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Facts and Figures¹

- The International Cotton Advisory Committee (ICAC) estimates at US\$6 billion the combined support granted to the cotton sector by the US, the EU and China in 2001/2002, which corresponds to total world exports in that year.
- US cotton subsidies alone exceed by 60 percent the total GDP of Burkina Faso, where nearly two million people depend on cotton production. Nearly half of US support goes to a few thousand growers with farms of more than 1,000 acres, penalising West and Central African farmers whose plots average five acres and who live on less than a dollar a day.
- The EU's subsidies per kilogram of cotton are the highest in the world, i.e. 160 and 180 percent of the market price for Greek and Spanish farmers respectively.
- According to ICAC, cotton would have fetched 31 cents more per pound in 2001/2002 without subsidisation. Even if demand dropped due to the higher prices, West and Central African cotton would be highly profitable under such conditions.

Elimination of Cotton Subsidies: A Development Deliverable for Cancun

Amidst slipping deadlines and increasing mistrust in the Doha Round's ability to provide development benefits, four African countries have come up with a concrete deliverable for the WTO's Ministerial Conference in Cancun next September: a rapid phase-out of all export and production support for cotton.

On 10 June, President Blaise Compaoré of Burkina Faso is expected to present the WTO's Trade Negotiations Committee with a new proposal for the Doha Round's agricultural negotiations entitled *Poverty Reduction: Sectoral Initiative in Favour of Cotton*. The initiative calls for two 'early harvest' decisions to be taken at the Cancun Ministerial:

- the establishment of "a mechanism for phasing out support for cotton production with a view to its total elimination", which would provide for "substantial and accelerated reductions in each of the boxes of support for cotton production. This decision should set a specific date for the complete phase-out of cotton production support measures"; and
- the establishment of transitional measures for least-developed countries (LDCs): "until cotton production support measures have been completely eliminated, cotton producers in LDCs should be offered financial compensation to offset the income they are losing, as an integral part of the rights and obligations resulting from the Doha Round."

According to the proposal – co-sponsored by Benin, Burkina Faso, Mali and Chad, and supported by 13 other West and Central African countries¹ – the elimination of subsidies for cotton production and export is their "only specific interest" in the Doha Round, at the launch of which WTO Members committed themselves to "addressing the marginalisation of least-developed countries in international trade and to improving their effective participation in the multilateral trading system." The sponsors see the initiative as "a practical manifestation of the Doha objectives for cotton, which plays an essential role in development and poverty reduction in West and Central African countries."

Why West and Central Africa?

While the elimination of cotton subsidies would benefit all low-cost cotton producers, and the transitional compensation measures would apply to all least-developed countries, West and Central African countries – where more than 90 percent of cotton is grown for export – are among those that suffer most from the high level of subsidisation in the sector.

Over ten million people in the region depend directly on cotton production. Cotton exports represent around 30 percent of total export earnings and more than 60 percent of earnings from agricultural exports. Over the past two decades, West and Central African countries have made major efforts to improve both cotton quality and production efficiency. State marketing bodies have been restructured and farmers' loan mechanisms have been improved. As a result, the region's cotton producers are among the most competitive in the world: they can produce a kilogram of high quality cotton at half the price it would cost in the US. However, millions are currently affected by the steady fall in prices pushed down by governmental manna to growers in a handful of countries (see opposite). In a telling point, West and Central African countries' cotton export revenue decreased by 31 percent between 1999/2000 and 2001/2002 even while the region's production increased by 14 percent. The revenue drop was not due to lack of market access, but to subsidisation making world market prices unsustainably low.²

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Bridges

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Compensation Mechanism for LDCs

While supplementary market access concessions for other products or increased import tariffs are the customary WTO methods of compensating a Member for trade losses, the cotton initiative signatories argue that neither will work for cotton-producing LDCs. The first alternative would bring no benefits due to LDCs' lack of alternative export products, as well as the preferential access they already have to most major markets. The second possibility (i.e. raising import tariffs for products from subsidising countries) would only "right a wrong through another wrong", and impact more heavily on the countries which impose such customs tariffs, as "the majority of their imports are essential for development and poverty reduction."

Therefore, "the only practicable short-term measure is contractual financial compensation as an integral part of rights and obligations, as well as the balance of commitments resulting from the Doha Round. [...] Such financial compensation should be calculated in proportion to the subsidies granted by countries which support their cotton production. It will decrease (terminate) as and when these subsidies are reduced (abolished)." When defining the total amount of compensation, the direct and indirect effects of support for cotton production on the economies of LDCs should be taken into account, and the compensation should be sufficiently high to constitute an additional incentive to decrease or phase out subsidies as soon as possible.

Enlarge 'Special Products' Category & Define Subsidy Boxes

In addition to the elimination/compensation proposals, the initiative's sponsors call for an extension of the concept of 'special products' envisaged in the latest draft for agricultural negotiating modalities (Bridges Year 7 No.2, page 5). Instead of being restricted to 'defensive measures' such as higher tariffs and quotas, the category should include products of 'offensive interest' to developing countries, i.e. those whose export "is essential for agricultural development or the survival of the rural population in LDCs, as is the case for cotton."

While the proposal recognises the general validity of both 'non-trade concerns' and green box³ support, it nevertheless makes a clear distinction between developed and developing countries in the case of cotton: "Whereas cotton clearly has non-trade objectives in developing countries – due to its role in food production, rural development and poverty reduction – this is not the case in industrialised countries. In the latter, cotton does not have any role related to food security or protection of the countryside neither is it essential for the livelihood of a decentralised or agricultural population. Cotton production can easily be replaced by other agricultural products that are more profitable on global markets."

The signatories also call for "a strict and mandatory definition of the various subsidy boxes", and warn that they will not be able to accept "any outcome of the negotiations that allows the WTO disciplines to be circumvented by reclassifying subsidies from one box to another. A substantial reduction in the amber and blue boxes, export subsidies, and the *de minimis* level in developed countries would be a step in the right direction."

After the presentation to the Trade Negotiations Committee on 10 June, the initiative will be discussed at the 30 June Special Session of the Committee on Agriculture (see page 14 for an update on the US cotton subsidy dispute in which Benin and Chad are third parties).

ENDNOTES

¹ TN/AG/GEN/4. Other countries supporting the cotton initiative include: Cameroun, Cap-Vert, the Central African Republic, Côte d'Ivoire, Gambia, Ghana, Guinea Bissau, Liberia, Niger, Nigeria, Senegal, Sierra Leone and Togo.

² The combined support granted to the cotton sector by the US, the EU and China in 2001/2002 amounted to US\$6 billion, which corresponds to total world exports in that year. Of this, the US provided nearly half (US\$2.3 billion) and the EU almost US\$700 million. China's cotton subsidies (US\$1.2 billion in 2001/2002) are being restructured as a result of its WTO accession, including the total elimination of export subsidies.

³ The 'green box' refers to subsidies considered at most minimally trade-distortive. The use of green box measures is unlimited and not subject to reduction commitments.

The WTO Should Drop the Investment Issue after Cancun

Martin Khor

At the Singapore WTO Ministerial in 1996, ministers agreed to form a working group to study the relationship between trade and investment. Despite the explicit caveat that there was *no commitment to negotiate an agreement*, for the next five years major developed countries pressed hard to transform the WTO Working Group on Trade and Investment into a forum that would negotiate an investment agreement in WTO. However, the majority of developing countries were either opposed or extremely reluctant to agree to this. They remain so today.

At the Doha Ministerial, the opposition of developing countries continued but – as a result of pressures and tactical measures, including the convening of a marathon Green Room session on the last night – a draft Declaration was issued on the morning of 14 November, which in para. 20 “recognised the case for a multilateral framework” on investment and agreed that “negotiations will take place after the fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.”

At the final formal session, the Chairman issued a statement underlining that his understanding was that at the fifth WTO Ministerial Conference

“a decision would indeed need to be taken by explicit consensus, before negotiations on trade and investment and trade and competition policy, transparency in government procurement, and trade facilitation could proceed. In my view, this would also give each Member the right to take a position on modalities that would prevent negotiations from proceeding [after the Ministerial] until that Member is prepared to join in an explicit consensus.”

According to the renowned authority on international trade, Bhagirath Lal Das, the Chairman’s statement has legal standing and force in the WTO context: “Decision by consensus is defined in the footnote 1 to Article IX of the Marrakesh Agreement Establishing the WTO as a situation when ‘no Member, present at the meeting when the decision is taken, formally objects to the proposed decision’. Thus technically speaking, even one Member can withhold consensus on modalities and thereby withhold the negotiation in this area.” Therefore, from a legal viewpoint, the two texts (the Declaration and the Chairman’s statement) have to be read together, and the Doha Ministerial has not mandated that there will be negotiations on an investment agreement. Moreover, although the Declaration recognises the need for a multilateral framework, it does not say what kind of framework (in substance or whether legally binding or non-binding) nor what is the appropriate venue.

Post-Doha Work in the WTO

Since Doha, the Working Group has proceeded to discuss the issues mandated by Doha for clarification, as well as other issues, notably the obligations of foreign investors and of their home states (following a paper submitted on this by a group of developing countries).

However, a reading of the 2002 report of the Working Group clearly reveals that there is no consensus among the Members. According to the report, some Members have doubts regarding the WTO’s suitability as a forum for discussing an issue whose relationship with trade is only tenuous. On scope and definition, there is a major split between countries such as the United States that want a comprehensive coverage, including portfolio investment, and most other countries, which want to restrict the discussion to foreign direct investment. There are many points of disagreement regarding development provisions, with many developing countries wanting maximum flexibility for development policies whilst developed countries seek a much more restrictive approach. Developed countries insist that non-discrimination is a core principle of any investment agreement, while several developing countries doubt its appropriateness in relation to investment. Some countries maintain that investor and home country obligations must be included for the sake of having some balance, whilst others do not think they even belong in an investment framework.

