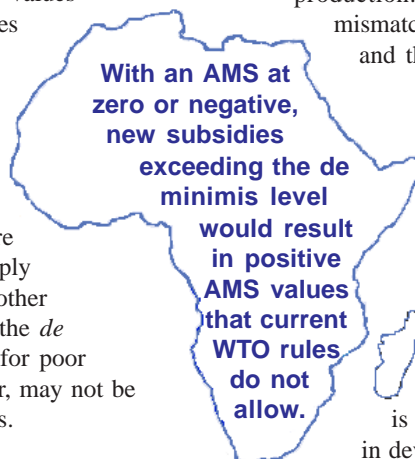
In addition, limited participation of these countries, both in number and effectiveness, in international standard-setting bodies also continues to be an issue.⁷

The AoA Favours Developed Countries

Due to the limiting effect on policy options set by their AoA commitments, most developing countries have come to regard the

the Agreement as structural biased and imbalanced in favour of the developed countries.

In most of Africa, even high bound tariffs may not ‘protect’ poor farmers of sensitive products. It is unlikely that countries under structural adjustment plans would be able to pursue expensive support policies under green box measures, even though these are permitted under the AoA. The table on page 10 shows that African countries’ green box measures represent less than one percent of WTO Members’ total green box measures. On the other hand, blue box measures (concerning payments provided under production-limiting programmes) have no meaning for countries where one of the objectives in agricultural sector is to increase production. These are some examples that illustrate the mismatch in the current AoA between allowed measures and the objectives of African countries.



A ‘Development Box’ Would Reflect Many of African Countries’ Needs

Over the past two years, developing countries have submitted many proposals at the WTO, focusing on allowing more flexibility in order to enable them to pursue food security and rural development policies. The most popular of these is known as the ‘development box’. The guiding idea behind the development box is that, for some agriculturally sensitive products in developing countries, development objectives may ‘supersede’ WTO principles.

Among the main features of the proposal are the following:

- allowing developing countries to exempt some agricultural products, in particular staple food security crops, from support reduction commitments;
- allowing developing countries to re-evaluate and adjust tariffs, i.e. raise bindings on key food security products;
- correcting the imbalances in the AoA in the limited use of safeguards available to developing countries;
- ensuring reductions in OECD countries’ tariff peaks and tariff escalation for products of interest to developing countries; and
- allowing developing countries more flexibility in domestic support by raising the *de minimis* level to 20 percent.

Conclusion

Despite special and differential treatment provisions with the Agriculture Agreement, African countries may encounter difficulties in ensuring food security in the future. Without minimising the effect of structural adjustment plans in eliminating some support policies, the AoA may limit African policy options regarding market access, domestic support and export subsidies.

The following, non-exhaustive list of policies (which should be country-specific) would enhance food security:

- Market access: the use of quantitative safeguards in addition to simple tariffs to offset import surges. This instrument should be used in a transparent way and be simple.
- Domestic support: direct subsidies above the *de minimis* level would be necessary for some specific products to restructure the anomaly of their implicit taxation.
- Export subsidies: although most African countries could not afford export subsidies, marketing and transportation subsidies are valuable in countering the high cost of transportation.

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China's WTO Membership Reveals a Savvy Player, but Challenges Remain

The hand of developing countries was considerably strengthened in the protracted *quid pro quo* on the post-Doha negotiating machinery when China backed some of their key demands. For instance, while the framework agreed on 3 February does not exclude 'other qualified individuals nominated by governments' as Special Session Chairs, in fact all the Chairs appointed on 15 February were Geneva-based government representatives, which was the preferred option of developing countries. China also held out on the nomination of the WTO Director-General as the Chair of the Trade Negotiations Committee, until guidelines were established limiting the scope of Special Session Chairs to submit compromise texts under their own responsibility (see page 6).

China's support may also tip the scales in favour of WTO Members pushing for the establishment of an emergency safeguard mechanism (ESM) in the services sector. Many developing countries have conditioned opening their services markets on the creation of an ESM, which most developed countries maintain is unnecessary. A much-delayed decision is expected by 15 March (Bridges Year 6 No.1, page 9).

Despite Strengths, Challenges Abound

While many countries, particularly in South East Asia, worry about their ability to compete in international – or even domestic – markets once China begins to reap the full benefits of its WTO membership, that same membership presents China with serious challenges both domestically and internationally.

At the technical level, China's already considerable burden in becoming WTO-compatible is exacerbated by mandated annual reviews of its trade policies in the organisation's subsidiary bodies over the next eight years. The Secretariat has been unable to accommodate a Chinese request for the training of hundreds of officials.

China is also under fire over its lax enforcement of intellectual property laws. It is no longer just the counterfeit Gucci bags or Levis jeans that exporters object to. The multi-billion-dollar entertainment industry, particularly – but not exclusively – in the United States, is pushing for WTO action on pirated video and DVD cassettes available in China for just a dollar, sometimes even before they are officially released in their home markets.

Domestically, the effect of the WTO membership on employment, particularly in the agricultural sector, is another major worry. The government recently released figures that for the first time officially acknowledged the scope of the problem. According to the state-controlled *China Daily*, an estimated 12 million of urban dwellers are jobless, while 'rural surplus labourers' are estimated by some experts to be ten times as many. That would mean an unemployment rate in the region of 10.4 percent. In addition, agricultural and industrial sector labour demand is dropping. While industrial jobs are likely to pick up as other WTO Members open their markets, agricultural workers are expected to find themselves in a worsening situation when cheap imports start flooding in.

Use of Trade Defences Closely Watched

On 7 February, China's State Development and Planning Commission notified new tariff rate quotas for imported grains and oil seeds, allowing exporters only two weeks submit applications ahead of a 21 February deadline. While the rates

conform to those agreed in China's accession negotiations, trading partners have expressed concern over the tight deadline and the fact that separate quotas were established on goods intended for 'domestic consumption' and for 'processing for re-export'.

China also notified WTO Members on 14 January of its intent to 'retain the right to use the transitional safeguard mechanism' during the transitional period of the Agreement on Textiles and Clothing (ATC). The mechanism allows the maintenance of tariff rate quotas on nearly 800 product categories listed in the Annex of the ATC.

Although Chinese manufactured goods are expected to be fiercely competitive internationally, not all sub-sectors will benefit equally. In early February, China launched its first anti-dumping investigation since joining the WTO, following a complaint of the art paper (i.e. high quality newsprint) industry that South Korean, Japanese, US and Finnish manufacturers had engaged in a price war, causing local firms to reduce staff and cut production. The problem is expected to get worse, as the current import tariff will be lowered from fifteen to nine percent this year, and further cut by five percent in 2004.

In addition, the US in February blocked China's request to join the plurilateral Information Technology Agreement because the latter has singled out 15 products on which tariffs will be maintained until 2005 unless they are destined for domestic production of other IT goods. To qualify for duty-free treatment, exporters must present end-user certificates guaranteeing that the products will be used for further processing.

Dispute Settlement Possible to Reverse EU Food Ban

Ironically, China finds itself at both the initiating and the receiving ends of potential dispute settlement proceedings regarding the application of sanitary measures/technical standards (for the receiving end, see page 12). On the initiating side, Chinese officials have strongly condemned a recent European import ban on an array of agricultural products, which the European Commission says may be contaminated by the antibiotic chloramphenicol. Veterinary use of the antibiotic is prohibited in the EU and China does not question that measure. Rather, Chinese authorities have insisted that no wide-spread significant risk of contamination exists – as claimed by the EU expert report, which led to the ban – and deplored the lack of consultation with Chinese scientists.

