

### Trade and Sustainable Development: Time for a Fresh Start in Johannesburg

ICTSD aims to contribute to the debate on the purpose, prospects and outcome of the World Summit on Sustainable Development through offering space in *BRIDGES* for a wide variety of views. Below, Kevin Watkins, Senior Policy Adviser at Oxfam, looks at how the Johannesburg Summit could contribute to making trade an essential component of sustainable development.

*By Kevin Watkins*

When the 1992 Earth Summit catapulted the idea of sustainable development into the public domain, the World Trade Organisation (WTO) was still an apple in the eye of a few rich country governments – and globalisation was a word happily confined to academic seminars. Hard to believe as it may be, the ‘G’ word did not even merit a footnote in Agenda 21, the manifesto adopted at the Earth Summit.

How times change. As governments and civil society prepare for the World Summit on Sustainable Development in Johannesburg, one question looms over the entire agenda: namely, are current patterns of globalisation compatible with a commitment to sustainable development and poverty reduction? The answer to that question is ‘no’. And the management of world trade, one of the most powerful drivers of globalisation, is part of the reason. With its rigged rules and warped approach to economics and the environment, the WTO is the cuckoo that has pushed sustainable development out of the nest.

Three fundamental challenges have to be addressed in the area of trade policy if Johannesburg is to move us beyond the rhetoric of sustainable development, and towards a world that is ecologically sustainable, less scarred by poverty and inequality, and more stable. The first challenge is one of basic equity. Rising global inequalities point to an overwhelming case for a radical redistribution of the benefits of trade in favour of poor countries. Second, world trade rules have to recognise that our global environmental space is not infinite: sustainable ecology demands that we keep the overall levels of resource flows within that space.

Last but not least, we have to find new ways of balancing equity, economics and ecology. The challenge facing Johannesburg is to develop the rules and norms needed to sustain a trading system that creates opportunities for poor

countries without inflicting global environmental damage, and capable of fostering patterns of growth that reduce poverty and inequality.

There are those who argue that trade is already acting as a powerful catalyst for poverty reduction and equity. But this view flies in the face of the facts. Trade is part of a globalisation regime that is perpetuating poverty in the midst of prosperity. Today, countries representing just 14 percent of the world’s population account for over 75 percent of export activity. At the other end of the spectrum, the low income countries, with 40 percent of the world’s population, account for 3 percent of exports. Meanwhile, within countries the expansion of trade has often been accompanied by rising inequality. One recent survey by the Inter-American Development Bank found that inequality had increased in twelve countries in the region over the past decade. This has diminished the already weak linkage between export activity and poverty reduction. Inequalities are also growing rapidly in China and India, acting as a brake on poverty reduction.

#### Protectionism and Forced Liberalisation

Rich country protectionism is one factor behind trade-related inequality. Northern governments may offer strictures to developing countries about the virtues of open markets, but they are protectionists in free trader clothing. Their credo is based on a simple principle: ‘you liberalise, we protect and subsidise’.

When poor countries export to rich countries they face trade barriers that are four times higher than those faced by rich countries themselves. These barriers currently cost developing countries US\$100bn a year – twice the amount that they receive in kind. The

future costs associated with lost income, employment and investment opportunities are much higher. To make matters worse, protectionism is concentrated in precisely those areas – such as garments and agriculture – that have the potential to have the biggest impact on poverty. By denying poor people access to employment opportunities, northern protectionism frequently reinforces the poverty at the heart of ecological problems.

While the rich world keeps its markets closed, developing countries are being forced to open their markets under IMF-World Bank programmes, often with devastating consequences. For example, when Haiti liberalised its rice market in the mid-1990s, courtesy of an IMF loan

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edict, the country was promptly flooded with cheap (heavily subsidised) US rice. Tens of thousands of livelihoods were destroyed, just as they have been by similarly unequal – and unfair – competition across the developing world. In some cases, developing country governments themselves are responsible for inflicting poverty through import liberalisation. In India, the government has resolutely protected large-scale wheat and rice farmers through policies that have wrought environmental havoc, while exposing smallholder oilseed farmers in Andhra Pradesh to cheap imports. Free market ideology has been tempered by considerations of political power.

More generally, the erosion of the developing world's special and differential treatment status under the WTO has compromised the right of governments to follow the lead of successful East Asian countries in providing temporary protection for local industries. This threatens to lock poor countries into low value-added areas of production, further marginalizing them in world trade.

### Unequal Sets of Rules

Hypocritical and unbalanced approaches to market access are just the tip of the iceberg. The deeper problem is a profound gap between the principles of sustainable development, and the principles enshrined in world trade rules.

Agenda 21 is statement of broad intent running into a couple of hundred pages. It is non-binding and aspirational. By contrast, the Uruguay Round agreements overseen by the WTO stretch to 21,000 pages – and they carry the force of law. And while Rio was concerned with limiting access to natural resources and protecting the global environment in the public interest, the WTO's agreements reflect a corporate-driven agenda to gain access to markets, resources and labour on an unconditional basis.

The intellectual property agreement (TRIPs) is a prime example. By extending more stringent patent protection in the interest of northern transnational companies, this will drive up the cost of technology transfer, increase the costs of basic medicines, and extend corporate control over seeds. It conflicts in a fundamental manner with the Convention on Biological Diversity. On the other side of the equation, it will generate an additional US\$40bn in revenue for the northern transnational corporations (TNCs) that account for nine out of every ten patents.

Under the General Agreement on Trade in Services (GATS), the European Union is using the WTO as a lever for opening not just banking and insurance, but water, health and environmental services to deregulation and foreign competition. Similarly, WTO rules, aided and abetted by regional trade agreements, have weakened the regulatory power of states in favour of free capital mobility, regardless of the social, economic, and environmental consequences. There is a real danger that the GATS agreement could be used to challenge the right of governments to require foreign water providers to subsidise access to low income groups.

### Global Warming and MEAs

Multilateral trade rules are not the only factor militating against the type of world order that the Earth Summit sought to create. Built on the consumption of fossil fuels, the economic growth driving the expansion of trade is also driving global warming – and threatening the integrity of the biosphere. Greenhouse gas emissions associated with air transport are now one of the most potent sources of global warming. The future costs will be disproportionately borne by communities such as the rice growers of the Mekong Delta, slum dwellers in Lima and farmers in semi-arid areas of Africa. While the world's worst polluter (the United States) does nothing and the rest of the industrialised world does too little, organisations like Oxfam are starting to plan for humanitarian consequences of global warming. This is market failure on an epic scale.

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Editor: Anja Halle  
Address: 13 chemin des Anémones  
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Tel: (41-22) 917-8492  
Fax: (41-22) 917-8093  
E-mail: ictsd@ictsd.ch  
Web: <http://www.ictsd.org>

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# External Transparency: The Policy Process at the National Level of the Two Level Game

By Sylvia Ostry

The word 'transparency', which could be described (only partly in jest) as the most opaque in the trade policy lexicon, has become so widespread that it could be described as *the* buzzword of 'diplolingo'. In WTO speak, 'internal transparency' refers to the nature of the decision-making processes of the institution while 'external transparency' deals with the relationship between the WTO and non-governmental institutions such as business, unions, farmers, academics and NGOs (non-governmental organizations). While there is no agreed definition of the term, it includes access to information as well as the nature of participation in the policy-making process.

The policy process of trade is a 'two level game' involving negotiations among interest groups – or stakeholders – at the national level and negotiations among country representatives at the international level. In trade policy, especially for the big players (the US and the EU), one could plausibly argue that the negotiating strategies are largely determined by domestic constituents. Yet there has been almost no empirical research on the subject of the national process and its interrelationship with the process in Geneva. It is essential to correct that omission, not for research purposes but because of the link to the future of the WTO.

## External Transparency

The demand for greater transparency at the WTO has continued unabated since its establishment and is gaining broad support. The WTO has responded by providing information, speedily and effectively on its website, through informal secretariat briefings and has engaged civil society groups in annual symposia and, in the case of the Committee on Trade and Environment, in discussion. But even these efforts have been opposed by a number of Southern countries.

Curiously, the issue of transparency and the participation at the national level has only recently been raised. The *Open Letter on Institutional Reforms in the WTO* sent by a group of NGOs to WTO Members in October 2001 (just before Doha) includes the 'development of guidelines for national consultation with relevant stakeholders' among a number of other proposals. Since reform issues were not on the table in Doha, there was no response. A similar silence greeted US efforts, after the Seattle debacle, to discuss national policy processes in the WTO.

Yet the WTO's rejection of the relevance of this issue could backfire. It is useful to 'benchmark' other institutions in the rapidly evolving international policy environment because in a globalizing world 'policy spillover' has become increasingly significant. Thus, for example, in 1993, the OECD Joint Working Party on Trade and Environment proposed that 'transparency and consultation' be established as a principle of policy-making in this domain. The proposal was adopted by ministers. But the OECD's initiative went beyond this specific policy set. In July 2001, its directorate for research in public management (PUMA) published a policy brief outlining a number of principles for good governance entitled *Engaging Citizens in Policy-Making: Information Consultation*

and *Public Participation*. The brief emphasized the importance of participatory policy-making in tapping ideas, building public trust and enhancing the credibility of government. The principles listed to guide OECD governments while not binding (being a form of 'soft law') their adoption by ministers is not without significance.

This OECD initiative reflects a more pervasive trend of endorsement of the idea of 'ownership' of the policy-making process. The most significant recent example is the UNECE (United Nations Economic Commission for Europe) *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* adopted on June 25, 1998, in the Danish city of Aarhus. It entered into force on October 30, 2001 with 40 signatories including members of the Economic Commission for Europe as well as states with consultative status with the ECE (mainly central and eastern European countries) and the European Community. Aarhus, unlike the OECD principle, constitutes 'hard law' and is quite radical in both its content and, perhaps, in its implications for international law if efforts by the proponents of transparency and participation succeed in extending it to customary international environmental law (see related article in Bridges Vol.2 No.5, page 2, *ed.*).

The Convention is built on three pillars – access to information, participation and access to domestic courts – and spells out in detail what each of these rights includes. It recognizes that forms of participation must be adapted to different legal and institutional systems and are dynamic in concept, i.e. should and will evolve over time. The treaty's intention is to identify basic or preliminary elements that would entail a participatory process. It also includes the need for follow-up monitoring of implementation measures, which should be transparent. And, to ensure transparency, the public is granted access to judicial review procedures when their rights to information and participation have been breached.

The concept of customary international law (noted above) is not confined to the environment but is also very much an issue in the field of human rights. There is considerable disagreement as to whether – or which – human rights have status as custom. The proposal that human rights should prevail over international trade law has generated a storm of controversy and the battle seems set to continue. Thus, some legal experts have argued that the preamble of the WTO Agreement, which refers to sustainable development and the need for the poorest countries to grow, states values that could be interpreted as basic human rights.

The legal (as opposed to the legislative) route to inserting human rights into the WTO was given a leg-up by a decision of a dispute settlement panel concerning US trade law Section 301. Included in the panel report was a statement that the multilateral trading system was composed not only of states but also – indeed mostly – of individual economic actors. This astonishing conclusion has certainly attracted the attention of WTO-watchers in the legal

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community. Among the individual rights of interest to this large and expanding group is the right of public participation in policy-making. Could a dispute over, say, public services in health or water or whatever be the next step in inserting human rights into the WTO? I would predict that if the *legal* route is chosen the results will be profoundly traumatic for the WTO. If there is to be any change in WTO rules it must be 'legislated' not litigated.

I insert the word 'legislate' in inverted commas because my proposal need not involve a change in the formal rules of the WTO – a most difficult and lengthy proposition as everyone would agree. Rather, I would propose an informal, voluntary initiative to incorporate discussion of the national trade policy-making processes into the WTO under the broad rubric of transparency, a pillar of the GATT/WTO system from its origins.

### The Dilemma of Civil Society Participation

Article V : 2 of the Uruguay Round Agreement states: 'The General Council may make appropriate arrangements for consultation and co-operation with non-governmental organisations concerned with matters related to those of the WTO.' In order to clarify the precise *legal* meaning of this broad directive the General Council on July 18, 1996 spelled out a set of guidelines covering transparency including release of documents, *ad hoc* informal contracts with NGOs, etc. Guideline 6 is most pertinent in the context of this present discussion:

'Members have pointed to the special character of the WTO, which is both a legally binding inter-governmental treaty of rights and obligations among its Members and a forum for negotiation. As a result of extensive discussions, there is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings. Closer consultation and co-operation with NGOs can also be met constructively through *appropriate processes at the national level where lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making*'.

Yet nothing has been done with respect to the admonition to focus on the national level. An effort to introduce the idea failed because of strong opposition from some Southern countries. Criticism of the more powerful well-financed Northern NGOs demanding two bites of the apple (at the WTO and at home) are fair enough. But how realistic is it to suggest *no* bite of the apple? It would be helpful if Southern NGOs undertook to explain to their governments the benefits of a more participatory transparent policy-making process in enhancing legitimacy, providing information and gaining information.

Of course there are also costs to a more participatory process. There are costs for governments in terms of time, expertise and financial resources, and there are significant differences in resources among the stakeholders. Since business lobbies are better equipped than other groups an insider-outsider mentality can develop. Or some stakeholders, simply by being engaged in the process, develop unrealistic expectations about outcome and are frustrated when all their demands are, inevitably, not delivered. The policy process is complex and messy. And the bottom line in all this deserves stressing: that it is the role of *government* to make policy; transparency and participation are *not* a replacement for *governmental responsibility*.

### Conclusion

In the WTO context, weighing costs and benefits thus rests on the judgement of each member country. The arguments presented here suggest that there are likely to be significant systemic costs from doing nothing and these should be considered by members when rejecting any WTO initiative. The erosion of the multilateral system will impact the weaker more than the stronger because the alternative to a rules-based system is one based on power.

A pilot project on external transparency at the national level could be launched in the Trade Policy Review Mechanism. The TPRM was proposed as a vehicle to enhance transparency at the national level. It is voluntary and flexible in subject matter and *not* linked to rule-making or dispute settlement. A pilot of a mix of countries (voluntary, of course) would illustrate the diversity of policy-making processes and could launch a discussion on the costs and benefits of different models. The issue of technical assistance and capacity-building to improve the capabilities of stakeholders should also be discussed. Enhancing capacity to improve and sustain a more transparent process sounds like a good investment. Any takers?

