

Stalemate in Agriculture Casts Pall over Doha Round

For most WTO Members, and developing countries in particular, a level playing field for agricultural production and trade is the central goal of the Doha Round. However, what little hope remained for reaching agreement on negotiating 'modalities' by the 31 March deadline was dashed when several key players rejected out of hand the latest framework proposal from Stuart Harbinson who chairs the negotiations.

The draft 'modalities' (or broad aims of the negotiations) drew fire from many sides as soon as they were issued on 18 March. EU Agriculture Commissioner Franz Fischler called the paper "unbalanced against those developed countries like the EU that have pursued an internal reform path and in favour of those who had increased trade-distorting support." He added that "the measures proposed for export competition left too many loopholes open for export credits and bogus food aid. And last but not least we find that the draft is not comprehensive as it does not include non-trade concerns nor a peace clause."

In contrast, US Trade Representative Robert Zoellick commended Mr Harbinson for his "leadership", noting only that the paper was not "completely satisfactory at this stage." For instance, the US has called for the elaboration of strict criteria for a proposed new category of agricultural goods that developing countries could designate as "special products with respect to food security, rural development and/or livelihood security concerns." Tariff cuts in the 'special product' category would range from five to ten percent instead of the 15-40 percent that Mr Harbinson has proposed for other developing country agricultural imports. Special products could also possibly be protected from import surges through quotas (see page 5).

Perhaps looking for a silver lining, WTO Director-General Supachai Panitchpakdi called the fact that "some numerical figures" were now on the table a "great start" but added that in his six months in office he had not seen "an inch of movement" in Members' positions.

The failure to agree on the agricultural modalities was the third serious setback for what was once called the Doha Development Agenda.

First, Members failed on 10 February – for the third time – to agree on recommendations for strengthening special and differential treatment (S&D) provisions for developing countries in WTO Agreements. A request from developing countries for a General Council clarification of the Doha mandate was rebuffed and the Council's meeting ended in confusion. Recent efforts to revive the process

do not look likely to bring a swift solution to the S&D review, initially slated for conclusion in July 2002 (see page 2).

Then, talks aimed at ensuring that WTO rules would not impede poor countries' access to medicines broke down on 18 February with no clear indication on what to do next (see page 8).

In addition, the WTO Director-General acknowledged at the March Trade Negotiations Committee (TNC) meeting that his efforts to break the deadlock in addressing scores of 'implementation' issues had not been successful.

Single Undertaking in Gridlock, Round May Be Prolonged

The Doha Round is a 'single undertaking' – where consensus must be reached in all five substantive sectors (agriculture, services, market access for industrial goods, WTO rules and the environment), as well as the cross-cutting S&D and implementation issues, before the negotiations can conclude. While this approach has the advantage of offering trade-offs between concessions in different sectors, it can also lead to gridlock across the board when some sectoral negotiations stall.

There is growing evidence that this is currently the case. For instance, pace has slowed in the services negotiations, which were among the most advanced until it became clear that the agricultural modalities deadline would be missed (see page 13). In market access talks, Bolivia has explicitly stated that "this Negotiating Group should not go beyond the outcomes achieved in the Negotiating Group on Agriculture, in order to strike a balance in the tariffs applied to industrial and agricultural products" (see page 11).

The political context of a controversial war with uncertain economic consequences adds to the sombre outlook for realising the development potential of the multilateral trade negotiations.

EU Trade Commissioner Pascal Lamy and Canada's Trade Minister Pierre Pettigrew have already evoked the possibility of missing the 1 January 2005 deadline set in Doha for concluding the round, although both stress that they remain committed to meeting it. A large number of WTO delegates privately admit their near certainty that the negotiations will go into considerable overtime (guestimates vary between two and three years) with the inevitable consequence of further slowing momentum.

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New Start for Special and Differential Treatment?

In February, the fate of the special and differential treatment review was utterly unclear. The General Council simply “took note” of the division between Members without setting a new deadline for concluding the negotiations or providing guidance to the Committee on Trade and Development (Bridges Year 7 No.1, page 6). More than 85 proposals to strengthen S&D provisions in existing WTO Agreements are on the table.

In an effort to get the process back on track, the new General Council Chair Carlos Pérez del Castillo held informal consultations with Members during the last week of March. According to delegates, Ambassador Pérez del Castillo was sounding out reactions to a new ‘early harvest’ package of recommendations to strengthen a certain number of provisions. To the 22 measures of minor practical significance previously identified as ripe for harvest, the Chair proposed to add 20 more to be determined by Members.

A second group of proposals would be considered in the relevant negotiating bodies (i.e. consideration of special treatment provisions of the Anti-dumping Agreement, for instance, would effectively move from the Committee on Trade and Development to the Negotiating Group on Rules). While this has already happened in some areas, many developing countries have in the past resisted consideration of S&D in the ‘single undertaking’ negotiating context where any proposed changes would become subject to corresponding concessions. The plan would also involve admitting that on some proposals views diverge so widely that there is no realistic chance of consensus.

First informal reactions were sceptical. Developing countries doubted that industrialised countries would accept 20 further changes after the protracted negotiations that were necessary to arrive at the first 22, which remain unadopted. Kenya in particular stressed that making special and differential treatment part of the single undertaking was unacceptable. Ambassador Pérez del Castillo is expected to present an informal document outlining which category each of the 85 or so proposals would fall into by mid-April. The next General Council meeting where the S&D review will be discussed is currently scheduled for 15-16 May.

No New Start for Implementation Issues

‘Implementation issues’ consist of more than developing country 90 proposals to change the application – or, in some cases, the substance – of certain WTO rules in order to right imbalances that have prevented them from reaping expected benefits in the implementation of the Uruguay Round Agreements. The changes sought frequently overlap with those proposed in the S&D review, and the debates on both subjects are largely similar.

Only a small handful of ‘outstanding’ implementation issues addressed in regular WTO Committees has been solved while others are at a total impasse. A December proposal from Dr Supachai to divide the issues into categories failed to muster support, partly due to developing country reluctance to place the most significant demands in a *quid pro quo* negotiating context.

In February, Dr Supachai announced that he would intensify collaboration with the Chairs of the Committees involved in order to break the standstill (Bridges Year 7 No.1, page 6). At the March Trade Negotiations Committee (TNC) meeting, however, he had to admit defeat: “I have to tell you that, despite the serious efforts made by all involved [...] very little progress has been possible in my consultations.” He noted that some Members wanted to end the discussions without further action, while others wanted to move them from the Committees to the TNC level. According to Dr Supachai, the problem was “aggravated by the same factors that are hampering progress in other areas of the Doha work programme; negative tactical linkages and an ‘all or nothing’ approach which prevents progress being made where it may be possible.” It is unlikely that his message to the 4 April TNC meeting will be substantially different.



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Non-Violation Complaints under the TRIPs Agreement: Time to Let Go

By Betty Berendson

The concept of non-violation and situation remedies refers to cases where a WTO Member can bring a dispute against another Member, claiming that a measure or “any other situation” has nullified or impaired a benefit even if no WTO provision has actually been violated.

The application of this remedy in the context of the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) raises a number of fundamental questions and concerns. WTO Members have expressed on numerous occasions that the dispute settlement mechanism should be transparent, predictable and equitable. The mere fact that a Member has the possibility of bringing a complaint, even if the other Member is in full compliance with the WTO Agreements, contradicts this basic principle.

This situation is of special concern in the context of the TRIPs Agreement, as the availability of GATT Article XXIII:1(b) – which establishes the basic rules on non-violation complaints, see box on page 2 – would tend to guide panels and the Appellate Body away from a constructive interpretation of the obligations under the Agreement, and therefore have effects contrary to those sought by its original proponents. Article XXIII:1(b) may also undermine the regulatory authority and infringe Members’ sovereign rights and limit the use of the flexibilities inherent in the TRIPs Agreement to achieve objectives relating to issues of public interest in sectors of vital importance to socio-economic and technological development.

Grounds for the Concept Are Weakening

What led to a rules-based trading system allowing challenges based on something other than the rules in the first place? The non-violation and situation remedies stem from early bilateral trade agreements. Not part of the corpus of international law, these concepts were specifically developed for the GATT¹ in order to prevent the intended effect of a tariff reduction from being frustrated by measures that the GATT did not regulate, such as domestic subsidies. Since the GATT did not contain any substantive commitments on such internal measures, procedures for the adjustment of tariff concessions following their introduction were required.

The purpose of Article XXIII:1(b) and (c) was thus to protect the balance of tariff negotiations by addressing the misuse of non-tariff and other trade-restrictive measures that, while consistent with basic GATT disciplines, might affect agreed market-access commitments. To date, the non-violation concept has been applied in only a limited number of GATT cases, most of which addressed subsidies that undermined agreed market-access commitments. There is no history of situation complaints under the GATT.

Since the early days of the GATT, the evolution of the multilateral trading system and the establishment of the WTO – including the adoption of extensive rules on non-tariff measures and a binding dispute settlement system – has weakened the traditional justification of non-violation complaints and largely removed the need for such complaints to protect tariff concessions.² The non-violation remedy has also been narrowed in scope under GATS Article XXIII:3, which limits complaints to benefits accruing from specific commitments undertaken by Members. Additionally, non-

violation complaints would rarely be necessary to protect the exchange of rights and obligations in the TBT and SPS Agreements, and the other agreements in Annex 1 of the Marrakesh Agreement, as these include substantial flexibility within their rules to address borderline cases, without resorting to the legally-imprecise notion of non-violation and situation complaints.

Today, resort to these remedies is difficult to justify within the rules-based WTO system. By introducing legal uncertainty they undermine the predictability and security that the system seeks to provide all WTO Members. The application of non-violation complaints to the TRIPs Agreement raises an additional set of problems. It is unnecessary to achieve the Agreement’s effective implementation and may upset its delicate balance.

The implementation of the TRIPs Agreement does not require recourse to the legally imprecise notion of non-violation and situation complaints.

Progress in Negotiations to Date

Discussion on the “scope and modalities” of non-violation nullification or impairment complaints under the TRIPs Agreement was initiated in 1999 in the TRIPs Council. Although several WTO

Members have submitted communications on this issue, the Council has not yet been able to reach any conclusions on the application of these complaints to the Agreement.

In order to advance the negotiations and to fulfil the Mandate given by the Doha Ministerial Conference, a group of 14 developing countries³ proposed in September 2002 that the TRIPs Council recommend to the 5th Ministerial Conference that the violations of the type identified in Article XXIII:1(b) and (c) of the GATT 1994 be determined inapplicable to the TRIPs Agreement.

The co-sponsors, as well as other WTO Members and legal scholars, consider that the concept of allowing non-violation complaints in a rules-based system is incompatible with a transparent, predictable and equitable mechanism for settling trade-related disputes concerning intellectual property. Several WTO Members have noted that the non-violation remedy should remain an exception and be applied with considerable caution.

In the view of the co-sponsors, it is a priority task for the Council to reach a consensus on non-violation and situation complaints with respect to the TRIPs Agreement in accordance with the Ministerial mandate. The co-sponsors believe that it is wrong to assert that the expiration of the deadline provided in Article 64.2 of the TRIPs Agreement might make non-violation and situation complaints automatically applicable to the TRIPs Agreement. Article 64.1 of the TRIPs Agreement established that the GATT non-violation clause was applicable to the intellectual property rights regime subject to TRIPs Articles 64.2 and 64.3. Thus, despite the expiration of the time-period provided in Article 64.2, non-violation/situation complaints should only be applicable to the TRIPs Agreement in conformity with the procedures established in Article 64.3, i.e. once consensus has been achieved on the issue.

Unlike other WTO Agreements, the TRIPs Agreement was not designed to protect market access but rather to establish minimum standards of intellectual property protection, which, if abused, might even undermine market access. Non-violation and situation

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complaints are unnecessary to protect any balance of rights and obligations internal to the TRIPs Agreement, as these are reflected in its principal obligations and flexibilities, and the Agreement explicitly states that WTO Members are not obliged to implement more extensive protection. Furthermore, rights and obligations in the TRIPs Agreement are best secured through WTO Members' good-faith application of its provisions in accordance with established principles of international public law recognised by the Appellate Body of WTO. The implementation of the TRIPs Agreement does not require recourse to the legally imprecise notion of non-violation and situation complaints.

The co-sponsors believe that the benefits accruing under the TRIPs Agreement are adequately described in its text, including its preamble, objectives and principles, which fully take into account the development dimension. Implementation of the Agreement should bring mutual benefits to producers and users of technological know-how in order to enhance social and economic well-being. The balance between rights and obligations, protection of public health and nutrition, and promotion of public interest in sectors of vital importance for social, economic and technological development, should ensure that intellectual property rights protection does not limit trade in an unjustifiable manner (or be detrimental to) international transfer and dissemination of technology. Such benefits, which accrue to Members rather than to private entities, are adequately protected through good-faith application of the Agreement.

Some other WTO Members have proposed to clarify and narrow the definition of measures that might give rise to non-violation and situation complaints. However, defining "measure", even narrowly, would not address concerns that the remedy would infringe sovereign rights and undermine the Agreement's flexibilities. These concerns arise not merely from a lack of clarity about which measures could be challenged, but more fundamentally from the legal uncertainty inherent in the concept of non-violation and situation complaints. There is insufficient guidance in Article 26 of the DSU and in GATT dispute settlement practice for panels and the Appellate Body to apply non-violation and situation complaints in the context of the TRIPs Agreement. Extending the non-violation and situation remedy – and with it the right to challenge measures that were otherwise consistent with WTO obligations – might unbalance the proper distribution of responsibilities between WTO Members, panels and the Appellate Body. All these concerns raise fundamental challenges to the multilateral trading system. Introducing non-violation and situation complaints in the TRIPs context is unnecessary and creates tension with the security and predictability provided by the multilateral trading system. It is incompatible with the long-term best interests of the multilateral trading system and of all WTO Members.

The proposal by the 14 developing countries has received support from many WTO Members, such as the ASEAN countries, Australia, Canada, Chile, China, the Czech Republic, the EU, Hong Kong-China, New Zealand, Nigeria, the Slovak Republic, Hungary and Korea. The Swiss delegate suggested, as a compromise, that the moratorium mentioned in paragraph 11 of the Decision on Implementation-Related Issues and Concerns be prolonged so that the non-violation and situation complaints would not be available at this time. The Singapore delegate suggested that a practical way to end a debate that has been going on for several years with no agreement in sight would be to extend the moratorium indefinitely. Only one Member, namely the United States, has openly opposed the proposal, as it still maintains that non-violation

and situation remedies should be readily applicable in the context of the TRIPs Agreement. This question must be decided by the 5th WTO Ministerial Conference – to be held from 10 to 14 September 2003, in Cancun, Mexico – and is probably one of the few issues that stand a good chance of commanding consensus.