Jia Youlin of the Chinese Ministry of Agriculture said the EU veterinary report was 'riddled with factual inaccuracies and errors' and that the EU gave China no time to respond to its allegations before imposing the ban. In an effort to head off a WTO public health dispute, the Chinese government has provided the Commission with a list of 'inaccuracies' in the report, and the two sides have established a study group on creating a mutual 'early warning system' on food safety issues. According to Foreign Trade Minister Shi Guangsheng, China is already implementing a 'complete food safety monitoring system, along with the scientific and technological measures for sanitation infractions'. While both sides in the food ban dispute are seeking to solve the matter bilaterally, Mr Jia in early February put the EU on notice that his government would 'fully apply the WTO rules to safeguard its interests and reserved the right for further action in this regard' should the ban not be lifted reasonably swiftly. The products affected include sea food, poultry, pet food and honey.

Doha Round Negotiating Structure, Chairs Agreed

On 3 February, WTO Members reached agreement on how to conduct the negotiations launched at the Doha Ministerial Conference in November 2001. The Trade Negotiations Committee, whose role is to 'monitor and supervise the negotiations', will be chaired by the WTO Director-General in his official capacity, i.e. Mike Moore until September 2002 and his successor Panitchpakdi Supachai until the end of his term in 2006. The TNC will, however, remain under the authority of the General Council, the chair of which rotates on an annual basis between Geneva-based ambassadors from developed and developing countries.

Organisation of Substantive Negotiations

New negotiating groups were established on WTO Rules (i.e. anti-dumping and subsidies, as well as regional trade agreements; see schedule on page 8) and market access for non-agricultural goods.

Negotiations on agriculture and services will continue in Special Sessions of the Committee on Agriculture and Council for Trade in Services. Special Sessions were also agreed for the following:

- Committee on Trade and Development – negotiations on special and differential treatment (see page 8);
- Committee on Trade and Environment – negotiations on the WTO/MEA relationship; reduction of tariffs on environmental goods and services (see page 8);
- Dispute Settlement Body – negotiations on the Dispute Settlement Understanding, to conclude 'no later than May 2003'; and
- Council for TRIPs – negotiations on the establishment of a multi-lateral registration system for wines and spirits, to conclude by the fifth WTO Ministerial Conference (see also page 9).

The chairmanship of existing WTO bodies has been split into two, one for the regular sessions and another for the special negotiating sessions. The former will rotate annually according to standard WTO practice while the latter will stay in their posts until the fifth WTO Ministerial Conference, when their terms may be extended.

The schedule of the regular and special sessions is currently under preparation. 'As far as possible', only one negotiating body should meet at the same time.

Developing Countries Look for Member-driven Negotiations

Insisting on the need to safeguard the 'Member-driven' nature of the negotiations, developing countries – and China in particular – succeeded in putting on record their view that the appointment of the Director General as an *ex officio* Chair of the TNC was an 'exceptional arrangement and that appointments to WTO bodies should normally be made from among representatives of WTO Members'. The open support of the current DG Mike Moore for starting negotiations on the divisive Singapore issues – investment, competition policy, transparency in government procurement and trade facilitation – at the WTO's fifth Ministerial Conference in 2003 makes critics doubt his ability to act as an 'honest broker' in all Members' interest. Some developing countries also criticise Mr Moore for what they see as an increasing tendency to bypass recalcitrant Geneva-based trade delegates through dealing directly with ministers in capitals.

At the end of tough bargaining, developing countries obtained some reassurances. The most important was ensuring the supremacy of the General Council and limiting the Special Session Chairs' authority to submit compromise proposals under their own

responsibility. Instead, their regular reports to overseeing bodies should 'reflect consensus, or where this is not possible, different positions on issues'. These caveats reflect some developing countries' frustration with the final drafts of the Doha Ministerial documents, which in their view did not accurately present dissenting views.

Provisions on internal transparency stress the need to conduct the negotiations in a manner that facilitates the 'effective participation of all'. This includes prompt circulation of the minutes of the negotiating bodies, dissemination of information to non-resident and smaller missions, and scheduling no more than one negotiating meeting simultaneously.

The importance of the last point is underscored by a 13 February report from WTO Deputy Director-General Miguel Rodriguez Mendosa, according to which the WTO held nearly 400 formal and more than 500 informal meetings in 2001. This surfeit led to as many as four or five formal meetings being convened at the same time, which made it impossible for small missions to attend all of them.

WTO CHAIRS AGREED ON 15 FEBRUARY

General Council Sergio Marchi (Canada)
Trade Negotiations Committee Mike Moore (ex officio)

Negotiating Group on WTO Rules

Timothy John Groser (New Zealand)

Negotiating Group on Industrial Tariffs

Pierre-Louis Girard (Switzerland)

Committee on Agriculture

Special sessions Stuart Harbinson (Hong Kong, China)

Regular sessions Magdi Farahat (Egypt)

Council on Trade in Services

Special sessions Alejandro Jara (Chile)

Regular sessions Mary Whelan (Ireland)

TRIPs Council

Special sessions Eui Yong Chung (Korea)

Regular sessions Eduardo Pérez Motta (Mexico)

Committee on Trade and Development

Special sessions Ransford Smith (Jamaica)

Regular sessions Toufiq Ali (Bangladesh)

Committee on Trade and Environment

Special sessions Yolande Biké (Gabon)

Regular sessions Oguz Demiralp (Turkey)

Dispute Settlement Body

Special sessions Péter Balás (Hungary)

Regular sessions Carlos Pérez del Castillo (Uruguay)

Council for Trade in Goods

Regular sessions M. Supperamaniam (Malaysia)

Working Group on Trade and Investment

Luiz Felipe de Seixas Corrêa (Brazil)

Working Group on Trade and Competition Policy

Frédéric Jenny (France)

Working Group on Transparency in Government Procurement

Ronald Saborío Soto (Costa Rica)

Working Group on Trade, Debt and Finance

Hernando José Gómez (Colombia)

Working Group on Trade and Transfer of Technology

Stefán Haukur Jóhannesson (Iceland)

Revisiting the Technology Transfer Debate: Lessons for the New WTO Working Group

By Pedro Roffe and Taffere Tesfachew

At Doha, Ministers agreed to establish a working group to examine 'the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries.' The Doha Ministerial Declaration also states that the 'General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination.'

The debate on transfer of technology to developing countries is not new. It acquired special importance in the international economic agenda with the launching of negotiations on a draft International Code of Conduct on the Transfer of Technology in the 1970s. Although negotiations on the code of conduct ended in 1985,¹ their failure did not necessarily mean that the interest and concerns about transfer of technology to developing countries had diminished. To the contrary, technology transfer to developing countries has been a recurrent theme in the multilateral discussions that have taken place in recent years.

In the context of multilateral environmental agreements (MEAs), for example, the issue of technology transfer, more specifically environmentally sound technologies (ESTs), to developing countries has been a regular feature of any such agreements negotiated ever since the Rio de Janeiro Earth Summit. Indeed, in these agreements, the transfer of ESTs to developing countries is often presented as an essential condition for successful realisation of the agreements. Hence many MEAs include provisions on the transfer of technology on favourable terms, including financial support. The Framework Convention on Climate Change states, for instance, that:

'The developed country Parties... shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to the parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties should support the development and enhancement of endogenous capacities and technologies of developing country Parties...' (Article 4.5).