Since the Working Group’s work is near completion, and hardly a few months remain before Cancun, reaching an explicit consensus on modalities – with so many wide and serious disagree-

ments on all the key issues – would appear to be an impossibility. It remains to be seen if the proponents can still ‘manufacture’ a consensus even when substantially there is none.

The Strategic Aims of the Proponents

Among the main aims of developed countries is to eventually establish binding international rules on investment that would:

- provide foreign investors the right to enter countries without conditions and regulations, and to operate in the host countries without most conditions now existing, and be granted ‘national treatment’ and MFN status;
- prohibit or discipline performance requirements (i.e. regulating equity, obligations for technology transfer, investment incentives, etc);
- prohibit the regulation of mobility of funds into and out of a country;
- establish strict standards of protection for investors’ rights in relation to ‘expropriation’ of property (the NAFTA experience is very pertinent: expropriation is likely to include ‘indirect expropriation’ such as the loss of goodwill and future revenue/profits of a company or an investor, as a result of a government measure or policy); and
- expose governments to dispute settlement proceedings in the WTO for violations such as the use of prohibited regulations or conditions.

This design is in the original 1995 EC paper, which proposed the agreement in the WTO, and the same elements can be found in the OECD draft for a multilateral agreement on investment (MAI), which remains the prototype of the proposed investment agreement.

Due to the unpopularity of this extreme model, including with citizens in the North who successfully opposed the MAI, some of the major proponents are now offering watered-down versions. These versions would

Continued on page 4

not be so extreme, and would not enable the proponents to reach the ultimate goals immediately. Instead, step-by-step or stage-by-stage approaches are now proposed, whereby WTO Members will agree to negotiate an agreement, which leaves them a choice of which sectors and how fast to liberalise (this is presumably what the 'GATS-type' approach refers to). The idea is to draw countries to agree to the concept that investment rules belong to the mandate of WTO; and then to draw them into an agreement which appears not to be so harmful and where there is some space to make choices. Pressure would be applied later for more and more liberalisation in terms of sectors and depth of policy measures.

Thus, although the current proposals of the EU in the WTO are 'different' from the original models, in reality the elements remain the same, albeit in a diluted form. Moreover, it is clear that the US would advocate a 'higher standard' agreement, which would be close to the MAI model. In short, it is not true that the proposed framework in the WTO differs substantially from the original proposals.

Analysis and Proposed Positions

An international agreement on investment rules of the type being proposed is ultimately designed to maximise foreign investors' rights whilst minimising the authority, rights and policy space of governments and developing countries. This has serious consequences in terms of policy-making in the economic, social and political spheres, affecting the ability to plan in relation to local participation and ownership, balancing of equity shares between foreign and local owners (and between local communities), the ability to build capacity of local firms and entrepreneurs, etc. It would also weaken the bargaining position of government vis-à-vis foreign investors (including portfolio investors).

Due to the particular features and effects that foreign investment can have, there is a need for government to retain the option for regulation. Among the possible effects are:

- impacts on balance of payments (especially increased imports and outflow of investment income, which has to be balanced by export earnings and new capital inflows; if the balance is not attained naturally, it may have to be attained or attempted through regulation);

- impacts on the competitiveness and viability of local enterprises;
- impacts on the balance between local/foreign ownership and participation in the economy; and
- impacts on the balance of ownership and participation among local communities in society.

An investment agreement of the type envisaged would make it much more difficult to have a policy that regulates in favour of the concerns above. In other words, it would significantly reduce the space needed for development policy in developing countries.

Proponents argue that an investment agreement will attract more FDI to developing countries. There is no evidence of this. FDI flows to countries that are already quite developed, or where there are resources and infrastructure or a sizable market, such as China, which attracts FDI like a magnet even in the absence of high standards of rules.

A move towards a binding multilateral investment agreement is dangerous as it would threaten options for development, social policies and nation-building strategies. Developing countries should thus focus on preventing the investment issue from entering a 'negotiating' mode, because once a decision is taken to start negotiations, it would be very difficult to prevent an investment agreement of the kind advocated by the developed countries.

Reasons against the Launch of Investment Negotiations

Investment is not a trade issue, and thus bringing it within the WTO's ambit would be an aberration and could cause distortion to the trade system. The principles of the WTO (including national treatment, MFN) that apply to trade in goods are inappropriate when applied to investment. Instead, their application would be damaging to the development interests of developing countries, which have traditionally had the freedom and right to regulate the entry and conditions of establishment and operation of foreign investments. Restricting these rights would cause adverse repercussions. An agreement in the WTO is likely to be of the type proposed by developed countries, i.e. profoundly anti-development.

Whilst Doha recognised 'the case' for a multilateral framework on investment, it can be argued that a case can also be recognised against a multilateral framework, depending on what the framework is. If the framework is located in the WTO, with the elements and obligations proposed by the advocates, and based on the principle of "national treatment", it would be an imbalanced one and thus should not be accepted. A more appropriate and balanced framework would aim to regulate corporations (instead of governments); it would not necessarily be legally-binding; and could be located in the UN rather than the WTO.

The WTO agenda is already over-crowded, with delegations unable to cope. Introducing investment and other 'Singapore issues' on the negotiating agenda would divert Members' time and resources from the urgent uncompleted tasks, including implementation and other development issues that they had pledged to give priority to, but on which developed countries have so far not shown a commitment to make progress on.

The establishment of an investment agreement which in fact gives unprecedented rights to foreign investors would cause the already imbalanced WTO system to become much more imbalanced. Since most international investments are owned by developed countries, they will obtain an overwhelming share of the benefits, whilst developing countries as a whole would bear the costs, including the loss of flexible policy spaces for development. The proposed investment framework would not be reciprocal in benefits.

For these reasons, and the fact that there is no consensus on the substance of the issues even as Cancun draws near, ministers should not take a decision to launch negotiations on investment at Cancun. They should mandate the continuation of the study and clarification process. Or better still, they should come to the conclusion that the investment issue has been divisive and has for too long diverted the attention of the WTO Membership from the real issues of trade and development, and that the issue should be dropped after Cancun.

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The Northern WTO Agenda on Investment: Do as We Say, Not as We Did

Ha-Joon Chang and Duncan Green

When challenged at a seminar in March 2003 to name one country that had developed on the basis of not discriminating between domestic and foreign investors, US trade negotiator William Tagliani replied somewhat plaintively “Korea?” His reply demonstrates the historical vacuum in which much of the WTO debate is conducted, in particular over whether to commence negotiations on a Multilateral Investment Agreement (MIA) at the Cancun Ministerial in September 2003.

Korea is hardly the best advert for the benefits of non-discrimination. Up until the early 1970s, when the level of Foreign Direct Investment (FDI) was low, the Korean government was indeed quite willing to allow 100 percent foreign ownership, especially in assembly industries in the free-trade zones established in 1970. However, as the country tried to move into more sophisticated industries, where the development of local technological capabilities was essential, it started to restrict foreign ownership more firmly.¹

To begin with, there were policies that restricted the sectors that transnational corporations (TNCs) could enter. Until as late as the early 1980s, around 50 percent of all industries and around 20 percent of the manufacturing industries were still ‘off-limits’ to FDI.² Even when entry was permitted, the government tried to encourage joint ventures, preferably under local majority ownership, in an attempt to facilitate the transfer of core technologies and managerial skills.

In sectors where FDI was permitted, foreign ownership above 50 percent was prohibited except in areas where FDI was judged to be of “strategic” importance. These covered only about 13 percent of all the manufacturing industries.³ Foreign ownership remained restricted in industries where access to proprietary technology was deemed essential for further development of the industry, and industries where the capital requirement and/or the risks involved in the investment were very large. As a result, as of the mid-1980s, only 5 percent of TNC subsidiaries in Korea were wholly-owned, whereas the corresponding figures were 50 percent for Mexico and 60 percent for Brazil, countries that are often believed to have had much more ‘anti-foreign’ policy orientations than that of Korea.⁴

Policy measures other than those concerning entry and ownership were also used to control the activities of TNCs in accordance with national developmental goals: technology brought in by the investing TNCs was carefully screened to check that it was not overly obsolete and that the royalties charged to the local subsidiaries were not excessive; investors that were more willing to transfer technologies were given preference in the selection process, unless they were too far behind in terms of technology;⁵ and local contents requirements were quite strictly imposed, in order to maximise technological spill-overs from TNCs’ presence.

The overall result was that, together with Japan, Korea has been one of the least FDI-dependent countries in the world. Between 1971-95, FDI accounted for less than 1 percent of total fixed capital formation in the country (data from UNCTAD, various years), while the developing country average for the 1981-95 period (pre-1980 figures are not available) was 4.3 percent.

Korea may be a well-known example of a successful developmental state (except perhaps among WTO negotiators), but a survey of the history of now-developed countries in North America, the European Union and elsewhere in East Asia provides similar lessons. When they were net recipients of foreign investment, all of today’s developed countries imposed regulations on foreign investment in order to ensure that such investment contributed to their long-term national development. These findings are particularly important because the main *demandeurs* of investment negotiations in the WTO, the EU and Japan, insist that the WTO

‘core principle’ of national treatment, (i.e. that treatment of foreign investors should be no less favourable than that for domestic firms), should be a central aspect of any MIA. Almost all of the now-developed countries restricted the entry of foreign investment. Very often, the entry restrictions were directly imposed, ranging from a simple ban on entry into particular sectors to allowing entry on certain conditions (e.g. requirements for joint ventures, ceilings on foreign ownership). Bans on entry created space for local producers to establish themselves, while conditional entry made it possible to extract more benefits from permitted foreign investment. In some cases, entry was also restricted through informal mechanisms that prevented hostile takeovers by foreign investors.

When entry was permitted, governments placed numerous performance requirements on investors in order to maximise the benefits to their economies. Even when there were no formal performance requirements, most developed countries used them informally.