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¹ Kuyper. 1994. *The Law of GATT as a Special Field of International Law*, in Netherlands Yearbook of International Law, pp. 227-257, Volume XXV.

² See Kuyper, op. cit.

³ Argentina, Bolivia, Brazil, Colombia, Cuba, Ecuador, Egypt, India, Kenya, Malaysia, Pakistan, Peru, Sri Lanka and Venezuela (IP/C/W/385).

A number of WTO agreements, decisions and declarations refer to non-violation complaints. GATT Article XXIII establishes the basic rules on the remedy. It states:

"If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of ...

(b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or

(c) the existence of any other situation ...".

Article 26.1 of the Dispute Settlement Understanding provides that the DSU's procedures will apply to non-violation complaints subject to certain stringent requirements including that "the complaining party shall provide a detailed justification in support of any complaint". Article 26.2, and the dispute settlement rules and procedures contained in the Decision of 12 April 1989 (BISD 36S/61-67), stipulates that in the case of situation complaints "the practice to adopt panel reports by consensus shall be continued".

Article 64 of the TRIPs Agreement addresses the application of non-violation complaints to settlement of disputes. Paragraphs 2 and 3 of Article 64 provide the following:

2. Subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time-period referred to in paragraph 2, the Council for TRIPs shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

The Doha Ministerial Conference adopted a Decision on Implementation-Related Issues and Concerns stating that:

"The TRIPs Council is directed to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 and make recommendations to the Fifth Session of the Ministerial Conference. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPs Agreement." *WT/MIN(01)/W/10, paragraph 11.1*

Agriculture: Second Draft Modalities Paper Finds No Favour with Membership

WTO Members did not reach agreement on agricultural negotiating 'modalities' (i.e. the broad aims of the negotiations, as well as an indicative range/timeframe for reductions in export support, domestic subsidies and tariff levels) by the 31 March 2003 deadline. The general acknowledgement that the deadline would not be met followed the release of a second draft modalities paper on 18 March 2003, which several Members promptly condemned for not taking their particular concerns on board. The modalities discussions could continue at least until the Cancun Ministerial Conference next September.

Facing a membership firmly camped on long-established positions, the negotiations Chair Stuart Harbinson issued a first draft modalities paper on 17 February "on his own responsibility", reflecting his personal assessment of where "possible paths to solutions" might be found (Bridges Year 7 No.1, page 5). As expected, the document raised a storm of opposition from all sides, and particularly the European Union, Switzerland, Japan and other 'Friends of Multifunctionality', who claimed that it was biased in favour of large agricultural exporters, and all but dismissed the 'non-trade concerns', such as the environment, food safety, animal welfare and consumer protection, that the 'Friends' seek to address. Other WTO Members, such as the Cairns Group of agricultural exporters and the US, faulted the document for not setting ambitious enough targets for reducing subsidies and tariffs.

The 24-28 February negotiating session revealed no trend toward starting effective negotiations, prompting Mr Harbinson to marvel at Members' "insatiable appetite" for restating known positions. Mr Harbinson was asked to prepare an 'improved' second modalities paper. However, due to "insufficient collective guidance" from Members, the Chair's 18 March paper stated that he could do no more than present "an initial, limited revision of certain elements of the first draft of modalities."

The revised draft leaves the core elements of the original approach on new commitments with regard to market access, export competition and domestic support untouched (see table). It recognises that "further consideration needs to be given to non-trade concerns and other market access issues [...] and the extent to which these issues should be taken into account in the modalities to be established and/or subsequent work." The text refers specifically to the issues identified in Mr Harbinson's first overview of proposals (18 December 2002), i.e. geographical indications, food safety, labelling and capacity-building for agriculture-related standards and rules of origin.

Ahead of the 24-31 March negotiating session, Members' reactions to the revised modalities paper faithfully reflected their criticism of its predecessor.

Special and Differential Treatment Strengthened

The most noticeable changes in the second draft appear to respond to some of the key points put forward by developing countries.

Developing countries' tariff reductions would be carried out over ten years in four different bands (see table), while least-developed countries are not expected to make any commitments. Developing countries could also declare a so-far unspecified percentage of their agricultural products as "special products with respect to food security, rural development and/or livelihood security concerns." For these products, the average reduction would be

ten percent and the minimum per tariff line would be five percent. The draft proposes that Members develop the 'special product' concept in further technical consultations. This promises heated debates, as countries differ widely on the criteria to be used. Some, such as the US and Australia, want to set stringent conditions that would result in only a handful of 'special products', while others, such as India, see the concept applying to potentially hundreds of products. Cairns Group developing country members have warned that excessive protection of sensitive sectors would be detrimental to South-South trade.

The new draft would also make it mandatory for developed countries to provide "fullest liberalisation" of trade in tropical products, "whether in primary or in processed form".

Due to progress on a new special safeguard (SSG) mechanism for developing countries, the original proposal providing that this new SSG would be restricted to only a few "strategic products" denominated by developing countries, has been dropped. The text now states that "an outline of a possible new special safeguard [...] is currently subject to technical work and will be included at the appropriate stage in" an annex to the modalities draft.

Preventing the erosion of preferential margins due to special market access conditions is of prime importance to a number of countries (Bridges Year 7 No.1, page 5). The revised draft provides that preference-giving countries' tariff reductions "affecting long-standing preferences in respect of products which are of vital export importance for developing country beneficiaries of such schemes may be implemented in equal annual installments over a period of [eight] instead of [five] years by the preference-granting participants concerned, with the first installment being deferred to the beginning of the [third] year of the implementation period that would otherwise be applicable." It would also require preference-providing Members to undertake targeted technical assistance programmes and other measures to support preference-receiving countries in efforts to diversify their economies and exports.

Key Figures of the Draft Modalities

Market Access				
Tariffs	Present level	Average cut	Minimum cut per tariff line	Time period
Developed countries	Over 90%	60%	45%	5 years
	15-90%	45%	35%	5 years
	Under 15%	40%	25%	5 years
Developing countries	Over 120%	40%	30%	10 years
	60-120%	35%	25%	10 years
	20-60%	30%	20%	10 years
	Under 20%	25%	15%	10 years
Domestic Support: Amber Box (trade-distorting subsidies)				
Developed countries: reduce by 60 percent over five years				
Developing countries: reduce by 40 percent over ten years				
Domestic Support: Green Box (at most minimally trade-distorting support)				
Developed countries: No reductions/spending ceiling, but stricter eligibility criteria possible				
Developing countries: Maintain at least present flexibility under the Agreement on Agriculture				
Domestic Support: Blue Box (direct payments under production-limiting programmes)*				
Developed countries: capped and bound, reduce by 50 percent over five years				
Developing countries: reduce by 33 percent over ten years				
Export Competition: Subsidies*				
Developed countries: phase out 50 percent within five years, the rest within nine years				
Developing countries: phase out 50 percent within ten years, the rest within twelve years				

* The draft also proposes a [bracketed] alternative: the immediate elimination of the blue box for developed countries and after five years for developing countries.

* Unlike export subsidies, some export credits could be considered in conformity with WTO rules, while others would be "subject to specific financing reduction commitments."

Dispute Settlement Review: Another Deadline in Danger of Slipping

An increasing number of WTO Members doubt that the negotiations on “improving and clarifying” the Dispute Settlement Understanding can be concluded by the 31 May 2003 deadline. Numerous changes have been proposed to virtually every one of the agreement’s 27 Articles, but so far Members have made no progress in streamlining even largely similar proposals into consolidated legal text, let alone come to a common understanding on the proposals that have a chance of generating consensus through further negotiations.

EU Trade Commissioner Pascal Lamy has floated the possibility of adopting a “small package” of changes regarding some of the less contentious issues in time for the May deadline and concluding the negotiations “if there were procedures in place for reaching a broader deal later”. Other WTO Members have not officially commented on how they would like to proceed if there is no consensus on changes by the deadline.

One issue on which differences seem slender enough to bridge is ‘sequencing’, i.e. clarifying conflicting deadlines for steps that Members must take under DSU Articles 21 and 22 before they can resort to trade retaliation. Other potential candidates for consensus include the composition of panels, the number and term of Appellate Body members and the rights of third parties to a dispute, although differences still exist over the proposed changes, as well as the need to make them in the first place.

More controversial are certain proposals for special and differential treatment for developing countries (Bridges Year 6 No.7, page 17), fast track procedures for – possibly retroactive – retaliation to ensure prompt compliance with rulings (Bridges Year 6 No.8, page 15) and enlarging the scope of remedies available to economically weaker Members in cases of non-compliance (see page 23, and Bridges Year 6 No.4, page 9). Among issues that stand virtually no chance of rallying consensus are opening up dispute settlement hearings to the public, making submissions publicly available and acceptance of *amicus* briefs.

The negotiations Chair, Ambassador Péter Balás of Hungary, has so far resisted calls to issue a consolidated draft legal text based on his best understanding of where consensus could be reached. Instead, he has urged Members to work out common agreed text for proposals along similar lines before producing (possibly in mid-April) a second draft of the Compilation of Draft Text Proposals, which is to serve as a basis for final negotiations.

During negotiating sessions held in January, February and March, Members went through the first draft Compilation of Draft Text Proposals (Job(03)/Rev.1) article-by-article, but no consensus was apparent on any of then proposed changes. The process was further complicated by Members submitting new draft text proposals simultaneously with the first reading of the compilation.

Recent Proposals

The 10-11 March session showed continued division regarding a late US-Chile proposal aimed at providing parties to a dispute more control over the content of Appellate Body reports, as well as the course of the dispute settlement proceedings. The paper seeks the following innovations: the circulation of a confidential interim report by the AB to parties prior to issuing the final report; allowing parties to “delete by mutual agreement findings in the report that are not helpful or necessary to resolving the dispute”;

allowing the DSB to only partially adopt a report; providing parties the right to suspend panel or AB proceedings for further negotiations; and providing “some form of additional guidance to WTO judicative bodies” concerning the application and interpretation of WTO law. Draft legal text for the “additional guidance” will be developed after further consultation with other WTO Members, the two proponents said. Providing guidance on the ‘standard of review’ is one the primary aims of the US, which has complained bitterly about panels and the Appellate Body overstepping their authority in interpreting WTO obligations, particularly in anti-dumping and subsidy disputes such as the Byrd Amendment and foreign sales corporation rulings (see page 7).

Malaysia and India were supportive when these changes were first floated in December 2002 (TN/DS/W/28), but Brazil, Canada, the EU, Korea and Switzerland cautioned that they would undermine the independence of the AB, transform the WTO dispute settlement system from litigation towards bilateral settlements, and subvert the predictability and security of the multilateral trading system.

In January, Members showed a degree of sympathy to a proposal that in disputes involving least-developed countries (LDCs), the possibility of “holding consultations in the capitals of LDCs shall always be explored and a joint note to this effect made, which shall be considered in the event of the request for a panel and any proceedings” (TM/DS/W/37). There is considerably less support for a proposal from Cuba, the Dominican Republic, Egypt, Honduras, India, Jamaica and Malaysia to change Article 4.10 so it would become obligatory to give “special attention to developing country Members’ particular problems and interests”, through including information in the panel request and other submissions on how such “special attention” was given, and making it obligatory for panels to rule on the issue. The seven countries have also proposed, *inter alia*, that a developing country that wins a dispute (either as defendant or as complainant) against a developed country should be awarded at least US\$500,000 in litigation fees (TN/DS/W/47).

Jamaica has proposed that a Member be deemed to have a “substantial trade interest” in a dispute following a simple notification of its desire to join consultations to the parties and the Dispute Settlement Body (TN/DS/W/44/Rev.1). Under current Article 4.11, the country that receives the request to join consultations must agree that the requesting Members’ claim of substantial interest is “well-founded”. Removing this requirement would be in the interest of countries that do not have a substantial interest in terms of share of trade in the good involved but for whom even a small share represents a large percentage of exports.

Brazil has proposed adding a new Article entitled *Procedures Related to Measures Already Held Inconsistent with Covered Agreements* after current Article 20 (TN/DS/W/45/Rev.1). Brazil’s basic concept is that “whenever a Member considers it is being affected by a measure that has already been declared inconsistent by an adopted panel or Appellate Body report, it would have the right to request the establishment of a ‘fast track panel’ that would be composed, if possible, of the same panelists that served in the original panel that considered the matter.” The panel would announce its decision on the question of whether the disputed measure was ‘same measure or not’ in a limited period of [10-15] days after receipt of the rebuttal submission of the party complained against. If the panel confirms that the measure is the same, the panel would have three months to complete its proceedings and the time for appeals deliberations should be limited to 45 days.

Dispute Settlement News

Brazil Takes on US Cotton Subsidies, Sugar Consultations Continue

On 18 March, a dispute settlement panel requested by Brazil was established on US subsidies to upland cotton. Brazil's 5-page panel request (WT/DS267/7) refers to "prohibited and actionable subsidies provided to US producers, users and/or exporters of upland cotton, as well as legislation, regulations, statutory instruments and amendments thereto providing such subsidies (including export credits), grants, and any other assistance to the US producers, users and exporters of upland cotton." Among specific measures, Brazil highlighted:

- domestic and export support subsidies provided to the US upland cotton industry during marketing years 1999-2002, as well as those mandated until 2007;
- subsidies contingent upon the use of US upland cotton between 1999-2001, as well as those mandated until 2007; and
- subsidies and domestic support provided under the Farm Security and Rural Investment Act of 2002 (and its predecessor FAIR 1996), including marketing loans, loan deficiency payments, commodity certificates, direct payments, counter-cyclical payments, export credit guarantees, etc.

Brazil listed an impressive number of laws and regulations that provide support to cotton growers/exporters, alleging that these violate at least six provisions in the Agreement on Agriculture and five in the Agreement on Subsidies and Countervailing Measures (SCM), as well as three GATT rules.

Brazil has claimed that US producers of upland cotton received domestic subsidies in excess of 100 percent of crop value in 2001. Together with export support the level of subsidisation attained US\$4 billion or more than 130 percent of crop value. Brazil alleged that the subsidies were actionable despite the Agriculture Agreement's peace clause because they exceeded the 1992 level of support for a specific commodity (Art. 13(b)(ii)) and provided export support in excess of US commitments (Art. 13(c)(ii)).