Broad statements about transfer of technology have also been made in the context of a number of WTO Agreements, including the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). Although the TRIPs Agreement does not establish an operational link between the reinforcing of intellectual property rights, the promotion of domestic technological development and the transfer of technology, it nevertheless contains some general statements about the importance of technological innovation and the role of transfer of technology in this process. For instance, Article 7 states that

'the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations'.

The Agreement also calls for technical co-operation (Article 67) where developed countries are invited to provide technical and financial cooperation in favour of developing and least-developed

countries. Furthermore, in the case of least-developed countries, industrialised countries *'shall provide incentives to enterprises and institutions... for the purpose of promoting and encouraging technology transfer...in order to enable them to create a sound and viable technological base'*. A parallel treatment is found in the GATS Agreement which, with a view to increasing the participation of developing countries in world trade, recognises that further negotiations should be pursued to strengthen their domestic services capacity, their efficiency and competitiveness, *'inter alia through access to technology on a commercial basis'* (Article IV).

What are the lessons that could be drawn from past and recent attempts to deal with technology transfer at the multilateral level?

The knowledge component of the output of manufactured goods rose from 20 to 70 percent between the 1950s and 1995.

In the past, much emphasis was placed on the international transfer of technology *per se* rather than on what happens to it once it has been transferred. Although the importance of domestic technological and innovative capacity-building was fully recognised, the focus of attention was predominantly on the acquisition and transfer of technology from abroad. The assumption was that once technology was transferred, technological upgrading would take place which, in turn, would enhance local productive capacity. Consequently, much of the analysis focused

on the imperfections of the technology-transfer process and on the role played by transnational corporations. Little attention was paid to domestic absorptive and adaptation capacity. The policy envisaged was primarily – but not exclusively – to adopt defensive measures to remedy defects in the international market for technology.

Since the mid-1980s, the way technology, and the process of technology transfer, are perceived has changed. Several factors have contributed to this evolution, including the experience of newly-industrialised countries in technology acquisition and development, which has shown that in building technological dynamism what matters most is not the transfer of technology *per se* but its adaptation and assimilation in the local economy. Thus, though transfer of technology from abroad remains important, it should not be viewed as a substitute but rather as a complementary positive stimulus to domestic technological dynamism.

This evolution has meant paying greater attention to the processes of technology adaptation and domestic technological mastery rather than just the 'transaction' aspect of technology transfer. We have also learned that the process of transferring technology is much more complex than assumed in the past. It involves not only a commercial transaction of tangible goods such as machinery and equipment, but also the transfer of knowledge and skills needed to operate it and other elements that are important components of the transfer process such as intellectual property rights and investment. Indeed, with rapid advances in technology, especially information technology, intangible investments now dominate the production and investment patterns of most dynamic enterprises. It is estimated, for example, that the knowledge component of the output of manufactured goods has risen from 20 percent in the 1950s to 70 percent in 1995.

A widely acknowledged fact is that technology transfer is a multifaceted process involving property rights, know-how, trade

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Busy 'Development Agenda' Starts to Emerge

- According to the guidelines for the Trade Negotiations Committee agreed by the General Council on 3 February (see page 6), the review of all special and differential treatment provisions is to be carried out in Special Sessions of the Committee on Trade and Development. The first such session was expected to take place in late February/early March under the chairmanship of Ambassador Ransford Smith of Jamaica. Further meetings were expected roughly once a month as Members attempt to meet the fast-approaching deadline of 31 July for making recommendations to the General Council on strengthening S&D provisions.
- WTO Deputy Director-General Ablassé Ouedraogo has proposed that the General Council, which will retain ultimate responsibility, should instruct the CTD to have a 'work programme on small economies which will be conducted in dedicated sessions of the CTD'. The proposal does not include a precise timetable, but implies that the CTD would be the body to deliver a first assessment to the General Council which shall, 'as appropriate, direct relevant subsidiary bodies to frame responses to the trade-related issues identified by the CTD with a view to making recommendations for action to the fifth WTO Ministerial', as mandated by the Doha Declaration's paragraph 35.
- An intergovernmental pledging conference for the Doha Development Agenda Global Trust Fund, which WTO Director-General Mike Moore hopes will result in core budget in the region of US\$10 million, is scheduled for 11 March 2002. However, the Committee on Trade and Development has yet to agree on exactly what the WTO should deliver with regard to the much-expanded technical assistance mandate spelled out in 11 different paragraphs of the Doha Declaration.

In January, Members rejected a first draft prepared by the Secretariat as many developing countries considered it too focused on the 'Singapore issues' (investment, competition policy, government procurement and trade facilitation).¹ At a 14 February meeting, Members discussed a revised version of the Coordinated Annual Technical Assistance Plan (WT/COMTD/W/95/Rev.1), but again failed to reach consensus on Annex I, which focuses on the Singapore issues. Due to resistance from traditional opponents to these topics (India, Pakistan, etc.) regarding language linking technical assistance to future negotiations, further revision of Annex I will be necessary.

The next formal CTD regular session is scheduled for 25 April. It will be chaired by Ambassador Toufiq Ali of Bangladesh.

- Opposition to the Singapore issues has also surfaced in the Council for Trade in Goods. Pakistan has objected to a Chilean proposal to devote four meetings of the Council for Trade in Goods exclusively to trade facilitation (Doha Declaration para. 27 directs the Council to review GATT Articles V, VIII and X, as well as identify the 'trade facilitation needs and priorities of Members' before the fifth Ministerial in 2003). Chile's proposal was backed by most industrialised countries, as well as Colombia and Morocco. Brazil, Guatemala and Paraguay supported Pakistan's argument that the issue be placed instead as a standing agenda item of the Goods Council's regular sessions. The next formal meeting of the Goods Council will take place on 19 March.

¹ The Doha Declaration foresees negotiations on these issues after the fifth Ministerial Conference, but only on the basis of a decision taken 'by explicit consensus'.

Work Programmes Proposed for CTE

With the exception of fisheries subsidies, the environment-related negotiations mandated by the Doha Declaration will be dealt with in Special Sessions of the Committee on Trade and Environment (CTE). Ahead of its first post-Doha formal meeting on 21-22 March, the Committee's outgoing Chair Alejandro Jara circulated draft work programmes for both its regular and special sessions.

Special Sessions: He suggested that all areas of the Declaration's paragraph 31 (negotiations) be discussed in every special session, i.e. the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs); procedures for information exchange between MEAs and the relevant WTO Committees, as well as criteria for granting observer status; and the reduction/elimination of tariff and non-tariff barriers to environmental goods and services.

Regular Sessions: Each regular CTE session would address other environmental issues singled out the Doha Declaration:

- **Para. 32** – 'particular attention' to (i) the effect of environmental measures on market access, especially in relation to developing countries and situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development; (ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and (iii) labelling requirements for environmental purposes. Work on these issues should include the identification of any need to clarify relevant WTO rules.
- **Para. 33** – capacity-building and technical assistance in the trade and environment field; preparation of the CTE to report to the fifth WTO Ministerial Conference on activities aimed at sharing expertise with Members wishing to conduct environmental reviews at the national level.
- **Para. 51** – CTE is to 'to identify and debate environmental aspects of the negotiations in order to help achieve the objective of having sustainable development appropriately reflected.'