Some of the requirements were imposed for balance of payments reasons, such as export requirements, foreign exchange balancing requirements, or ceilings on licensing fees. However, most were put in place in order to ensure that local businesses picked up advanced technologies and managerial skills from their interaction with foreign investors, either through direct transfer or

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Since non-discrimination is part of the WTO’s institutional DNA, however much flexibility is initially provided under the MIA, there will be an inevitable tendency for negotiators to chip away at developing countries’ national policy space in this and successive rounds of negotiations, forcing them into a developmentally premature application of national treatment to foreign direct investment.

through indirect spill-overs. Local content requirements and explicit requirements for technology transfer were the most obvious means to ensure this.

Some countries, such as Taiwan, went further and explicitly required foreign investors to help their local suppliers to upgrade their technology. In the late 19th Century, the USA even banned the employment of foreign workers. Bans on majority foreign ownership or the encouragement of joint ventures were also ways to encourage the transfer of key technologies and managerial skills.

The exact strategies that were used to regulate foreign investment varied from country to country, ranging from the very welcoming (but not *laissez-faire* and increasingly selective over time) strategy of Ireland to the very restrictive strategies of Finland, Japan, Korea, and the 19th-century USA in certain sectors (especially finance and navigation). In other words, there was no 'one-size-fits-all' model of foreign investment regulation.

However, one common factor is that they all took a *strategic approach* to foreign investment. This meant that different sectors could be subject to different policies at the same time. For example, Korea and Taiwan applied liberal policies towards FDI in labour-intensive industries while applying very restrictive policies towards FDI in the more technologically advanced industries, where they wanted to build up local technological capabilities.

Such a strategic approach also meant that their policy stances changed over time, according to their evolving economic structure and external conditions. Only when domestic industry reached a certain level of

sophistication, complexity, and competitiveness did the benefits of non-discrimination and liberalisation come to outweigh the costs. As a result, countries generally moved towards a greater degree of non-discrimination and liberalisation as they developed. In that sense, non-discrimination is better seen as an *outcome* of development, not a cause.

Would these development success stories have been possible under the current WTO rules, let alone those likely to emerge from the current negotiations under the General Agreement on Trade in Services (GATS), or under the MIA proposed by the EU and Japan? The answer is probably not (although nothing in the WTO debate is ever black and white).

A number of measures, for example the French government's use of foreign exchange to manage FDI flows, or the UK's use of informal performance requirements, or South Korea and Taiwan's use of local content requirements are already illegal under the Agreement on Trade-related Investment Measures (TRIMs).

The GATS case is less clear cut, but more all pervasive, since according to the World Bank, 80-85 percent of restrictions affecting international investment are maintained in service sectors.⁶ A number of regulations in the services sector are already coming under severe pressure in the current round of GATS negotiations. A small sample of the EU's requests to developing countries illustrates this:⁷

- Chile is being asked to drop its rule that foreign investors should employ 85 percent of staff of Chilean nationality, when the US formerly insisted on 100 percent US nationality
- Pakistan is being pressured to drop its requirement of maximum foreign equity participation of 51 percent, when Japan put a 50 percent ceiling on foreign ownership of 33 key industries
- Colombia is being asked to drop its preferential treatment of Colombian companies during the disposal of state holding companies, when France reserved shares for French investors during privatisations.

The impact of the MIA is more likely to resemble that of GATS than of TRIMs. Further reduction of policy space for development is likely on a creeping basis if investment rules are extended via an MIA.

When pressed on this issue, EU negotiators respond that the MIA need not harm developing countries, as it can be negotiated in such a way that there is sufficient flexibility to guarantee developing countries all the 'policy space' they require.⁸ Especially emphasised is the GATS-style positive list approach, where the MIA would apply only to sectors that countries explicitly designate. This way, the proponents argue, countries can shut out as many sectors as they like from foreign investment for as long as they wish. For example, Fabien Lecroz, the EC negotiator, told NGOs at a Geneva seminar on 20 March 2003: "You could be a WTO member, a signatory of an investment agreement, and keep your market completely closed to FDI, and with no national treatment. That is your policy choice."

One immediate question that arises is: if so much flexibility is allowed, why bother with an agreement? Another question is 'how long would it last?' Since non-discrimination is a "core principle" of the WTO, part of its institutional DNA, however much flexibility is initially provided, there will be an inevitable tendency for negotiators to chip away at developing countries' national policy space in this and successive rounds of negotiations, forcing them into a developmentally premature application of national treatment to FDI. The EU's recent requests under the GATS process amply justify such fears.

Furthermore, the flexibility that is offered by the proponents of an MIA is a one-way street. Once a sector is opened up, it is extremely difficult, if not impossible, to re-regulate it. It is also far from clear how much flexibility will be permitted within sectors that a country chooses (or is obliged) to include in its commitments. Countries may be able to include exceptions to national treatment in some sectors, but these will have to be negotiated, at a price, and will have to be included at the outset. If a future government considers that too much has been given

Countries may be able to include exceptions to national treatment in some sectors, but these will have to be negotiated, at a price, and will have to be included at the outset. If a future government considers that too much has been given away, or circumstances change and new restrictions are required, it will be extremely difficult to introduce new exceptions once the agreement has been signed.

away, or circumstances change and new restrictions are required (as in the Korean case), it will be extremely difficult to introduce new exceptions once the agreement has been signed.

Two thousand years ago, the great Roman orator Cicero recognised the importance of history: ‘Not to know what has been transacted in former times is to be always a child. If no use is made of the labours of past ages, the world must remain always in the infancy of knowledge.’ Unfortunately, that insight is not informing the debate on launching negotiations on investment in Cancun.

Developing country negotiators and ministers face a momentous decision in Cancun. If they take the next step on the slippery slope to an MIA, they can be sure that, whatever the *demandeurs*’ protestations to the contrary, the push to restrict governments’ ability to discriminate in favour of local companies, through the application of the WTO core principle of national treatment, will end up at the heart of this or subsequent rounds of negotiations. It is imperative that they recognise the dangers involved for their countries’ future. Depriving current and future governments of the ability to implement a successful industrial policy aimed at developing national industry could consign future generations to poverty and underdevelopment. The stakes could not be higher.

This article is based on The Northern WTO Agenda on Investment: Do as we Say, Not as We Did, by Ha-Joon Chang (University of Cambridge) and Duncan Green (CAFOD), to be published by the South Centre and CAFOD in June 2003.

ENDNOTES

¹ Lee, H-K. 1994. *Oegoogin Jikjup Tooja wa Tooja Jungchek* (Foreign Direct Investment and Investment Policy) (in Korean), Seoul, Korea Development Institute, pp. 187-8

² EPB (Economic Planning Board) 1981. *Oegoogin Tooja Baeksuh* (White Paper on Foreign Investment) (in Korean), Seoul, Korea, The Government of Korea, pp. 70-1

³ EPB, 1981, p. 70

⁴ Evans, P. 1987. Class, State, and Dependence in East Asia: Lessons for Latin Americanists in F. Deyo (ed.), *The Political Economy of the New Asian Industrialism*, Ithaca, Cornell University Press, p. 208

⁵ For example, the Korean government chose in 1993 the Anglo-French joint venture (GEC Alsthom), organised around the producer of the French TGV, as the partner in its new joint venture to build the country’s fast train network. This was mainly because it offered more in terms of technology transfer than its Japanese and German competitors, who had technologically superior products (*Financial Times*, 23 August 1993).

⁶ World Bank 2003. *Global Economic Prospects 2003*, Washington, D.C., World Bank, p. 126

⁷ See World Development Movement. *Whose Development Agenda: An Analysis of the European Union’s GATS Requests of Developing Countries*, April 2003, London.

⁸ For an NGO response to arguments put forward in favour of an MIA, see *Unwanted, Unproductive and Unbalanced: Six Arguments Against an Investment Agreement at the WTO*, May 2003, <http://www.investmentwatch.org/files/UKJointNGO.pdf>

General Council: Cautious Reactions to S&D Categorisation

The 15–16 May General Council meeting provided WTO Members with the first opportunity to comment on the ‘approach’ paper on special and differential (S&D) treatment for developing countries circulated by the Council’s Chair Pérez del Castillo in early May. The paper divides the nearly 90 proposals submitted by developing countries into three categories according to the amount of further work needed and the venue where they would be addressed (see page 10 for detailed contents). While no country rejected the proposal out of hand, most expressed reservations.

For instance, the African Group was unhappy with the very notion of categorising, as well as delegating many key proposals to negotiating groups established under the ‘single undertaking’ instead of an independent process in the Committee on Trade and Development. Many other developing countries share the latter concern. However, the next steps will be taken under the General Council, with Chair Pérez del Castillo scheduled to conduct more informal consultations at the heads-of-delegation level.

Despite their reservations, developing countries did not rule out further discussions based on the Chair’s paper. Many are frustrated by industrialised countries’ lack of engagement so far. One delegate called for ‘alternative language’, saying it would be helpful to “see their counter-proposals so we can know what effective S&D would look like to them.”

Some developed countries singled out provisions related to government assistance and Part IV of the GATT (trade and development) as going too far, in particular with regard to making ‘aspirational’ language in GATT Part IV into solid S&D obligations for developed countries (see page 10). The US again stressed that S&D should not be over-emphasised, as the greatest development benefits of the Doha Round would accrue from liberalising trade in agriculture and services, as well as the elimination of tariff and non-tariff barriers. Other industrialised

countries hinted that despite the Chair’s Agreement-specific approach, far-reaching exemptions would require the creation of categories of developing countries entitled to different levels of S&D. This notion of ‘differentiation’ is strongly contested by the wealthier developing countries (see footnote 1 on page 12).

Implementation Issues

Responding to a proposal from India, the General Council requested the Secretariat to prepare a document outlining the status of ‘outstanding implementation issues’ under Article 12(b) of the Doha Ministerial Declaration. Progress so far has been more than modest, with Members disagreeing on the exact negotiating mandate for a start.