According to Brazil, these subsidies have permitted the US to become the world's premier exporter of upland cotton while Brazil's lower-cost upland cotton production and market share in third countries have decreased significantly. Brazil estimates that the losses due to "price suppressed or depressed by US subsidies" amounted to more than US\$600 million in 2001 alone, including lost production and revenue, losses of related services, lost state and federal revenue, higher unemployment and losses in Brazil's trade balance (WT/DS2681).

At the DSB meeting that established the panel, the US maintained that its cotton subsidies were within its WTO commitments and suggested that both countries' energies "would be better spent ensuring that the WTO agriculture talks are successful."

On 31 March 2003, Brazil will request the Dispute Settlement Body to appoint a facilitator (a representative of a Member government) to assist in gathering information on the US subsidy programmes. According to Article 5 of Annex V of the SCM Agreement, the information-gathering process must be completed within 60 days of the date the matter is referred to the DSB.

Argentina, Canada, China, the EU, India, Pakistan, Taiwan and Venezuela have requested third party rights in the dispute.

Together with Australia, Brazil is also involved in dispute settlement consultations with the EU regarding the latter's sugar export subsidies. The challengers allege that the high prices for sugar produced in the domestic market allow European producers to sell out-of-quota sugar on the world market below the cost of production. Brazil also charges that the EU's export subsidy programme effectively transfers to other countries the cost of its preferential trading arrangement with the African, Caribbean and Pacific (ACP) Group. Fourteen ACP sugar producers, who have joined the consultations as third parties, have stated that the dispute settlement proceedings could have a "devastating impact" on their preferential agreements and pose serious threats to their economies (Bridges Year 6 No.8, page 16). Other third parties in the dispute include Canada and India.

On 14 March, Thailand requested consultations on a similar complaint alleging, *inter alia*, that the EU's sugar regime treats imported sugar less favourably than domestic sugar, and provides subsidies contingent upon the use of domestic over imported goods (WT/DS/283/1).

Dispute Settlement News in Brief

- On 14 March, the 11 complainants in the Byrd Amendment dispute requested binding arbitration from the WTO on the time period the US should be given to comply with the Appellate Body report adopted on 27 January 2003 (WT/D217/AB/R). The US, which has not yet indicated how it plans to comply with the ruling, refused to negotiate on the 'reasonable period of time' with ten of the complainants, arguing that Canada alone had placed the report's adoption on the DSB agenda in January. The complainants hope to see the US to repeal the Amendment, but that solution faces stiff resistance from Congress (Bridges Year 7 No.1, page 7).
- On 31 March, the United States will make a second request for a WTO panel to examine whether the Canadian Wheat Board, a state trading enterprise that provides a guaranteed price to farmers, complies with WTO rules. The US claims that the CWB has "exclusive and special privileges", and that the government has "entirely abdicated" its obligation to ensure that the Board operates in a non-discriminatory manner and gives other WTO Members an adequate opportunity to compete. The US also maintains that Canadian handling and storage regulations – which require segregation between domestic and imported grain – are discriminatory, as are Canada's rail transportation rules, which favour domestic wheat shipments.

This is the ninth time the US has initiated investigations of the CWB, which markets Canadian grain both domestically and for export. The US has already imposed a provisional 3.94 percent countervailing duty on certain Canadian wheat imports and, in parallel with the WTO dispute, is pushing to reform (or eliminate) state trading enterprises in the ongoing negotiations on agriculture. Some US proposals aimed at curbing the monopoly powers of state trading enterprises and making them more transparent are reflected in the section on tariff quota administration of the second draft modalities paper released by the Chair of agriculture negotiations on 18 March (see page 5).

Access to Medicines Negotiations Blocked, Small Step Forward in Technology Transfer

A last-minute effort by outgoing TRIPs Council Chair Ambassador Pérez Motta to clinch a deal to enhance poor countries' access to medicines fizzled out with no new document presented for Members' consideration on 18 February. Instead of agreeing on a solution that would have allowed WTO Members to export medicines produced under compulsory license to developing countries with no manufacturing capacity of their own, Members largely reiterated their established positions at the last TRIPs Council meeting. Developing countries see the failure to solve this problem as symptomatic of the lack of political will to address their concerns in the negotiations launched in Doha.

Since the February TRIPs Council meeting, the issue has 'gone to sleep', with no new deadline set or formal decision taken on how to take the matter forward. Although some sources have implied that efforts are still underway in certain capitals to revive the talks, no one would speculate on which countries are involved or what type of solution is being pursued.

Paragraph 6 of the Doha Declaration on TRIPs and Public Health instructed the Council for Trade-related Aspects of Intellectual Property Rights (TRIPs) to find an 'expeditious solution' to the problems that countries without domestic pharmaceutical manufacturing capacity may encounter in making use of compulsory licensing before 31 January 2002.¹ The deadline was extended twice, but divisions between Members could ultimately not be bridged.

Ambassador Pérez Motta had hoped to forge consensus on an explanatory statement that could have made it possible for Members to adopt – without changes – the draft solution rejected by the US late last year (Bridges Year 7 No.1, page 3). Contrary to expectations, he did not present this statement on 18 February, presumably due to Members' continued concerns about its legal standing and potential to restrict the scope of the solution. India, along with many other delegations, again stressed that the draft provided a good balance for all interests, and added that it was not prepared to accept a limitation of the disease coverage. The US continues to reject the draft, arguing that the disease coverage of the solution should be limited to HIV/AIDS, malaria, tuberculosis and similar infectious diseases.

During the Council meeting, Brazil declined to comment on news reports of a proposal floated earlier, which would have involved the World Health Organisation (WHO) in verifying whether poor countries wishing to use the paragraph 6 solution had insufficient manufacturing capacity to produce the drugs themselves under a compulsory license. While European Trade Commissioner Pascal Lamy noted the initiative could help bridge the 'confidence gap', US Trade Representative Robert Zoellick said only that the scope of the proposed solution could be limited either through focusing on the disease coverage or on the beneficiary countries.

There are voices in the US asking the Administration to show more flexibility in the TRIPs and health discussions. In a letter to Mr Zoellick, three House representatives advocated broadening the disease coverage beyond infectious epidemics and supported a consultative process between WTO Members and competent authorities, either involving the WHO as proposed by the EU (Bridges Year 7 No.1, page 3) or between Members' health ministries. In a separate letter, five Senate Democrats urged Mr Zoellick not to seek to narrow the Declaration "through restrictive interpretations of its critical terms."

Technology Transfer Decision Adopted

At its 18-20 February session, the Council adopted a decision on transfer of technology to least-developed countries (LDCs), thereby fulfilling one of the mandates adopted at the Doha Ministerial Conference. The *Decision on Implementation of Article 66.2 of the TRIPs Agreement* (IP/C/28) responds to the mandate in the Doha Decision on Implementation-related Issues and Concerns, which calls on countries to put in place a mechanism for ensuring the monitoring and full implementation of Article 66.2. This Article instructs developed country Members to "provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer" to LDCs.

Specifically, the decision requires developed country Members to submit annual reports on actions taken or planned in pursuance of their commitments under Article 66.2. The reports will provide an overview of the incentive regime put in place, the type of incentives and government agency or entity making it available, eligible enterprises and other institutions, and any information available on the functioning in practice of these incentives. The TRIPs Council will review the reports at its last meeting of each year, providing an opportunity for Members to ask questions and discuss the effectiveness of the incentives.

Ambassador Vanu Gopala Menon of Singapore took over the TRIPs Council chairmanship on 20 February. The Council's next regular session is scheduled for 3-5 June 2003.

Members Disagree on Wine and Spirit Names Protection

During the special session of the TRIPs Council on 21 February, Members' positions remained unchanged regarding a multilateral notification and registration system for geographical indications (GIs) for wines and spirits. According to the Doha Declaration these negotiations must conclude by the next WTO Ministerial Conference in September.

The EU, Bulgaria, Switzerland, Sri Lanka and others are advocating that Members should be required to protect the GIs registered in the multilateral system, although countries would be free to choose whether to register a particular GI. In contrast, Australia, Canada, Japan, the US and others envisage the system functioning mainly as a database, with even the protection of registered terms, as well as their registration, being voluntary.

Members were divided along the same lines over how to move forward in the debate. The EU and supporters noted that the five hours of discussions in the session had produced "nothing new" and called on the Chair of the special session, Ambassador Eui Yong Chung of Korea, to prepare and circulate a first draft agreement by the first half of March. Australia argued that Members' positions were still too far apart to begin discussions on a first draft. The Chair said that he would aim to circulate a first draft "well before" the next special session on 24-25 April.

¹ Under current rules, such exports are restricted by Article 31(f) of the TRIPs Agreement, which requires production without the authorisation of the rights holder to be "predominantly for the supply of the domestic market of the Member authorising such use."

Rules: Members Split on Purpose of Negotiations, Fisheries Subsidies

So far, negotiations on the WTO's anti-dumping, countervailing and subsidy disciplines have produced a large number of proposals but no meeting of the minds. The main split centres on the need to change current rules so as to make recourse to trade remedies (i.e. anti-dumping and countervailing duties) less frequent. This is the end-result sought by fifteen 'Friends of Anti-Dumping', whose position is supported to varying degrees by many other WTO Members. At the other end of the scale, the United States – now supported by Egypt – wants to keep maximum flexibility in the application of trade remedies and focus instead on procedural fairness and closing any loopholes that Members may use to avoid anti-dumping duties.

EU Proposes 'Swift Control Mechanism'

Between January 1995 and June 2002, Members initiated more than 2,000 anti-dumping and countervailing investigations, while the number of outstanding anti-dumping orders more than doubled worldwide during the last decade.

Against this background, the European Union has circulated a proposal aimed at speeding up procedures related to unjustified anti-dumping and countervailing investigations (TN/RL/W/67). Noting that most anti-dumping measures subject to dispute settlement rulings have been found inconsistent with WTO rules, the EU suggested setting up a 'swift control mechanism for initiations' that would stop flawed investigations even before they reach conclusions about the need to impose anti-dumping or countervailing duties.

Even investigations that do not lead to anti-dumping or countervailing duties impose burdens on companies, which have to respond to complex questionnaires and divulge confidential data, the EU argued. In addition, the investigations tend to be lengthy and, under current WTO rules, Members can only seek a dispute settlement ruling after provisional or final duties have been set. Furthermore, the dispute settlement proceedings can take years.

The EU suggested three ways in which the WTO could remedy this situation: (1) the establishment of 'fast track initiation panels', which would issue their recommendations on an investigation before the actual imposition of duties; (2) binding arbitration to "solve problems of initiation which result from clearly defined and straightforward issues" such as lack of evidence or faulty procedures; or (3) the creation of a 'standing advisory body' that would give a "non-binding advisory opinion on the WTO legality of the initiation of an anti-dumping or countervailing investigation".

A 12 February statement by senior officials of fifteen countries and customs territories dubbed the 'Friends of Anti-Dumping' (i.e. Brazil, Chile, Colombia, Costa Rica, Hong Kong-China, Israel, Japan, Korea, Mexico, Norway, Chinese Taipei, Singapore, Switzerland, Thailand and Turkey) raised similar concerns and called for the rules negotiations to focus on three key objectives: the improvement of rules in order to prevent the abuse and misuse of anti-dumping measures; the prevention of overly burdensome or frivolous investigations; and the improvement of rules to enhance the transparency, predictability and fairness of anti-dumping proceedings (TN/RL/W/63).

At the 19-21 March session of the WTO Negotiating Group on Rules, the United States rejected out of hand a proposal from the

'Friends' group to change Article 11.3 of the Anti-dumping Agreement so that it would become mandatory to terminate AD duty orders after five years rather than allowing Members' to extend them if the authorities determine that "the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury" (TN/RL/W/76). According to a 2002 study, only 28 percent of those US anti-dumping orders whose revocation was contested by domestic industry were terminated after five years.

US Calls for Rules Expansion, Egypt Rejects Any Changes

Unlike the 'Friends', who generally seek to make trade remedies less readily available, the US is fighting to preserve at least the present degree of government discretion in issuing anti-dumping and countervailing orders. In keeping with this basic outlook, US proposals have so far focused both on procedural issues such as the transparency of Members' regulations and practices (Bridges Year 6 No.8, page 12), and the importance of preventing circumvention of anti-dumping duties. Regarding its recent submission on the latter topic (TN/RL/W/50), a US official stressed that "circumvention is a serious concern for Members because it undermines the effectiveness of the trade remedy rules," and could take different forms, such as assembly of imported parts to avoid an anti-dumping duty, or slight alterations to a product to avoid the duty. Another recent submission proposes the clarification of WTO rules on anti-dumping and countervailing investigations on perishable goods; the calculation of weighted dumping margins and "persistent" dumping or subsidisation (TN/RL/W/72).

In a 19 March submission, the US also called for tightening subsidy rules through, *inter alia*, significantly expanding the category of prohibited subsidies; forbidding governments from offering support to companies on better terms than would be available from the private sector; limiting governments' right to provide natural resources at less than market value; and harmonising rules concerning direct and indirect subsidies (TN/RL/W/78).

Joining the US tenet that the focus of the negotiations should be on "the underlying trade-distorting practices" (TN/RL/W/27, Bridges Year 6 No.7, page 12), Egypt argued in a position paper dated 10 February 2003 that it was "the dumping itself and not the measures taken by an Authority to prevent dumping that is trade disruptive." According to the submission, "Egypt considers that the introduction of new rules in the AD Agreement at this point in time would be counter-productive and would defeat the objective pursued in the Doha Declaration." Among the reasons, Egypt noted that many 'new users' of anti-dumping action, such as Egypt, were developing countries with limited resources and experience to carry out anti-dumping investigations and that "expecting these 'new users' to adhere to the excessively complex rules being put forward by certain WTO Members would impose an unreasonable and unnecessary burden on them in terms of resources and ability and would negatively affect their rights under the AD Agreement" (TN/RL/W/55).

'Friends of Fish' Propose Negotiating Platform

At the February negotiating session, the 'Friends of Fish' (i.e. Argentina, Chile, Iceland, New Zealand, Norway and Peru) presented suggestions – based on a proposal tabled on the group's behalf by New Zealand in late 2002 – for creating a negotiating

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platform on fisheries subsidies (TN/RL/W/58). The group highlighted categories of fisheries subsidies that had been developed in other organisations, and said this categorisation should serve as a starting point for the next phase of work, which should be part of the Doha Round of negotiations. Australia, the US and Ecuador supported this approach.