*Sylvia Ostry is a Distinguished Research Fellow at the Centre for International Studies, University of Toronto, and a member of ICTSD's Governing Board. The author adapted this article from External Transparency: The Policy Process at the National Level of the Two Level Game, prepared for the WTO Advisory Group (forthcoming).*

### Transparency on the Road to Cancun

Internal, rather than external, transparency has been the focus of WTO Members ever since the failed Seattle Ministerial Conference. Last April, the Like-minded Group (LMG) of developing countries issued a paper on transparency and participation leading up to and during Ministerial Conferences (WT/GC/W/471). The proposal sought, *inter alia*, to ensure that all consultations be open-ended and that the draft ministerial declaration be based on consensus, or – if this is not possible – reflects the differences 'fully and appropriately through square brackets'. Many industrialised countries were less than enthusiastic about some of the proposed procedures, saying they would impose too much of a 'straight jacket' on Ministerial Conference preparations (Bridges Year 6 No.4, page 7).

On 28 June, Australia, Canada, Korea, Mexico, New Zealand, Singapore, Switzerland and Hong Kong/China issued a formal response to the LMG proposal, insisting on the need for flexibility and the 'inappropriateness' of 'prescriptive and detailed approaches to the preparatory process [which] will not create the best of circumstances for consensus to emerge in the Cancun meeting' (WT/GC/W/477). The eight countries defended the process leading up to the Doha Ministerial, including the draft declaration sent to ministers, which some developing countries criticised for not adequately presenting their dissenting views. Australia et al. said that while there had been 'differences over the scope of the agenda and the status of various elements within in', the final Doha Ministerial Declaration was nevertheless 'close to the text that was developed in Geneva. The judgement of most participants, both during the Geneva process and after final decisions were taken in Doha, was that the preparatory process had been successful in reconciling the broad range of Members' interests with the need to provide a platform for effective decision-making in the Ministerial Conference.'

# A Formula for Success: Potential Approaches to Market Access Negotiations

By Joseph François and Will Martin

There is an urgent need to identify a set of feasible and effective modalities for establishing market access commitments in current WTO agricultural and non-agricultural market access negotiations. Formula approaches have been used with success in the WTO in the past, but the situation has changed. Can these approaches be updated to deal with the change in circumstances? We offer some suggestions on ways this might be done.

## A History of Negotiating Approaches

The classic approach to tariff negotiations at GATT has been request-and-offer. Using this procedure, GATT members were able to reduce average tariffs by around 20 percent in the initial Geneva Round of negotiations. However, reliance on this approach produced disappointingly slow progress in the four following rounds. Only with the introduction of a formula approach during the Kennedy Round was it again possible to achieve substantial tariff reductions (a 50 percent cut yielded an effective 35 percent reduction in comparison to the average of 2.5 percent in the previous four negotiations). The Tokyo Round used the so-called – more sophisticated – Swiss formula<sup>1</sup>, and achieved a 30 percent reduction in average tariffs.

The Uruguay Round used a simpler approach involving setting broad tariff-reduction goals – such as a 30 percent average reduction on industrial products – leaving the distribution of the cut across sectors up to negotiation. While successful in achieving substantial tariff reductions, this approach did not make much progress in reducing tariff peaks and escalation. Even worse was the average 36 percent tariff reduction used in the agricultural negotiations. Part of the reduction in Uruguay Round tariffs was brought about through zero-for-zero tariff reductions in which tariffs on groups of products were reduced to zero – a method that succeeded in the Information Technology Agreement (ITA), but failed in the ITA II and the abortive suggestion for Early Voluntary Sectoral Liberalization proposed by APEC for the Seattle Ministerial.

## What About the Current Negotiations?

In a new paper on formula approaches<sup>2</sup>, we argue that, if the right formula can be found, a formula approach increases the likelihood of success relative to options involving more discretion in determining protection in individual sectors. In our view, there are at least two highly desirable objectives for market access commitment modalities: (i) they should reduce barriers in all countries, ensuring a balanced exchange of concessions, and (ii) they should reduce relatively high barriers by more than lower barriers – both to increase the size of the market access concessions exchanged, and to increase the economic benefits in importing countries. A formula approach may help accomplish this.

An appealing feature of a good formula approach is that it immediately creates a balanced package involving gains to exporters as well as costs to import-substituting firms, and it reduces the ability of individual firms and sectors to lobby for favored treatment. The greater success of formula-based approaches has been evident not just at the WTO, but in regional arrangements such as the ASEAN Free Trade Area, which began

with an unsuccessful discretionary approach and succeeded using a formula approach that encouraged offers of market access. Nor are formula approaches relevant only for trade in goods. Formula-based approaches have also been advocated for the Doha Agenda negotiations on services.

## New Approaches for a New Game

Identifying the best approach is complicated by the sharp differences between the current situation and that prevailing in earlier rounds of negotiations. One important difference is the much wider dispersion in the initial tariff regimes of active WTO participants. A second is the frequently-wide gaps between applied rates and tariff bindings resulting from the use of high bindings in the Uruguay Round, and from the wave of applied rate reductions that has swept the developing countries in recent years. Another important difference is the larger number of active participants in the negotiations, which makes classic request-and-offer procedures more difficult.

When formula approaches were applied in the Kennedy and Tokyo Rounds, the number of participants was relatively small and the negotiations – which focused on tariffs on industrial products in developed countries – involved tariff regimes that were broadly similar in their average levels and distribution. By the time a sharply top-down formula was applied in the Tokyo Round, the active participants (industrial countries) had been through six previous rounds of negotiations on the same products. By contrast, the current negotiations are only the second for agriculture, and the second involving large-scale participation by developing countries in negotiations on industrial products

The increase in the number of active participants in the negotiations increases the difficulties involved in request-and-offer type procedures, and increases the attraction of formula approaches. However, the wider dispersion of initial tariffs, and the gaps between bindings and applied rates creates challenges and a need for flexibility in formula approaches not encountered in the Tokyo Round.

## A Flexible Swiss Formula

To address these challenges, our paper proposes a relatively simple, yet flexible solution. It recommends what we call a ‘flexible Swiss formula’. The classic Swiss formula approach used in the Tokyo Round has highly desirable features, particularly its ability to introduce a maximum tariff rate, and to bring about larger reductions in the highest tariff rates. Unfortunately, it is too restrictive to be used as it was in the Tokyo Round, particularly because of the large differences in initial tariff rates, and the presence of binding overhang in many countries. Even in the Tokyo Round, the widespread use of exceptions suggests that the original formula was perhaps too restrictive to be broadly acceptable.

To overcome these problems, we suggest a generalization of the Swiss formula<sup>3</sup> – introducing a ‘compensation’ parameter that would allow the same average tariff cut to be achieved with somewhat smaller reductions in peak tariffs – and a focus on

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achieving agreed reductions in average tariffs. In its most basic form, the idea is to initially apply a standard Swiss formula unique to each WTO Member. Instead of agreeing on a common maximum tariff, as in the Tokyo Round, a common reduction in the average tariff might first be agreed. The Swiss formula coefficient for each country is then chosen to yield the agreed reduction in the average tariff (such as a 50 percent reduction in the average tariff for industrial products)<sup>4</sup>. Finally, the Swiss formula for each country can be generalized to allow the option of maintaining some higher rates, at the ‘cost’ of the deeper cuts on lower tariffs needed to achieve the agreed cut in the average rate.

So there would be two main elements for negotiation: the overall average tariff reductions and the individual ‘spread’/variation in tariffs, with scope for trade-offs between the two. However, all of this would be within a framework that always brings down high rates at least by the same proportion as lower rates – ensuring that tariff peaks do not escape discipline.

Our paper provides examples, with application to the current tariff schedules of Brazil, the EU, India, Japan, the United States, and Thailand. For manufactures trade, we find that suitable choices of the parameters give sizeable improvements in market access with a target 50 percent cut in protection. In agriculture, the proposed procedures appear to work well in some countries, but provide only limited increases in market access in cases where bindings are very high.

### Some Implications for Developing Countries

We believe that a formula approach along these lines also has the potential to contribute to a balanced package of concessions between developed and developing countries. Formula approaches would require reductions in the relatively high tariffs in industrial countries faced by smaller and poorer countries that find it difficult to make progress in request-and-offer negotiations. They would also reduce protection to the more highly protected sectors in developing countries, increasing efficiency in these countries, and stimulating south-south trade.

As long as the negotiations are based on bound rates, any gap between current bound and applied rates automatically gives one-for-one ‘credit’ to countries that have autonomously liberalized (primarily developing countries). Each percentage point cut in applied rates already undertaken reduces the required future cut in applied rates by one percentage point. The approach also allows for different reductions in average tariff rates between WTO country categories if that is desired by negotiators, or for placing limits on the reductions in applied rates required of particular country groups.

There remains the problem of currently unbound tariffs, where the formula might begin at some rate at or above the initial applied rate – we used 150 percent of applied rates in our examples for unbound tariffs. Since the incidence of unbound tariffs is highest in poor countries, starting the formula calculations at some rate above initial applied rates might introduce a form of special and differential treatment in this situation. Such an approach might allow developing countries to reduce these applied rates by less than the targeted reductions in bindings, while still yielding significant liberalization if sufficiently deep cuts in average bindings were undertaken.

### Renegotiate ‘Exceptions’

If in the end a formula approach were seen as not providing sufficient flexibility to accommodate the ‘needs’ of some particular sectors, it would be better to use the formula outcome as a new starting point. Renegotiations might then be undertaken to accommodate higher tariffs in these sectors with compensation to supplying countries. This would seem preferable to the use of exceptions – an approach which has contributed to the persistence of industrial country tariff peaks that are very high relative to average rates.

### Better than the Alternatives?

If a suitable top-down formula can be identified and implemented, it can be expected to lead to significant and balanced gains in market access and economic welfare. By contrast, approaches that focus on reducing relatively low ‘nuisance’ tariffs face the risk of reducing economic welfare by diverting imports away from higher-tariff items. Sector-specific zero-for-zero approaches face a similar potential problem if they end up focusing tariff reductions on relatively low-tariff items, while leaving peak rates in developed and developing countries in place. Even request-and-offer procedures can result in a focus on reducing tariffs in lightly protected, ‘easy’ sectors, rather than those with the high protection rates that generate the greatest social costs.

### With Real-world Data, a Formula for Success?

Clearly, much detailed work would still be needed for countries to ensure that they would achieve worthwhile market access gains, as well as manage the reductions in their own tariffs required by the formula. Only after this work is done would it be possible to reach agreement on key issues such as the overall depth of cuts to be targeted – which could range from zero cuts to a complete move to zero tariffs. Recent developments in tariff databases and software should greatly help countries do the necessary preparatory work.

Formulas have been used with great success in previous multi-lateral trade negotiations, but the situation has become more complex, creating a need for more flexible formulas. We suggest a flexible formula approach that builds on goals of an agreed percentage cut in average tariffs, while bringing down the highest rates by a larger proportion. Our ‘flexible Swiss formula approach’ appears to offer the flexibility to meet many key concerns of rich and poor countries, and to bring about substantial gains in market access if desired. Further work based on real-world data will be needed to assess whether it can meet the needs of all WTO Members.

*Joseph François is Professor of Economics at the Tinbergen Institute in Rotterdam and Will Martin is Lead Economist at the Trade and Development Research Group of the World Bank.*

### ENDNOTES

<sup>1</sup> The Swiss formula:  $T_f = a \cdot T_0 / (a + T_0)$  where  $T_0$  is the initial tariff rate,  $T_f$  is the final tariff rate, and  $a$  is a number that becomes the highest allowable tariff rate. In the Tokyo Round  $a$  was widely set at 0.16.

<sup>2</sup> *A Formula for Success? Structured Flexibility in Market Access Negotiations*, [www.intereconomics.com/text2002.004.pdf](http://www.intereconomics.com/text2002.004.pdf).

<sup>3</sup> We modify the original Swiss formula by the introducing an additional parameter,  $b$ , to obtain:  $T_f = 1/(1/a + b/T_0)$ . We call parameter  $b$  the ‘compensation parameter’.

<sup>4</sup> This can be done using a simple spreadsheet.



# New Development Aspects of Agricultural World Trade

By Joachim von Braun, Peter Wobst and Ulrike Grote

Trade in agricultural products is of particular importance to developing countries. In 2000, they accounted for roughly 40 percent of agricultural world trade, worth US\$558 billion in total. For some countries, such as Ethiopia, agricultural products make up the quasi-totality of their exports (see table below).

## The Need for Reform

Although heavily dependent on agricultural trade, developing countries are far from realising their export potential due to the enormous subsidies most OECD countries continue lavish on their farming sectors. These subsidies distort world trade patterns by inhibiting investments in developing countries' agriculture and limiting their access to OECD markets, thus depressing their returns (OECD 1997). In 1999, total support for agriculture reached US\$356 billion, or 1.4 percent of the gross national product for the OECD (OECD 2000). Average bound tariffs on agricultural products are still over 40 percent, compared to four percent for manufactures.

Analytical evidence of various empirical studies shows that global liberalisation would:

- generate benefits for developing countries of about US\$50-60 billion annually;
- increase world prices for agricultural products by around 10 percent; and
- create sizable export opportunities for developing countries through trade diversion and creation.

However, the gains will be distributed diversely across countries, as well as across different population groups within countries. Some groups would lose as consumers (price effects), as wage earners (employment effects), and/or as farmers (output and input price effects and trade-related technology access).

So far, the impact of the Uruguay Agreement on Agriculture (AoA) has been limited. Highly-subsidised agricultural sectors (e.g. meat, milk and sugar) were either not, or only slightly, liberalised while sectors with low protection rates (e.g. fruit, vegetable and oilseeds) were opened significantly more. With many traditional trade barriers and distortions in place and new ones added, the reform process has been slow and often not transparent. Low-income developing countries in particular have been marginalised.