The 2002 US Farm Bill: Assessing the Potential Impacts of the Harbinson Modalities

Karel Mayrand, Stéphanie Dionne and Marc Paquin

In May 2002, the United States adopted a new Farm Bill that fundamentally altered its position in the agricultural negotiations at the heart of the multilateral trade round launched in Doha in November 2001. The new farm policy stands in sharp contrast to the US' previous commitment to agricultural reform, particularly through decoupling domestic support from production, as it had advocated ever since the establishment of the WTO.

Meanwhile, agricultural negotiations at the WTO have got off to a slow start, which eventually led to the revised draft negotiating modalities released by Stuart Harbinson on 18 March 2003. This article attempts to provide an overview of the potential impacts of the implementation of the Harbinson modalities on US agricultural policy.

Shaping a New US Agricultural Policy

Congressional Research Services estimate that the 2002 Farm Bill increases the government's agricultural budget between 2002-2012 by US\$73.5 billion or 78 percent from the level of the 1996 FAIR Act that preceded it.¹ The bill comprises ten titles, among which the commodities, conservation, and agricultural trade & aid titles (Titles I, II and III) are the most relevant to the analysis of domestic support and export subsidies modalities. Over ten years, total support for commodities programmes is estimated to reach US\$124.8 billion. That means a US\$47.8 billion rise, accounting for 65 percent of the total Farm Bill budgetary increase. Conservation programmes stand to gain US\$17.1 billion (23 percent of the overall increase) to total \$38.5 billion.

The budget increase for agricultural trade and aid is US\$1.1 billion (1.5 percent of the total increase), bringing overall spending to US\$3.8 billion. However, taking into

account the activities funded by the Commodity Credit Corporation, notably the export credit program, the agricultural trade and aid level averaged US\$5.6 billion annually between 1996 and 2001 and was projected at US\$6.6 billion in 2002.

Overall, the Farm Bill is expected to have important impacts on US agricultural production and world markets. First, it could lead US Amber Box subsidies² to exceed US\$19.1 billion, which is the maximum allowed for this country under the Uruguay Round Agreement on Agriculture (Bridges Year 6 No.4, page 14).³ This would mean higher levels of distortion in world agricultural markets. In addition, given the scope and magnitude of the new support, it is very likely that even the Green Box⁴ elements of the Farm Bill could distort production decisions at the farm level.⁵ Among other things, some are concerned that the increased wealth provided by Green Box support may alter risk averse producers' perception of production risks. This change in risk perception may lead to an increased level of activity; production and consumption.

Combined with the reintroduction or extension of programmes/payments coupled to output or price - namely the marketing loan provisions and counter cyclical payments - the 2002 Farm Bill is likely to lead to increased US agricultural production beyond levels normally prevailing free markets. Part of this production surplus could flow to world markets with the support of export credits and food aid programmes, thus depressing world prices for commodities and distorting agricultural trade. These effects are likely to hurt developing countries farmers, hampering their access not only to world markets, but also to local markets that could be flooded with heavily-subsidised commodities.

The Harbinson Modalities: Setting the Stage for WTO Agricultural Negotiations

Even if the revised Harbinson modalities paper has met with scepticism, if not open criticism, the modalities were drafted in an effort to bridge the gap between negotiating positions, particularly those of the US and the EU.

The revised modalities specify that the final bound total AMS⁶ as set out in Member's schedules "shall be reduced by 60 percent in equal annual instalments over a period of five years." For the US, this would bring the total AMS from US\$16.9 billion in 1999 to US\$11.46 billion per year at the end of the implementation period. Currently, the AMS limit is set on an aggregate basis, allowing a country to change its AMS product mix at will. Harbinson's proposal would cap AMS support to any individual product at the average 1999-2001 levels.

The US notified to the WTO US\$7.4 billion in *de minimis* support in 1999 and is by far the most important user of this category of support among WTO members. Currently, the *de minimis* clause allows countries to exclude from the AMS up to 5 percent of the value of production (US\$ 9.5 billion in 1998). Harbinson's proposal would reduce this percentage to 2.5 percent over five years. Based on 1998 figures, this would represent a US\$ 4.7 billion reduction in US *de minimis* support. It is difficult to assess with precision the impacts of this proposal without knowing the future value of US agricultural production and how Farm Bill support will be notified. However, it appears that this element of the Harbinson modalities would impact the US relatively more than other countries.

The Harbinson text does not cap Green Box support, but adds precision to its definition by proposing that "[p]ayments shall be based on activities in a fixed and unchanging historical base period. All base periods shall be notified." Under the 2002 US Farm Bill, the direct payments

The proposals that would most affect US agricultural policies are those related to Amber Box measures and *de minimis* support. The proposed modalities would also add new disciplines to the use of export credits and food aid. However, given that more than 80 percent of US agricultural domestic support is concentrated in Green Box support, the current orientation to maintain the basic elements of the Green Box is likely to require only minor adjustments in US agricultural policy.

and counter-cyclical payments both provide the option to update the base acreage reference period to 1998-2001. This option could no longer be provided under subsequent Farm Bills.

As US export subsidies totalled only US\$15 million in 2001, phasing them out is not expected to have a significant overall impact on US agricultural policy. A phase-out should mainly affect the EU, which allotted US\$6 billion in export subsidies in 1998. On the other hand, the US export credit programme is likely to be affected by Harbinson's proposals to better define the terms under which export credits could be provided. The 2002 Farm Bill authorises a yearly minimum commitment of US\$5.5 billion until 2007. However, the Harbinson modalities do not propose to establish limits to the use of export credits.

In 2001, total US spending on food aid was approximately US\$2.3 billion. The 2002 US Farm Bill authorised or reinstated several food aid programmes. The Harbinson modalities add precision to the conditions, forms, and procedures under which food aid can be delivered. Their implementation could necessitate some reforms in US food aid programmes. For example, food aid is only to be delivered in grant form and can only be provided in-kind under certain circumstances. In addition, countries would need to report on their food aid activities.

Conclusions

Overall, the Harbinson proposals that would most affect US agricultural policies are those related to Amber Box policies (i.e. support already capped and to be further reduced) and *de minimis* support. In addition, the Harbinson modalities would add new disciplines to the use of export credits and food aid. To a certain extent, this could limit Member's ability to use of such measures to dump excess domestic production on world markets.

Given that more than 80 percent of US agricultural domestic support is concentrated in Green Box support, the current orientation to maintain the basic elements of the Green Box is likely to require only minor adjustments in US agricultural policy.

The Harbinson modalities would nevertheless require significant adjustments to specific elements of the US agricultural policy, especially in light of the 2002 US Farm Bill, which introduced, increased funding for, or extended the scope of many production and trade distorting forms of support. However, these concessions need to be assessed on a comparative basis with those that will be made by trade partners. Looking at the US and EU negotiating positions, one may argue that the costs of adjustments could be lower for the US than the EU, but it is too early to see how the end result of the negotiations will affect their respective competitiveness.

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ENDNOTES

¹ Much of this increase results from the formal integration of the *ad hoc* emergency assistance payments – averaging US\$20 million a year since 1998 – in the counter-cyclical payments programme under the new bill's commodities title.

² See footnote 4

³ The 2002 Farm Bill comprises a new provision to monitor the AMS ceiling. If it is anticipated that the ceiling will be exceeded, a report will be submitted to Congress with a description of the needed adjustments.

⁴ The Green Box refers to subsidies considered at most minimally trade-distortive. The use of Green Box measures is unlimited and not subject to reduction commitments.

⁵ Brazil has already started WTO dispute settlement proceeding against US subsidies for upland cotton production/export under the 2002 Farm Bill; see page 14.

⁶ AMS stands for 'aggregated measurement of support' – commonly referred to as the Amber Box, i.e. 'prohibited' subsidies that Members agreed to cap in the Uruguay Round and

Geographical Indications

WTO Director-General Supachai Panitchpakdi is expected to report to the 10 June session of the Trade Negotiations Committee on his consultations aimed at breaking the deadlock regarding negotiations on the protection of 'geographic indications' (GIs) under the Agreement on Trade-related Aspects of Intellectual Property Rights or (TRIPs).

Proponents of extending the strong protection currently available for wines and spirits to other – mainly agricultural – products seek the exclusive right to such denominations as Parma ham, Gruyère cheese or Darjeeling tea.

Extending GI protection divides WTO Members on old world/new world rather than North/South lines. It has been raised by the EU and Bulgaria in the context of the Doha Round agricultural negotiations, as well as in the TRIPs Council as an outstanding 'implementation issue'.

Meanwhile, negotiations on the establishment of a multilateral registration system for wines and spirits – due to be finalised by the Cancun Ministerial – remain stuck. A Chair's text released on 16 April merely reflected the divergent positions, and all sides continue to cling to their favourite 'option'.

In April, Bulgaria linked the establishment of the multilateral system with the GI extension debate. It suggested that of all references to 'wines and spirits' in the Chair's draft be replaced with *products protected under Article 23 of the TRIPs Agreement*, which would automatically extend the registry's scope and (potential) obligations to a wider range of products.

The EU, Switzerland, Kenya, India, Thailand and others supported the wording, while opponents of GI extension, including the US, Australia, Chile and others, strongly objected to it. The next negotiating session is scheduled for 6 June.

Chair's Text Offers Glimmer of Hope for Special Treatment

After a three-month pause, the WTO's General Council returned to the question of special and differential treatment for developing countries at its 15–16 May session. Despite the inconclusive nature of those discussions (see page 7), further work will follow the approach of a Chairman's text, which proposes a three-tiered structure to grapple with issues so numerous and contentious that any solution seemed out of reach.

The latest of three deadlines to carry out the Doha mandate to improve special and differential treatment for developing countries (see box) was missed in February 2003 when talks broke down amid general confusion (Bridges Year 7 No.1, page 6).