The US further proposed that the category of prohibited subsidies should be expanded to include fisheries subsidies that directly contribute to fleet overcapacity. It also noted that the quality of fisheries subsidy notifications should be improved (TN/RL/W/77).

Japan, supported by South Korea (both maintain substantial fisheries subsidy programmes), presented a contrasting paper arguing that the Negotiating Group on Rules should focus solely on the trade-distorting effects of all subsidies while the regular (non-negotiating) session of the Committee on Trade and Environment was “the proper place to deal with the issue of overexploitation of fisheries resources and [was] expected to fully analyse how the subsidies affect fisheries resources and to identify factors causing stock depletion.” Japan has also suggested in the negotiations on market access that governments should retain considerable flexibility in setting tariffs and non-tariff measures on fisheries and forestry products, see page 12.

The EU said it would present a new paper based on its fisheries reform agreed in December 2002 (Bridges Year 7 No.1, page 12).

According to scientific studies, 50 percent of marine fisheries are fully exploited, while 20 percent are over-exploited. The ‘Friends of Fish’ believe that stocks are declining due to perverse subsidies, while Japan claims that the decline is a result of poor fisheries management. Iceland noted during the meeting that while it has made major efforts to manage fish stocks in its own waters, the results have been destroyed because factory fleets from other countries are emptying North Atlantic waters.

Regional Trade Agreements

In February, Members also discussed when and where to notify regional trade agreements (RTAs) in the WTO context, and what

information should be notified. There was some support among Members for parties to notify the outline of an RTA to the WTO at the time of its signature, and submit the agreement in its entirety at the time of entry into force. While some Members thought that all notifications should be made to the Committee on Regional Trade Agreements, many developing countries expressed a preference for the existing practice, which allows them to submit notifications to the Committee on Trade and Development.

Development Concerns

Venezuela has proposed that Members address the re-introduction of a category of non-actionable subsidies in the Agreement on Subsidies and Countervailing Measures (SCM) during the current negotiations (TN/RL/W/41/Rev.1). The SCM Agreement’s Article 8 on non-actionable subsidies expired in January 2000.

Pointing to paragraph 10.2 of the Doha Decision on Implementation-related Issues and Concerns, which instructs Members to “examine measures aimed at achieving legitimate development goals such as regional growth, technology research and development funding, production diversification and development and implementation of environmentally sound methods of production,” Venezuela called on Members to explore which subsidies could be classified as non-actionable in response to the Doha mandate. Australia has requested a number of clarifications to this proposal, including whether Venezuela envisages a “totally new approach” to non-actionable subsidies and whether there should be a “development dimension or criterion” in any assessment of such subsidies (TN/RL/W/61).

Among other recent proposals, the Friends of Anti-dumping have suggested strengthening special and differential treatment for developing countries under the Agreement on Anti-dumping. This should be done through ‘operationalising’ the Agreement’s Article 15, which recognises that developed countries must give “special regard” to developing country Members’ special situation when considering the application of anti-dumping measures, and explore “constructive remedies” before applying anti-dumping duties. (TN/RL/W/46). Considering this language too generic, the Friends propose that Members “elaborate on the idea of special regard and constructive remedies.”

Cancun Ministerial Conference: Logistical Information for NGOs

Ministerial Venue: The fifth WTO Ministerial Conference will take place from 10 to 14 September 2003 in the Cancun Centro de Convenciones. The ground floor of the Conference Centre will house the Press Centre and will be accessible to all accredited personnel (including non-governmental organisations). Plenary sessions will also be open to all accredited personnel. Floors 1 and 2 will house the negotiation venues, and will be available only to authorised participants (i.e. members of government delegations, WTO Secretariat). For updates, see: www.ictsd.org.

NGO Centre: The NGO Centre will be located a 15-20 minute walk away from the Ministerial venue, in the Hotel Sierra. A continuous shuttle bus service will be available between the NGO Centre and the Convention Centre. Meeting and conference rooms, photocopy, telephone, fax and computer facilities will be available. A large meeting room of 400-500 person capacity will be made available for NGO briefings in the Hotel Fiesta Americana. Some 1500-2000 accredited NGO participants are expected to attend.

NGO Accreditation: Requests for accreditation must be mailed to the WTO Secretariat by 30 April 2003. NGOs must supply *in detail* all necessary information indicating how they are concerned with matters related to those of the WTO. Organisations that have registered for *at least* two previous Ministerial Conferences need not resubmit such detailed information, but must still officially request registration. Applications should be sent to: External Relations Division; Centre William Rappard; 154, rue de Lausanne; 1211 Geneva 21; Switzerland.

The Secretariat will send out confirmations of eligibility, together with the individual registration forms, as from 31 May 2003 (the number of representatives per NGO delegation may be limited). Individual registration forms must be returned by 30 June 2003.

As from 1 August 2003, NGOs will receive confirmation of registration. On that basis, badges will be made available in Cancun which allow access to all official Ministerial related venues.

Inching Towards Market Access Modalities

By the end of March 2003, the Chair of the Doha Round market access negotiations is to issue an overview of WTO Member governments' proposals that will serve as a basis for deciding the 'modalities' – or overall framework – that will be used in negotiating further cuts in tariffs on industrial goods. Members agreed last July to aim at reaching "a common understanding on a possible outline of modalities by the end of March 2003 with a view to reaching agreement on those modalities by 31 May 2003."

'Common understanding' by March seems compromised, however, due to diverging views on the desired end-result, as well as many Members' reluctance to make significant progress (or compromises) in one area of the 'single undertaking' negotiations while other key issues – such as agriculture, implementation and special and differential treatment – are at an impasse.

On 5 February, the Chair circulated a first draft of the overview (TN/MA/6), which laid out a wide range of approaches regarding both the level of tariff cuts sought and the manner to get there. Among these were the US proposal to eliminate all industrial tariffs by 2015 through a series of linear reductions and the EU proposal to compress all tariffs in a flatter range (Bridges Year 7 No.8, page 13), as well as various formula-based across-the-board tariff cuts, the total elimination of tariffs only in certain sectors or for certain countries, or relying on bilateral requests and offers. Those Members that have proposed a 'cocktail approach' have mostly advocated supplementing across-the-board formula-based reductions with (more or less) limited zero-for-zero negotiations in certain sectors or bilateral requests/offers. The overview document will be updated to take into consideration new proposals submitted until 14 March. The next negotiating session is scheduled for 14-16 April.

LDCs, Africa Focus on Preferences

Generally speaking, developing countries seek the elimination of tariff escalation (i.e. the more highly-processed the good, the higher the tariff) and tariff peaks (i.e. considerably higher-than-average tariffs on certain sensitive products), as well as less comprehensive liberalisation commitments and longer adjustment periods. Several recent proposals have highlighted the need to avoid the erosion of preferential margins under special market access arrangements and the need for caution in liberalisation commitments due to the potential for de-industrialisation. Developing countries have also frequently stressed the importance of import duties as a source of government resources to respond to development needs.

The goal of least-developed countries (LDCs) is duty-and quota-free access to developed country markets for all LDC products. Noting the "serious adverse impact" that liberalisation measures had had on their industrial development, trade and economy over the last two and a half decades, the latest submission from Bangladesh called for LDCs to be exempted from any tariff reduction commitments (TN/MA/W/22). The proposal also sought to ensure that preference-giving countries would consider "sympathetically" LDC requests to delay their own tariff reductions if LDCs' preferential margins were "of meaningful advantage in trade terms" (TN/MA/W/22).

Kenya (on behalf of a number of African countries) has also highlighted the importance of preferential trading schemes to

African countries, as well as called for the Negotiating Group to take into account the "dismal" experience of liberalisation in African countries. In its proposal of 18 February, Kenya said that any further liberalisation should be determined by the countries themselves, and requested that maximum attention be given to reducing tariff escalation and tariff peaks on products of export interest to developing countries, and that special and differential treatment (S&D) be based on economic benchmarks, including the protection of infant industries (TN/MA/W/27).

Mauritius (TN/MA/W/21), which often defends the interests of small island developing states, said that the modalities to be used in the negotiations should be flexible enough so as to accommodate

While an overview of proposals is still expected in March, market access negotiations may stall due to lack of progress made in other areas.

the specific situations of countries and to stagger the liberalisation process for products that are highly sensitive. An across-the-board formula approach, its proposal stated, would neither take account of the different regimes under which countries trade, nor would it ensure the maintenance of at least the current preferential market access of some of the poorest and most vulnerable countries. It proposed a trade weighted average tariff reduction with a longer staging period of tariff reductions for sensitive products. Like Kenya and many other developing countries, Mauritius also proposed that tariff cuts

should be based on 'bound' rather 'applied' rates, which are usually much lower.

Tariff Reduction Schemes

Bolivia has expressed a preference for a Swiss formula (a tariff reduction model that cuts high tariffs more steeply than lower ones) "in accordance with Members' level of development, using bound tariffs as the basis of calculation." Sectoral zero-for-zero negotiations to eliminate tariffs should only be undertaken by developed countries. Bolivia also linked the industrial tariff negotiations with progress in other areas, stating that "this Negotiating Group should not go beyond the outcomes achieved in the Negotiating Group on Agriculture, in order to strike a balance in the tariffs applied to industrial and agricultural products. In this way, the prevalent discrimination in the treatment of these two sectors will be eliminated" (TN/MA/W/28).

Japan has taken a radically different stance, advocating the elimination of tariffs on a large number of consumer and industrial goods ranging from information technology products (including 'smart' kitchen appliances) to motor vehicles, machinery, chemicals and toys (TN/MA/W/28). These categories should be subject to zero-for-zero or 'harmonisation', while all tariffs should be reduced according to "a formula which reduces tariff rates by setting a target level of a trade weighted average tariff rate for each Member in accordance with the level of its bound rate (trade-weighted average) to address the wide disparity in tariff rates that exists among Members."

In its 4 March submission, Japan noted that the sectors it proposed accounted for "two-thirds of the world's non-agricultural products trade, including products of export interest to developing countries, and products that are growing in the amount of trade during this decade." Citing empirical studies showing that tariff elimination in these sectors would lead to a 0.24 percent increase in world GDP,

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while large developing countries' GDP would grow by 0.7 percent, Japan argued that the zero-for-zero approach it was proposing was the most "realistic" way to tackle tariff peaks and tariff escalation due to the difficulty of defining 'tariff peaks' and 'tariff escalation' when Members' continued to have large differences between their average tariff rates and structures. This proposal has not yet been discussed in the Negotiating Group.

Environmental Goods

Some of the proposals described above have also addressed market access for environmental goods. For instance, the group of African countries said that the Market Access Group should wait until the Committee on Trade and Environment had provided expert input on what could be classified as an environmental good before starting to develop modalities for such products, adding that "it would be futile to introduce issues such as process and production methods into the debate." Before further consideration of this issue, Bolivia called on the WTO Secretariat to draw up a list of 'environmental goods' based on Members' suggestions, and to update the database of Members' notifications of environment-

related measures (EDB). Bolivia also requested technical assistance for EDB's operation.

At the last negotiating session (20-21 February), a number of Members were critical of a Japanese submission entitled Sustainable Development and Trade in Forestry and Fisheries Products (TN/MA/W/15/Add.1), which advocated substantial flexibility in setting tariff and non-tariff measures to restrict imports of forestry and fisheries products – of which it is a major importer – in order to advance sustainable development objectives. According to Japan, neither of these sectors should be subject to zero-for-zero negotiations. Echoing its contributions to the ongoing negotiations on non-agricultural subsidy rules (see page 10), Japan urged Members' to tackle the overexploitation of resources at the UN Food and Agriculture Organisation rather than the WTO. Chile countered that Japanese subsidies in these areas were already contributing to overexploitation of natural resources, while Malaysia objected to what it saw as an attempt by Japan to bring the concept of 'multifunctionality' into the non-agricultural market access negotiations.

The next meeting of the Negotiating Group on Non-agricultural Market Access is scheduled for 14-16 April.

Environment: Ad Hoc Solution for Observers Agreed but Differences Persist on the Scope of Negotiations

The Committee on Trade and Environment agreed in February to allow secretariats of certain multilateral environmental agreements (MEAs) to attend its May negotiating session, but failed to narrow differences regarding the scope of negotiations on the MEA-WTO relationship and the definition of environmental goods.

In para. 31 of the Doha Declaration, Members agreed to negotiations on: (i) the relationship between WTO rules and specific trade obligations in MEAs; (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) liberalisation of trade in environmental goods and services.

CTE Admits MEA Secretariats As Ad Hoc Observers

Members agreed to authorise the attendance, as *ad hoc* observers, of the UN Environment Programme and six MEAs, namely the Basel Convention on Transboundary Movement of Hazardous Waste, the Convention on International Trade in Endangered Species (CITES), the Convention on Biological Diversity, the Montreal Protocol on Ozone-depleting Substances, the International Tropical Timber Organisation (ITTO) and the UN Framework Convention on Climate Change. While observers are not usually allowed to attend negotiating sessions, an exception was made in this case due to the nature of the environment negotiating mandate, which many say requires the presence of MEA secretariats, *inter alia*, to ensure better coherence at the international level. The decision was taken without prejudice to the larger observership question – which remains unresolved at the Trade Negotiations Committee/General Council level.

Definition and scope of 'specific trade obligations' in MEAs

Members began substantive discussions to examine specific trade obligations (STOs) in certain MEAs, following the work structure agreed at the last CTE meeting (Bridges Year 6 No.8, page 16). The US and India (TN/TE/W/20 and W/23) advocated limiting the definition of an STO to one that is mandatory and specific in

character. The US identified six MEAs that would qualify under this criteria: three that have entered into force – CITES, the Basel Convention and the Montreal Protocol; and three that have not – the Stockholm Convention on Prior Informed Consent, the Rotterdam Convention on Persistent Organic Pollutants and the Cartagena Protocol on Biosafety. India wanted to limit the negotiations to only those MEAs that are currently in force. The submissions laid out the provisions in the agreements the proponents believed qualified as specific trade obligations. According to the US, the special session should now begin to build a factual foundation that would then allow the Committee to examine the relationship between these two sets of international obligations (MEAs and the WTO). This position was supported by Australia, ASEAN and Argentina.

Canada also focused on the six MEAs identified by the US and India, but added that it did not view them as a definitive list (TN/TE/W/22). The proposal suggested that it might be necessary to examine a specific provision in the context of other provisions of an MEA and its objectives, including decisions by Conferences of the Parties after entry into force. It did not consider the Climate Convention or its Kyoto Protocol to contain any STOs.