At the Ministerial Conference in Doha, WTO Member countries acknowledged the need to further correct the prevailing restrictions and distortions in agricultural world markets. The Ministerial Declaration reaffirms the commitment to create a fair agricultural trading system that will recognise the special needs of developing countries and foster their full integration and participation in agricultural world trade.

## Special and Differential Treatment and a 'Development Box'

Paragraph 13 of the Doha Declaration specifies that special and differential treatment (SDT) for developing countries 'shall be an integral part of all elements of the 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.' The same paragraph states that 'non-trade concerns will be taken into account in the negotiations as provided for in the AoA.'

The idea of a Development Box that would allow developing countries more flexibility in implementing the AoA has been discussed since the Seattle Ministerial Conference. In February 2002, nine developing countries submitted an informal paper further elaborating this concept. Applying only to developing countries and designed to enhance flexibility rather than prescribe specific policies, the main objectives the proposed 'box' were:

- protecting and enhancing food production capacity, particularly in key staples,
- safeguarding employment opportunities for the rural poor, and
- protecting small/marginal farmers from 'an onslaught of cheap imports'.

One of the key elements of the proposal was to exempt government support for basic food-security crops from reduction commitments.

Another paper from the same group proposed similar action under special and differential treatment, suggesting that support for staple food crops should be exempted from reduction commitments and that developing countries should be able to reduce their bound tariffs by a smaller percentage than developed countries.

In addition to the official proposals made by various country coalitions, a number of international development organisations have contributed to the debate. The FAO, for example, has suggested within its catalogue of *Measures to Enhance Agricultural Development, Trade and Food Security in the Context of the WTO Negotiations* several clarifications, interpretations and adjustments to the current provisions of the AoA that can be taken as a guide for the creation of a Development Box. The UK-based Catholic Agency for Overseas Development has also come up with an extensive proposal on Development Box instruments including market access and domestic support measures, aiming at (i) developing countries only; (ii) enhanced flexibility; (iii) low-income, resource-poor farmers, and (iv) food security.

## Strategic Direction: A Rule-based Development Box

The conceptual design of a Development Box within the AoA should not start out as an attempt to create just another colourful box of supportive measures.<sup>1</sup> Its objective should be to effectively integrate poverty reduction and development concerns into the WTO framework in a sustainable manner.

*Continued on page 8*

Agricultural Exports of Select Developing Countries		
Country	Share of all exports	Main export commodities
Ethiopia	97%	Coffee, oilseeds, qat
Malawi	80%	Tobacco, tea, sugar
Ivory Coast	77%	Cocoa, coffee, tropical woods
Uruguay	70%	Meat, rice, dairy products
Argentina	49%	Edible oils, cereals, feed

*New Development Aspects, continued from page 7*

Conventional policies and instruments such as regional preferences or the EU's 'Everything But Arms' initiative are neither appropriate nor sufficient to address the prevailing and persistent deficiencies in hunger-struck, low-income economies in the long run. Such schemes are largely unilaterally reversible and do not address supply side constraints. Rules of origin impose further obstacles.

Within the WTO negotiations, the EU has signalled a willingness to accommodate developing countries' concerns on food security, rural development and rural poverty by adjusting the 'green box' and by increasing their threshold for *de minimis* support. Negotiations for a free trade zone covering the Americas might have led to more market access for Latin American farmers, but the recent increase in US domestic support for agriculture to the unprecedented level of US\$73.5 billion (the 2002 Farm Bill expands subsidies by more than 70 percent) has undermined the country's role in multilateral and possibly regional trade negotiations.

### New Definitions Needed

Grouping countries by different criteria in order to generate homogenous groups (such as cluster analysis) reveals the limits of the commonly adopted 'country group' concept. Further WTO negotiations – particularly in agriculture – have to focus on people rather than countries or groups of countries, as there are severe fluctuations not only across regions and districts of single countries, but also across population groups in the same regional location. A group of particular interest in the context of designing a Development Box are low-income, resource-poor farmers, who need special attention to address national food security problems through (a) their own self-reliance and (b) the utilisation of potential excess production for enhanced food supply in rural areas.

A Development Box (DB) should constitute a well-defined package that responds not only to the poorest countries' short-term food security needs, but also their long-term development goals.

Specific criteria and elements might include the following:

- DB measures should only apply to a well-defined group of food-insecure countries, based on specified criteria. *Poverty and hunger indicators should determine eligibility*, not self-sufficiency concepts or other country averages. Thus, the DB should protect people, not commodities or countries.
- *Complementarity of DB and other AoA measures* (e.g. commodity-specific free access to Quad markets if no export subsidies).
- Use of domestic support measures permitted for *small-scale farmers* (based on specific criteria such as index of income or the 'low-income, resource-poor' concept), perhaps linked to national poverty reduction strategies.
- Transfers permitted in case of large *price fluctuations* (stabilisation, not permanent support of price levels). Financial and food aid support for trade-related domestic *safety net programmes*.
- Support for agricultural *productivity and diversification*, both for export and domestic production, as well as investment and input subsidies in the context of DB countries' development programmes permitted under specific criteria.
- Special and well-defined arrangements for DB countries with respect to *standards and consumer protection*, as well as environmental protection and assistance to reach appropriate standards.
- *No fixed transition periods*, but linking duration of food security measures to objective economic (e.g. level of development and human development index) and social (e.g. literacy and life expectancy) criteria.

In this context, the WTO concept of food security needs to be defined precisely and to be distinguished from the concept of food self-sufficiency. The broadly accepted definition by the World Food Summit should guide food security concerns under WTO as well: 'Food security exists, when all people, at all times, have physical and economic access to sufficient, safe, and nutritious food to meet their dietary needs and food preferences for an active and healthy life' (FAO 1996, p.3).

The ongoing WTO negotiations on agriculture need to explicitly define a new package of provisions aiming at the needs of the most disadvantaged economies and people. It would be insufficient to simply redefine the existing tools of special and differential treatment and the green box. New and innovative action within the WTO is required to confront all stakeholders with the immense challenges of fully integrating developing countries into the world economy and the world trade system.

Developed countries should not seek to take advantage of these particular negotiations by counter-proposals aimed at expanding the green box to cover more of their own 'non-trade concerns'. To merge Development Box issues with developed countries' interests such as 'multifunctionality' could spell the end of rules-based trade within WTO. Alterations of existing instruments under the Agreement on Agriculture should be negotiated largely independently of a Development Box to guarantee its effectiveness with respect to eligible target groups and potential measures.

### Conclusion

The global agricultural trade system stands at crossroads, where one possible path leads towards a dangerous erosion of rules-based trade that would be detrimental for developing countries, and the other towards a heavy overloading of trade policy with objectives the WTO is ill-equipped to handle. This article is an attempt to identify the scope and limitations of this second path, which includes a rules-based Development Box.

It would not fit the international division of labour to link the food security measures to a special WTO financing mechanism. Rather, existing mechanisms and co-ordinating bodies should be called upon, for example, the World Bank, the IMF, the World Food Programme, the FAO, the International Fund for Agricultural Development, etc. Incremental development finance would still be needed for food security measures within the DB. Part of the funding might be mobilised from a 'dividend' of reduced OECD agricultural protection.

Direct action for food security remains necessary. The complementary potentials of trade, financial and political reform, and the multiplicity of instruments needed for sustainable development, including food security, all have an important role to play.

*Joachim von Braun is Director of the Center for Development Research (ZEF) at the University of Bonn; Peter Wobst is a research fellow at the International Food Policy Research Institute in Washington D.C. and the ZEF; and Ulrike Grote is a research fellow at the ZEF. The authors based this article on a longer study entitled The Development Box and Special and Differential Treatment for Food Security in Developing Countries: Potentials, Limitations, and Implementation Issues. ZEF Discussion Paper Series No.47.*

### ENDNOTE

<sup>1</sup> The term Development Box echoes the three existing WTO categories of support measures, informally known as the amber box (prohibited subsidies), the green box (allowed subsidies) and the blue box (subsidies decoupled from production).



## Small Island Developing States: The Forgotten Vulnerability

By G. Rajpati and Shazi Sahadutkhan

The precarious situation and vulnerability of least-developed countries (LDCs) have aroused considerable concern amongst public opinion worldwide. In the trade area, WTO Members addressed this issue at their first Ministerial Conference in Singapore and made appropriate recommendations. Subsequently, several actions have been taken in favour of LDCs, the most important one being the EU's Everything But Arms initiative. The Doha Ministerial Declaration reiterates earlier commitments in favour of least-developed countries and calls for further action.

The designation of a country as an LDC depends on GDP per capita. All countries that have a GDP above the level chosen for LDCs are considered to be either developed or non-LDC developing countries.

At the WTO, developing country status is obtained by self-election. The non-LDC developing country group in fact exists by default, as – unlike LDCs – no criteria or parameter is used or has been designed to describe 'developing countries', which vary tremendously in size, population, vulnerability etc.

There are sub-groups with common features within the non-LDC group. However, their characteristics are little known to the general public and are accordingly ignored in any action undertaken by civil society. As a result countries, which are extremely different in most respects, are put in the same basket and 'one size fits all' measures are applied across the board. Thus, country A – endowed with considerable natural resources, and having a broad economic base and the possibility to diversify within and outside agriculture – and country B with limited natural resources, a heavy dependence on one or two commodities and very limited avenues for diversification, are placed in the same group and are considered as deserving the same treatment.

To complicate matters, country B is generally highly dependent on imports of basic food (cereals, meat, milk, oilseeds and vegetable proteins). It is an insignificant player on the world market while country A is an ever-expanding major world player. In addition, country B tends to be highly prone to adverse climatic conditions and would suffer most from the negative impacts of climate change.

The description of country B is not theoretical. Indeed, it applies perfectly to small island developing states (SIDS).

### What Are SIDS?

SIDS are to be found mainly in the Caribbean, the Pacific and the Indian Ocean. They usually share the following characteristics:

- the harmonious development of their rural areas rests upon predictable revenue derived from agriculture;
- they are single commodity producers/exporters with a high dependence on preferential markets;
- their domestic markets are small and their shares of the world market are insignificant;
- their export and import markets are remote;
- they are net food importers with a high dependence on export earnings to procure food;
- they cannot expand agricultural exports; and
- they are prone to cyclones and other adverse climate conditions.

SIDS are also characterised by strong and vibrant democracies, the rule of law and the protection of human and gender rights.

It is often argued that SIDS have a level of GDP per capita that does not warrant any particular support measures, or that they should diversify their economies away from a single commodity. These arguments are incorrect as they overlook the vulnerability of small island developing states, the absence of economies of scale and the inability to expand exports or even to influence trade. Moreover,

the concept of GDP per capita is of little relevance given the SIDS' extreme dependence on one or two activities and the smallness of their populations.

### Losing Out from Globalisation

Globalisation, and in particular further market access through the dismantlement of border protection, is presented as a panacea for all developing countries.

Of all non-LDC sub-groups, the SIDS would be worst off as a result of globalisation. The benefit/loss situation among sub-groups of developing countries is outlined below:

- Large multi-commodity exporting developing countries – more or less self-sufficient in food – will be by far the most important beneficiaries of globalisation through more market access.
- Developing countries, which export many commodities but import food, stand to gain through further access and the establishment of mechanisms to foster domestic production.
- LDCs will gain through the various initiatives taken in their favour.
- Due to the substantial erosion of preferences, small island states would be crowded out of their preferential markets and would have to bear the brunt of higher food bills. The price hikes in the aftermath of the Uruguay Round are sufficient evidence that liberalisation does not automatically lead to lower prices; in fact the contrary took place as world prices are essentially governed by other factors than the law of supply and demand.

The disruption of SIDS' export earnings will invariably undermine the whole socio-economic fabric of their rural societies. In fact, these earnings underpin the very foundation of sustainable agriculture in small island countries.

The problems of SIDS have been, and continue to be, raised in several fora but no concrete action has been taken so far. Indeed, subsumed in the vast and heterogeneous non-LDC group, SIDS and their vulnerability have been forgotten by nearly everyone although their predicament was very well gauged in the 1996 World Food Summit, namely:

'Small Island Developing States face the threat of land loss and erosion due to climate changes and sea level rises and have particular needs for their overall sustainable development. Improvements in trade, transportation, communication, human resources, stabilization of income and higher export earnings will increase food security in these countries.'

The Declaration of the World Food Summit Five Years Later reaffirms the need to address the particular difficulties of SIDS. In addition, the NEPAD (New Partnership for Africa's Development) has recognised these countries' special problems and has agreed

*Continued on page 10*

*Small Island Developing States, continued from page 9*

to support 'targeted initiatives' in their favour in international development fora and at the WTO.

### Special Status Should be Recognised in the WTO

Prior to the establishment of modalities, which will lead to draft schedules of commitments in the WTO negotiations in agriculture, it is vital to remind ourselves of the vulnerability of SIDS (see related article on page 13). The Monterrey Consensus provides valuable guidelines regarding the market access element:

'We recognize the importance of enhanced and predictable access to all markets for the exports of developing countries, including small island developing states [...].'

The Monterrey document also highlights the particular difficulties of countries heavily dependent on commodity exports. SIDS certainly fall into this category. The document notes that:

'Multilateral assistance is also needed to mitigate the consequences of depressed export revenues of countries that still depend heavily on commodity exports.'

SIDS are not only concerned by the risk of severe deterioration of terms of trade, but also by the impacts of climate change. This aspect – mentioned in the 1996 Rome Summit – is taken up in the draft text of the World Summit on Sustainable Development (WSSD):

'Small island developing states are a special case both for environment and development.'

This draft text calls for measures to assist countries in mobilising 'adequate resources and partnerships for their adaptation needs relating to the adverse effects of climate change, sea level rise and climate variability [...].'

Similarly, the Johannesburg draft text refers to the issue of vulnerability and the effective implementation of the Barbados Programme of Action, namely to:

- 'Support the finalisation and subsequent early operationalisation, on agreed terms, of economic, social and environmental vulnerability indices and related indicators as tools for the achievement of the sustainable development of the small island developing states;' and
- 'Undertake a full and comprehensive review of the implementation of the Barbados Programme of Action for the Sustainable Development of SIDS in 2004' and to 'consider an international meeting for the sustainable development of small island developing states.'