To restart the stalled negotiations, General Council Chair Carlos Pérez del Castillo circulated a 55-page 'approach' paper on 5 May. The document groups 88 proposals put forward by developing countries into three categories but specifies that before starting substantive negotiations Members "need a prior understanding that all the S&D proposals that have been submitted by Members will be addressed."

Category I: Early Harvest for Cancun

This category covers 38 proposals on which "there appears to be a greater likelihood of making recommendations." According to a 7 April communication, Ambassador Pérez del Castillo expects Members to "undertake to engage substantially on these issues and, without prejudice to the outcome of the discussions thereon, [...] be willing to consider changes in the existing balance of rights and obligations and/or possible amendments to existing texts of WTO agreements and decisions. The outcome of the process on this category of proposals should be considered as the possible result to be recommended for adoption at Cancun."

In paragraph 44 of the Doha Declaration, ministers agreed that "all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational." The Decision on Implementation-related Issues and Concerns also adopted in Doha mandated the Committee on Trade and Development to identify those S&D measures that should be made mandatory and to "report to the General Council with clear recommendations for a decision by July 2002."

Most Category I proposals were submitted to the Committee on Trade and Development by the African Group (TN/CTD/W/3/Rev.2), the Group of Least-developed Countries ((TN/CTD/4W/4 and 4/Add.1), and an informal coalition of 'like-minded' developing countries, which generally includes Cuba, the Dominican Republic, Egypt, Honduras, India, Indonesia, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania and Zimbabwe. Category I also includes some individual proposals from India, Thailand and St. Lucia.

Many Category I proposals deal with strengthening special and differential treatment under GATT Article XVIII (government assistance to economic development) and Part IV of the GATT (trade and development). While the Doha Declaration only 'noted' that some Members had proposed a Framework Agreement on Special and Differential Treatment, the Category I proposals include the following from the African Group: "It is further understood that Members will consider at the fifth Session of the Ministerial Conference the elaboration of a multilateral framework on the provisions of Article XVIII and Part IV of GATT 1994."

Government Assistance to Economic Development

The African Group has proposed, *inter alia*, that developing and least-developed country (LDC) Members shall not be subjected to "cumbersome requirements or conditions" that would undermine the attainment of "the rapid development of domestic industries and the needed adjustments where domestic industries experience difficulties." Specifically, such Members should not be required to "make or offer unreasonable compensatory adjustments" if they modify their WTO schedules (i.e. market access commitments). They should also be allowed to maintain measures undertaken for balance-of-payment reasons for at least three years even if short-term improvement has occurred.

Regarding 'infant industry' protection (Art. XVIII:C), St. Lucia has proposed that the review of such measures "must be tied to achievement of the objectives for which the measure was imposed as opposed to any arbitrary absolute number of years", and that "XVIII: Section C should be affirmed as a new distinct special and differential (S&D) trade policy instrument for, *inter alia*, small and vulnerable developing country Members with limited administrative capacities; and not merely a measure of last recourse."¹

Least-developed countries have proposed making the rules applicable to safeguard actions taken for 'development purposes' under Article XVIII:C comparable to those that apply to 'emergency situations' under the Agreement on Safeguards. These allow countries to "take actions involving increase in the bound rates of duties or imposition of the quantitative restrictions, if the conditions laid down by the Agreement on Safeguards are met. There is no need to seek prior approval of WTO, except in cases where the safeguard action takes the form of application of quantitative restrictions to imports on a selective country basis."

Trade and Development

The Africa Group seeks to make binding the provisions contained in the objectives and principles of Part IV of the GATT, making it obligatory for developed countries to ensure that developing and least-developed country Members enjoy "rapid and sustained expansion of export earnings" and "secure a share in the growth in international trade commensurate with the needs of their economic development". This would entail, *inter alia*, providing "maximum market access" to their products of export interest; taking measures to "stabilise and improve conditions in world markets for these products"; assisting developing and least-developed countries in the diversification of their economies; and ensuring "coherence in global economic policymaking". These obligations should not, however, prejudice the *acquis* under any preferential regime governing the exports of developing and least-developed country Members. The

implementation of these provisions “shall be subject to reviews twice in every 12 months, in the Committee on Trade and Development.”

Other Main Category I Proposals

Category I covers 17 further proposals, including those briefly highlighted below.²

Agreement on Sanitary and Phytosanitary (SPS) Measures: The SPS Committee shall grant developing countries specified, time-limited exceptions of no less than three years to comply with obligations under the SPS Agreement.

Import Licensing Procedures: Import licensing regimes shall specifically be expeditious in relation to the trade of developing country Members, and developing country Members would not be expected to take additional administrative or financial burdens on this account.

Substitute ‘should’ by ‘shall’ in Article 3.5(j) of the Pre-shipment Agreement so that “the provision shall be construed to require that priority in license allocation shall be accorded to importers from developing and least-developed country Members.”

Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs): Incentives under Article 66.2 (on transfer of technology to least-developed countries) “shall be of a magnitude and nature that will effectively operate as motivation to transfer technology”, and developed countries’ reports on their implementation of Article 66.2 “shall be evaluated in the TRIPs Council to establish whether or not the implementation is achieving the objectives of building sound technological bases in developing and least-developed country Members.” In addition, ‘technology’ “shall include equipment, knowledge and skills including their tacit forms and trade secrets, practical and theoretical training, and insights into the history and global context of innovations and processes relating to particular technologies.”

On 20 February 2003, the TRIPs Council adopted a decision (IP/C/28) on the Implementation of Article 66.2 of the TRIPs Agreement, which requires developed countries to submit detailed annual reports to the Council on their incentives regimes (Bridges Year 7 No.2, page 8).

Decision on Measures in Favour of Least-Developed Countries: Most of these proposals revolve around making duty- and quota-free access to all LDC exports mandatory. In addition, LDCs “shall always be entitled to extensions for their transition periods as they may require”; and technical assistance “shall aim among other things to remove any supply-side constraints to benefits under all WTO Agreements, such as benefits of market access opportunities and development of domestic productivity”; developed countries should bind the preferences they grant under their Generalised Systems of Preferences (GSPs); rules of origin requirements should be “realistic and flexible to match the industrial capacity of LDCs”; and existing S&D treatment provisions under WTO Agreements “should be improved in an effective manner with a view to ensuring that duty-free access is not nullified by non-tariff measures”.

Other proposals are directed to ensuring that LDC’s market access opportunities under GSP schemes are not eroded by liberalisation on a most-favoured nation (MFN) basis.

Enabling Clause: The ‘enabling clause’ refers to the November 1987 *Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*. Here, as under the previous heading, LDC proposals are aimed at securing duty- and quota-free access and avoiding the erosion of preferential margins under GSP schemes. For instance, if MFN tariff reductions result in such erosion (and thus loss of competitiveness), “the LDCs affected would require compensatory or adjustment support measures in the trade, financial and technological fields to mitigate adverse effects on their export earnings as well as enable them cope with increased global competition, through, *inter alia*:

- the elimination of all internal and border constraints inhibiting the full utilisation of existing preferential access;
- support for diversification efforts including elimination of all tariff peaks and tariff escalation affecting semi-processed and processed products;

- debt relief and facilitation of technology transfers;
- removal of non-tariff barriers to all LDCs exports; and
- temporary financial compensation for fall in export earnings in the case of products whose share in the total export earnings of an LDC exceeds 50 percent.

In addition, LDCs “shall not be required to take liberalisation measures that are inconsistent with their development trade and financial needs” under structural adjustment programmes required by the World Bank or the International Monetary Fund. The WTO Working Group on Trade, Debt and Finance should look into these issues and make appropriate recommendations.

The General Council Chair is currently consulting with Heads of Delegation on the Category I proposals. No deadlines have been established for concluding the consultations or formal follow-up.

Category II: Proposals under Consideration in Other WTO Bodies

The second category comprises 27 proposals “currently under negotiation as part of the Doha Development Agenda, or being otherwise considered in other WTO bodies, and which, in [the Chairman’s] judgement, are likely to get a better response within the framework of the negotiations or at the technical level.” Among areas specifically mandated for negotiations are agriculture, services, improvements and clarifications to Dispute Settlement Understanding (see page 14), and anti-dumping and subsidy rules. In his introduction to the proposed categorisation, Ambassador Pérez del Castillo suggested that the General Council would be instructed to consider these proposals as soon as possible as part of the ongoing work and that these bodies report to the General Council’s last meeting before the Cancun Ministerial Conference “on their status and the progress made in this regard. These bodies will also be instructed that where Members are in a position to make recommendations, this shall be done without prejudice to the date of completing the negotiations, and that these recommendations can be subject to an early harvest.”

Continued on page 10

Developing countries view this category with great suspicion, as it would put many key proposals in the context of the wider bargains to be struck in the Doha Round instead of keeping them on a separate, expedited track as envisaged in the Doha Decision on Implementation.

Category III: 'A Certain Degree of Redrafting May Be Necessary'

Chair Pérez de Castillo described Category III as “proposals on which we currently have wide divergences of views among Members, which have prevented any progress so far. In order to preserve the concepts rather than the form in which some of these proposals have been presented, a certain degree of re-drafting of the original texts may be necessary for a more positive outcome.” The twelve proposals in this category deal with developing countries’ right to levy ‘other duties or charges’ than tariffs to meet government revenue requirements; giving urgent attention to ‘re-balancing’ the right of small and medium-size exporting Members; longer compliance timeframes for sanitary and phytosanitary obligations, as well as several demands aimed at faster liberalisation of the textiles trade (including duty- and quota-free access for LDC exports); mandatory technical assistance before compliance can be required with technical standards; exemptions from ‘domestic content’ requirements under the TRIMs Agreement; as well as total exemption for LDCs from compliance with “any obligations or commitments that are prejudicial to their individual development, financial or trade needs.”