Switzerland identified two broad categories of STOs. The first, 'trade measures *explicitly* provided for and mandatory under MEAs', coincided closely with the STO approach adopted by the US and many other Members. The second category, which met with almost universal criticism, denoted 'other measures that are appropriate and necessary to achieve an MEA objective'. According to Switzerland, this category comprises all MEAs setting out measures and policies that can and must be adopted in pursuit of a specific objective negotiated by the Parties to the MEA, and which give Parties some latitude on the trade-related measures to be adopted (the so-called 'obligation de résultat'). This category would include measures taken under the Kyoto Protocol and other MEAs such as the ITTO and the International Commission for the Conservation of Atlantic Tunas. The next CTE meetings are scheduled for 29-30 April and 1-2 May 2013.

Services Council Approves Modalities for Autonomous Liberalisation

After more than two years of discussions, the Council for Trade in Services (CTS) approved modalities for the treatment of autonomous liberalisation on 6 March. Although Article XIX.3 of the General Agreement on Trade in Services (GATS) and paragraph 13 of the guidelines for the current services negotiations (S/L/93) both provide for the recognition of credit for such liberalisation, bilateral talks had proceeded without agreement on how the credit would be acknowledged (Bridges Year 7 No.1, page 15).

Autonomous Liberalisation: Definition and Value

Autonomous liberalisation refers to measures undertaken unilaterally by WTO Members either as a consequence of their own national liberalisation processes or in response to World Bank/IMF structural adjustment programmes since 1995.

The modalities – or guidelines – for granting credit (JOB(02)/35/Rev.3) define two important elements: what constitutes an autonomous liberalisation measure (ALM); and the criteria for assessing its value. According to the decision, an autonomous liberalisation measure is:

- subject to scheduling under specific commitments of the GATS, and/or leading to the termination of a most-favoured nation (MFN) exemption;
- compatible with the principle of most-favoured nation (MFN);
- undertaken by the liberalising Member unilaterally since previous negotiations; and
- applicable to any or all services sectors.

The criteria for assessing the value of an ALM may include:

- sectoral coverage;
- the liberalising nature of the measure concerned (i.e. elimination of measures restricting market access or existing measures that are inconsistent with national treatment and/or MFN);
- the date of entry into force and duration of the measure;
- the share of the sector in the total trade of the trading partner;
- the share of the trading partner in the total trade in the sector autonomously liberalised by the liberalising Member;
- the importance and impact of the autonomous liberalisation measures on the liberalising Member's economy;
- the market potential in the liberalising Member for the trading partner; and
- the opportunities for the expansion of foreign participation in the sector after the introduction of the measure.

The granting of credit for ALMs will be advanced through bilateral negotiations. According to Chair Ambassador Jara's (Chile) statement, "the modalities do not create any legal obligations nor do they establish any automatic right to credit or recognition." This means that the modalities function as a predictable and transparent framework for bilateral procedures when seeking and consolidating credit, while there is some political control by the CTS on their general application. Nevertheless, this does not imply automatic recognition of credit for autonomous liberalisation.

The type of credit that a Member can seek can take the form of: a measure by a trading partner in sectors of interest to the liberalising Member under the GATS; a decision to refrain from pursuing a request addressed to the liberalising Member; or any other form that the liberalising Member and its trading partner may agree upon.

The new modalities apply to all WTO Members, and any Member that has engaged in autonomous liberalisation can request credit for it. Members shall fully take into account flexibility provided for individual developing countries, as well as their level of development. Many developing countries consider this a small advancement toward a recognition of the objectives of the GATS of increased participation of developing countries in the services trade.

End of the Road for Emergency Safeguard Measures?

While the autonomous liberalisation decision was a small victory for developing countries, negotiations appear to have stalled on the establishment of emergency safeguard measures (ESM) – a key priority for the Association of Southeast Asian Nations (ASEAN) countries in particular. On 14 March, the Chair of the Working Party on GATS Rules Thomas Chan (Hong Kong) circulated a note telling Members that the negotiations had reached a "stalemate". According to Mr Chan, Members remain entirely divided on the basic elements of the ESM, including: for what and when a safeguard would be needed; who should be protected against what and through what means; and to whom the safeguard would apply. Due to "the absence of political will to strive for an outcome one way or the other," the Chair said it was doubtful that the Working Party would be able to finalise the negotiations by their 15 March 2004 deadline.

According to GATS Article X.1, the ESM negotiations should have concluded and the results entered into in force by 1 January 1998. That deadline has been extended several times. In view of the current stalemate, Mr Chan noted that Members may wish to "start considering how to proceed should there be no consensus [...] by the deadline of the negotiations."

Request/Offer Process Slowing Down

The Doha Declaration set a 31 March 2003 deadline for submitting initial market opening offers for services. However, only a handful of WTO Members did present their offers by that deadline. According to the head of the WTO Services Division, around 30 other submissions are expected to trickle in during April and May or maybe even later. The main reason for the slow-down is – yet again – the uneven progress in other areas, which has undermined many countries' motivation to keep to the deadlines.

Most of the 30-plus market opening requests were also submitted well after the 31 July 2002 deadline. Developing countries' requests (about a third of the total) have focused on four areas in particular:

- the need to ease some horizontal limitations including residence requirements, property limitations and authorisations for foreigners, minimal participation and visa granting processes;
- the need to reduce or eliminate restrictions for computer and related services;
- the need for particular treatment and deep liberalisation of the movement of natural persons in a multilateral manner; and
- the need to widen the definition of professional services so as to include "occupations" according to the International Standard Classification of Occupations of the International Labour Organisation.

The next services negotiating session is scheduled for 12-16 May.

Brazil Protests US Market Access Approach in FTAA

The official deadline for tabling initial market access offers in the negotiations for the Free Trade Area of the Americas (FTAA) expired in mid-February. The US – so far the only country to do so – has issued a summary of the different deals it is prepared to offer Latin American regional groupings provided that they reciprocate. Mercosur countries have condemned this “regional segmentation”, through which the US offers them less immediate duty-free market access than other Latin American countries.

Caricom countries would get duty-free access for 91 percent of their industrial goods and 85 percent of agricultural products as soon as the treaty enters into force. The corresponding figures would be 66 and 64 percent for Central American countries, 61 and 68 percent for Andean countries, and 58 and 50 percent for Mercosur members. For sensitive agricultural sectors, such as sugar, US tariff elimination could take more than ten years.

Brazil was particularly disappointed in this approach, as it could take 12 years or more for Mercosur members to get duty-free treatment for export products of the greatest interest. Brazil's Foreign Minister Celso Amorim said his country was not interested in having a common system of rules on investment, government contracts, services and intellectual property rights if market access was segmented without even the principle of most-favoured nation. “If it will be this way,” he added “it is better to do this kind of negotiation within the WTO.”

The US has also offered to eliminate all textiles and apparel tariffs by 2010 “provided others reciprocate” (quotas will be dismantled in 2005 under WTO rules). In addition, it has proposed the immediate reciprocal elimination of tariffs in a number of “key sectors” including energy and environmental products, as well as medical equipment, non-woven fabric, steel and wood products.

Negotiations on improving the offers on the table are to start in June. The FTAA should be concluded by the end of 2004.

CAFTA Negotiations to Conclude in 2003

Negotiations for US-Central America Trade Free Trade Agreement (CAFTA) were launched on 27 January 2003. Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the US expect to conclude the agreement by the end of this year after nine rounds of negotiations. Five negotiating groups will cover topics such as market access; investment and services; government procurement and intellectual property; labour and environment; and institutional issues such as dispute settlement. A sixth group on trade capacity-building will meet in parallel with the five negotiating groups.

As negotiating aims, a US press release listed “broad liberalisation in market access for goods and services, including e-commerce; the elimination of non-tariff barriers; science-based food inspection systems; strong protections for intellectual property and for investors; increased transparency in government regulation and procurement; strengthened capacity to protect workers and the environment; and meaningful dispute settlement mechanisms.” For CAFTA countries, market access for agricultural products will be the key issue. US protection of sensitive sectors is expected to be among the most contentious aspects of the negotiations.

US-Australia Free Trade Talks Launched

Negotiations for a free trade area between Australia and the US were launched on 21 March 2003. Fifteen negotiating groups have been established on market access, agriculture, services, investment, intellectual property rights, competition policy, environment, labour standards and technical barriers to trade, as well as cross-cutting issues such as dispute settlement. Negotiators say they will aim to conclude the treaty “some time in 2004”.

Although the US government strongly denies that the dismantling of the Australian Pharmaceutical Benefits Scheme (PBS) is one of its negotiating objectives, it will be under strong pressure from the pharmaceutical lobby to seek changes in the scheme. The PBS purchases about 90 percent of all prescription drugs in Australia and sets government-subsidised reference prices for them. Pharmaceutical companies claim that PBS pricing practices force them to lower prices in order to maintain any volume of sales.

At a press briefing after the initial round of talks, Australia's chief negotiator Stephen Deady stressed that “there is nothing in these negotiations that limit the ability of a government at the end of the day to provide public services and health, education, cultural protection and those sorts of issues.”

While reductions in US agricultural tariffs are among Australia's key priorities, Mr Deady said the FTA was not “the vehicle” for addressing the US Farm Bill. In WTO agricultural negotiations, Australia – like other Cairns Group Members – has demanded drastic cuts in domestic and exports subsidies. The Cairns Group has strongly criticised the 2002 Farm Bill, which nearly doubled US agricultural support when it was signed into law last May (Bridges Year 6 No.4, page 14).

Among US agriculture-related aims are eliminating the exclusive export rights of Australian state trading enterprises – i.e. the grains, sugar and rice marketing boards (see also Dispute Settlement Briefs on page 7), the elimination of quarantine and health regulations that act as non-science-based barriers to US farm exports, as well as easing Australian labelling regulations for genetically modified food and other biotechnology products.

New Treaties Seek to Bypass WTO IPR Debates

The US-Singapore Free Trade Agreement contains stringent restrictions on the use of compulsory licensing for pharmaceutical products and on importing patented drugs from countries where they are cheaper. While the provisions were hailed by US pharmaceutical industry representatives as “clarifying and improving” the WTO's TRIPs Agreement, development organisations such as Oxfam expressed concern about the new trade agreement's restrictions on Singapore's access to cheaper alternatives to both patented and generic medicines.

If the provisions above seek to prevent Singapore from taking advantage of the Doha Declaration on TRIPs and Public Health, the Chile-US Free Trade Agreement contains language specifically designed to pre-empt the EU-led push for stronger protection for geographical indications (GIs) in the WTO's Doha Round (see page 8). The text confirms that whenever a trade mark is registered before a “confusingly similar” geographical indication, protection of the trade mark over-rides any obligation to protect the GI.

Genetically Modified Soy in Argentina: Challenges Ahead

By Charles Benbrook and Heike Baumuller

The economic benefits following the adoption of genetically modified Roundup Ready (RR) soybeans in Argentina and the remarkable expansion of soybean acreage and exports is the one unequivocal national success story during a period of general decline throughout Argentina's economy. Enthusiasm for the RR soybean system in the country is near boundless and those working in the Argentinean soybean industry, government officials and agribusiness leaders take great pride in their involvement and contributions to the soybean industry's growth and prosperity. Questions about the sustainability of soybean production, possible environmental impacts of expanded production or changes in the efficacy of technology have been given little attention. Also, as import regulations for genetically modified organisms (GMOs) are continuously being tightened around the world, concerns have been raised on the impacts of these regulations on the competitiveness of Argentinean soy in the international market place.

Importance of RR Soy in Argentina

Remarkable growth in soybean production and income has been generated by the adoption of RR soybeans in Argentina. The low cost and relative ease of the RR soybean system led to a rise in the adoption of the technology from a few percent of the 6 million hectares planted in 1996 to almost 100 percent of the 10.5 million hectares grown in 2002. An estimated US\$ 5 billion in economic benefits have been derived from the technology, despite a world market driven, near 50 percent drop in the price of soybeans and processed soybean products.¹

Much of the environmental benefits arising from the use of RR soybeans in Argentina stem from the positive synergy between the adoption of no-tillage (direct seeding) planting systems and planting of RR soybean varieties. Prior to the introduction of RR soybeans, serious soil loss in the Pampas region was eroding the productivity of cropland and leading to serious adverse environmental impacts. While some acreage was devoted to no-till systems, weed control in such systems proved difficult and expensive. The emergence of RR soybeans made no-till systems far easier for farmers and much less management attention and skill were required to profitably use RR soybean technology. In addition, the planting of RR soybeans has led to a shift from higher-risk herbicides to glyphosate, one of the least toxic and most environmentally benign herbicide options available to soybean growers.

Some Contributing Factors

While the use of RR soy in Argentina has led to a 25 percent reduction in per hectare and per bushel costs of production, it is important to note that this reduction is largely attributable to circumstances particular to Argentina and to RR soy. Farmers in Argentina have benefited from a substantial 'windfall profit' by virtue of access to RR soybeans at little or no added cost. RR soybean seed available in Argentina is highly price competitive and farmers in the US are paying at least 35 percent more to plant RR varieties. This price differential arises, inter alia, from weak intellectual property protection (Monsanto does not have patent protection for RR soy in Argentina due to a

mismanagement of the issue, see Trigo et al. 2002). Because of the terms under which RR technology was introduced into the country, Argentina's farmers pay only a modest technology fee and have, in effect, captured the benefits of RR soybean technology without paying the usual share of the technology's development costs. A second major economic factor contributing to the cost reduction was the relatively low and falling price of Roundup (glyphosate) herbicides, which fell by almost half from 1996 to 2001 following the expiration of the Roundup patent and the subsequent entry of new producers into the market.

Emerging Challenges in the Field

The shift to RR soybeans in Argentina has led to a doubling of the pounds/kilograms of herbicide applied per acre/hectare, compared to cropland grown using conventional varieties. The number of herbicide applications per hectare has risen from about 2 to 2.3. This far greater reliance not just on herbicides in general, but on a single herbicide, has markedly increased the odds that a number of problems will emerge. These include shifts toward weed species that are able to survive applications of glyphosate, and changes in soil microbial communities. The former ecological adaptation will tend to erode the efficacy of RR technology and increase its cost; the latter change could increase plant disease and nutrient cycling and bioavailability problems.