Ambassador Jara proposed the following schedule:

- **21 March – Regular Session: paras 32, 33 and 51**
+ the market access cluster of the CTE's standing work programme
- **22 March – Special Session: paragraph 31**
- **11-12 June – Special Session: paragraph 31**
- **13-14 June – Regular Session: paras 32, 33 and 51**
+ an MEA information session, followed by discussion on linkages between the multilateral trade and environment agendas
- **8-9 October – Regular Session: paras 32, 33 and 51**
+ trade in services and the environment; arrangements for relations with intergovernmental and non-governmental organisations.
- **11-12 – Special Session: paragraph 31**

The Negotiating Group on Rules
agreed on the following schedule on 28 February:

11 March
13-15 May
8-10 July
16-18 October
25-27 November

The group will aim to 'clarify and improve' existing WTO rules on subsidies (including fisheries subsidies, whose relative status is still unclear), anti-dumping and regional trade agreements.

TRIPs Council to Start on Crowded Post-Doha Agenda

The WTO Council on TRIPs will meet for the first time this year on 5-7 March. Public health, geographical indications, the relationship between TRIPs and the Convention on Biological Diversity (CBD), protection of traditional knowledge and folklore, as well as technology transfer are among agenda items that were singled out for 'priority attention' by ministers in Doha.

- **Public Health:** Members are slated to examine ways in which countries that lack sufficient manufacturing capacity could make effective use of compulsory licensing under the TRIPs Agreement. Paragraph 6 of the Doha Declaration on TRIPs and Public Health instructs the Council 'find an expeditious solution to this problem and to report to the General Council before the end of 2002'. The right to grant compulsory licenses to third country producers was one of the most controversial points in the TRIPs and public health debate in the run-up to Doha, with some major brandname drug producers insisting that, according to TRIPs Article 31(f), production under compulsory license 'shall be authorised predominantly for the supply of the domestic market'.

Ahead of the meeting, six development/public health civil society groups sent a letter to the Council, urging it to consider the issue under TRIPs Article 30 (Exceptions to Rights Conferred). The writers proposed the following as a possible statement:
Under Article 30 of TRIPs Agreement, Members may provide an exception to the exclusive rights conferred by a relevant patent to permit all acts associated with the production for export to a third country of a patented product produced by a patented process; where the export addresses health needs in the third country; and the product and/or process is either (a) not patented; or (b) a compulsory license has been granted or government use made of the relevant patent in the third country.

- **Geographical indications:** Members will also need to address a major difference in interpretation on whether the Doha Ministerial Conference did or did not launch negotiations on the extension of stronger protection – similar to that currently enjoyed by wines and spirits – to geographical indications for other products. The different interpretations are possible due to ambiguity in the wording of paragraph 12 of the Doha Declaration (see Bridges Year 5 No.9, page 4 for details).

In a nutshell, those opposing the extension of stronger coverage insist that no negotiating mandate exists, and those who want the extension say it does. The Cairns Group of major agricultural exporters – both developed and developing – and the US are against the extension, which would mostly apply to food items. The European Union, Bulgaria and Switzerland, which could gain a marketing advantage through the exclusive use of certain place names (such as Gruyère cheese or Parma ham, say) are in the opposite camp. Developing countries are divided. Cuba, Egypt, India, Kenya, Sri Lanka and others have stated their belief that negotiations are mandated 'as part of the negotiations on outstanding implementation issues'. Mexico and Cairns Group member Argentina in particular are strongly against extension.

- **TRIPs/CBD:** Developing countries are *demandeurs* for negotiations on the TRIPs/CBD relationship, protection of traditional knowledge and technology transfer, but no consensus exists on whether these are subject to negotiations or just further study.
- The first Special Session for negotiating a multilateral registration system for wines and spirits will be held on 8 March.

Dispute Settlement Briefs

- **Brazil vs Canada Export Credits for Regional Aircraft** – Brazil scored the latest victory in the long-running dispute that opposes it to Canada regarding export subsidies for rival regional aircraft manufacturers Embraer and Bombardier. In a report adopted by the DSB on 19 February, a WTO panel found that loan guarantees provided by Canada's Export Development Corporation to Bombardier's clients Air Wisconsin, Air Nostrum and Comair constituted a prohibited export subsidy contrary to Article 3.1(a) of the SCM Agreement. Canada had previously acknowledged that the support was inconsistent with WTO rules, but claimed it faithfully mirrored financing provided by the Brazilian government's Proex programme to Embraer's clients. The panel recommended that Canada withdraw the subsidies within 90 days.

While Canada has indicated it will implement the ruling, the US and the EU criticised the panel for finding that matching prohibited subsidies – allowed under an OECD arrangement – was inconsistent with the WTO Subsidies Agreement. The possibility that a trading partner might counteract non-conforming subsidies by similar subsidies of its own, and thus start a subsidy 'race to the bottom', was an incentive for countries to refrain from granting illegal subsidies in the first place, the US Ambassador said. The EU said the possibility of matching subsidies provided 'effective disciplines on export credits' that now would be more easily circumvented as 'any action compensating for WTO incompatible behaviour in the field of export credits' was now officially prohibited.

- **EU/Japan vs US 1916 Anti-dumping Act** – A similar dispute is currently pending with regard to countering WTO-incompatible legislation of a trading partner with parallel legislation of one's own. In this case, the European Union and Japan have agreed to put on hold their controversial request to adopt trade remedy legislation mirroring that of the US 1916 Anti-dumping Act, which the Appellate Body found WTO illegal in August 2000 (Bridges Year 6 No. 1, page 8). The complainants have given the US an unspecified amount of additional time implement the ruling. The EU may, however, press ahead if the US does not act before the end of March.
- **US vs Mexico Telecommunications** – In the first 'real' WTO dispute in the field of services, the US has requested the establishment of a panel against measures maintained by Mexico in the telecommunications sector. According to the US, Mexico has adopted or maintained GATS-inconsistent 'anti-competitive and discriminatory regulatory measures', including the failure to control the high interconnection rates charged by the formerly state-owned Teléfonos de México (Telmex). Telmex charges US\$13.5/minute to complete an international call, while the domestic interconnection rate is four cents.
- **EU vs US Extraterritorial Income Exclusion Act** – The arbitrator's decision on the amount of trade sanctions the EU may impose on the United States in the corporate tax regime dispute is due on 29 April. The EU has estimated the damage caused to member countries' economies at US\$4.043 billion, while the US claims the proper amount to be US\$956 million. Bush administration officials have now admitted that a significant reform of the tax system is likely to be only way of complying with the WTO ruling although this option presents serious political difficulties.

News in Brief

- **US Climate Policy:** Environmental groups and others sharply criticised the new climate policy announced by President George W. Bush on 14 February. The long-delayed plan, which the US promised to produce when it pulled out of the Kyoto Protocol last March, ties reductions in carbon dioxide emissions to growth in US gross domestic product (GDP). It seeks to reduce the 'greenhouse gas intensity' of future economic growth by 18 percent – i.e. cutting emissions from 183 to 151 metric tons per million dollars in GDP by 2012 – over the next ten years, almost entirely through voluntary action. While vehicle pollution is hardly addressed at all, a tax credit programme worth US\$4.6 billion over the next five years is part of the plan's financial package, meant to spur companies into action.