ENDNOTES

¹ The creation of a new group of countries eligible for S&D is highly contentious. Current WTO rules recognise three categories: developed countries (including countries in transition to market economies, which have longer timeframes for compliance with certain obligations), a self-designated group of developing countries, and least-developed countries identified according to UN criteria.

² Others include, *inter alia*, sympathetic [favourable] and expeditious consideration for developing countries’ requests for waivers from WTO obligations. In addition, many proposals would turn exhortatory S&D provisions under existing Agreements into obligatory ones through substituting ‘should’ by ‘shall’.

Market Access Modalities Draft Issued

When this issue of Bridges went to press, Members were meeting to consider the *Draft Elements of Modalities for Negotiations on Non-agricultural Products* issued by Chair Pierre-Louis Girard on 16 May. No one expected the 31 May deadline for adopting the market access modalities to be met, but most Members seemed willing to continue negotiations based on the Chair’s text.

The Chair’s text (TN/MA/W/35) recognises at the outset that the draft “is not in anyway comprehensive” and should “be seen as a set of basic elements for possible modalities, which will need to be adjusted, completed, refined, or further expanded upon.”

Smaller Reductions for Developing Countries

A key element of the draft is the formula to be used for reducing tariffs. In an attempt to take on board developing countries’ concerns about both government revenue from tariffs and the need to protect local industries, the Chair proposed a formula that would affect Members with high average tariffs (i.e. mainly developing countries) less steeply than those (mostly industrialised countries) with low average tariffs. For example, a 10 percent tariff would be reduced to 2.9 percent in a country whose average rate is four percent, while the same tariff would be cut to 7.5 percent in a country whose average tariff level is 30 percent.

While this approach responds to the Doha mandate’s explicit recognition that the tariff negotiations must take into account developing countries’ “special needs and interests [...] including through less than full reciprocity in reduction commitments”, it would nevertheless bite steeply in their higher-than-average tariffs. This is due to the formula’s ‘harmonising’ effect, designed to bring all tariffs within a flatter range through the elimination of tariff peaks. Thus, a 100 percent tariff in a country with a 30 percent average would be brought down to 23.07 percent (in contrast with the 2.5 percent reduction of the ten percent tariff above).

The reductions would be based on bound rather than (usually much lower) applied rates, and tariffs in unbound sectors would be cut from twice the applied most-favoured-nation (MFN) rate. The draft does not specify the timeframe for the tariff cuts, but suggests (unspecified) longer implementation periods for developing countries, as well as the possibility to keep five percent of tariff lines unbound.

Least-developed countries (LDCs) would be expected to “substantially increase their level of binding commitments”, but would not be required to undertake reduction commitments. The draft also proposes that developed countries (and others who so decide), grant “on an autonomous basis” duty- and quota-free market access for products originating from LDCs by an unspecified year. However, the phrase *on an autonomous basis* would not make granting such access a developed country obligation, as LDCs have sought for many years (see page 11).

Responding to concerns from such new WTO Members as China, the draft suggests that “newly acceded Members could have recourse to a higher coefficient in the formula in order to take into account their extensive market access commitments undertaken as part of their accession and recognising that staged tariff reductions are still being implemented.”

Tariff Elimination Proposed for Seven Sectors

The draft also proposes the elimination of tariffs in seven sectors of particular importance to developing countries, “through three phases of equal length”. The sectors include electronic/electrical goods; fish and fish products; footwear; leather goods; motor vehicle parts/components; stones, precious metals and gems; and textiles and clothing. Developed countries should eliminate tariffs in these sectors by the end of the first phase, while developing countries would be required to cap theirs at ten percent during the first phase, maintain them at that level during the second phase and eliminate them at the end of the third phase.

Talks to Continue on Clarifying Dispute Settlement Rules

Another deadline set in Doha was missed when WTO Members agreed on 28 May to continue negotiations on dispute settlement rules. No ‘early harvest’ or partial results were adopted, but further discussions are likely to have a sharper focus due to a new Chairman’s text, which excludes the most controversial proposals and offers fewer options than previous draft compilations of amendments suggested by Members.

Negotiations on clarifying and improving the WTO’s Dispute Settlement Understanding (DSU) were to conclude on 31 May, but it had been clear for some time that the deadline would not be met. Instead, on 28 May Ambassador Péter Balás of Hungary, who chairs the negotiations, presented a revised Chair’s text (JOB(03)/91/Rev.1), which contains proposed amendments to more than a dozen DSU articles. At press time, Bridges was unable to confirm under what premises (or deadlines) the negotiations would proceed. A developing country delegate stressed, however, that his government (and those of several other developing countries) would only consider the text as a ‘working paper’ rather than a ‘basis’ for further work.

Highlights from the Chair’s Text

Consultations: Among many amendment proposals regarding consultation proceedings, the basis for the establishment of a panel would lapse if the complaining party does not request a panel within 18 months of the circulation of the consultation request (proposed Article 4.12.

Sequencing: The so-called ‘sequencing’ issue has lost much of its heat since the banana wars, which first exposed the conflicting timelines applying to compliance reviews (Article 21.5) and sanctions procedures (Article 22). The Chair’s draft proposes a new Article 22.2(a)(iii), which would require parties to await the completion of compliance reviews (up to nine months, if the panel report is appealed) before requesting the authority to impose trade sanctions.

Third party rights: Many of the proposed amendments aim to facilitate third parties’ access to consultations, as well as panel and Appellate Body proceedings. A bracketed sentence in Article 17.4 would give even those third parties that only notify their ‘substantial interest’ at the appellate stage of a dispute “an opportunity to be heard and to make written submissions.”

Panel proceedings: The text proposes that panels be established at first request, although in cases where the defendant is a developing country the establishment could be delayed until the second request. There are new provisions regarding the suspension of panel/Appellate Body proceedings, either by both parties or the complaining party alone. No reference is made to the EU’s proposal of establishing a permanent body of panelists.

Appellate Body proceedings: The draft leaves open the possibility for the General Council to increase the number Appellate Body members. The timeframe for issuance of an AB report would be prolonged by a month, making 90 days the norm and 120 days the upper limit.

Reflecting the possibility of ‘remand’ proposed by US and Chile (TN/DS/W/28), the Chair’s text suggests that if the Appellate Body is unable to fully address an issue “due to insufficient factual findings in the panel report or undisputed facts on the record of the panel proceedings”, its report shall explain the specific insufficiencies in detail. The complaining party may then request the DSB to remand that issue to the original panel. An entirely bracketed Article 17(bis) sets out terms of reference for the remand panel, which should issue a report within 90 days. The report could be appealed. The text does not, however, include either the controversial proposal to allow parties to a dispute to disregard ‘unhelpful’ AB findings by mutual consent, or the US suggestion to elaborate guidelines for a ‘standard of review’ (Bridges Year 7 No.2, page 6).

Transparency: The draft contains no proposals on *amicus* briefs or opening dispute settlement proceedings to the public. A bracketed Article 18.2 would, however, require parties/third parties “if requested by any Member, [to] provide a non-confidential version of the written submissions it has made to the panel, that could be disclosed to the public.” The Secretariat should “facilitate access to these non-confidential versions of written submissions.”

Provisions for Developing Countries

Consultations: Members “shall give special attention to the particular problems and interests of developing country Members.” If the defendant is an LDC, “the possibility of holding consultations in the capital of that Member “shall always be explored.” The DSB Chairman could, at the request of the developing country Member concerned, decide to extend the consultation period.

Composition of panels: In disputes between developed and developing countries, “the panel shall include at least one panelist from a developing country Member” if the developing country so requests.

Panel proceedings: Article 12.10 [in brackets] would allow developing countries extra time to present submissions and rebuttals. As proposed by India, panel reports “shall explicitly take into account and reflect the consideration given to any provisions on differential and more favourable treatment for developing country Members [...] raised by a developing country Member party to the dispute” (proposed Art.12.11(c)).

Compliance: The arbitrator shall take “due account” of any specific circumstances/special constraints which may affect the time within which a developing or least-developed country Member can implement dispute settlement rulings.

Withdrawal of concessions: Special consideration is to be given to developing and least-developed countries’ difficulties in using trade sanctions/withdrawal or WTO obligations to enforce favourable rulings (this evokes the possibility of monetary compensation, *ed.*).

Litigation costs: The draft contains a bracketed Article 28, under which panels or the AB “may decide to award, at the request of [the parties/one of the parties] an amount for litigation costs, taking into account [...] the respective circumstances of the parties and special and differential treatment for developing countries.”

Update: US Cotton Subsidies

On 20 May, WTO Director-General Supachai Panitchpakdi appointed the three panelists who are to rule on Brazil's challenge of US upland cotton subsidies (WT/DS267/7). Dariut Rosati of Poland will preside the panel. The other members are Mario Matus (Chile) and Daniel Moulis (Australia).

Meanwhile, Brazil appears to have lost its bid for the appointment of a WTO facilitator to assist it in gathering information about the complex web of US cotton subsidy programmes. Brazil claims that US government spending on cotton production and exports now exceeds its commitments under the Agreement on Agriculture (AoA), which makes such support subject to the far more stringent disciplines of the Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Under Annex V of the SCM Agreement, the Dispute Settlement Body must, upon the complainant's request, appoint a representative to gather information on the defendant's subsidy regime. The facilitator must report his/her findings within 60 days of the request. In the cotton dispute, the 60-day period expired on 18 May.

The US maintains that its support for upland cotton is covered by the AoA's Peace Clause, which shields Members' agricultural subsidies from WTO challenges as long as they remain under a ceiling agreed in the Uruguay Round. Thus, the US claims, Brazil cannot have recourse to the SCM Agreement's Annex V until the "unlikely event" that the panel finds US cotton subsidies to fall outside the scope of the Peace Clause.