More nitrogen, phosphorus and glyphosate have been needed each year to sustain yield levels on many of the fields planted to RR soybeans. The factors driving this slippage in the efficiency of the RR system are not fully understood, although scientists strongly suspect that soil compaction resulting from the shift to no-till production systems is one of the major causes. Possible consequences of compaction include greater yield variability, less efficient fertiliser use, and ultimately, the need to break up compacted soil layers. While compaction will occur similarly if conventional or RR soybean varieties are grown using no-till, the introduction of RR soy has greatly simplified and consequently expanded the use of no-till. RR soybeans and no-till systems have been used long enough in Argentina for compaction problems to emerge. Without remedial management strategies, it is likely that the economic impacts of compaction will steadily worsen.

There is little research or grower education underway in Argentina focusing on ways to manage compaction. Similarly, inadequate attention has been directed toward the other potential adverse impacts of such a high level of reliance on no-tillage and RR soybeans in Argentina. There is a strong need to increase research on these potential negative effects, even though it seems unlikely that such research will be undertaken in the foreseeable future, given the dramatic cuts that have been made in publicly funded agricultural research throughout the country.

Emerging Challenges in the Marketplace

Import regulations for GMOs are increasingly being tightened around the world, raising concern over export losses in key markets such as the EU, Japan and Korea. The still pending finalisation of the EU regulations on labelling and traceability of GMOs and the looming

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US-EU trade dispute over the EU's *de facto* moratorium on the approval of new GMOs and its proposed regulations further contribute to market uncertainty. Argentina, along with the US, Canada, Australia and others, have strongly criticised the EU's proposed labelling and traceability requirements as unworkable, costly and unnecessarily trade-restrictive. Compliance with the regulations, these countries claim, would involve substantive additional costs for segregating genetically modified from non-modified products, monitoring a particular crop throughout the food chain, and testing for the presence of GM materials.

The extent to which these concerns are justified and how the regulations will impact Argentina's agricultural exports remains uncertain. In the case of RR soy, the concern is not whether the EU regulations will block the import, as RR soy was granted market approval (for import and processing into non-viable soya bean fractions only) in the EU in 1996. Instead, the impacts of the EU regulations would stem from a possible loss in competitiveness and market access for Argentinean soy exports.

Given that almost all soy grown in Argentina in 2002 is genetically modified, exporters could simply opt for labelling all exports as GM, thereby avoiding the cost of segregation. This decision will depend on the intended use of RR soy (i.e. meal, oil or seed) and the export destination. Argentinean soybean oil is primarily exported to India, Iran and South Africa,² all of which do not have labelling requirements for highly processed GMOs (as opposed to the EU which is considering the introduction of labelling for products derived from, but no longer containing GMOs, like soy oil). The main destinations for meal are the EU, Egypt, Malaysia and Thailand. While GM feed destined for the European market would need to be labelled under the proposed regulations, meat from animals fed on GM feed would not. Thus, if these regulations are adopted, the impact on soy meal exports might not be significant, since the price of feed may remain the deciding factor for meat producers rather than whether the feed was genetically modified.

It remains to be seen, however, how strongly European consumers will demand the labelling of meat from animals fed GM feed and whether they will be prepared to bear any additional costs. The extra cost of such meat will depend on the availability of competitively priced non-modified feed. In this context, Brazil – the second largest soy producer after the US – will continue to play a major role in shaping the global market and establishing the terms of trade. If Brazil continues its efforts to preserve its GM-free status, exports from Brazil may come to be viewed preferentially by importers seeking out non-modified feedstuffs.

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ENDNOTES

¹ Trigo, E., Chudnovsky, D., Cap, E. & Lopez, A. 2002. *Los transgénicos en la agricultura argentina - Una historia con final abierto*. Libros del Zorzal.

² Reca, A. 2001. *Oilseed crushing industry in Argentina: Increasing supplies, better margins & further restructuring*. Industry Note – Food & Agribusiness Research, Issue 028-2001, Rabobank International.

EU-ACP Summit: Slow Progress in EPA Negotiations

The first ministerial-level meeting held in late February 2003 between the African, Caribbean and Pacific (ACP) Group of States and the European Union revealed little progress since negotiations were launched last September on new trading arrangements under the transitional Cotonou Agreement.

The two blocks are currently half way through the first phase of negotiations that are to conclude in 2008 with the establishment of 'WTO-compatible' Economic Partnership Agreements (EPAs) between regional groupings of ACP countries and the EU. The first phase – conducted between the EU and the ACP Group as a whole – is slated to conclude in September 2003.

Phase II of Negotiations Could Be Delayed

The two sides continue to differ on both the breadth and the nature of phase I negotiations (Bridges Year 6, No. 8, page 20).

In a communiqué released after the February meeting of the Ministerial Trade Committee, ACP countries noted that owing to "the slow pace of the negotiations, persistent differences in the points of view of both sides on the objectives and contents of the EPAs, some ACP countries are now questioning the advisability of launching the second phase of the negotiations at the level of ACP regions, scheduled for September 2003. The ACP Group and its constituent regions will need to review the progress achieved in the negotiations before the September deadline."

WTO Developments Loom Large over the Negotiations

"ACP apprehension is all the more keen now that the preferences accorded the Group in its trade relations with the European Union have been weakened by successive attacks from third parties that the European Union does not seem prepared to resist. These include the attacks on the Sugar Protocol of the Cotonou Agreement [see page 7, *ed.*] and preferences accorded to the ACP on the EU tuna market," the ministers added. They also deplored the loss of the development dimension in the Doha Round, and called for increased ACP-EU consultations to regain momentum.

The ongoing negotiations on WTO rules – including those on regional trade agreements – are another area where WTO developments will have a major impact on the shape of the EPAs. So far, this aspect of the negotiations has had a much lower profile than talks on subsidy and anti-dumping rules (see page 9), but it is essential for the EPAs' success that the WTO explicitly recognises that free trade areas between developed and developing countries do not need to be completely reciprocal. GATT Article XXIV.8(b) defines a free trade area as one where customs duties and other restrictive regulations of commerce are eliminated on "substantially all the trade" in products originating from *all* parties to the FTA.

The Secretary-General of the ACP Group Jean-Robert Goulongana reflected this necessity when he stressed that while the primary objective of the negotiations was to transform the EPAs into "instruments of development for ACP States", compatibility between them and WTO rules was "indispensable for ensuring the requisite security and stability to enable the EPAs to become true instruments of development over time. This is why we must continue to do everything possible to obtain the necessary flexibility in WTO rules to ensure our legitimate interests are taken into consideration in their development and implementation, which does not appear to be the case of the current norms."

Grounds for Action: Looking for a Sustainable Solution to the Coffee Crisis

By Trineesh Biswas and Jason Potts

The international price of coffee has collapsed. In real terms, the price of unroasted beans is at its lowest point in the past century. The crisis in the international coffee sector is wreaking havoc with the livelihoods of the 25 million small farmers who directly depend on coffee as their primary source of income. Impoverished producers, who are often unable to cover their costs, let alone feed and educate their families, are forced to adopt strategies to reduce the costs of production. These, however, can increase the environmental burden of coffee production on communities at the local, regional, and global levels. Meanwhile, governments have seen much-needed export revenues plummet, threatening infrastructure development and service provision at the national level.¹

Many of the challenges to sustainability within the sector are the result of market failures and problems associated with the provision of public goods – textbook cases for market intervention, although the institutions designed to take action in the sector have been weakened by a decade of neo-liberal reforms. Several attempts have been made to address sustainability issues, but these have been on a project-by-project basis and have suffered from a lack of inter-initiative co-operation.

The crisis may, however, have a silver lining: if properly coordinated, efforts to address the sector's structural supply and demand problems can reinforce those to improve both the environmental sustainability of production and the socioeconomic conditions of coffee growers, and vice-versa. This confluence of interests could provide the basis for a wide range of stakeholders in the sector to come together to pursue an integrated approach to sustainability – one built on a recognition of the full range of social, environmental and economic challenges facing the production of coffee.

The need and opportunity for such collaboration at the international level provided the rationale for a recent multi-stakeholder brainstorming workshop hosted by the International Institute for Sustainable Development (IISD) and the United Nations Conference on Trade and Development (UNCTAD) under the joint UNCTAD/IISD Sustainable Commodity Initiative.² The meeting brought an unprecedented range of interests together to discuss opportunities for international action towards sustainability in the sector.

The Origins of the Coffee Crisis

The coffee market has always been highly volatile – largely because farmers expand planting when prices are high, but the trees do not reach maturity until five to seven years later, by which time market conditions may be quite different. Prices have also been subject to a long-term decline reducing overall revenues to coffee producers and producer countries. The recent downward spiral in coffee prices, however, is without precedent: the composite indicator price for coffee dropped by 68 percent between 1995 and 2001.³

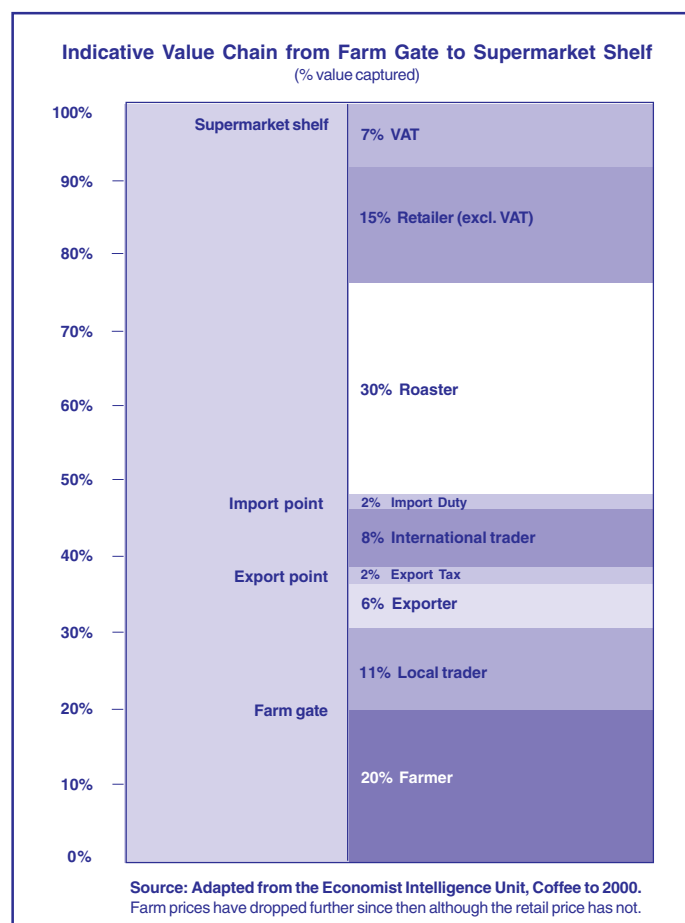
The principal cause of both the recent and long-term decline in coffee prices is oversupply. Productivity growth resulting from technological innovations and mechanised farming has increased yields and reduced production costs. Furthermore, the area of land under coffee cultivation has increased; new countries are starting to produce coffee – in ten years, Vietnam has gone from a

bit player in the coffee market to the world's second largest producer.⁴ The breakdown of multilateral market managing mechanisms to regulate global coffee production has exacerbated the situation – production has increased and prices have dropped since 1989, when the International Coffee Agreement, according to which producing and consuming nations set export quotas and a relatively high and stable price band, fell apart as a result of disagreement among its members.⁵ Although further International Coffee Agreements have been negotiated since then, none of them have been able to address price issues through quotas or other economic clauses. Reducing production, on the other hand, is not without its complications. The initial costs of diversifying out of coffee production may be beyond the reach of individual farmers, and there is no guarantee that available alternatives will prove more rewarding, in part because of restricted access to developed-country agricultural markets.

The oversupply problem has been compounded by the sluggish growth of demand for coffee. In OECD countries, which consume 70 percent of the world's coffee, coffee consumption levels are essentially stagnant. Even though low coffee prices have not been reflected in retail prices, demand can only be expected to increase marginally in response to a significant decline in price because of coffee's relatively low price elasticity.

The structure of the coffee market and the distribution of power within it also contribute to the low prices farmers receive for their coffee. The coffee supply chain – how coffee goes from the farm

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to our cups; from farmers to local traders, to their international counterparts, and then finally to roasters and retailers in consumer countries – is heavily biased against producers at almost every level. Small producers generally have limited access to credit, inputs, markets, and information, leaving them entirely unequipped to get the best possible price for their products. The chronic oversupply, coupled with imperfect competition at virtually every level of the supply chain, allows buyers to play suppliers off against each other, driving prices even lower.⁶

A rather telling statistic from Oxfam speaks volumes about the place of primary producers in the supply chain: of the US\$26.40 that it takes to buy a 1 kg bag of soluble Ugandan robusta in a UK supermarket, 14 cents go to the farmer for each kilogram of green beans. Even accounting for the loss of weight during the refining process, this represents a price inflation of more than 7000 percent!⁷

Low Prices Threaten Both Sustainable Development and the Industry Itself

The low prices are having a devastating effect on human development. Hunger levels have risen among small farmers. Children, especially girls, are withdrawn from school when incomes fall. Plantation workers have experienced further reductions in their already low wages and working conditions. The intensification of the need for economically efficient production has also served as an incentive for environmentally harmful production practices. Although traditional systems of growing coffee have a relatively low impact on the environment,⁸ non-traditional ‘technified’ production – especially mono-culture – requires the use of ecologically harmful synthetic external inputs. Such practices are marked not only by significantly lower floral, faunal, and mammalian diversity than traditional production – a 50 percent reduction in avian biodiversity has been observed under sun-growing conditions in Latin America – but can aggravate soil erosion and encourage deforestation.⁹ Efforts to maintain export revenues in a number of Latin American countries have led to policies encouraging such production. The fact that coffee is currently grown in 13 of the world’s 25 biodiversity ‘hotspots’ makes the displacement of traditional smallholdings by large, mechanised plantations a threat not only to local communities, but to the planet as a whole.

Low prices are also endangering the long-term health of the coffee industry. Given the relative price inelasticity of coffee demand, growth in consumption is likely to be more accessible via quality improvements at the retail level than reductions in retail prices. Indeed, reductions in coffee quality have at times been blamed for encouraging consumers to switch from coffee to other substitute products – a trend which aggravates oversupply. However, when international prices are low, farmers may be motivated to cut back on inputs and become lax about maintaining certain quality and production standards in order to cut costs. The resulting lower quality beans can thus set in motion a vicious, and unsustainable, cycle of oversupply, low prices and low quality coffees. Notably, it is the small producers of higher quality coffee that are finding it particularly difficult to produce profitably; plantation-grown Vietnamese robusta, for all of its environmental and quality problems, is extraordinarily competitive.