Administration officials said the cuts were comparable to those set in the Kyoto Protocol, but critics disagreed. In an acerbic Op-Ed in the 15 February New York Times, Paul Kruger called the new programme 'nearly content-free'. He pointed out that, as most forecasts called for GDP to expand by 30 percent or more in the same period, the proposal actually allowed substantial emissions increases. In addition, the accelerating shift to a service economy would lead to a decoupling of economic growth from smokestack pollution 'without any policy actions – which is good news, as the administration hasn't really proposed any,' he wrote. Kate Hampton of Friends of the Earth International said it was 'outrageous' that President Bush refused to cut emissions in order to avoid upsetting the powerful US fossil fuel lobby. Former Vice President Al Gore criticised Mr Bush for putting forward a plan that fell 'far short of the needs of both America and the world instead of accepting an accord endorsed by over 170 nations'.

- **Textiles:** Pakistan has secured an increase worth US\$476 million over the next three years for its textiles and clothing products' access to the US market. A 'special swing' will allow Pakistan to shift 25 percent of unused textile quotas to some categories that it fills, or nearly fills. An eight percent 'swing' applies to more sensitive categories. The deal – granted as part of the US commitment to Pakistan for its help in the 'war on terrorism' – falls far short of Pakistan's original demand of trade benefits worth US\$1.4 billion, including suspension of all apparel tariffs until 2005. The American Textile Manufacturers Institute (ATMI) strongly criticised the deal, saying the government should have granted Pakistan only broad-based assistance the cost of which would have been shared by all Americans instead of singling out textile manufacturers and workers for 'bearing the sole burden of an important component of the package'. ATMI requested the government to take several steps to support US textile producers, including aggressive enforcement of US trade defence laws.

In related news, textile industry associations of the US, Canada, Mexico, the EU and Turkey have joined forces to ensure that post-Doha negotiations 'make no concessions regarding the implementation of the Agreement on Textiles and Clothing beyond those already provided for in the Agreement itself'. Concretely, the group will seek to achieve the following objectives:

- open the textiles markets of large developing countries;
- fight any speeding of quota expansion (discussions on this are slated to conclude in the WTO Council for Trade in Goods on 31 July 2002);
- fight special treatment of developing countries in trade remedy cases (para. 4.2 of the Doha Implementation Decision); and
- obtain an end to the *de facto* non-complaint moratorium on disputes regarding protected trademarks and designs.

Food Security, continued from page 4

The measures described above may be considered as the minimum African countries should secure in the ongoing negotiations. These policies imply that specific products should be identified in terms of food security. Based on the insufficient information provided by the majority of African countries during the Uruguay Round, this may be a challenge.

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ENDNOTES

¹ See FAO (1997), *National Agricultural Development Strategies towards 2010*, for a number of the LIFDCs.

² FAO, *Some Issues Relating to Food Security in the Context of the WTO Negotiations on Agriculture*, Discussion Paper No.1, FAO Geneva roundtable, 20 July 2001

³ FAO, *Incorporating Food Security Concerns in a Revised Agreement on Agriculture*, Discussion Paper No.2, see above

⁴ Articles VI on Antidumping and Countervailing Duties; XII on Restrictions to Safeguard the Balance of Payments; XVI on Subsidies; XVII on Governmental Assistance to Economic Development; XIX on Emergency Action on Imports of Particular Products; XX on General Exceptions; and XXI on Security Exceptions.

⁵ Only Morocco, Tunisia and South Africa have reported base total AMS that are above the *de minimis* level. Mauritius has a positive but less than *de minimis* AMS. The AMS for all other 37 African countries is either at zero or negative. Based on WTO data (AIE/S2/Rev.1, 1999) in *Policy Issues and Options for African Countries in the Forthcoming Multi-lateral Trade Negotiations on Agriculture*, prepared by FAO, ESCP, September 1999

⁶ J. Michael Finger and Philip Schuler (1999), *Implementation of Uruguay Round Commitments: the Development Challenge*, Policy Research Working Paper No. 2215, Development Research Group, World Bank, Washington

⁷ For example, the Codex Commission encourages, as a priority for more universal acceptance of its standards, greater developing country participation in its committees, but funding for such participation has been very limited.

Table 2: Total Expenditure on Green Box Measures by Member, 1995-1999

Country	1995		1999	
	Amount US\$ million	Share in reported GB expenditure of all Members	Amount US\$ million	Share in reported GB expenditure of all Members
Grand total of reported expenditure	129,440	100.00	126,735	100.00
Total of reporting developed countries	110,173	85.10	110,958	87.60
Total of reporting developing countries	19,271	110.958	15,776	12.50
Total of reporting African countries	315	0.24	495	0.39
African countries				
Botswana	11	0.01		0.00
Gambia	n.a			0.00
Kenya	53	0.04	66	0.05
Morocco	157	0.12	378	0.30
Namibia	50	0.04		0.00
Tunisia	30	0.02	39	0.03
Zimbabwe	14	0.01	12	0.01
South Africa	763	0.59	525	0.41

Trade Issues Central to Sustainable Development Summit

From 26 August to 4 September 2002, the heads of state of most countries will gather in Johannesburg for the World Summit on Sustainable Development (WSSD). The event will take place ten years after the UN Conference on Environment and Development – dubbed the Earth Summit – in Rio de Janeiro in 1992. At that meeting, heads of state adopted Agenda 21, a 40-chapter blueprint that was to promote economic growth in a socially and environmentally responsible manner worldwide. As the main contributors to global environmental problems such as climate change, deforestation and biodiversity loss, rich countries were to contribute more to the their solution according to the principle of ‘common but differentiated responsibilities’. Recognising that poverty eradication was an ‘indispensable requirement for sustainable development’, Agenda 21 called for better terms of trade, more official development assistance and debt relief as part of the US\$600 billion that its implementation was estimated to cost.

Little of this money has been forthcoming. The second Preparatory Meeting (PrepCom II) for the Johannesburg Summit ended on 8 February with the adoption of a Chair’s Paper, which raises among other issues a number of trade-related points, including market access, subsidies and intellectual property. The paper will form the basis for discussions at PrepCom III (25 March to 5 April, New York) where delegates will focus on a governance system for sustainable development and on linkages between the various international institutions, including the WTO.

The Chair’s Paper consists of nine clusters that were discussed and agreed upon by delegates at PrepCom II. Among trade-related issues, it calls on WTO Members to implement the outcomes of Doha, and to address issues related to intellectual property protection of traditional knowledge, improved market access for poor countries, and the reduction of environmentally harmful subsidies in areas such as agriculture and fisheries. Many of the points raised in the paper are also being discussed in the context of the new round of trade negotiations currently underway at the WTO, where delegates will deal with the relationship between WTO rules and multilateral environmental agreements (MEAs), environmental goods and services, fisheries subsidies and intellectual property rights.