At the 19 May meeting of the Dispute Settlement Body, Brazil blasted the US for both its opposition to appointing a facilitator and its lack of co-operation in providing information. The EU and Argentina argued that a facilitator should have been appointed. India expressed its concern about the negative impact of US cotton subsidies on other countries (see related article on page 1).

EU's GMO Approval Moratorium Challenged

The US on 13 May officially requested consultations with the EU over its continued *de facto* moratorium on the approval of genetically modified organisms (GMOs). Canada has also filed a request while Argentina and Egypt have expressed their intention to follow suit. The countries allege that the moratorium poses an unjustified trade barrier in violation of various WTO Agreements. The European Commission expressed regret at the request, which it described as "legally unwarranted, economically unfounded and politically unhelpful". Civil society groups were also quick to attack the decision, accusing the US to trying to force biotech foods on European consumers.

This is a dispute the multilateral trading system desperately wanted to avoid. Like other high-profile WTO cases, the US challenge involves health and environmental issues, but the financial stakes for the multi-billion-dollar biotech industry are infinitely higher than those involved in the asbestos, beef hormone or shrimp-turtle disputes. Environmental and consumer groups reacted with outrage to the initiation of WTO proceedings, with Lori Wallach, Director of Public Citizen's Global Trade Watch predicting that the US decision would "become Exhibit No. 1 in the growing worldwide attack on the WTO's legitimacy."

Moratorium 'Unwarranted by the EC's Own Scientific Analysis'

The US consultation request (WT/DS291/1) concerns the EU's continued *de facto* moratorium (in place since 1998) and national marketing and import bans on approved products in certain EU member states. It alleges that these measures are inconsistent with the Agreements on Sanitary and Phytosanitary Measures (SPS), on Technical Barriers to Trade (TBT) and on Agriculture, as well as the General Agreement on Tariffs and Trade. "The EU's persistent resistance to abiding by its WTO obligations has perpetuated a trade barrier unwarranted by the EC's own scientific analysis," US Trade Representative Robert Zoellick noted. The US, Canada, Australia, Argentina and others have repeatedly criticised the EU's GMO regime in the WTO's TBT and SPS Committees as not workable, not enforceable, costly and more trade-restrictive than necessary. Australia, Chile, Colombia, El Salvador, Honduras, Mexico, New Zealand, Peru and Uruguay have voiced their intention to join the case as third parties.

Commission Questions US Motives

European Trade Commissioner Pascal Lamy openly questioned the US' "real motive in bringing the case". "The EU's regulatory system for GMO authorisation is in line with WTO rules: it is clear, transparent and non-discriminatory," he noted. "There is therefore no issue that the WTO needs to examine." Commission officials stressed that the EU's efforts to bring its regulatory system in line with "the latest scientific and international developments" was "essential to restore consumer confidence in GMOs in Europe." They noted the importance of adequate approval procedures to ensure health and environmental protection in order to avoid problems such as the recent StarLink contamination in the US. They also attacked the US for using developing countries' "legitimate concerns" regarding GM food aid against the EU GMO policy, arguing that these countries had the right to set their own level of protection.

Background

The incriminated 'de facto moratorium' followed calls by Denmark, Greece, France, Italy and Luxembourg for the suspension of new authorisations pending the adoption of rules ensuring labelling and traceability of GMOs and GMO-derived products. Draft labelling and traceability regulations have now been submitted to the European Parliament for a second reading. According to the Commission, GMO approvals could restart later this year, possibly in autumn.

After a 60-day consulting period, the US can request the establishment of a WTO panel to assess the dispute. With an appeal from either side, the process could take up to 18 months to complete. Even if the EU were to lift the moratorium while the panel was still considering the case, the US might still ask the panel to reach a final decision on the case "for precedential purposes," according to John Veroneau, General Counsel at the Office of the USTR.

MEA Participation in Environment Committee Proves Inconclusive

Halfway through the Doha Round's official three-year duration, there are few indications of convergence of positions regarding the approach, scope and desired outcome of the WTO's environmental negotiations. After an *ad hoc* experiment to involve staff from multilateral environmental institutions as advisors proved inconclusive in May, some Members are calling for more structured negotiations.

As part of the Doha Round slated to conclude by 1 January 2005, the WTO's Committee on Trade and Environment (CTE) is currently negotiating possible improvements and clarifications with regard to:

- the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs);
- procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status; and
- the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

WTO–MEA Relationship: What is a 'specific trade obligation'?

The latest negotiating session in early May showed a continued divide between those Members who wish to focus the talks on a limited number of a narrowly-defined 'specific trade obligations' (STOs) and those who seek broader approach to both STOs and the negotiations themselves.

The EU, Japan, Norway and Switzerland continue to maintain that the negotiations should not be limited to coming up with an exhaustive list of STOs (which would subsequently be examined for potential conflicts with WTO rules) but encompass broader concepts such as mutual supportiveness between relevant WTO rules and specific trade obligations in MEAs. This latter negotiating goal has scant support from other Members.

Echoing earlier proposals from Argentina and India, Malaysia tabled a submission at the May session arguing that there could only be "one category of specific trade obligations, where the obligations are mandatory and specific" (TN/TE/29). According to Malaysia, only three MEAs currently in force contain such obligations: the Basel Convention on Transboundary Movements of Hazardous Wastes, the Montreal Protocol on Substances that Deplete the Ozone Layer and the Convention on International Trade on Endangered Species (CITES). Provisions in MEAs not yet in force should not be included in the CTE's examination.

However, some countries such as Switzerland, the EU, Canada the US have referred to provisions in other MEAs in addition to the three singled out by Malaysia. Most often these include the Cartagena Protocol on Biosafety (see related article on page 15), the Stockholm Convention on Persistent Organic Pollutants and the Rotterdam Convention on Prior Informed Consent (regarding banned/severely restricted chemicals and severely hazardous pesticide formulations). While none of these have yet entered into force, each has obligations related to import and export controls.

In a 25 April submission, which looked at the six MEAs mentioned above, Japan identified two categories of trade-related MEA measures that could classify as STOs: first, trade measures "explicitly provided for as mandatory under an MEA"; and, second, trade measures identified in an MEA as potential means to meet the agreement's objective, i.e. when an 'obligation de résultat' is explicitly provided for in the MEA in question (TN/TE/W/26). Switzerland presented similar arguments in its February submission TN/TE/W/21 (Bridges Year 7 No.2, page 12). Most WTO Members have firmly rejected the second category. Delegates at the CTE are also at odds over whether MEA member governments' subsequent decisions and amendments that contain trade-related provisions should qualify as special trade obligations.

Frustrated by the lack of tangible progress, some Members now seek a more structured approach, perhaps through clustering STOs into categories rather than examining them individually.

Information Exchange and Observership

The second CTE negotiating mandate concerns information exchange between MEA secretariats and the WTO, as well as the establishment of criteria for permanent observer status in the CTE's deliberations. To move this mandate forward, the following entities were invited to the CTE's May negotiating session: the UN Environment Programme (UNEP), the Basel Convention; the Convention on Biological Diversity; CITES; the International Tropical Timber Organisation; the Montreal Protocol, and the UN Framework Convention on Climate Change.

While pleased to have been invited, some MEA representatives were disappointed at the lack of opportunity to make interventions beyond answering questions from Members. One MEA source said it was not clear that MEAs had anything to gain from devoting resources to the WTO–MEA endeavour, particularly as they did not see any sign that the WTO negotiations were helping them to implement their own mandates. One official noted that MEAs did not "want to be there just to legitimise an eventual WTO decision." In addition, some MEA secretariats have difficulty in providing advice without a mandate from their own members.

MEA secretariats were also frustrated at being barred from the CTE debate on information exchange and observer status (they were asked to leave after the discussion on the relationship between WTO rules and STOs). However, the CTE sidestepped the sensitive question of criteria for observer status, and focused instead on procedures for regular information exchange between MEA secretariats and relevant WTO committees. Most Members agreed that information exchange should be formalised, but some – primarily developing country – Members resisted proposals that would increase their workload and/or require additional financial resources.

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Switzerland provided a number of suggestions, including the institutionalisation of MEA information sessions at the WTO; CTE and MEA information sessions on specific topics of the Doha mandate; adaptation of existing websites; and guidelines for observer status (TN/TE/W/30).

At informal consultations on 22 May, Members decided to re-extend an *ad hoc* invitation to the same eight MEA secretariats for the CTE's 8 July negotiating session. Their participation will, however, remain limited to discussions under para. 31.1 (the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements).

Environmental Goods & Services

Liberalisation of trade in environmental goods and services is under discussion at the Negotiating Group on Market Access and the Council for Trade in Services. The CTE's role is limited to coming up with definitions for what goods and services would be qualified as 'environmental'. So far, Members have

agreed that lists developed by the Asia Pacific Economic Cooperation forum (APEC) and the Organisation for Economic Cooperation and Development (OECD) provide an acceptable basis for defining environmental goods (debate on definitions for environmental services is less advanced). At the CTE's May session, Kenya suggested that Members consider goods of export interest to developing countries, such as organic agricultural products, and indicated that it planned on submitting a list to the CTE's next meeting. The US expressed interest in exploring this idea. A trade source speculated that the EU and Switzerland would be likely to support it, and other developed countries might just find it acceptable. Some developing countries, however, remain wary due to apprehension that the definition could expand to include goods produced in an environmentally-friendly fashion (i.e. criteria involving process and production methods, or PPMs).

CTE Regular Session

The EU presented its concept paper on the *Review of Article 27.3(b) of the TRIPs Agreement, and the Relationship between the TRIPs Agreement and the Convention on Biological Diversity and the Protection of Traditional Knowledge and Folklore* (WT/CTE/W/223). As the concept paper was first released in the TRIPs Council in October 2002 (IP/C/W/383; see Bridges Year 7 No.3, page 15), Members did not comment on the paper in detail.