Moving forward – Ideas Raised during the Geneva Workshop

Some basic principles emerge as we try to address these problems: producers should be paid a reasonably stable price/wage that covers their production, living, and environmental costs within a

market-based framework; employment relationships should be based on core ILO conventions and local law; production practices should be environmentally sustainable; and, finally, producers should have enhanced access to credit, markets and trade information, and should receive support for diversification efforts.

Increased consumption of ‘sustainable’ coffee, the production of which conforms to certain broad levels of social fairness and environmental protection, would help promote some of these goals. ‘Sustainable’ coffee has been defined to date in terms of four broad categories: *organic coffee* is produced without the use of synthetic chemicals and under strict resource-management and crop culture practices; *fair trade coffee* is purchased by licensed companies from co-operatives of small farmers which make environmental commitments and are provided a minimum floor price and access to reasonable credit; *shade and bird friendly coffee* is grown in forest settings, in conjunction with reduced chemical input and broad ecosystem management; and finally *ethical coffee* is grown under conditions which abide by core ILO labour conventions, respect national health and safety laws and promote responsible pesticide use.

At present, however, sustainable coffees operate without harmonised standards and account for only a small fraction of total retail sales. The wide variety of so-called sustainable coffees, promotes confusion among consumers and industry which reduces potential market share and ultimately threatens the effectiveness of such systems as tools towards sustainability. Nonetheless, the market is expanding rapidly; if sustainable coffee comes to be associated with high quality, the potential is greater still.¹⁰ One of the key questions facing the international community is how such standards systems can be used to extend the promotion of sustainability to mainstream markets.

Stakeholders could develop an internationally-recognised definition of ‘sustainability’ as the confusion currently surrounding the term hinders efforts to increase consumer awareness and demand for socially and environmentally friendly coffees. There is also a possible role for pricing systems that put a value on and reward the social and environmental benefits of sustainable production. Farmers could, potentially, receive price premiums in return for their contribution to increased carbon fixation or biodiversity preservation. International contracts could be re-designed into a ‘sustainable contract’ system, so as to provide growers who apply sustainable practices with long-term contracts that would isolate them from the vagaries of price shifts. In general, large retailers, possibly under the direction of shareholder and consumer interests, could use quality and sustainability standards as a tool to help address the oversupply problem.

Producer empowerment is also a key issue – a more even distribution of market power could allow producers to capture more returns within the system. Increased information about and access to international coffee markets could enable producers to take advantage of market signals. International action could help improve producer linkages with international coffee markets. In Brazil, for example, some specialised exporter institutions have been developed; they provide information and extension services to green coffee producers and help them forge commercial relationships with foreign buyers.¹¹ Another proposal would have coffee producers’ incomes augmented by direct payments such as those received by EU farmers. Producer countries lack the resources to provide direct income supports, but may be able to convince importing country governments to finance the scheme

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Russia's Accession to the WTO: Multilateral and Domestic Policy Considerations

By Julia Selivanova

Russia's WTO accession negotiations shifted into a higher gear after the Putin administration declared accession a priority in 2000. The government views WTO membership as one of the primary steps for Russia's full integration into the international economy. It argues that by remaining outside international trade liberalisation the country loses opportunities and cannot make use of all the advantages of market restructuring reforms currently underway. The accession process helps move forward much-needed reforms in many sectors of the economy, including the creation of a legal framework, as well as other institutions necessary for the further development of a market economy. Equally important for Russia is the introduction of increased stability in trade policy as a result of adherence to WTO rules, which would enhance its chances to attract investment.

Almost eleven years after its original application to accede to the GATT was filed, Russia now seems very close to the conclusion of its accession negotiations. However, Russia and WTO Members still have opposite views on too many issues to predict when this process will be completed. The negotiations face difficulties in areas such as financial services, telecommunications and transport services, and the level of permitted agricultural support. Views also differ strongly on the maintenance of different levels of internal and export prices for energy such as gas and oil, as well as the below-world-market price that domestic industry pays for electricity.

Negotiations on Trade in Goods

Substantial progress has been made in negotiations on market access for industrial goods. Russia has already come to an agreement with several Members and hopes to be able to complete negotiations on tariffs for industrial goods in the spring of 2003. The remaining problematic issues relate to tariffs on cars, furniture, textiles, machinery and aviation.

The primary stumbling block for the Russian delegation results from WTO Members' insistence that it must bind all tariffs. Members have also asked Russia to undertake a commitment to eliminate and bind at zero (as of the date of accession) any charges on imports other than tariffs, domestic taxes applied to imports, or fees applied for services rendered. In the past, exporters had to pay many charges in addition to import tariffs, which has led to significant unpredictability in market access.

Trade in Services

Continuous bilateral talks were held on trade in services throughout last year. Negotiations identified sectors that require additional efforts to determine mutually acceptable conditions for foreign providers' access to the Russian market. Most problems in finding a compromise lie in the financial services area (insurance, banking, securities), telecommunications and transport services (especially marine and air transport). For instance, Russia is negotiating to reserve a high level of protection for its insurance services sector. It is seeking to bar foreign insurance companies from operating in Russia through branch offices and from providing main types of compulsory insurance. It also seeks to limit the participation of foreign capital in the insurance market. In the telecommunications

sector, the main disagreement concerns Russia's introduction of a 49 percent cap on foreign ownership of telecommunications companies, whereas this restriction did not exist in the past.

Agricultural Negotiations

Agricultural issues are one of the most problematic – and vital – areas of the accession negotiations. In addition to tariffs, they cover discussions on government support for the agricultural sector and export subsidies for food products.

Negotiations on the level of 'amber box' subsidies – i.e. trade-distortive support subject to reduction commitments – have been blocked for a long time, as parties cannot agree on the level of domestic agricultural support that Russia may maintain after its accession to the WTO.

Russia has shifted emphasis to obtaining acceptable terms of accession no matter how long that will take.

The initial level of bindings is calculated in practice as an annual average value of actual costs over the three latest representative years (the baseline period) at both federal and regional levels. Russia's initial proposals on amber box measures and export subsidies were based on average annual figures for the 1989-1992 base period, which showed a pre-crisis level of agricultural production support. Subsequent revisions of these proposals have so far been rejected by the main negotiating counterparts. The sternest opponents are the Cairns Group countries, which are leading exporters of agricultural products. Interestingly, while Russia considers agriculture the most crucial item in the negotiations, its current level of subsidies is almost ten times lower than the one it is proposing as a binding commitment.

The introduction of quotas on several agricultural products have further complicated the accession negotiations, as many Members view such measures as a step in the wrong direction (see page 20). It should be noted that tariff rate quotas on several products have been introduced without conducting safeguard investigations.

Energy Pricing

Some Members are concerned about trade distortions caused by state controls on the pricing of energy for domestic consumption. The effect of these controls is to depress prices for domestic industrial users. The prices on exports of natural gas are sometimes six to eight times higher than internal ones, and domestic oil prices can be four times lower than the world price. WTO Members have also been critical of the policy related to the regulation of electricity tariffs as it allows domestic companies to pay five times less for energy than the going world market price. This situation has implications for the ability of imported goods to compete on the Russian market and could also lead to a displacement of Members' products from third-country markets.

Russia continues to reject WTO Members' requests to increase domestic prices to the level of export prices for energy resources, maintaining that its current practice is not inconsistent with WTO rules. The demands to eliminate dual pricing for energy upon accession to WTO are unacceptable for Russia, as this move could

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lead to an economic collapse. Although the government is devising plans for restructuring the energy sector, including the elimination of state price control on the domestic market, Russian officials stress that this reform would be gradual and not subject to any binding commitments vis-à-vis WTO Members.

Institutional and Legislative Reform

WTO Members have expressed concern over the complexity and discriminatory character of Russian regulations. They fear that regulations and laws setting standards, certification, licensing and establishment procedures will create additional barriers to trade and nullify concessions given upon accession. Russian customs requirements are a particular target of criticism. While WTO membership is contingent on customs reform, the Russian government itself also views such reforms as a necessity.

Whereas, in general, Members' demands for a liberal trade regime correspond to Russia's long-term needs, their requests for commitments in areas such as customs valuation, technical barriers to trade, sanitary and phytosanitary regulations, trade-related intellectual property rights with no transition periods raise serious problems due to Russia's lack of institutional capacity to secure the implementation of such commitments. This insufficiency explains and justifies delays in the accession process, as numerous laws must be adopted and state agencies created or reformed in order to accommodate the needs of implementation. The Russian government has made legislative reform a priority, and launched an ambitious plan to achieve it prior to accession. An impressive amount of work has already been carried out on amending existing laws and drafting new regulations in compliance with WTO provisions. The government hopes to complete this process in the spring of 2003.

Positions of Domestic Interest Groups

Although studies show overall gains from WTO membership for the Russian economy in general, particular industries' and companies' positions regarding accession vary depending on the impact of future WTO membership on their respective industries. The most notable advantage of Russia's accession to the WTO is improved market access for Russian exports. Therefore, many well-established large companies are not threatened by accession and, furthermore, are interested in the possibility of obtaining improved market access in their existing or potential export markets on WTO Members' territories (e.g. companies in wood and paper, chemical, and steel industries). Companies in the energy and raw materials sectors are in favor of WTO membership as well. These companies are equally interested in improved investment opportunities abroad and the liberalisation of the monetary regime that would follow accession. Steel producers lobby in favor of accession because for them membership would imply a revision of trade remedy measures imposed on their products. Russian exporters assert that there are numerous trade measures of discriminatory character in place against their products; the direct loss from such measures is estimated at US\$3-4 billion a year.

The first and most straightforward counter-argument is that some industries in Russia are not ready to compete with cheaper and higher-quality products from abroad. According to a study carried out by the Russian Academy of Science, only 25 percent of Russian enterprises consider themselves ready to compete in the domestic market, 18 percent in the Commonwealth of Independent States (CIS) market, 9 percent in other foreign markets, and 10 percent are

ready for WTO accession. As competition increases, it is highly likely that the unemployment rate will rise as a large number of companies as expected to go bankrupt.

WTO opponents among Russian companies include some players in the banking, insurance and telecommunications sectors, agricultural producers, aircraft and car manufacturers, etc. Russian producers in many branches of the food and drinks industry are not pleased about WTO accession, as it would allow foreign suppliers to overwhelm the market with products at much lower prices than current ones. Russian poultry producers, for instance, are apprehensive about the accession process and the domestic poultry producer unions have several times successfully lobbied the government to ban imports. First, in 2002 the imports of American poultry were banned on the basis of SPS norms due to sanitary concerns. Later, the government imposed a quota on poultry imports as a safeguard measure (see box).

Overall, while one year ago many business leaders in Russia were still opposed to WTO accession in general, the opinions expressed presently by domestic industry representatives show that WTO membership is widely viewed as an opportunity for many sectors of the economy. While the most eager opponents of WTO accession still insist on prolonged transition periods, few now assert that Russia should not join the WTO at all, as was the case before.

Conclusion

There are many indications that it is in Russia's interest to complete the negotiations as soon as possible in order to participate as a full member in the Doha Round negotiations, which encompass many areas of crucial importance to the country. However, the amount of outstanding issues is still large and agreement has to be reached on the most controversial of them.

While Russian politicians used to specify the timeframes they sought for the conclusion of the negotiations (such as the end of 2003/beginning of 2004), they have recently laid stronger emphasis on accession on acceptable terms – no matter how long it would take to reach agreement on the right conditions. It is possible that this approach is due to the opposition that still exists against early accession to the WTO, as well as the presidential elections to be held in the spring of 2004.

Julia Selivanova is an associate working in Baker&McKenzie's WTO Practice Group in Geneva.

During the latest round of accession negotiations in early March, WTO Members strongly criticised Russia for its recently-established poultry, beef and pork quotas. They pointed out that acceding countries are expected to observe a 'standstill' with regard to imposing further import restrictions while accession negotiations are underway. Russian chief negotiator Maxim Medvedkov countered that his country would not, "as a matter of principle [...] refuse to use those instruments which are explicitly allowed, and are used, by other WTO Members."

Meanwhile, 51 US Senators and 140 House Representatives have requested President Bush to "use the tools available, including trade retaliation" to regain market access consistent with the levels of 2001.

Agricultural Negotiations:

Compensation to Small Farmers for Biodiversity Protection

By Santiago Perry

Over thousands of years, different societies have endeavoured to adapt species to the conditions of their environment through genetic improvement. In this way, they have substantially modified genetic resources for food and agriculture, which at present are made up partly of species that still grow wild and partly of species that have been domesticated or transformed by humans. While the latter now make up the bulk of our food supply, all species – and particularly those that grow in the wild – offer significant potential for the expansion and diversification of agriculture and food production. Further still, the success of any genetic improvement – whether achieved by conventional or by biotechnological methods – will depend on the availability of a broad base of genetic resources, which will make it possible for researchers to find the desired or required characteristics to obtain new varieties that are more productive and resistant to different forms of stress.

The development of large-scale commercial agriculture, with extensive specialised production zones containing few varieties on hundreds of thousands of hectares, can lead to a homogenisation of agricultural production and a consequent erosion of genetic diversity. In contrast, small farmers and rural communities in developing countries have a more diversified and heterogeneous production and play a fundamental role in the preservation of genetic resources and maintenance of their diversity. Indeed, their contribution to preserving and improving plant genetic resources for food and agriculture (PGRFA) is increasingly recognised, as is the need to create incentives to carry out that vital work. Farmers' rights were a key issue in the discussions that led to the development and the signing of the Agreement on Biological Diversity (CBD) and, more recently, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA).

Article 15 of the CBD recognises that the authority to determine access to genetic resources rests with national governments and that each country should take measures to ensure the fair and equitable sharing of benefits arising from the commercial and other use of genetic resources. Section III of the International Treaty recognises the fundamental role that farmers have played in the conservation and transformation of resources, although Article 9.2 leaves the responsibility of implementing farmers' rights in the hands of national governments, without establishing any particular specific implementation mechanism.

There are no other international agreements that would oblige governments or other entities to compensate small farmers in developing countries for their work. In other words, no binding, concrete mechanism currently exists that would require economic compensation to small farmers and rural communities in developing countries for their fundamental role in the preservation and improvement of the PGRFA.

The World Trade Organisation and Farmers' Rights

The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs) establishes the obligation to protect intellectual

property rights pertaining to plant varieties, without any reference to the rights of small farmers and rural communities regarding the genetic resources that they have helped to preserve and improve. The Agreement's emphasis on the private appropriation of the genetic improvement benefits of different food species, and its lack of specific recognition of small farmers' rights may contribute to discouraging them from preserving genetic and agricultural diversity, and may lead to homogenisation of agriculture and erosion of the genetic diversity. This is one of the risks that various

Member countries of the World Trade Organisation and many analysts see arising from the implementation of the TRIPs Agreement, which does not explicitly include provisions related to farmers' rights such as those contained in the CBD and the International Agreement on Plant Genetic Resources for Food and Agriculture.