Adequate awareness of the situation of LDCs was instrumental in triggering initiatives that address their concerns. It has now been proven beyond doubt that SIDS too are vulnerable and consequently require targeted measures to uphold their sustainable development.

For this purpose, urgent action has to be undertaken firstly under the ongoing Doha Work Programme, which is expected to conclude by end 2004, and then in the context of the full and comprehensive review of the implementation of the Barbados Programme of Action proposed for 2004 in the draft text of the WSSD.

The international community and NGOs have a vital role to play in this regard so as to ensure that the ignorance of the vulnerability of SIDS is a thing of the past.

*G. Rajpatti is Executive Director of the Mauritius Sugar Authority and the country's Chief Negotiator in Agriculture. Shazi Sahadutkhan is a Technical Advisor at the Permanent Mission of Mauritius in Geneva.*

### Services: Horizontal Issues Take a Back Seat

With initial requests for market opening in the services sector due on 30 June – and capitals and missions busy preparing for the bilateral negotiations that start thereafter – Members made scant progress on 'horizontal' services issues during the June sessions of the Council for Trade in Services.

Members failed to adopt a proposed Chair's negotiating text on autonomous liberalisation at a 29 May informal special session, and the related debate was not resumed during the 5-6 June formal negotiations as 'just too many controversies remained'. In particular, Members are divided on three points: first, whether commitments made by acceding countries could be eligible for credits; second, whether developing country Members as well as developed countries could request credit from trading partners; and third, whether or not credits should only be given in the services sector or, for example, in goods as well. Chile's Ambassador Alejandro Jara, who chairs the negotiations, will consult with Members in an effort to overcome disagreement on the three contested issues before issuing a revised draft.

Pakistan tabled a paper on assessment (TN/S/W/3), building on points raised in a previous joint submission by Cuba, Pakistan, Senegal, Sri Lanka, Tanzania, Uganda, Zambia and Zimbabwe. In this new joint communication, Pakistan et al. urge the CTS to carry out an assessment of services trade with a special focus on whether or not services trade liberalisation has so far achieved the objective of increasing the participation of developing countries. The submission suggests that this is not the case as developing countries' share of world services exports remains negligible.

Members also addressed new negotiating proposals by Cuba – one on tourism and travel-related services (TN/S/W/1) and another on telecoms (TN/S/W/2) – together with four March proposals on environmental and financial services, as well as on energy and construction (S/CSS/W/142-145). Members asked preliminary questions on certain points of the four earlier submissions, but did not enter into substantial discussions on any of the proposals.

Under the agenda item 'submission of initial requests' – at least the EU and the US have already submitted a large number of these – the CTS Chair presented preliminary considerations on how to structure the multitude of bilateral negotiations to follow. Further discussions are expected at the next services week on 22-26 July.

The Working Group on GATS Rules continued its examination of the desirability/feasibility of setting up an emergency safeguard mechanism (ESM) for services. Members discussed an EU submission (S/WPGR/W/38) on whether it would be technically possible to develop a uniform set of rules applying to all four modes of service supply or whether a 'mode-specific' solution would be required. Despite this detailed analysis, a South American trade source said that, by citing so many difficulties and systemic problems, the EU actually implied that an ESM was 'rather impossible'.

Australia tabled an informal paper in which it mainly focused on procedural aspects of an ESM, but not on their feasibility, as the EU did. Australia proposed two models: the first would require a consensus among WTO Members prior to the application of a safeguard measure; and the second outlined a procedure according to which a Member applying an ESM would be required to notify the safeguard measure, as well as to consult with the Member affected by it. Sources said that Members saw the second model as a particularly productive contribution to the debate.

## Agriculture: No Surprises in Export Competition Debate

WTO Members on 18 June wrapped up a two-day informal special (negotiating) session of the Committee on Agriculture focusing on export competition without agreement on any of the areas under discussion.

### Export Subsidies

The Cairns Group of agriculture exporting countries again called for a phase-out of export subsidies within three years (six years for developing countries), with an initial down-payment of 50 percent. Many non-Cairns developing countries, including China, backed this proposal, but the US – a former supporter of Cairns positions – proposed a five-year phase-out period without the down-payment. The EU, which is a key user of export subsidies, remained silent on the issue but generally questioned whether the Doha mandate envisaged the elimination, or just the reduction, of export subsidies. Switzerland – the only Member to table a written proposal – suggested the option of modulating reduction commitments so that Members could cut support more moderately for some sensitive products in return for steeper cuts in others – a proposal vigorously opposed by the Cairns Group. Japan and Korea did not propose any specific modalities (see separate article on negotiating formulas on page 5).

As a special and differential treatment (S&D) measure, India and other Like-minded Group members called for exemptions for developing countries along the lines of Article 27 and Annex VII of the Agreement on Subsidies and Countervailing Measures, which exempt certain developing countries from the general prohibition to use export subsidies. Cairns Group developing countries objected to this approach, saying it would worsen distortions and damage South-South trade. Switzerland proposed outlawing all exports supported by export competition to least-developed countries and other vulnerable economies unless such exports were explicitly approved by the importing state. According to some sources, Switzerland also showed some flexibility towards extending this S&D measure to other developing country Members.

### Export Credits: Rules vs Reductions

Two trends emerged with regard to export credits. The Cairns Group suggested a 'rules-based' approach by which 'commercial terms' such as duration of credit (e.g. 180 days) and benchmarks for interest rates and appropriate insurance premiums would be defined, with everything else forbidden. In contrast, the EU proposed a 'reduction commitment' approach where the subsidy component of a credit, insurance or guarantee would be calculated and then treated the same as export subsidies. The US supported the Cairns Group version but insisted that export credits were very different from export subsidies and less trade distortive. Together with Korea, Japan, Malaysia and Cuba, the US further cautioned that export credits could be useful in times of currency reserve crises.

### State Trading Enterprises

Regarding agricultural state trading enterprises (STEs), the debate centred on the question of whether the operation of STEs as such would automatically lead to trade distortions, as argued by the EU, or whether transparency through the notification of purchases and sales prices and transaction costs could appropriately control government-granted agriculture monopolies. Australia, New

Zealand and Canada, which all maintain STEs, expressed reservations regarding the EU and US approach on the grounds that private companies (Cargill etc.) were not subject to such transparency provisions.

### Export Restrictions and Taxes

Switzerland, which – along with Japan and Korea – considers export restrictions as a food security concern for net food importers, proposed the tariffication of all export restrictions into export taxes, subsequently to be bound and reduced. Switzerland inscribed its proposal on export restrictions partly in the category of non-trade concerns (NTCs) used in its technical elaboration. Switzerland was one of the six organisers of the 14 June Ministerial Conference on Non-Trade Concerns, where supporters of the concept of multifunctionality of agriculture again reaffirmed that NTCs such as rural development, food security and the environment needed to be effectively taken into account in the WTO negotiating modalities.

### Food Aid

Members agreed that food aid provided at the request of relevant international organisations such as the UN Food and Agriculture Organisation and the World Food Programme should not be subject to new WTO disciplines. Some Members noted that bilateral food aid was often used to dump surpluses, whereas others argued that individual governments could respond to food emergencies faster than intergovernmental bodies. Nevertheless, most Members said that food aid should only be given in grant form.

### The Dilemma of Keeping Track of Informal Meetings

The modalities negotiations take place mostly in informal meetings where presentations are made orally. In the absence of written proposals or minutes, the Chair's summary – the only record of these sessions – takes on a heightened importance, as Australia, Cuba, Canada, Brazil and India showed when they proposed that the summary presented by Chair Stuart Harbinson at the formal special session on 20 June be amended to take account of Members' comments. Most other Members opposed the idea on the grounds that amendments would lead to lengthy negotiations.

Members are also divided over who should chair the negotiating sessions after Stuart Harbinson takes up his new post as chef de cabinet for incoming WTO Director-General Supachai Panitchpakdi, who starts his three-year term in September.

### Background

The June meeting was the first of three sessions on modalities to negotiate reductions in (i) subsidies for export competition and (ii) domestic production; as well as (iii) tariff barriers (market access). In these sessions, Members should translate the proposals they tabled during phases one (2000-2001) and two (2001-2002) into legal and technical language that will determine the framework for negotiating further liberalisation. An overview paper on draft modalities is due in December, based on what countries have put forward so far. According to Article 14 of the Doha Declaration negotiation modalities must be established by 31 March 2003.

See back page for future special sessions schedule.



## TRIPs Council Explores Options for Exports under Compulsory Licenses

At the 25-27 June meeting of the Council for Trade-related Aspects of Intellectual Property Rights (TRIPs), Members put forward a number of potential solutions to the problems that countries with insufficient or no drug manufacturing capacities could face in making effective use of compulsory licensing. The difficulty stems from the TRIPs Article 31(f) requirement that production under compulsory licensing must be primarily for the supply of the domestic market. A country producing a generic version of a brandname medicine under a compulsory license cannot *a priori* export that drug to another country, even if the latter has also granted a compulsory license for the drug in question but cannot manufacture it domestically. Paragraph 6 of the Doha Declaration on TRIPs and Public Health instructs Members to find an 'expeditious solution' to this problem by the end of this year.

Members also adopted a decision to extend until 2016 the period during which least-developed countries (LDCs) do not have to provide patent protection for pharmaceutical products, and agreed on a waiver exempting them from the obligation to grant exclusive marketing rights for any new drugs in the period when they do not provide patent protection.

#### Four Different Approaches

The Council examined proposals from the EU, which favoured an exception under TRIPs Article 31(f); the US, which advocated a dispute settlement moratorium or a waiver of the Article 31(f) obligation; Brazil and twelve other developing countries, who proposed an authoritative interpretation of Article 30; and the Africa Group, which suggested a comprehensive approach encompassing several elements.

The European Union came down in favour of an additional paragraph to TRIPs Article 31 which would set out an exception to the restriction imposed by Article 31(f). This option, the EU argued, would guarantee a 'sustainable, balanced and workable solution' to the problem raised in para. 6. The exception would apply to pharmaceutical products needed to deal with public health problems affecting developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics. The EU also stressed the need for countries importing such products to implement the necessary measures that would prevent their re-exportation (IP/C/W/352).

The United States acknowledged the need for poor countries with insufficient manufacturing capacity to be able to obtain pharmaceuticals for public health crises. However, its solution would waive the Article 31(f) obligation only in cases where the importing country meets agreed criteria on manufacturing capacity. The US also echoed the EU's call that Members should be encouraged to implement a monitoring mechanism that would prevent diversion of such medicines away from the intended recipient (IP/C/W/358).

In contrast to the EU and US proposals, the developing country submission – put forward by Bolivia, Brazil, Cuba, China, Dominican Republic, Ecuador, India, Indonesia, Pakistan, Peru, Sri Lanka, Thailand and Venezuela – advocated that the solution envisaged by the TRIPs Council should apply to all countries, not only to developing, least-developed or 'poor' countries, as well as countries where no patents existed. While considering various possible solutions, including deletion of Article 31(f) or amending Article 31(k), the submission preferred an authoritative interpretation of

Article 30 (exceptions to patent rights). Partial or temporary arrangements, such as a moratorium or waiver, were inappropriate, the group argued, as they did not 'amount to sustainable or legally predictable solutions'. The group furthermore called on the TRIPs Council to consider measures to encourage technology transfer to least-developed countries in order to strengthen local manufacturing capacities in their territories (IP/C/W/355).

The Africa Group proposed three options, namely an amendment of the Article 31, a deletion of 31(f) or an addition to 31(f) stating that the paragraph does not apply to measures adopted to protect public health. It also suggested that 'domestic market' in 31(f) should include customs unions or free trade areas, and that 31(f) should be interpreted to mean that up to 49.9 percent of production could be exported. In addition, the Group proposed that transition periods should be extended for developing country Members with insufficient manufacturing capacity to delay patent protection in order to allow for the implementation of measures to address health concerns; and a moratorium on disputes against Members that take such measures (IP/C/W/351).

To prevent re-exportation, the Africa Group proposed labelling the relevant pharmaceuticals as intended for consumption within the designated domestic market. It also stressed that the 'expeditious solution' should allow any Member to take measures 'for exports of necessary pharmaceutical products to any countries, particularly developing and least developed Members that need support to address public health concerns'. Any solution should be part of the broader implementation of TRIPs provisions, including those related to transfer of technology.

The two developing country groupings stressed that their submissions were meant to complement rather than oppose each other. One source noted that the Africa Group's more comprehensive proposal took into account the concerns of the EU, the US and Switzerland, and that the differences between the groups' emphasis could be explained by their circumstances, i.e. the Brazil-led group includes several countries with generic industries (in particular Brazil and India), while the Africa Group is likely to focus its efforts on overcoming the considerable difficulties it faces in accessing affordable drugs to treat epidemics such as HIV/AIDS.

#### Civil Society Defends Article 30 Solution

Oxfam, Médecins sans Frontières, the Third World Network and the Consumer Project on Technology accused the EU and US of backing out of the pledge made at Doha to ensure developing countries' access to affordable medicines to fight epidemics. They also expressed disappointment with the EU's decision to drop the previously proposed option of interpreting Article 30, which is the alternative favoured by many non-governmental groups (Bridges Year 6 No.4, page 3). They furthermore voiced concerns regarding proposed requirements of border controls and other safeguards to prevent re-exportation. 'The major problem is that the option that the EU is pushing...might impose a number of restriction which will make this "solution" impracticable for most of the countries in concrete terms,' said Gaelle Krikorian of ACT-UP, Paris.

The Secretariat will prepare a note on possible common elements of a decision on para. 6, which will be discussed at an informal TRIPs Council meeting on 25 July. The next (regular) meeting of the TRIPs Council is scheduled for 17-19 September.

## Special and Differential Treatment Review May Miss End July Deadline

When this issue of Bridges went to press, WTO Members were at an impasse over what recommendations to forward to the General Council on special and differential treatment for developing countries (S&D).

OECD countries continue to resist what they see as an attempt to create a 'two-tier' WTO, while a core group of developing countries remains equally firm about the need to meaningfully address their long-standing demands aimed at levelling the playing field of international trade.