NGOs Question Strong Trade Orientation

The references to the Doha Declaration and to the WTO have led to fears among some NGOs that the World Summit on Sustainable Development will be biased towards free trade and subordinated to the trade regime. These concerns were further fuelled by the release of the European Commission’s External Sustainable Development Strategy Communication, which places what the Commission refers to as the *Doha Development Agenda* at the centre of its sustainable development strategy, as well as the main element of its approach to the WSSD and the Conference on Financing for Development to take place on 18-22 March in Monterrey, Mexico (Bridges Year 6 No.1, page 1). In response to the Communication, the Greens in the European Parliament warned that the commitment of the EU towards sustainable development was now running the risk of becoming a pretext to a trade-oriented agenda at WSSD. Southern NGOs and delegates have also been critical of what they see as an overly trade liberalisation-friendly orientation for the upcoming Monterrey Conference on Financing for Development, as well as Johannesburg Summit next fall.

NGOs Call for Changes in WIPO’s New Patent Agenda

From 25-27 March, the World Intellectual Property Organisation (WIPO) will convene an international conference to discuss the WIPO Patent Agenda, intended to lead to a ‘blueprint for the future evolution of the international patent system (IPS)’. According to WIPO, in the longer term the IPS should provide ‘mechanisms and programmes whereby inventors and industry have access to nationally, regionally and internationally effective patent protection systems which enable them to obtain, maintain and enforce their patents through procedures which:

- are simple, inexpensive, timely and reliable, consistent with the need to afford effective protection;
- support the exploitation of patented technology, whether that is by manufacture, incentives for investment, international licensing and business transactions, or other technology transfer arrangements.’

Responding to WIPO’s call for comments on the Patent Agenda, Oxfam called for a revision of organisation’s objectives to ‘balance the promotion of intellectual property protection with the realisation of internationally agreed human rights and development objectives, including access to medicines and technologies essential for development and the protection of the environment.’ James Love of the Consumer Project on Technology said there was too much focus on making the patent system ‘more reliable and certain’ while ignoring the ‘choices that policy-makers struggle with to balance the costs and benefits of the patent system’. Both comments are available at <http://patentagenda.wipo.int/rfc/rfc1/index.html>.

The conference is open to the public. For more information, contact: WIPO, tel: (41-22) 338-4164, e-mail: ips.meetings@wipo.int; web: <http://patentagenda.wipo.int/meetings/2002/index.html>

Institutional News in Brief

- On 1 March, the International Labour Organisation announced the establishment of a World Commission on the Social Dimension of Globalisation, which is to ‘examine ways in which all international organisations can contribute to a more inclusive globalisation process that is acceptable and fair to all’. The blue-ribbon Commission is seen as a compromise solution for addressing, *inter alia*, the relationship between trade liberalisation and core labour standards, which developing countries have staunchly resisted in the context of WTO talks. Dutch Minister for Development Co-operation Evelyne Herfkens, former Uruguayan President Julio Sanguinetti and Nobel Prize-winning economist Joseph Stiglitz are among the eminent personalities who make up the 21-member body, which will be jointly chaired by President Tarja Halonen of Finland and Benjamin Mkapa of Tanzania. All will act their personal capacities. The Commission will hold its first meeting in Geneva on 25 March.
- The UN Conference on Trade and Development (UNCTAD) has launched a capacity-building and technical assistance programme, which the organisation’s Executive Secretary Rubens Ricupero called ‘demand-driven’ and ‘tailor-made’, based on consultations with developing countries. Among other assistance, UNCTAD stands ready to support the active participation of developing countries in issues such as trade, debt and finance, and trade and technology transfer, on which WTO working groups were established in Doha.

Technology Transfer, continued from page 7

and technology policies, investment flows and competition policies. Only when all these aspects are dealt with can one claim that effective transfer has taken place and that the concerns of developing countries about technology transfer have been fully addressed. These are some of the important elements that the new working group at WTO should bear in mind as it considers its agenda on trade and transfer of technology.

The relationship between transfer of technology and trade is not automatic nor is it cost-free. Successful technology transfer involving partners from developed and developing countries requires financing, but above all it requires home *and* host country policy measures to stimulate the transfer and local adaptation of technology. In effect, therefore, new multilateral efforts to increase flows of technology to developing countries and promote linkages between trade and transfer of technology should:

- a) incorporate flexibility in the design of national technology policy to foster the development of competitive productive sector;
- b) recognise the need to create conditions conducive to fostering transfer of technologies by international firms whose collaboration is vital to make it effective;
- c) formulate a workable mechanism for effective implementation of existing technology-related provisions in WTO Agreements; and
- d) promote opportunities for capacity-building and international co-operation in research and development aimed at improving trade from developing countries.

What is needed are mutually beneficial arrangements that maintain a balance between the concerns and interests of technology generators/suppliers and those that rely on transfer for their technological development. Transnational corporations as the main, but not exclusive, suppliers of technology to developing countries seem to prefer methods of transfer where they can exercise some control over the process, while host countries prefer transfers that contribute to local technological development. What would therefore seem appropriate is to create conditions in the host countries that encourage a multitude of channels of transfer of technology and permit the designing of incentives that would motivate international firms to participate in the efforts of developing countries to boost their domestic capabilities.

The development of new approaches and initiatives aimed at supporting and strengthening human, entrepreneurial and institutional capacities in developing countries need to be taken into consideration in future international trade agreements, with a view to enabling developing countries to benefit and participate fully and more effectively in those agreements.

In summing up, the persistence of transfer of technology issues in multilateral negotiations, as demonstrated by the decision to establish within WTO a working group on trade and transfer of technology, calls for a renewed assessment of this subject and the formulation of a new agenda that takes into account recent developments including the evolution of thinking on technology and the process of technology transfer.

Pedro Roffe and Taffere Tesfachew are staff members of UNCTAD, Geneva. The views expressed in this note are their own and not those of the organisation.

¹ See Patel, Roffe, Yusuf: *International Technology Transfer: The Origins and Aftermath of the United Nations Negotiations on a Draft Code of Conduct*, Kluwer law International, 2000.

Chinese, EU Biotech Regulations Face Intensifying US Fire

The US biotechnology lobby is urging the government to take a tough stance against China's new labelling and safety inspection regulations on imports of genetically-modified commodities and products. The 'implementing regulations' – released in January to complement legislation adopted in May 2001 – will require labels on GMO imports, as well as documentation on testing and other information as of 20 March 2002. Applications from exporters will be processed within 270 days of their submission.

The US is seeking further clarification of the regulations and a delay in their application. Among its major objections are unclear provisions regarding the criteria and procedures for obtaining a safety certificate from the Chinese Ministry of Agriculture, as well as the short time given to exporters to adapt their products and documentation to the new regulations. US corn exporters are particularly worried as their annual shipments of genetically-modified varieties have averaged US\$1 billion for the last three years. Twenty-three agricultural/industry associations wrote to President Bush in February asking him to ensure uninterrupted access for US GMO products to the Chinese market. They argued that the 20 March date did 'not comply with China's new WTO obligations to provide other parties notice of new regulations and sufficient time for comment prior to their implementation' and thus failed to provide 'a transparent and predictable framework for exporters and importers'.