The WTO Agreement on Agriculture is equally silent on this important topic. The Agreement has not countered the protectionist and trade-distorting trends that affect farmers in developing countries and encourage the homogenisation of agriculture.

On the contrary, distortive subsidies have been maintained, if not increased, as happened with the recently approved US Farm Act. Despite the modest commitment to reduce support agreed upon in the Uruguay Round, the lack of stricter 'green box' disciplines, the existence of the 'blue box' and the 'peace clause', as well as the special agricultural safeguard and the *de minimis* level of support allowed for developed countries have ensured a perennially high level of subsidies. Similarly, the Uruguay Round did not lead to real improvements in market access due to the way non-tariff measures were converted to ordinary custom duties (i.e. tariffs) and due to the introduction of tariff rate quotas, both of which have prevented developing countries from effectively increasing their access to developed country markets.

It is estimated that the US\$361.000 billion that OECD countries spent on agricultural support in 1999 cost developing countries US\$20,000 billion a year. Subsidies depress international prices making it difficult for the farmers of these nations to compete, and substantially reduce their incomes and profitability. The poor people who live in the countryside in the developing world can hardly adopt environmentally-friendly productive practices or maintain a diversified and heterogeneous agricultural production. The lack of profitability of their plots often forces them to abandon the land and colonise humid tropical forest zones where they cut the trees to plant crops for their livelihood. In any case, it is difficult – if not impossible – for them to fulfil their role in the preservation and improvement of the PGRFA. As a consequence genetic diversity and the genetic improvement process required to feed an increasing world population are severely endangered.

Establishment of a Compensatory Mechanism

Under present circumstances the preservation of plant genetic resources for food and agriculture and their genetic improvement do not have a promising future. Industrialised countries' agricultural subsidies and other protections contribute to the erosion of genetic

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diversity and promote production practices that harm the environment and biodiversity. There is no doubt that the elimination of these distortions is of the utmost importance to stop the trend towards ever less sustainable global agriculture. It is thus crucial that WTO Members agree on ways that would ensure a rapid continuation and deepening of the agricultural reform process, as well as eliminate any doubt about the incompatibility between the provisions of the TRIPs Agreement and those of the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture.

Nevertheless, until such agreements are reached and the reform process is complete, it is necessary to put into place a mechanism that encourages small farmers and rural communities in developing countries to continue to preserve and improve PGRFA. This mechanism must be binding or obligatory, and must allow economic compensation to these producers for the work that they are carrying out for the community and for the future of the world's economy. In summary, it must contribute to making their diversified and heterogeneous agricultural practices profitable enough to ensure the survival of such production methods.

The mechanism proposed to attain these objectives is as follows:

Each year, industrialised countries shall contribute financial resources – equivalent to a certain percentage of the total support they grant their farmers – and these resources shall be used for direct support to those small farming communities in developing countries that contribute to the preservation and/or improvement of PGRFA. This share could be established by agreeing to a percentage of each developed country's total AMS¹ plus support provided under the 'blue' and 'green' boxes.

This mechanism has the following advantages:

- It contributes to preservation of PGRFA through encouraging small farmers to maintain well-diversified and heterogeneous productive systems, which will help contain loss of biodiversity.
- It harmonises the WTO's agriculture-related rules and disciplines with the CBD and the ITPGRFA, because it includes a WTO recognition of farmers' rights to establish a mechanism that grants them economic compensation for the role that they play in the preservation of genetic diversity.
- It provides 'compensation' for the distortions produced by agricultural subsidies, because it forces developed countries to pay for the subsidies that they grant to their domestic farmers, and those resources go to small farmers in developing countries.
- It is of transitional nature, because as developed countries reduce subsidies to their farmers, the proposed mechanism decreases the compensatory payments and the role that they play in proportion. When the subsidies are eliminated – and we should not forget that this must continue to be a fundamental objective of the WTO – the 'compensation' will automatically disappear.

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ENDNOTES

¹ AMS is the Aggregate Measurement of Support recognised in the AoA as the support provided under the 'amber box' of trade-distorting subsidies.

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in return for recognition of their agricultural non-trade concerns in the WTO.

Systemic support mechanisms to improve producers' access to credit and risk management strategies could protect them from predatory creditors and fill the void left by dismantled national coffee boards. Coffee co-operatives, producer organisations, and other such 'non-bank' organisations need assistance to expand the provision of credit and financing to small producers. Such financial support systems, moreover, could be a powerful tool to encourage sustainable production. For instance, a credit facility proposed by the Commission for Environmental Co-operation could be established to provide reasonable or even guaranteed loans to producers of sustainable coffee. Variable-interest rate financing could also be used to cushion farmers from the effects of large shifts in the market price.

Further research will be required into the linkages between the issues and the potential effects of implementing schemes such as those proposed. Nevertheless, the need for action is urgent. The crisis in the sector remains an unmitigated disaster for the millions of families whose very lives depend on coffee. It poses a serious challenge to the premise upon which the international trading system is based – in spite of the fact that the sector is unaffected by OECD producer subsidies, liberalised trade has been anything but the silver bullet that cures all ills. Some of the most economically efficient modes of production can both damage the environment and compromise the quality of coffee, threatening the long-term success of the industry itself. Yet, as has been observed, the existing situation offers an opportunity for concerted multi-disciplinary, multi-actor action. Although a single solution to achieving sustainability in the sector is unlikely, efforts following from those proposed during the recent UNCTAD/IISD workshop could go a long way towards making the coffee market work more effectively for all stakeholders along the supply chain, and making it an engine for sustainable development.

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ENDNOTES

¹ For example, coffee export earnings in El Salvador fell from US\$311 million in 2000 to US\$130 million in 2001 and an estimated US\$100 million in 2002. *Making Global Trade Work for People*. London and Sterling, VA: Earthscan, 2002

² See Sustainable Commodity Initiative website online at <http://www.iisd.org/trade/commodities/>

³ *Making Global Trade Work for People*

⁴ Oxfam Great Britain, *The Coffee Market – A Background Study*. Oxfam, 2001

⁵ *Mugged: Poverty in your coffee cup*, Oxfam International, 2002.

⁶ Oxfam Great Britain, *The Coffee Market – A Background Study*

⁷ *Mugged: Poverty in your coffee cup*

⁸ Merle D. Faminow and Eloise Ariza Rodriguez, *Biodiversity of Flora and Fauna in Shaded Coffee Systems*. CEC, 2001

⁹ Ibid.

¹⁰ Daniele Giovannucci, *Sustainable Coffee Survey of the North American Specialty Coffee Industry*. Conducted for The Summit Foundation, the Nature Conservancy, North American Commission for Environmental Co-operation, Specialty Coffee Association of America. World Bank, May 2001

¹¹ <http://www.qualicafex.com/>

Making WTO Dispute Settlement Work for Developing Countries

More than a hundred participants attended a dialogue on *Making the WTO Dispute Settlement System Work for Developing and Least-developed Countries* hosted by the International Centre for Trade and Sustainable Development on 7 February 2003.

The principal issues explored during the meeting were the reasons why the WTO's dispute settlement system is not working effectively for developing countries and how those shortcomings could be addressed.

Four main factors explain why developing countries have been subject to an increasing number of WTO complaints from developed countries, but have brought fewer cases against developed countries than would be predicted from their respective shares in world trade. First – due to the scope and detail of WTO rules, the appeals, implementation and compliance procedures, the spiralling number of cases and the volumes of pages of WTO judicial reports – the demand on human resources has skyrocketed for a WTO Member wishing to defend its trading rights. Second, knowledge in WTO law is unevenly distributed and developing countries typically depend on private counsel in Washington, Brussels or Geneva that charge fees ranging from US\$200-US\$600 an hour. Third, the system of WTO remedies is structured to the benefit of large developed countries. Fourth, even though developing countries often have 'high stakes' legal claims, the cost of defending their trading 'rights' may not be worth the benefits on account of weak remedies.

The conference explored strategies that developing countries could pursue. These strategies include negotiating revisions of WTO remedies as part of DSU review, so that developing countries would have more leverage in bringing or settling a WTO claim. Under current circumstances, the remedies available to a successful complainant are the removal of the offending measures, or – if the measure is not removed – compensation (usually in the form of more market access) and, as a last resort, trade sanctions. These remedies are not adequate for disputes between litigants of unequal economic weight. Revised remedies that were considered included monetary damages, retrospective damages, and attorneys fees awarded to developing countries.

To counter the disadvantage of uneven trade law expertise and high costs, participants proposed that developing countries could pool their resources through regional trade law centers, such as the new Trade Law Center for Southern Africa. There is potential for co-ordination with academics to support the work of developing country missions in Geneva. Greater linkages could also be created between developing country litigants and civil society groups, including consumer organisations in developed countries (this strategy was successfully used in the EC-Sardines case, see Bridges Year 6 No.7, page 15). In addition, the Advisory Centre on WTO Law can help developing countries to bring and defend cases at lesser cost.

The possibility of interpreting WTO Agreements from a development perspective (as highlighted in their preambles) was evoked as one way of strengthening the development dimension of dispute settlement rulings. Examples of how developing countries have sought to strengthen their hand included Brazil's reorganisation of its administration for WTO matters, co-ordinating a WTO law group involving lawyers in Geneva and its capital, which works in co-operation with the Brazilian private sector.

Panelists and discussants included Arthur Appleton (Lalive & Partners), Péter Balás (Chair of the DSB Special Session), Bernard Chisanga (Zambia), Thomas Cottier (World Trade Institute), Mateo Diego-Fernandez (Mexico), Natalie McNelis (Wilmer Cutler & Pickering), Bernard O'Connor (O'Connor & Co.), Ernst-Ulrich Petersmann (European Univ. Institute), Asif Qureshi (Univ. of Manchester), Koteswara Rao (India), Frieder Roessler (ACWL), Gregory Shaffer (Univ. of Wisconsin) and Celso de Tarso Pereira (Brazil). For more information, see: <http://www.ictsd.org/dlogue/2003-02-07/03-02-07-desc.htm>

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MEETINGS OF WTO BODIES

Apr. 4	Trade Negotiations Committee
Apr. 10-11	Dispute Settlement Body, special session*
Apr. 14-16	Negotiating Group on Market Access
Apr. 15	Dispute Settlement Body
Apr. 28	Sub-Committee on Least-developed Countries
Apr. 29-30	Committee on Trade and Environment
Apr. 29-30	Council for TRIPs; special session on the multilateral register of geographical indications for wines and spirits*
May 1-2	Committee on Trade and Environment, special session*
May 5-7	Negotiating Group on Rules
May 8-9	Committee on Subsidies and Countervailing Measures
May 8-9	Trade Negotiations Committee
May 12-16	Council for Trade in Services, special session*
May 13	General Council on Coherence – World Bank/IMF
May 13	Working Group on Trade and Technology Transfer
May 15-16	General Council

*Special sessions denote negotiations mandated in the Doha Ministerial Declaration.

OTHER MEETINGS

Apr. 12-13 Washington	Annual Spring Meetings of the World Bank and the International Monetary Fund http://www.imf.org/external/spring/2003/index.htm
Apr. 24-26 Beijing	WIPO Summit on Intellectual Property and the Knowledge Economy http://www.wipo.int/summit-china
Apr. 28-30 Paris	OECD Forum 2003/OECD Ministerial Council. Contact: John West, tel: (33-1) 4524-8025, e-mail: john.west@oecd.org ; www1.oecd.org/forum2003/
Apr. 29 to May 9 New York	Eleventh session of the UN Commission on Sustainable Development Contact: CSD Secretariat, tel: (2-212) 963-3170, e-mail: dsd@un.org , web: http://www.un.org/esa/sustdev/csd/csd.htm
May 12 Brussels	Joint ACP-EU Ministerial Trade Committee on the EPA negotiations Contact: ACP Secretariat, tel: (32-2) 743-0600, e-mail: info@apsec.org , web: www.apsec.org

DOCUMENTS AND RESOURCES

Assunção, Lucas and Zhang, ZongXiang. November 2002. Climate Change Policies and the WTO. UNCTAD. Geneva

Bonaglia, Federico and Fujasaku, Kiichiro. 2002. Trading Competitively: Trade Capacity Building in Sub-Saharan Africa. OECD. Paris

Easterly, William and Levine, Ross. August 2002. Tropics, Germs and Crops: How endowments influence economic development. National Bureau of Economic Research. Cambridge, Mass.

Runnalls, David; von Moltke, Konrad and Yang, Wanhua. 2002. Trade and Sustainability: Challenges and Opportunities for China as a WTO Member. IISD. Winnipeg

UNDP et al. February 2003. Making Global Trade Work for People. Earthscan Publications. London

WTO Comm. on Agriculture. 18 March 2003. First Draft Modalities for the Further Commitments – Revision (TN/AG/W/Rev.1)

WTO Council for TRIPs. 18 February 2002. Decision on the Implementation of Article 66.2 of the TRIPs Agreement (IP/C/28)

NEW from ICTSD

Mangeni, François. February 2003. Strengthening Special and Differential Treatment in the WTO Agreements: Some Reflections on the Stakes for African Countries. ICTSD. Geneva (*Disponible en français également.*)

Shaffer, Gregory; Mosoti, Victor and Qureshi, Asif. March 2003. Toward a Development-Supportive Dispute Settlement System in the WTO. ICTSD. Geneva

Doha Round Briefings

The International Centre for Trade and Sustainable Development in collaboration with the International Institute on Sustainable Development has prepared a 'midterm review' of the current WTO negotiations consisting of a series of 13 Doha Round Briefings on:

- Implementation-related Issues and Concerns
- Agriculture
- Trade in Services
- Market Access for Non-Agricultural Products
- Intellectual Property Rights
- The Singapore Issues
- Negotiations on WTO Rules
- Review of the Dispute Settlement Understanding
- Trade and Environment
- Trade, Debt and Finance
- Trade and Transfer of Technology
- Technical Assistance and Capacity-building
- Special and Differential Treatment

The Briefings provide a comprehensive overview of the current status of the negotiations, as well as other mandates arising from the Doha Ministerial Conference. They are available on the ICTSD and IISD websites (www.ictsd.org and www.iisd.ca), as well as in hard copy from the two organisations.