Numerous formal and informal sessions of the Committee on Trade and Development have so far failed to break the deadlock, and many more meetings are scheduled as CTD Chair Ransford Smith tries to meet the increasingly improbable end-July deadline for coming up with 'clear recommendations for action' aimed at making the WTO's S&D provisions more effective and operational. Below are some highlights from recent proposals.

### Africa and LDC Groups Propose Major Changes

The Africa Group addressed the question from three different angles:

- an examination of the form and meaning of S&D;
- a cross-cutting look at the principles and objectives of S&D; and
- agreement-by-agreement recommendations.

Among other things, the Africa Group suggested that non-binding S&D provisions be made binding, as well as enforceable under dispute settlement procedures. A monitoring body should be established to ensure compliance. The proposal that transition periods for compliance with WTO Agreements be criteria-driven and automatically extendable upon notification met with particularly stiff opposition from developed countries.

The Africa Group proposal also included changes in a number of Agreements, including GATT 1994 and the Agreements on Balance-of-Payments, Agriculture, Sanitary and Phytosanitary Measures, and Technical Barriers to Trade (TN/CTD/W/3/Rev.1).

In their proposal, least-developed countries (LDCs) suggested a general framework approach that, *inter alia*, would reaffirm development as the primary goal of the multilateral trading system, strengthen the supremacy of the development principle in the four major areas of the WTO (goods, services, intellectual property, and dispute settlement), and provide developing and least-developed countries recourse to financial resources in order to exercise their rights (including their S&D rights). They also highlighted the need for addressing supply-side constraints via exemptions or the relaxation of obligations (TN/CTD/W/4).

The proposal reiterated LDCs' long-standing request for binding duty- and quota-free market access, and called for the establishment of an annual General Council special session on LDCs, realistic and flexible rules of origin requirements and an exemption from the Agreement on Trade-related Investment Measures (TRIMs).

### Despite Some Agreement, Fundamental Differences Remain

Many developing country delegates welcomed these proposals. Among industrialised countries, the US, the EU, Canada and Japan acknowledged that some of them deserved attention, but disagreed on the premises they were based upon (such as wholesale changes

of 'should' to 'shall' or unconditional extension of transition periods). Norway and the US, for instance, expressed reservations about the desirability of a 'two-tiered' system, i.e. one set of rules for developing countries and another for industrialised Members. Pakistan acknowledged that the WTO should strive for a single-tier system, but questioned whether this was presently realistic.

The major trading powers seemed amenable to some kind of monitoring mechanism, as suggested by the Africa Group, although vast differences remain over how such a mechanism might work.

Although some developing countries regard it as a delaying tactic, Members agreed on 14 June to a request from Quad Members (the US, the EU, Japan and Canada) for an in-depth paper on how often, and which, existing S&D provisions had been used to date. The Quad also advocate moving detailed debate on proposals to the relevant subsidiary bodies of the WTO, while most developing countries want to keep all of them under review in the CTD.

Since the S&D review started in March, Members have been split on whether the special sessions of the CTD constitute a forum to negotiate changes to WTO rules or just an occasion to review current provisions. Chair Ransford Smith said in June that, despite that divergence, all Members shared the view that the mandate of the special session derived from both the Doha Ministerial Declaration and the Implementation Decision and that there was agreement on a work programme and the relevant time-frames.

### Other Developments in Brief

- At a CTD session dedicated to small economies on 1 July, Barbados, Belize, Bolivia, the Dominican Republic, Guatemala, Honduras, Mauritius and Sri Lanka recommended, *inter alia*, asymmetrical treatment of 'small economies' in a range of key WTO Agreements (WT/COMTD/SE/W/3). In response, the US indicated that while it was willing to explore the issue of a smooth transition for small economies that are also least-developed countries when they graduate to developing countries, it was not willing to consider the creation of a new category of Members. The debate is also bogged down due to persistent differences – including between developing country Members – on how a 'small economy' should be defined. Chair Taoufiq Ali will hold further consultations on these topics.
- At a regular CTD session on 1 July, many developing countries reiterated their concern that GATT Article XVIII, entitled 'Government Assistance to Economic Development', was not serving its original objective of facilitating the implementation of policies designed to assist the progressive development of developing country economies. The EU asked exactly how the Article had constituted an impediment in the real world. This agenda item will be taken up at future CTD sessions.
- Numerous developing country delegates rejected the WTO Secretariat's proposed 31 July 2002 deadline for requests regarding technical assistance in 2003. This was far too soon, they said, as developing countries had yet to see the impact of technical assistance from 2002, and were still unsure of their future needs. Further consultations are expected.

The next formal CTD special session is scheduled for 17 July and frequent informal meetings are expected in the course of the month.

*Continued on page 14*

*Special and Differential Treatment, continued from page 13*

### GSP Schemes and Non-discrimination

The 1979 'Enabling Clause' allows developed countries to provide better than most-favoured-nation (MFN) access to developing countries. At a CTD special session on 14 June, Members debated a proposal from Paraguay to make GSP preferences available to all developing countries on an equal basis through the prohibition of conditionalities (TN/CTD/W/5).

Paraguay argued that many Art. I (MFN) waivers for Generalised Systems of Preferences (GSPs) had been used to grant discriminatory preferences to certain developing countries. As such, they were incompatible with the Enabling Clause, which stipulates, *inter alia*, that S&D should not be applied in a way that raises barriers or creates difficulties for other developing countries. At least, according to Paraguay, developing countries left out of special GSP programmes should be compensated for the discrimination.

The ensuing discussion reflected the diversity of Southern perspectives on this issue – with a stark divide between those who agreed that preferential treatment must be applied on an MFN basis (e.g. Philippines, Thailand, Argentina, India, etc.) and those who felt that the same treatment could not be accorded equally to all due to differing levels of development (e.g. Uganda, Kenya, Cuba, Nigeria, Zimbabwe, Jamaica, Pakistan). In general, however, most developing countries supported Paraguay's core observation, embodied in para. 10 of the proposal, that the 'rules laid down in both the GSPs and Enabling Clause are frequently infringed by criteria for granting these schemes'. They also noted that the criteria were usually driven by political rather than trade objectives, and were arbitrary, unilateral and discriminatory. Many OECD countries grant 'GSP-plus' preferences to countries that comply with certain labour/human rights, environmental standards, or have programmes intended to curb drug trafficking.

### ATPA Preferences in the Line of Fire

After the meeting, Paraguay's Ambassador Luis Maria Ramirez Boettner said that his government would block a WTO waiver for the US Andean Trade Preferences Act (ATPA) if it further increased the beneficiaries' market access. The Philippines has enlisted other ASEAN countries in lobbying the US Congress against the preferential access that the ATPA is likely to confer to canned tuna from Bolivia, Colombia, Ecuador and Peru (Bridges Year 6 No.4, page 16).

The EU warned Paraguay against opposing the ATPA's MFN waiver, saying it would open up a 'dangerous debate' pitting developing countries against each other.

These are not new concerns: in July 2001, the EU created a special quota for Brazilian soluble coffee in response to the latter's complaint that European preferences to Andean countries fighting illegal drug production had eroded its market share. And, last November in Doha, Paraguay only agreed to a waiver for the Cotonou Agreement after the EU created a special quota for Paraguayan beef in compensation for the benefits the Cotonou Agreement confers on ACP countries (see page 19).

To push the Cotonou waiver through, the EU also promised to hold talks with the Philippines and Thailand, which were concerned about the duty-free entry of ACP tuna products in the EU, while their canned tuna faced a 24 percent import tariff. Those talks have now broken down, and Thailand and the Philippines are taking the matter to WTO dispute settlement.

### Textiles: US 'No' to Quota Expansion Buries Hopes

Developing countries' textiles-related concerns are faring even worse than the rest of the implementation agenda (see page 13). At the 13 June session of the Council for Trade in Goods, the United States categorically rejected requests to advance quota expansion for developing countries, or to use the 'most favourable method available' for calculating quota rates for small suppliers and least-developed countries. The Doha Implementation Decision directs the Goods Council to examine these proposals and to report to the General Council 'for appropriate action' by the end of this year.

The US said that its textiles imports had increased significantly since the establishment of the WTO and that the cost of faster liberalisation would be unacceptably high. India and China pointed out, however, that most of the benefits so far had gone to Mexico, while Indian and Chinese shares of the US market had actually declined. A smaller decline had occurred in their exports to the EU.

Both the EU and the US insisted on the fact that some large developing country textile exporters had not opened their own markets to competition. The US also pointed out that advancing quota-removal could wipe out small suppliers from major markets (a number of developing countries unofficially concur, acknowledging their fear of competition from large Asian textile producers).

In related news reflecting the complexity of preferential trading arrangements (see opposite), India is threatening to launch a WTO dispute against the EU's textiles concessions to Pakistan, which was included in a special tariff regime for countries fighting illegal drug trade on 1 January 2002 (Bridges Year 6, No. 1, page 12).

### Still No Work Programme on Technology Transfer

Paragraph 37 of the Doha Declaration set up a working group to examine the relationship between trade and technology transfer and 'any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries'. The General Council must present a progress report to the fifth Ministerial Conference in September 2003.

At the second meeting of the Working Group on Trade and Transfer of Technology on 11 June, the 'Like-minded Group' of 15 developing countries suggested structuring work under five broad sub-headings, including: an examination of tech transfer-related provisions of WTO Agreements; analytical work; identification of areas of possible technical co-operation; areas where consensus building could be sought; and co-operation with other organisations (WT/WGTTT/W/2). The EU proposed focusing work on a common understanding of the definition of technology transfer; an identification of various channels for transfer of technology; and the conditions under which these channels are most effective (WT/WGTT/1).

So far, consensus has proved elusive. Key points of divergence include whether the programme should include activities all the way to the fifth Ministerial in September 2003 and whether greater detail on issues such as technical assistance should be included. According to some sources, the US has made it clear that the working group should merely do analytical work and not make any final recommendations to the General Council, while the EU and Norway have sought flexibility on the various issues.

The next meeting will take place on 10 October 2002.



## Trade and Environment: Not So Fast, Other Members Tell the EU

The June special session of the Committee on Trade and Environment focused mainly on the scope of the negotiations. Discussion centred around proposals from Australia, Argentina, Switzerland, the US and New Zealand, all of which attempted to rein in the more ambitious approach taken by the EU at the CTE's first negotiating session in March (Bridges Year 6, No.3 page 9).

### WTO-MEA Relationship

Australia suggested conducting the negotiations in three phases consisting of identification of the most relevant multilateral environmental agreements (MEAs) with specific trade obligations, an examination phase, and action if necessary (TN/TE/W/4).

Argentina argued for a narrow interpretation of the Doha WTO-MEA language, advocating a study phase to define the negotiation mandate precisely (TN/TE/W/2). It noted, for instance, that paragraph 31(i) of the Doha Declaration limited negotiations to 'specific trade obligations' in MEAs and should thus exclude all non-mandatory trade measures, non-trade obligations and non-specific trade obligations. This contrasts with the EU paper (TN/TE/W/1), which advocated a broad interpretation of 31(i), particularly with regard to 'specific trade obligations' (see Bridges Year 6 No. 4, page 8 for more details on the Argentine proposal).

Switzerland also said that there was a need to define the different categories of specific trade obligations set out in MEAs (TN/TE/W/4). A detailed analysis would be necessary to establish the distinction between specific trade obligations and non-specific trade obligations. Switzerland, supported by the Czech Republic, favoured an interpretative decision on the WTO-MEA question, arguing that the solution should not be left to dispute panels, nor should GATT Article XX (general exceptions) be amended.

There was some resistance from the US, Mexico and Bolivia with regard to establishing a definition to determine which MEAs should be addressed. The EU, Chile and Japan supported including regional MEAs in the discussion, with the EC and Japan further stating that they should not be limited only to those MEAs currently in force, as argued by Argentina in its submission.

Delegates broadly agreed that the outcome of the negotiations should only bind those WTO Members that are MEA parties.

### MEA-WTO Information Exchange, Observer Status

Canada, Indonesia, Mexico and Switzerland supported the idea of institutionalising information sessions with MEA Secretariats. This was also reflected in a US proposal (TN/TE/W/5), which further advocated providing access to restricted documents by MEA Secretariats and the development of specific guidelines for MEA characteristics for granting of observer status.

Brazil, Cuba, Indonesia, Malaysia, Mexico, Pakistan and Thailand said that it was not the place of the CTE special session to decide on the observer status issue, which was being addressed at the General Council level, while the Trade Negotiations Committee was looking at whether organisations who have observer status in regular WTO bodies should also have it in special sessions.

Nevertheless, Switzerland, Korea and Norway told the Committee that the CTE special session had a mandate to look at this issue;

Switzerland said it was imperative that MEAs be granted observer status so that the CTE special session could carry out its work.

### Reduction of Barriers to Environmental Goods and Services

In March, Members agreed that paragraph 31(iii) should be implemented in the context of the market access and services negotiations, but that the CTE could contribute by examining what constituted environmental goods and services. Members welcomed a paper from New Zealand clarifying the concept of environmental goods (TN/E/W/6). Only the EU said that this category could also include goods produced in an environmentally friendly fashion and goods that were environmentally sound (i.e. easy to recycle). Malaysia, India, Korea, New Zealand were uncomfortable with this reference to production methods.

### Regular Session Highlights

- Discussions on paragraph 51 of the Doha Declaration indicated that the CTE and the Committee on Trade and Development (CTD) could collaborate in order to help achieve the objective of having sustainable development appropriately reflected in the negotiations. The EU, supported by Chile, proposed that the two bodies hold a joint outreach event in order to 'break down the wall that currently exists', and suggested that civil society be allowed to participate and comment. Malaysia and Egypt said they would not oppose a joint meeting, but did not comment on the civil society aspect. The US, however, considered a joint CTE/CTD effort premature and too burdensome. CTE Chair Oguz Demiralp said he was in contact with the Chair of the CTD, but that conditions were not right for a joint meeting (see page 13).
- A paper submitted by India on the effects of environmental measures on market access (WT/CTE/W/207) received enthusiastic feedback from most developing countries. Canada, the EU, Japan and the US indicated that they were prepared to discuss it, but that not everything it contained was achievable. One Quad delegate said that many of the paper's concerns could be addressed through the Committee on Technical Barriers to Trade.
- No progress was made on harmonising the TRIPs Agreement with the Convention on Biological Diversity.