Some business analysts speculate that the new regulations are intended to protect China's own biotechnology industry, which stands to reap the benefits of the developing world's largest research programme. China's biotech research spending accounts for more than half of the developing country total, easily dwarfing the budgets of Brazil, Argentina or India. According to the January 2002 issue of *Science*, the strength of the Chinese programme is its focus on food security and crops that have received little attention elsewhere. The same *Science* article says that in China, 90 percent of research is directed toward developing insect- and disease-resistant varieties, while in the industrialised world 45 percent of research targets herbicide tolerance/product quality and only 19 percent goes to insect resistance.¹

US Questions Science of Biotech Regulations

The US also has problems with what it sees as a non-science-based Chinese requirement that even products made with GMOs but no longer containing traces of them must be labelled. In the WTO's Committees on Technical Barriers to Trade and on Phytosanitary and Sanitary Measures, the US has repeatedly questioned the scientific justification the European Union's pending new labelling regulations, which contain similar requirements. The US government is currently consulting the biotech industry on the timeliness of a WTO challenge of the EU's stalled GMO approval process. Such action may, however, be counterproductive as it would further inflame European public opinion already more than sceptical of GMO foods and crops. In addition, the entry into force of the EU's new regulations may lift the *de facto* moratorium on approvals within a year while a WTO case is likely to take at least two years.

¹ Jikun Huang, Scott Rozelle, Carl Pray and Qingang Wang. 'Plant Biotechnology in China'. *Science* Vol. 295, pp. 674-677.

The Canada – US Lumber Dispute: An Apology for a Third Way

By Guillaume Beaupré

Since its inception some twenty years ago, the Canada-US softwood lumber dispute has never been completely resolved. Claiming that the ‘stumpage fees’ set by Canadian provinces amount to an unfair subsidy to the Canadian forest industry,¹ the US has indeed tried more than once to restrict the imports of softwood lumber from Canada or to impose unilateral countervailing duties in response to these alleged illegal subsidies.² As a temporary response to this long-lasting dispute, the two countries in 1996 signed the Softwood Lumber Agreement (SLA), intended to limit the amount of lumber permitted to enter the United States from Canada, in return for which the US refrained from launching trade actions against the Canadian softwood lumber industry.³

The SLA’s expiry on 31 March, 2001, triggered a new phase in the dispute. Pursuant to a petition by the US Coalition for Fair Lumber Imports, the US Commerce Department first hit Canadian lumber with a 19.3 percent countervailing duty in August in response to the alleged government subsidies and, more recently, imposed a second round of anti-dumping penalties ranging from six to nearly 20 percent on a certain number of Canadian lumber companies suspected of selling artificially low-priced lumber in the US market. This second lot of penalties brought the effective duties as high as 32 percent in some cases.⁴

The softwood lumber dispute puts Canada in a delicate situation. On the one hand, the impacts of this industry on the Canadian economy are very important. Softwood lumber constitutes Canada’s single-largest export to the US (\$10-billion annually) and employs more than 100,000 people directly. On the other hand, one cannot overlook the potential impacts of such an industry on the environment, and many argue that this aspect should also be taken into consideration in any attempt to settle the dispute.

While the Canadian government has already announced it will undertake appropriate action to bring these unilateral measures to an end, some questions still remain. What are the available options? Which solutions would be the most efficient and/or desirable both from a commercial and an environmental standpoint? Finally, which place should sustainable development hold in the dispute settlement process?

A Multi-dimensional Perspective

There are a few legal mechanisms through which this dispute could be settled, and the choice of the appropriate one will depend mostly on the goals to achieve, as well as the chances of success in achieving these goals. Two of these regimes will be briefly reviewed here.

The World Trade Organisation (WTO)

The WTO seems to be the obvious legal channel through which the softwood lumber dispute could be resolved, at least from a trade standpoint. Indeed, the WTO has dealt extensively with subsidies, anti-dumping and countervailing duties, and has developed a comprehensive set of rules designed to regulate these

aspects of international trade.⁵ One of these is the strict prohibition to use subsidies as a boost to exportations,⁶ a provision on which the US relied on in justifying its countervailing measures in the lumber dispute. Where a subsidy is found to exist, the WTO authorises the affected country to impose, after having made the proper investigations, a special countervailing duty on the subsidised goods in a way that would neutralise the alleged subsidy. In theory, this countervailing duty may last a maximum of five years or until it is no longer justified.

The essential question is whether Canada’s ‘stumpage fees’ can be described as a form of subsidy to exports within the meaning of Article XVI of the GATT and Article 3.1a) of the ASCM. The answer is far from clear. The position of the Canadian government, of course, is that they are not. Instead of viewing stumpage fees as a means of providing a financial contribution to the Canadian lumber industry, the government describes these fees as a simple licence or right of access to cut timber. Canada also questions the methods used by the US Department of Commerce in fixing the rate of the effective duty and has requested the establishment of a WTO panel to hear its concerns.



It is questionable, however, whether the recourse to a WTO panel is an effective and desirable way to settle the dispute. First, the adjudication process can be very long. In some cases the entire process may take up to 18 months, and by then, the damages may be irreparable. Second, the decision would be trade-centered, meaning that the conflict would be mostly resolved in function of its commercial issues, thus minimising other aspects of the dispute such as its environmental or social impacts.

The North American Free Trade Agreement (NAFTA)

Two types of action could be available under NAFTA. The first one relates to chapter 19 of the Agreement, which provides that a Party’s anti-dumping or countervailing duty law (including administrative decisions) must be consistent both with the WTO’s antidumping and subsidies codes. It also states that it should be consistent with the object and purpose of the Agreement, which is to establish fair and predictable conditions for the progressive liberalisation of trade between the parties while maintaining effective and fair disciplines on unfair trade practices.⁷ This last condition, despite its relative vagueness, could arguably impose a duty of good faith and fairness in the conduct of commercial relations between the parties. Whether the US (protectionist?) measures could be challenged under this provision is still unclear, but *prima facie*, the consistency of such measures with the ‘spirit’ of NAFTA seems rather doubtful. Canada has not yet announced its intention to have recourse to this mechanism, but it could eventually decide to use it in parallel and simultaneously with the WTO panel. However, the process would present the same disadvantages of being very long and mostly trade-centered.

The second type of action relates to chapter 11 of the Agreement, which permits companies with investment in NAFTA countries to

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seek direct compensation for alleged harm to their operations caused by the actions of a Party's government. This mechanism assures both equal treatment among investors of the Parties in accordance with the principle of international reciprocity and due process before an impartial tribunal. Since the imposition of the anti-dumping duty in late October, one Canadian lumber company has already announced it will undertake a \$250-million action against the US government, and other lumber producers may take similar steps in the months to come.⁸

Sustainable Development : A Third Way Solution?

The options presented above all seem to suffer from the same weakness, namely, that they tend to tackle the dispute mostly from a trade perspective, leaving aside other related issues such as the environment. The question then is whether there are other ways that would actually avoid this trade-centered approach and seek a solution balancing the long-term commercial, social and environmental considerations.

The concept of sustainable development could offer such an alternative. Sustainable development is an integrated approach whose purpose is precisely to reconcile trade, environment and development, and which requires, among others, equity, international co-operation, environmental integrity, efficiency and cost internalisation.⁹ Despite some signs of openness, the WTO and NAFTA dispute settlement mechanisms are clearly not yet ready to fully acknowledge and apply these notions. While hopefully this is only a question of time, in the meanwhile, there are other ways to settle the dispute in a more sustainable manner. The most obvious (and probably desirable) one would be the negotiation of a new agreement on softwood lumber. This solution should be preferred for at least two reasons. First, it would be a negotiated rather than imposed settlement, a difference that could help develop better commercial relations in the long term. Second, an eventual agreement could be flexible enough to allow the incorporation of sustainable development concepts in its provisions.