The Committee's next regular/special sessions are respectively scheduled for 8-9 and 10-11 October.

In paragraph 31 of the Doha Ministerial Declaration, Members agreed to negotiations, 'without prejudging their outcome', on:

- (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;
- (ii) procedures for regular information exchange between MEA secretariats and the relevant WTO committees, and the criteria for the granting of observer status; and
- (iii) the reduction, or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

## Trade and Systemic Implications of the Shrimp-Turtle Ruling for India and Other Developing Countries

By Jayati Srivastava and Rajeev Ahuja

The decision of the Dispute Settlement Body of the WTO on the shrimp-turtle dispute between India, Malaysia, Thailand, Pakistan on the one hand and the US on the other, has far reaching implications on using trade as an instrument of environment policy.

The shrimp-turtle case has virtually mainstreamed environmental requirements in the WTO by

- extending the meaning of the term 'exhaustible natural resources' to include not just finite and non-living resources but living resources as well;
- ratifying the rights of the Member countries to take unilateral measures such as market access restrictions in order to address the global commons (transboundary environment issues); and
- legitimising process-related environmental requirements in international trade on transboundary environmental issues.

In other words, if trade in a particular commodity affects the global environment, an importing country can now impose an embargo on that commodity and in effect dictate the process by which a product is made.

### Trade: A Poor Environmental Policy Instrument

Analysis of the US ban's impact on shrimp trade between the United States and India once again underscores the fact that trade is a poor instrument for ensuring protection and conservation of the environment. It shows, *inter alia*, how easy it is for a country – arm-twisted through trade sanctions to follow a particular conservation plan – to bypass or only superficially address the issue without any durable positive impact. A study by the authors shows that the ban has had an insignificant effect on India's shrimp exports (both in value and quantity terms) to the US market.<sup>1</sup>

Two reasons explain this insignificant effect. One, since the ban only affects marine shrimp, exporters may simply have switched from captured to cultured shrimp when supplying the US market. Two, the ban may have led to redirection of exports away from the US and towards Japan since it was imposed only by the US and not by any other country. Given that the United States accounted for no more than 15 percent (in quantity terms) of all shrimp exports from India at the time the embargo took effect, it was from the beginning expected to have only a limited impact on shrimp exports. It turns out that even this limited impact was actually not significant. The embargo would, however, have adversely affected exports if it had been uniformly imposed by all major importing countries.

### Trade Restrictions Spurred Some Government Action...

Perhaps one positive impact of the ban was that it made the Indian government more sensitive to the issue. Accordingly, the government of India set up an Expert Scientific Panel in 1998 to conduct a study on the distribution of sea turtles, their incidental mortalities in fishing nets, use of turtle excluder devices (TEDs) in fishing operations, etc. The panel studied several aspects of the danger posed to turtles from the capture of shrimp in Indian waters and made a number of observations and recommendations in its report submitted to GOI in March 2000. One of the important recommendations of the ESP was to make the use of TEDs

mandatory in certain areas and during particular months of the year. Based on this, the government estimated the number of TEDs required by trawlers and the cost of producing them.

### ...but Key Problems Remain Unsolved

Although the total cost of producing the required number of TEDs is negligible (and the government has decided to bear the expense), the indirect costs related to TED enforcement may be quite high for the central and state governments, particularly when the adoption of TEDs by fishing/shrimp vessels imposes significant costs in terms of catch loss. No authoritative estimates exist for the catch loss but it is believed that it could be as high as 20 percent. Little wonder, then, that the state governments that have made TED-use mandatory following the panel recommendations have not yet implemented the measure.

The enforcement costs must be viewed in conjunction with the cost of other measures needed for the conservation and preservation of the species as recommended by the ESP. This opens up the question of the extent to which developing countries can afford to divert resources away for pressing needs and in favour of issues that are not of immediate concern to them.

This is true not just for protecting of turtles but of other environmental issues as well. Perhaps taking recourse to a 'carrot' in the form extending scientific and other assistance to improve developing countries' ability of to deal with the issue/problem is better than the 'stick' associated with the use of trade sanctions.

### Conclusion

We therefore conclude that the WTO may not be an appropriate forum to deal with either global (transboundary) environmental issues or issues strictly affecting the environment of an exporting country. Environmental protection would be needed even if the countries did not trade with each other; and the countries that do trade in commodities produced through environmentally-unsound methods can bypass the bite of trade sanctions. Thus, there must be an arrangement outside the WTO to address environmental concerns. Also, such concerns tend to get addressed with increase in income. Whereas trade sanctions can have a limited role in the conservation and protection of the environment at best, these sanctions can delay the positive impact that increase in income (resulting from trade) would have on the environment. Finally, environmental protection must be undertaken on its own merit, and not just because of the fear of trade sanctions.

Jayanti Srivastava is a Fellow at the Centre for Contemporary Studies of the Nehru Memorial Museum and Library in New Delhi. Rajeev Ahuja is a Fellow at the Indian Council for Research on International Economic Relations, also in New Delhi.

### ENDNOTE

<sup>1</sup> Jayati Srivastava and Rajeev Ahuja. 2001. *Mainstreaming Environmental Protection through Jurisprudence: Implications of the shrimp-turtle decision in the WTO on India and other developing countries*. See: <http://www.icrier.res.in/public/jayati-rajeev.html>.

# Access to Medicines For All: A Major Human Rights Issue

By Narendra B. Zaveri

Until the WTO Ministerial Conference met at Doha in November 2001, most Member countries read and applied the TRIPs provisions relating to public health as supportive of a strong product patent regime. This enabled right holders to fix and maintain extremely high prices for life-saving patented drugs, with the result that treatment was denied to millions of people dying and suffering from HIV/AIDS, tuberculosis, malaria and other epidemics. To make matters worse, the patent holding corporations were actively discouraging governments from discharging their basic obligation to protect their citizens from these life-threatening diseases by procuring drugs from generic sources at a small fraction of the patent holders' prices. Human values, reason, world opinion and even considerations of human rights were all ignored by the patent holding firms.

However, the Doha Declaration on the TRIPs Agreement and Public Health affirmed the right of WTO Members 'to protect public health and, in particular, to promote access to medicines for all'. Confirming TRIPs' 'flexibilities for this purpose', the Declaration establishes beyond question the primacy of health care and the powers of WTO members to grant compulsory licenses and to treat HIV/AIDS, tuberculosis, malaria and other epidemics as situations of national emergency.

One of the stumbling blocks is that many developing countries have no pharmaceutical industry with the capacity to manufacture generic drugs. Yet Article 31(f) of TRIPs stipulates that any use of the subject matter of a patent that is not authorised by the holder must be 'predominantly for the supply of the domestic market of the Member authorizing such use'. But realising that 'WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPs Agreement', the Conference instructed the TRIPs Council 'to find an expeditious solution to this problem and to report to the General Council before the end of 2002'.

## The Right to Life, Health and Development

Resolving this problem is a matter of life and death for millions of poor people suffering from these diseases. More than a trade related issue, it is a humanitarian and human rights problem; and more than a national anxiety, it is a matter of serious international concern.

The right to life, which includes the right to healthcare and nutrition, is universally accepted as a natural, inalienable and fundamental right of all human beings, and is affirmed in the Universal Declaration of Human Rights, and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (ICCPR and ICESCR). Specifically, Article 12 of the ICESCR declares that 'The States Parties ... recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health', and that the steps to be taken to realise this right shall include those necessary for:

- the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
- the prevention, treatment and control of epidemic, endemic, occupational and other diseases; and
- the creation of conditions which would assure to all medical service and medical attention in the event of sickness.'

These international conventions establish the universality of human rights and oblige all member states to respect, promote and protect them. No exception can be claimed or made by reference to nationality, territory or location of individual claiming such protection. It is in assertion of these human rights and obligations that UN members hold the government of any member country accountable for the atrocities or human right violations it commits even on its own citizens within national borders.

Thus, in the context of healthcare requirements, particularly for treating pandemics like HIV/AIDS etc., the government of country A – lacking adequate capacity to produce the generic drugs necessary for its citizens' health – can rightfully claim and require the government of country B, where generic production of the required drugs is available, to permit production and exports of such drugs for treatment of citizens of country A by grant of compulsory licenses. The conventions and treaties cited above oblige the government of country B to issue compulsory licenses permitting such supplies by its generic manufacturers, in order to protect the right to life and healthcare of citizens of country A.

These principles have also been consistently confirmed in the official Declarations or Resolutions adopted at special sessions of the United Nations General Assembly (27 June 2001), the UN Security Council, the UN Economic and Social Council, the World Health Assembly (20 May 2000), the UN Commission on Human Rights (3 April 2002), UNAIDS and other international fora, particularly those dealing with pandemics like HIV/AIDS, tuberculosis and malaria. Actions based thereon have been strongly recommended as part of co-ordinated international action, particularly in the context of public health and the implementation of trade agreements.

*Continued on page 18*

## Global Crisis – Global Action

In the Preamble of the UN General Assembly Declaration of Commitment on HIV/AIDS adopted on 27 June 2001, UN member governments

- recognised that 'the cost, availability and affordability of drugs and related technology are significant factors to be reviewed and addressed in all aspects and that there is a need to reduce the cost of these drugs and technologies in close collaboration with the private sector and pharmaceutical companies';
- recalled 'efforts to make drugs available at low prices for those in need'; and
- welcomed 'the efforts of countries to promote innovation and the development of domestic industries consistent with international law in order to increase access to medicines to protect the health of their populations, and noting that the impact of international trade agreements on access to or local manufacturing of essential drugs and on the development of new drugs needs to be evaluated further'.



*Access to Medicines, continued from page 17*

The Preamble of the World Health Assembly Resolution is very significant and provides guidance for implementing trade agreements having public health implications. It commends co-operation between: 'international organizations in monitoring and analysing the pharmaceutical and public health implications of relevant international agreements, including trade agreements, so that Member States can effectively assess and subsequently develop pharmaceutical and health policies and regulatory measures that address their concerns and priorities, and are able to maximize the positive and mitigate the negative impact of those agreements'. It also underlines 'the need to advocate respect for human rights in the implementation of all measures to respond to the epidemic'.

The Doha Declaration should not be considered separately from these covenants, declarations and resolutions. Indeed, Paragraph 2 stresses 'the need for TRIPs to be part of the wider national and international action to address these problems'. Having regard to all these considerations, Art 31(f) cannot be interpreted rigidly to restrict the scope of exports. The expression 'predominantly for domestic market' itself is flexible enough to allow for exports when domestic requirements are satisfied. In conclusion, Article 31(f) may be correctly interpreted as allowing for exports to countries granting the compulsory license. Consequently, there is no need to amend the sub-paragraph or to draft an interpretative statement on Article 30 to make such exporting permissible.

*Narendra B. Zaveri is an Advocate based in Mumbai, India*

### Zimbabwe Declares AIDS Emergency; US and Argentina Settle Patent Dispute

On 24 May, Zimbabwe became the first country to take advantage of the flexibilities confirmed in the Doha Declaration on TRIPs and Public Health. The country's Minister of Justice Patrick Chinamasa declared a six-month period of emergency, effective immediately, 'for the purpose of enabling the State or a person authorised by the Minister under Section 34 of the [Patent] Act

- (a) to make or use any patented drug, including any antiretroviral drug, used in the treatment of persons suffering from HIV/AIDS or HIV/AIDS related conditions;
- (b) to import any generic drug used in the treatment of persons suffering from HIV/AIDS or HIV/AIDS-related conditions.'

This declaration, which effectively frees Zimbabwe from its obligations to rights holders even for medicines that are under patent in the country, reflects the Doha TRIPs Declaration's acknowledgement that

Each [WTO] Member has the right to determine what constitutes a national emergency or other circumstance of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis and malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

TRIPs Article 31(b) allows Members to waive the requirement to seek the patent holder's consent before issuing a compulsory license in cases of 'national emergency or other circumstance of extreme urgency'.

With a quarter of its 13 million citizens estimated HIV positive, Zimbabwe has one of the highest HIV infection rates in the world. During the emergency period, the government is likely to purchase antiretroviral AIDS drugs from India, where a one-day dose of generic Combivir, for instance, sells for 75 US cents (the drug's brandname manufacturer GlaxoSmithKline had offered it to Zimbabwe for US\$2 a day). The government will finance the purchase of AIDS drugs from a US\$5.3 million grant offered by the Global Fund to Fight AIDS, Tuberculosis and Malaria.

Non-governmental organisations, such as the South African Treatment Action Campaign and the Health GAP, welcomed Zimbabwe's move, but cautioned that six months would not suffice to deal with the problem of access to medicines. Médecins sans Frontières called the Zimbabwean decision a 'model other countries should follow'.

On 31 May, Argentina and the United States notified the WTO that they had reached a mutually agreed solution to the dispute the latter initiated in May 2000 against Argentina's laws on the protection of pharmaceutical patents and test data for agricultural chemicals.

Argentina agreed not to issue compulsory licenses on the basis of a finding of anti-competitive practices, unless the national Commission on the Defence of Competition has first established that the patent holder abuses its dominant position in the market. Insufficient 'working' of a patent would not 'in and of itself warrant an automatic determination that a patent owner is engaging in an "anti-competitive" practice', the two countries agreed.

According to the agreement, Argentine authorities 'shall grant' exclusive marketing rights for a product that has been approved for marketing but whose patent application is pending, either for five years or until the patent is either approved or rejected, on condition that the patent application was filed after 1 January 1995, or that another WTO Member had either granted a patent or marketing approval for it.

The agreement also contains new legal language that will be proposed to the Argentine National Congress to amend or supplement existing provisions on process patent protection and preliminary injunctions to prevent patent infringements. In addition, new legal text would shift the burden of proof in process patent infringement cases from the plaintiff to the defendant.

The US had also challenged Argentina's protection of micro-organisms and chemical compounds (TRIPs Article 27.3(b)), but agreed that the government's October 2001 guidelines about its practices relating to the patentability of micro-organisms responded to this concern.

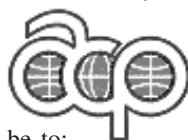
Finally, the parties agreed that, depending on the outcome of the Argentine legislative process, the US may still request a WTO panel on Argentina's laws protecting undisclosed test data submitted for market approval from unfair commercial use (TRIPs Article 39.3). If Argentina loses the dispute, it will submit a legislative amendment to the National Congress within a year of the adoption of the relevant DSB rulings.

The agreement (WT/DS171/3) is available on the WTO website.

## Highlights from the ACP Draft Guidelines for the Negotiation of Economic Partnership Agreements

On 21 June, the trade and finance ministers of ACP countries adopted draft guidelines for the negotiations slated to start on 27 September between them and the European Union. The negotiations are to conclude by 1 January 2008 with WTO-compatible Economic Partnership Agreements (EPAs), which will gradually replace the unilateral preferences extended to ACP countries under a succession of Lomé Conventions.

### ACP Strategic Objectives for the EPA Negotiations



The broad strategic objectives of the ACP Group should be to:

- achieve sustainable development and eradication of poverty in ACP States and to foster their smooth and gradual integration into the world economy;
- achieve sustained economic growth, develop the private sector, increase employment, and improve access to factors of production as well as securing improved and beneficial market access;
- enhance the production, supply and trading capacity of ACP countries and their capacity to attract investments well as strengthen the ACP countries' trade and investment policies;
- reduce the dependence of ACP States on the production of primary products and natural resource-based sectors through diversification and increased value-added;
- bring about the structural transformation of ACP States into knowledge-based competitive economies capable of facing the challenges of globalisation;
- address obstacles to the exports of ACP goods and services to the EU market;
- foster inter-linkage and complementarity between development strategies supported by the EU, and economic and trade co-operation to make them mutually reinforcing;
- secure the underwriting by the EU of the costs of adjustment associated with the implementation of EPAs; and
- establish a mechanism that will contribute to a durable solution for the problem of external indebtedness of ACP countries.

### ACP Approach and Proposed Timeline

The negotiations should be conducted in two phases. During the first phase, negotiations will take place at an all-ACP level with the EU with a view to concluding an all ACP-EU Agreement, focusing on objectives and principles of EPAs and issues of common interest to all ACP States, whilst allowing ACP States to undertake necessary back-up research and capacity building actions. This first phase could extend from September 2002 through 2003 when a review could take place. The negotiations in the second phase could start in September 2003.

In addition to the principles (see below) and broad objectives listed above, the guidelines spell out the goals ACP countries hope to achieve during the all-ACP negotiation phase in such areas as: rules of origin; sanitary and phytosanitary measures; customs and administrative co-operation; services; fisheries; treatment of trade-related issues such as competition policy, investment promotion and protection; trade and environment; modalities for the phasing of negotiations and the resultant implementation issues; dispute settlement mechanisms; safeguard measures; support measures to overcome supply constraints; capacity building; treatment of commodity protocols; trade facilitation; evaluation of the impact of CAP reform on agricultural exports; WTO-compatibility; product coverage and transitional periods and arrangements; and investment promotion schemes, including

measures to promote the transfer of technology, know-how and skills (a section on Specific Objectives provides details on ACP aims in each of these and other areas, *ed.*)

In phase 2, the issues will cover, *inter alia*, tariff negotiations and any other specific sectoral commitments at national or regional level as the case may be and issues of specific interest to ACP countries or regions.

### Principles

**ACP Unity and Solidarity:** The ACP should be guided by the overriding principle of unity and solidarity in their approach to the EPA negotiations. The ACP should also continue to work in unity and with cohesion in Geneva, in order to promote and preserve ACP interests in the post-Doha work programme of the WTO.

**Preservation of the Lomé Acquis:** No ACP State should be worse off in the post-2007 period than under the current ACP-EU trade arrangements. In view of the differences in the level of development between the ACP States and the EU, the ACP cannot be required to make the same level of commitments under EPAs as the EU, particularly as regards market access.

**WTO-compatibility:** Current WTO rules are inherently imbalanced against the development needs of ACP States. The ACP will keep in view what is being done in the WTO in the context of the Doha Work Programme with a view to:

- clarifying and improving WTO rules covering regional trading agreements between developed and developing countries;
- taking adequately into account the development dimension in WTO rules; and
- operationalising and making legally binding in the WTO existing and new provisions on special and differential treatment.

This will enable ACP States to be in a position to agree to EPAs that are compatible with WTO rules then prevailing.

**Special and Differential Treatment:** The provision of special and differential treatment to ACP States must be an essential consequence of the differentiation between the ACP and the EU based on equity and recognizing their different levels of development.

**Sustainability:** EPAs should result in trade creation and not in trade diversion so as to avoid any welfare loss. Sustainability should be a guiding principle and should be viewed in terms of:

- the adjustment costs of EPAs;
- the social and political implications of EPAs;
- the institutional / human resource capacities of ACP States; and
- the stability of ACP States.

**Legitimacy:** It will be essential that the negotiation process be paralleled by concerted efforts to generate:

- involvement of all stakeholders in the negotiation process and public support for the negotiations and their outcome;
- public scrutiny of the negotiations, including parliamentary follow-ups;
- creation of a level-playing field in terms of capacities to negotiate (including levelling the costs of the negotiation process); and
- negotiation procedures which are inclusive and transparent.

Full guidelines at: <http://www.acpsec.org/gb/council/oriente.html>

*Time for a Fresh Start, continued from page 2*

The link between trade and economic growth on the one side, and global warming on the other must be taken seriously. Of course trade is part of the equation. But the underlying problem is that governments grant a host of direct and indirect subsidies to the coal and oil economies, to air transport, and to industrialised agriculture, amounting to US\$800bn-\$1trillion a year. Even the least house-trained free market economist has to acknowledge that prices for energy and transport are now way out of line with real resource scarcity – let alone future welfare costs.

There is an urgent need to increase taxation on fossil fuel consumption and transport, and to reduce fossil fuel energy subsidies. Ecological tax reform, including aviation fuel tax, transport taxation and incentives for alternative energy all have a critical role to play. The proposals presented by Ernst von Weizsacker to the Club of Rome show how it could be done – and they should be at the heart of the Johannesburg agenda.

Multilateral environmental agreements also need to be strengthened. Several such treaties – including CITES, the Montreal Protocol and the Biosafety Protocol – include trade provisions. These are potentially at odds with WTO rules. Similarly, although GATT Article XX allows countries to regulate trade to protect human, animal and plant life, it is hedged about with restrictions and problems of interpretation. The scale of the global environmental crisis demands that MEAs and national environmental laws take precedence over WTO free market provisions.

Turning to developing countries, it has to be acknowledged that some forms of trade *are* deeply damaging to environmental sustainability. Export prices for Bangladeshi prawns and Senegalese fish, to take but two examples, manifestly do not reflect long-term costs, as recent work by the World Wide Fund for Nature has highlighted. The expansion of global markets is generating new pressures on fragile resource bases. Intensive prawn farming now accounts for over half of the destruction of mangrove swamps, and is heavily implicated in the destruction of coral reefs and salination of groundwater. The expansion of plywood exports from Indonesia and Malaysia is putting renewed pressure on forestry resources – and forest dwelling communities. And the extraction of minerals by TNCs operating in weak states has been at the heart of problems associated with human rights abuse, environmental destruction, and corruption in many countries.

International trade holds the potential for such problems, although production for domestic markets can produce similar effects. For instance, India's water crisis is largely a consequence of the state providing politically powerful commercial farmers subsidised access to groundwater at prices unrelated to the value of the resource. Surely the real challenge is to ensure that all market prices – including export prices – reflect ecological costs, rather than to offer sweeping and unfounded generalisations about the vices of export production.

### **Localising Is Not the Answer**

Given the record on poverty, inequality and the environment, it is perhaps unsurprising that trade pessimism has taken deep root. The reckless abuse of the WTO system by northern governments and corporations, allied to the mindless recitation of free trade theories by the IMF-World Bank, have severely dented the

credibility of multilateralism. It has also enhanced the credibility of those arguing that trade is a zero sum game, and that countries should withdraw from the global trading system in favour of 'localised' systems of production. The stated objective is to stop a 'race to the bottom', reduce inequality and diminish global environmental pressures.

Some of the problems identified by localisers deserve to be taken seriously. Unfortunately, the same cannot be said of the solutions they offer. This is especially true for developing countries, which stand to lose the potential benefits associated with trade.

Nowhere are the arguments of localisers more threadbare than when it comes to market access. Developing countries need access to new technologies and other essential goods, which means that they need access to foreign exchange. Moreover, exports to industrialised countries provide opportunities to go beyond the confines imposed by local markets – an important consideration in relatively small countries with low average income. By denying poor countries access to northern markets, localisers would undermine a potential source of employment, restrict opportunities for investment, and undermine access to new technologies. Paradoxically, this would be as bad for local and regional economic dynamism as it would for poverty.

What of the argument that export growth is inevitably associated with rising poverty? In some cases, it unquestionably is. In countries where unequal systems of land ownership, unequal education, weak environmental policies, and a bias in state support towards commercially advanced producers, skew markets in favour of the powerful, the benefits of trade will bypass the poor. But the case for trade pessimism is confounded by the experience of countries ranging from China, Malaysia, Korea and Vietnam, to Mauritius and Costa Rica, all of which combined export growth with local economic dynamism. In East Asia, export growth has contributed to domestic processes that have lifted 400m out of poverty since the mid-1970s.

Apart from making a mockery of some of the wilder claims of localisers, East Asia offers lessons for the Bretton Woods institutions. For all their differences, countries in the region have one thing in common: they have collectively rejected the free market prescriptions of the holy trinity of the IMF, World Bank and the WTO.

Does this mean that export-led growth is the right strategy to follow? Of course not. Countries such as Brazil demonstrate that export production can intensify already extreme inequalities. But this highlights the need to integrate trade policy into national strategies for poverty reduction. The Brazilian Workers Party, for instance, has called for improved access to European and North American markets partly as a strategy to support a national land reform strategy.

Some of the arguments against export production defy credibility. 'Food first' advocates who reject agricultural exports ignore two basic facts. First, some export production is done on a highly sustainable basis: witness the complex inter-cropping systems in East Africa, where farmers working on fragile hillsides interplant coffee with maize and bananas. Second, domestic food production is not an automatic panacea for hunger, or inherently superior to exports. For example, India has achieved domestic self-sufficiency

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### G-8: A 'No Action' Plan for Africa?

Security and the 'war on terror' – rather than Africa's economic and social concerns – dominated the annual summit of political leaders of the G-8 (Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States) on 26-27 June in Kananaskis, Canada. The leaders of the world's most industrialised countries adopted the G-8 Africa Action Plan, but African commentators expressed disappointment in its contents.

The document professes great support for the New Partnership for Africa's Development (NEPAD), which it enthusiastically describes as 'a pledge to the people of Africa to consolidate democracy and sound economic management, and to promote peace, security and people-centred development.' The G-8 noted with approval African leaders' personal involvement in NEPAD's creation and implementation, their emphasis on good governance, and their focus on 'investment-driven economic growth and economic governance as the engine for poverty reduction, and on the importance of regional and sub-regional partnerships within Africa.'

Stressing NEPAD's recognition that 'the prime responsibility for Africa's future lies with Africa itself', the G-8 committed themselves to mobilising global action, resources and expertise, as well as 'reinforcing actions to help Africa accelerate growth and make lasting gains against poverty'. However, their promises of action focus strongly on NEPAD's less costly elements, such as conflict resolution, improving governance or promoting private business.

On financial resources for this 'bold and clear-sighted vision of Africa's development', the G-8 leaders referred to the 'substantial new development assistance commitments' announced at Monterrey (Bridges Year 6 No.3, page 15), but stressed that each G-8 member would decide independently how to allocate the funds it had pledged. In support of NEPAD goals, the leaders stated:

Assuming strong African policy commitments, and given recent assistance trends, we believe that in aggregate half or more of our new development assistance could be directed to African nations that govern justly, invest in their own people and promote economic freedom. In this way we will support the objectives of the NEPAD. This will help ensure that no country genuinely committed to poverty reduction, good governance and economic reform will be denied the chance to achieve the Millennium Goals through lack of finance.

No new commitments were made on debt relief. And, although the plan contains a section on agriculture, this focuses solely on increasing productivity in Africa rather than reducing subsidies or other trade barriers in importing countries. A more general section on providing greater market access for African products adds nothing to the commitments undertaken in Doha.

Commenting in the Cape Town-based *Mail & Guardian*, Neville Gabriel of the South African Catholic Bishops' Conference called the G-8 leaders a 'hot air brigade', which had 'recycled old commitments without saying where and how they would act.' Christian Aid criticised the 'no action' plan for sidestepping the question of debt, and Moctar Diouf, an economics lecturer at the Dakar University, doubted that much would change due to 'this NEPAD business'. Instead, he said: 'What Africa needs is fair payment for the commodities we produce.'

The Africa Action Plan and other G-8 documents are available at: <http://www.g8.gc.ca/menu-e.asp>.

### Low-key Food Summit Endorses Biotechnology

The political declaration adopted by some 180 nations – only two which were represented by a head of state – at the conclusion of the second World Food Summit on 13 June drew fire from civil society for its endorsement of biotechnology and its commitment to halve the number of hungry people by 2015, the still unmet target set for 2001 by the 1996 World Food Summit.

Much to the disappointment of many NGOs, the follow-up event five years later formally endorsed biotechnology as a way to address hunger, while failing to mention the role of organic foods. The relevant paragraph urges the FAO and other international research institutes to

advance agricultural research and research into new technologies, including biotechnology. The introduction of tried and tested new technologies including biotechnology should be accomplished in a safe manner and adapted to local conditions to help improve agricultural productivity in developing countries. We are committed to study, share and facilitate the responsible use of biotechnology in addressing development needs.

The G-77 group of developing countries supported the inclusion of biotechnology in the declaration's hunger-reducing actions, an approach championed by the United States in particular. The EU, where citizens' opposition to genetically engineered foods remains fierce, put up stiff but ultimately vain resistance.