While there would have to be sufficient political will, one of the current objectives of sustainable development is precisely to sensitise the political leaders to these considerations. Citizens are also invited to participate in this process, and they actually have the legal means to do it. Articles 14 and 15 of the NAAEC (NAFTA's parallel agreement on environment) give the power to a citizen or NGO to make a submission asserting that a Party is failing to effectively enforce its environmental law, ultimately leading to the establishment of a factual record.

Even if it lacks any legal effect, such a record can nevertheless put considerable public pressure on the government to comply with its environmental obligations, and this may be an effective way to sensitise our leaders to these issues. Canada is currently facing such a process in regard with its logging practices in British Columbia, and the establishment of a factual record has recently been ordered.¹⁰ Whether it will have an impact on an eventual agreement remains to be seen, but certainly, this represents a positive and encouraging step toward the development of more sustainable practices in the logging industry. We now have to wait and see if it will actually evolve in a way that will respond to our expectations.¹¹

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ENDNOTES

¹ Since most of the Canadian forests are located on 'Crown lands', they are owned and managed by the government. Firms harvesting timber from these forests are thus required to pay a stumpage fee for each tree removed, at a rate normally set by each Canadian province or territory. However, the US is arguing that these stumpage fees are set artificially low.

² For a good historical review of the first ten years of the Canada-US softwood lumber dispute, see P.A. Piliounis, 'Anatomy of a Trade Dispute: The Question of Softwood Lumber' (1992) 1 Dalhousie J. Leg. Stud. 71.

³ Canada's softwood lumber exports to the US were limited at 14.7 billion board feet annually, and all the exports in excess of this quota were subject to a tax imposed by the Canadian government.

⁴ See 'New Duties Hit Softwood', *The Globe and Mail*, Nov. 1, 2001, B1.

⁵ Mostly through Article VI and XVI of the General Agreement on Tariffs and Trade (GATT), the Agreement on Subsidies and Countervailing Measures, and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade.

⁶ See Article XVI (Section B) of the GATT and Article 3.1a) of the Agreement on Subsidies and Countervailing Measures.

⁷ Article 1902 of the Agreement. Under Article 1903, a Party may request the establishment of a bilateral panel for a declaratory opinion on the consistency of the countervailing measure with GATT or NAFTA.

⁸ See 'Canfor suing U.S. over lumber industries', *The Globe and Mail*, Nov. 6, 2001, B1.

⁹ See M. Prost, 'Is WTO Law Becoming More Sustainable?', *Bridges*, Oct. 2001, pp.21-22.

¹⁰ On November 16, 2001. The summary of this process may be accessed at : http://www.cec.org/citizen/guides_registry/registryview.cfm?varlan=english&submission ID=60.

¹¹ The next issue of Bridges will look further into the environmental and social dimensions of this dispute, *ed.*

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World Civil Society Forum

The World Civil Society Forum was initially conceived during the Millennium Forum on UN reforms (May 2000, New York), which recalled the desire of the United Nations to work closely with civil society, as well as the request of several non-governmental organisations to strengthen co-operation among themselves and with the UN system. Next July, the Forum intends to gather 1,000-1,500 organisations to focus on four specific objectives:

- Promote co-operation among civil society organisations across the world and working in different fields of activity, especially with developing countries and indigenous peoples.
- Facilitate co-operation between civil society and the United Nations system, including its specialised agencies and other international organisations.
- Create a space for dialogue on the relation between the different stakeholders of the international scene, such as civil society organisations, international organisations, governments and private sector.
- Consider the constitution of a permanent forum.

The Forum will be held at the International Conference Centre of Geneva, from 14-19 July 2002, between the first Prepcom of the World Summit on the Information Society, the UN Working Group on Indigenous Peoples and the Sub-Commission on Human Rights. Parallel activities will be held between the 8 and the 20 of July. The Forum's preparatory working group is composed of more than 500 organisations from over 80 countries.

The Forum will include information and discussion sessions, workshops and thematic working groups. It will provide the opportunity to adopt recommendations, to share information and to strengthen co-operation with other organisations. The main thematic working groups are:

- Civil society – international organisations co-operation
- Environment, trade and sustainable development
- Civil society – private sector
- Information Society
- Indigenous peoples, women and development
- Health promotion
- Human rights and humanitarian law
- The right of peoples to self-determination in the prevention of conflicts
- Peace and disarmament
- Human Development

Training sessions (8 - 12 July) will be provided before and during the Forum. They will include training for journalists, access to Internet, management of development projects, human rights, introduction to international public law, construction of solar ovens and an introduction to humanitarian law.

A *Youth Forum* will be held on the 13th July 2002, preceded by three days of workshops and trainings. It will enable youth from all over the world to strengthen their participation in international co-operation and notably with the United Nations. The Forum will work on the role of youth in the promotion of human rights, sustainable development and peace.

Civil Society Village and cultural activities (15 - 20 July) will be open to the public and will include concerts, film projections, culinary specialties, photo exhibitions and theatre plays.

Exhibition areas (15 - 20 July) will be provided at the Conference Centre and in the 'Village' in order to enable organisations to present their activities.

Registration: Support and facilities will be provided for organisations from developing countries. Complementary information and registration forms are available on the Forum's website: www.worldcivilsociety.org

For further information contact: Mandat International, tel: (41-22) 959-8855; fax: (41-22) 959-8851; e-mail: forum@mandint.org

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March 8 Geneva	WTO Dispute Settlement Body Contact: Nuch Nazeer, tel: 5393 fax: 5458
March 14-15 Geneva	WTO Committee on Technical Barriers to Trade Contact: Luis Ople, tel: 5374, fax: 5458
March 14-15 Geneva	WTO Working Group on the Interaction between Trade and Competition Policy Contact: Robert Anderson, tel: 5198, fax: 5790
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 19-22 Geneva	WTO Council for Trade in Services Contact: Nuch Nazeer, tel: 5393 fax: 5458
March 20 Geneva	2 nd UNEP International Technical Workshop on Fisheries Subsidies Contact: Hussein Abaza, tel: (41-22) 917-8298, e-mail: hussain.abaza@unep.ch
March 20-21 Geneva	WTO Committee on Sanitary and Phyto-Sanitary Measures Contact: Peter Ungphakorn, tel: 5412, fax: 5458
March 21-22 Geneva	WTO Committee on Trade and Environment Contact: Lucy Giraud, tel: 5057, fax: 5458
March 25 Geneva	WTO Council for Trade in Goods Contact: Nuch Nazeer, tel: 5393, fax: 5458
March 25-27 Geneva	WIPO Conference on the International Patent System Contact: WIPO Secretariat, tel: (41-22) 338-9164; e-mail: jps.meetings@wipo.int
March 25-28 Geneva	WTO Committee on Agriculture Contact: Peter Ungphakorn, tel: 5412, fax: 5458
Mar. 25 - Apr. 5 New York	3 rd Preparatory Committee Meeting for the World Summit on Sustainable Development Contact: Johannesburg Summit Secretariat, e-mail: dsd@un.org
March 28 Geneva	Implementation of the Doha Declaration on TRIPs and Public Health: Technical assistance – How to get it right? Contact: Médecins sans Frontières, e-mail: trips_health_conference@paris.msf
April 3 Geneva	WTO Sub-Comm. on Least-developed Countries Contact: Lucy Giraud, tel: 5057, fax: 5458

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

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Please contact the Secretariat for confirmation of dates.

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