#### Working Group on Right to Food

Civil society groups, which had been pushing for a formal Code of Conduct outlining steps to be taken by FAO members to meet their international obligations on food security, welcomed as 'a major breakthrough' the decision to establish an intergovernmental working group to elaborate, in a period of two years,

a set of voluntary guidelines to support Members States' efforts to achieve the progressive realisation of the right to adequate food in the context of national food security.

Germany's Minister for Consumer Protection, Agriculture and Nutrition Renate Kuesnacht said the new working group could – through a focus on how poorer countries should develop their national markets to ensure food security – increase political momentum towards the establishment of a 'Development Box' in the WTO Agreement on Agriculture.

Like every other recently-adopted intergovernmental document, the Food Summit declaration refers to the Monterrey Consensus and the outcome of the WTO's Doha Ministerial Conference, but adds no new binding obligations on official development assistance or market opening. Developing countries were particularly disappointed in the lack of any explicit mention of the need to reduce of farm subsidies in wealthy nations.

In a statement rejecting the Summit outcome, a number of civil society groups called for a shift of focus to the 'unifying concept of food sovereignty', including the promotion of local markets and producers over production for export and food imports. This could be achieved, *inter alia*, by removing agriculture from the WTO while working towards a Convention on Food Sovereignty. The campaign is set to continue at the Johannesburg Summit on Sustainable Development.

For a copy of the FAO Summit declaration and other documents, see: <http://www.fao.org/worldfoodsummit/english/index.html>

*Time for a Fresh Start, continued from page 20*

in wheat and rice with a singular lack of success in tackling malnutrition. As the Nobel prize-winning economist Amartya Sen has shown, hunger is primarily a function of poverty and power relationships, not food availability.

It goes without saying that integration into global markets is not a panacea for poverty. Each government has to carefully assess the opportunities and challenges involved in order to situate trade policy in a coherent strategy for poverty reduction and ecological sustainability. Replacing vacuous free trade slogans with equally vacuous advocacy in favour of autarchy and localisation is not a helpful contribution to the debate. Blanket import liberalisation has a disastrous record in poor countries. But anybody suffering from the illusion that protectionism is inherently good for the poor and the environment might usefully spend some time looking at the Common Agricultural Policy, or at the beneficiaries of industrial protection in India.

### The Johannesburg Challenge

Last year, amidst a wave of self-congratulation, the world's richest countries signed on to what they labelled the Doha 'Development Agenda'. Since then, the United States has announced one of the biggest increases in agricultural subsidies in history, effectively demolishing the agricultural trade negotiations before they have started. The 2002 Farm Bill will have devastating consequences for agricultural exporters such as Argentina, Thailand and Malaysia, and it will increase the flood of cheap grains into local food markets elsewhere. In the case of textiles and garments, both the European Union and the United States have refused to speed up quota phase-out, violating the spirit if not the letter of the textiles agreement. Meanwhile, having failed to address the legitimate grievances of poor countries, the rich world is getting on with WTO business as usual: that is, consolidating and extending the rights of northern TNCs in areas such as banking, insurance, procurement and intellectual property.

The World Summit in Johannesburg provides southern governments and civil society an opportunity to contest this agenda. We should be challenging northern governments to open their markets, to outlaw agricultural export subsidies, to re-open the TRIPs agreement, to roll back the corporate-led WTO agenda on foreign investment and services, and to stop using IMF-World Bank loan conditions as a battering ram for opening southern markets. We also need to force some issues on to the international trade agenda. For instance, prices for primary commodities have fallen catastrophically in recent years, in the case of coffee back to levels not witnessed since the Great Depression. The consequences have been devastating, locking large swathes of the developing world into a vicious circle of rising poverty and environmental degradation. Yet while rich countries have pushed a range of 'new issues' on to the WTO's already crowded agenda, they have resolutely failed even to consider an old problem at the heart of unequal trade.

Johannesburg provides a rare opportunity to debate the future of world trade in a forum that, unlike the WTO, is not dominated by rich countries and corporate interest groups. Of course, northern governments, the IMF-World Bank, and the WTO secretariat will respond by reciting the well-worn metaphor: once you have started on the bicycle journey to free trade, you need to keep the pedals turning or you fall off. Then again, when your bike is hurtling towards the edge of the cliff it's not a bad time to consider applying the brakes.

### Trade and Finance Set to Go to the Wire in Johannesburg

Celine Tan of the Third World Network recently observed that the World Summit on Sustainable Development might 'turn out to be less about the technicalities of environmental protection and sustainable use of natural resources than about the trade and financial mechanisms helping or hindering these objectives.'

Indeed, all signs point to that direction. While governments have already broadly agreed that water, energy, health and biodiversity will form the main focus of the Summit's environmental and social agenda, most of the unagreed (bracketed) text going to Johannesburg regards the trade and finance section of the Action Plan.

### Possible Environmental Gains

Access to clean water looks most likely to receive a meaningful boost. US Treasury Secretary Paul O'Neill has repeatedly highlighted it as a priority area for action, and the EU's recently-published Johannesburg wish-list includes an intergovernmental agreement to halve the number of people without access to clean water and sanitation by 2015.

The EU also called for an increase in the share of renewable energy sources to at least 15 percent of primary energy supply by 2010. In addition, it said the Summit should agree to halt and reverse the current loss of natural resources/biodiversity and to restore fish stocks to sustainable levels by 2015.

### Vast Differences Persist on Trade and Finance

While South Africa's President Thabo Mbeki said in June that he would launch a personal initiative to avert failure in Johannesburg, the host country's Environmental Affairs and Tourism Minister Valli Moosa insisted that the Action Plan must take into account 'the most important causes of poverty, among them unfair terms of trade and, in particular, the lack of market access for agricultural products from poor countries.'

Meanwhile, OECD countries continue to emphasise the role of the WTO's Doha 'Development Agenda' in financing whatever plan of action emerges from Johannesburg, and to refer to the commitments on official development assistance announced in Monterrey as *the* other source of financing for the Summit's health and environmental targets. There are no signs of industrialised country willingness to take on new commitments on debt relief.

In keeping with this general outlook, G-8 leaders agreed in late June on 'the importance of reaffirming the Doha Agenda and the Monterrey Consensus', while the European Council's Barcelona summit stressed its determination to 'secure a comprehensive and timely conclusion to the Doha Development Agenda, in order to increase the benefits of trade liberalisation as an engine for the sustainable development of developing countries'.

In her analysis of the draft Action Plan going to Johannesburg, Celine Tan cautioned against generalised references to the Doha Ministerial Declaration, as some of its provisions – particularly those on launching negotiations on investment, competition policy and government procurement – were against the interests of developing countries. In addition, she warned that the sustainable development agenda was in danger of being 'hijacked' by corporate interests if the Action Plan's implementation provisions laid too much emphasis on partnerships with the private sector.



## Sustainable Justice 2002

The Centre for International Sustainable Development Law, UNEP and the World Bank hosted a conference entitled *Sustainable Justice 2002* in Montreal in June. More than 250 legal experts from both developed and developing countries attended this timely forum to examine some of the key areas of evolving international sustainable development law.<sup>1</sup>

During an Expert Workshop on Sustainable International Trade, Investment and Competition Law, Sylvia Ostry described the WTO as an institution with great policy influence but weak executive power, and cautioned against filling the policy space through litigation (see related article on page 3). Dr Ostry's warning echoes the 'law versus diplomacy' debates prior to the conclusion of the Uruguay Round, which pitted lawyers against trade economists and diplomats, the latter being notoriously reticent to convert the diplomacy-oriented GATT to a rules-based WTO.

Jeffrey Gertler from the WTO Legal Affairs Division pointed out that the preamble of the Marrakesh Agreement and the Doha Declaration both mention sustainable development, and that the Appellate Body has also shown ways to take such concerns into account in the interpretation of multilateral trade rules. The AB's decisions in the *US-Shrimp* and the *Korea-Beef* cases constitute examples of this integration. The *EC-Asbestos* decision is noteworthy to the extent that the AB agreed that it was legitimate to integrate social concerns such as health in the 'like-product' analysis of GATT Art. III.

Matthew Stilwell of CIEL saw the Doha negotiations mandate on clarifying the relationship between WTO rules and multilateral environmental agreements (MEAs) as a step back from what had already been decided in the 1996 Singapore Declaration: that parties to an MEA should solve disputes under these agreements and not proceed in the WTO. Nicolas de Sadeleer from CEDRE asked whether a new way to address the MEA-WTO relationship could be a consensual departure from WTO obligations if both Members were party to the MEA in question. He referred to Principle 4 of the 1992 Rio Declaration, which calls for considering environmental protection an 'integral part of the development process'. However, Principle 4 is 'soft law' and Members would need to clearly express their willingness to waive their WTO rights.

Regarding areas of integration in the Convention on International Trade in Endangered Species (CITES) and the WTO, Nicholas Sinclair-Brown of Cambridge University said that concluding sustainable development management regimes such as that developed for the Caspian sturgeon under CITES was preferable to the use of unilateral trade measures that seem to save the environment but often fail to take social effects into account.

Looking at international investment law, Armand de Mestral of McGill University noted that Art. 11.14 of NAFTA, which prohibits the lowering of environmental standards to attract investment, could be regarded as a first step towards sustainable development law. On the procedural side, the fact that a panel hearing a NAFTA investment dispute recently admitted an *amicus curiae* brief could also be considered as progress since such briefs may introduce other issues worth considering, including sustainable development principles. Whether or not to admit *amici curiae* briefs has also been extensively discussed in the WTO, where Members remain bitterly divided on the subject (see, for instance Bridges Year 6 No.4, pages 10 and 11).

The discussion showed that further research on how to integrate social and environmental concerns into trade and investment law was needed. The incorporation of the goal of sustainable development in the mandate of international organisations has proven to be a useful interpretative tool, but has not – by itself – transformed economic law into sustainable development law.

<sup>1</sup> *What Is International Sustainable Development Law?* CISDL legal brief, <http://www.cisdll.org/pdf/brief3.pdf>

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Tel:	(41-22) 917-8492
Fax:	(41-22) 917-8093
E-mail:	<a href="mailto:hcameron@ictsd.ch">hcameron@ictsd.ch</a>

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## REGULAR MEETINGS OF WTO BODIES

July 16	Sub-Committee on Least-developed Countries
July 22-23	Council for Trade in Goods
July 25	Council for TRIPs Informal meeting on access to medicines
July 29	Dispute Settlement Body
July 31	General Council

## OTHER MEETINGS

July 14-19 Geneva	World Civil Society Forum Contact: World Civil Society Forum, fax: (41-22) 959-8851; email: forum@mandint.org; Internet: <a href="http://www.mandint.org/forum/">http://www.mandint.org/forum/</a> .
July 16-19 Fiji	Third Summit of ACP Heads of State Contact: ACP Secretariat, tel: 32 2 743 06 00, fax: 32 2 735 55 73; Internet: <a href="http://www.apsec.org/fiji/index.html">http://www.apsec.org/fiji/index.html</a>
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August 26 - Sept. 4 Johannesburg	World Summit on Sustainable Development Contact: Johannesburg Summit Secretariat, e-mail: <a href="mailto:dsd@un.org">dsd@un.org</a> ; for further details visit <a href="http://www.johannesburgsummit.org/index.html">http://www.johannesburgsummit.org/index.html</a>

## DOCUMENTS AND RESOURCES

Charnovitz, Steve. 2002. Trade Law and Global Governance. Cameron May International Law Publishers. London

Correa, Carlos. June 2002. Implications of the Doha Declaration on the TRIPs Agreement and Public Health. World Health Organisation. Geneva

Harremoës, Poul et al (eds.). July 2002. The Precautionary Principle in the 20th Century. Earthscan. London

Hoekman, Bernard; Mattoo, Aaditya and English, Philip (eds.). June 2002. Development, Trade and the WTO – A Handbook. World Bank. Washington D.C.

UNCTAD. June 2002. The Least Developed Countries Report 2002: Escaping the Poverty Trap. United Nations Publications, Geneva/New York

UNCTAD. April 2002. Trade and Development Report 2002. United Nations Publications, Geneva/New York

WTO. 24 May 2002. Application of the Special and Differential Treatment Provisions Contained in the Agreements and Decisions of the WTO. Communication from Paraguay on S&D under the Enabling Clause (WT/CTD/W/5)

WTO. 29 May 2002. European Communities – Trade Description of Sardines. Report of the Panel (WT/DS231/R)

WTO. 21 June 2002. WTO Provisions Relevant to the Relationship Between Trade and Finance and Trade and Debt. Note by the Secretariat (WT/WGTDF/W/3)

## SCHEDULED SPECIAL (NEGOTIATING) SESSIONS OF WTO BODIES IN 2002

## Committee on Agriculture

July 29-30	Intersessional consultation on market access
Sept. 2-4	Special session on market access
Sept. 5-6	Intersessional consultation on domestic support
Sept. 23-27	Special session on domestic support
Nov. 18-22	Follow-up

## Council for Trade in Services

July 23-25; October 28 - 1 November and December 9-13

## Committee on Trade and Development

*(special and differential treatment for developing countries)*

July 17 Reporting procedures

September 16, October 7-9 and December 6

## Council for TRIPs

*(special sessions on a multilateral registration system for wines and spirits, regular meetings on access to medicines and protection of geographical indications)*

Sept. 17-20	regular meeting followed by special session
Nov. 25-28	regular meeting followed by special session

## Committee on Trade and Environment

Oct. 10-11 Paragraph 31 of the Doha Declaration

## Negotiating Group on Rules

*(anti-dumping, subsidies and regional trade agreements)*

October 16-18 and November 25-27

## Negotiating Group on Market Access

*(industrial tariffs)*

Late July Possible session to compensate for cancelled meeting on 11-12 July

September 12-13, November 4-6 and December 2-3

## Dispute Settlement Body

*(amending the Dispute Settlement Understanding)*

July 15-16, September 10-11, October 14, November 13-15 and December 18

## Trade Negotiations Committee

July 18-19 Co-ordination of negotiations