In response to another EU submission on eco-labelling based on a life-cycle approach (WT/CTE/W/225), many Members commented that eco-labelling should be addressed at the Committee on Technical Barriers to Trade, and that ambiguity remained over life-cycle analysis.

Members also strongly suggested that Japan raise the concerns contained in its latest proposal on fisheries subsidies and over-fishing (WT/CTE/W/226) in the Negotiating Group on Rules rather than the Committee on Trade and Environment.

Comment

Specific Trade Obligations and the Biosafety Protocol

Xueman Wang

In November 2001, the WTO's fourth Ministerial Conference adopted the Doha Declaration, which – among other things – launched negotiations on the relationship between WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). Despite its limited scope¹, the Doha mandate offers a welcome opportunity to address the MEA-WTO relationship. However, more attention needs to be given to the negotiations' possible effects on the internal balance of rights and obligations under MEAs. This paper uses the Cartagena Protocol on Biosafety to the Convention on Biodiversity as an example to raise, from an environmental perspective, some concerns and potential implications associated with identifying specific trade obligations (STOs) in MEAs in the multilateral trading system.

Although the negotiations have revealed wide differences in the understanding of what constitutes an STO, some WTO Members have identified the Biosafety Protocol as one of the MEAs that contains such measures² (see page 15, *ed.*). It regulates the transboundary movement of living modified organisms (LMOs).³ To ensure an adequate level of biosafety, the Protocol sets out general obligations requiring Parties to take measures necessary to reduce the risks of adverse effects of LMOs on biodiversity, taking into account human health, as well as *specific* obligations providing procedural and documentation requirements relating to the import and export of LMOs.

Since its adoption on 29 January 2002, the Protocol has moved rapidly toward entry into force.⁴ The first meeting of the Parties to the Protocol is expected to take place in March 2004.

Rights and Obligations

International agreements between states consist of exchanges of reciprocal rights and obligations. This is particularly true for a treaty such as the Biosafety Protocol, whose main provisions govern the relationship between importers and exporters. In this bilateral context, nearly every right of an importer is paired with an obligation of the exporter, and vice versa.

The advance informed agreement (AIA) procedure is the Protocol's central mechanism for regulating the notification/decision-making process for the first shipment of LMOs intended for introduction into the environment of the Party of import. Essentially, the exporting Party must notify the importing Party about the proposed transboundary movement of LMOs, while the importing Party has an opportunity to decide whether or not to allow the import. The importing Party's decision must be based on a risk assessment and, in some situations, the precautionary approach.

While the AIA provisions create rights and obligations for importing and exporting Parties to the Protocol, it seems that those provisions that create rights for importers may conceivably be excluded from the WTO's definition of STOs and therefore the scope of the negotiation.⁵ For example, Article 10.6 in the AIA procedure allows importing Parties to apply precaution in making decisions on the import of LMOs in the case of scientific uncertainty. Although this proviso is not, *prima facie*, expressed in terms of an 'obligation', the reciprocity of rights and obligations on importers and exporters may require us to read such provisions with the Protocol's object and purpose in mind.

First, Article 10.6 implies the right of importing Parties to use precaution provided that the conditions in that procedure are satisfied. Once the importing Party exercises its right to make a decision in light of Article 10.6, should an exporting Party have the *obligation* to respect that decision? If the Party of export were seen as being entitled simply to disregard an importer's exercise of these rights, it could render these provisions under the Protocol meaningless. The obligation to respect an importing Party's right to apply precaution does not, of course, prevent disagreements from arising over the interpretation of the scope of that obligation. Nevertheless, the question arises whether the concept of a 'specific trade obligation' would cover rights whose exercise results in a trade obligation for other Parties.

Second, Article 10.6 is an indispensable element of the AIA procedure. It complements other components, in particular Article 10.1 which obliges an importing Party to conduct a risk assessment when making importing decisions – a provision identified as an STO by some WTO Members.⁶ Under the AIA procedure, the obligation to carry out a risk assessment and the right to apply precaution support each other by requiring importing decisions to be scientifically based, while ensuring that the lack scientific certainty does not prevent a Party from taking appropriate action.

Finally, it should be noted that every element in the AIA procedure was heavily negotiated, and the final outcome is a package reflecting the delicate balance of rights and obligations of importing and exporting Parties under the Protocol. In identifying STOs in an MEA, the overall balance of that MEA must be taken into account; otherwise it would risk undermining the policy goal embedded in the environmental agreement.

Discretionary Elements in Trade-related Obligations

Some provisions under the Biosafety Protocol contain trade-related obligations, but give Parties some discretion regarding the way to fulfil such obligations. For instance, paragraph 1 of Article 18 obliges Parties to take necessary measures to ensure that LMOs are handled, packaged and transported under safe conditions. This provision is mandatory and trade-related, yet it does not specify the kind of measures that must be taken by Parties.

Such trade-related obligations may not qualify for STOs since they are not sufficiently 'specific'. However, these obligations lay down a solid basis for implementing more specific requirements under the Protocol. The general obligations spelled out in paragraph 1 of Article 18 provide a legal and institutional framework for the effective implementation of the article's second paragraph concerning specific documentation requirements for LMO shipments (this provision has been identified as an STO by some WTO Members).⁷ These two closely-related levels of trade-related obligations form an integrated arrangement to ensure safe conditions of transboundary movement of LMOs.

Legal Nature of COP or MOP Decisions

The rights and obligations (including trade measures) under MEAs may be further specified or clarified through regular decisions of the governing bodies of MEAs – the Conference of the Parties (COP) or the Meeting of the Parties (MOP). Questions have been raised about the status and legal nature of such decisions and, if they contain STOs, whether such provisions are included in the Doha mandate as part of "specific trade obligations set out in MEAs".⁸

In general, the COP reviews and makes decisions on the implementation of MEAs. It also has the competence to adopt a protocol, amendment or annex to an MEA.

The Conference of the Parties of the Convention on Biological Diversity (CBD) has so far adopted almost 150 decisions covering issues ranging from policy to science to administration. As the CBD is a framework convention, these decisions play an important role in further developing and clarifying rights and obligations under the Convention and in guiding Parties in their implementation.

The meeting of the Parties to the Biosafety Protocol will play the same role in promoting implementation of the Protocol after the Protocol enters into force.

It should be noted that the COP decisions are usually not mandatory and that the COP is not expressly authorised to impose legally binding obligations on Parties through decisions. Exceptions, however, exist.

One such exception is the adoption of annexes (or amendments to annexes) by COPs. According to Article 30 of the CBD, which also applies to the Biosafety Protocol, annexes to the Convention or to the Protocol form an integral part of both treaties. The annexes, though restricted to procedural, scientific, technical and administrative matters, may contain important requirements that specify the obligations in the main body of the treaties.

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Should multilateral solutions – negotiated and unanimously adopted by the international community – be further clarified and recognised by the WTO?

The trade-related provisions under MEAs have their own integrity and should not be treated in isolation from other relevant provisions. Singling out some of the elements bears the risk of fragmenting an MEA and creating a privileged group of measures within the agreement. It may also make other trade-related provisions that are not labelled as STOs vulnerable to a WTO challenge. The delicate balance between rights and obligations contained in MEAs must be maintained.

For example, the Biosafety Protocol contains annexes on the principles and methodologies of conducting a risk assessment, and on information required in notification by exporters under the AIA procedure.

Additional annexes or amendments to annexes may be adopted by consensus or, if consensus cannot be reached, by a two-thirds majority vote. The annexes/amendments to annexes will automatically enter into force for all Parties after the lapse of a specified time-frame except for those that have made reservations to the Depositary. It seems that through such a procedure, the COP may acquire limited law-making power to impose obligations on Parties.

In other cases, the limited law-making power of COP could be realised through the development of highly specific decisions that effect the way treaty rules are interpreted, applied and enforced. For instance, the Marrakech Accords adopted by COP7 of the Climate Change Convention contain rules and procedures relating to operation of the Kyoto mechanisms (i.e. emissions trading, the clean development mechanism and joint implementation).

Those COP decisions set out rights and obligations for the Parties to the Kyoto Protocol and breach of these rules will result in serious consequences for non-compliance imposed by the enforcement branch of the Protocol's Compliance Committee.⁹ The enforceability of these rules contained in COP decisions implies that these decisions have a *de facto* binding effect.

STOs in MEAs – Multilateral Solutions?

Identification of STOs under the auspices of the WTO raises the delicate issue of overlapping jurisdiction regarding trade measures employed by MEAs. It is beyond the scope of this paper to discuss the respective competence of the two regimes. But we may ask to what extent trade-related measures or STOs identified explicitly in MEAs need further clarification from the WTO.

Specific trade obligations such as the trade restrictions under the AIA procedure of the Biosafety Protocol are the outcome of five years of intensive negotiation. The negotiation process – open to all states including WTO Members – offered a sufficient and

equal opportunity for affected trading partners to consult and agree on a common approach.¹⁰ The trade measures embedded in the Protocol are, in fact, multilateral solutions based on international co-operation and consensus. Should such measures need to be further clarified and recognised by the WTO?

Conclusions

The relationship between trade and environment has been discussed for years at the WTO's Committee on Trade and Environment, as well as within the environmental community. The Doha mandate, though limited in its scope, could be a first step in a graduated approach to a reconciliation between multilateral environmental and trade rules. However, in clarifying the relationship between the two regimes, we need to pay attention to the following issues:

First, trade-related provisions under MEAs have their own integrity and should not be treated in isolation from other relevant provisions. Singling out some of the elements bear the risk of fragmenting an MEA and creating a privileged group of measures within the agreement. This, in turn, may make other trade-related provisions that are not labelled as STOs vulnerable to a WTO challenge. The delicate balance between rights and obligations contained in MEAs must be maintained.

Second, MEAs and WTO agreements are on equal footing under international law. MEAs provide a multilateral forum to explore and adopt measures, including trade-related measures, to achieve environmental objectives. The jurisdiction and competence of MEA institutions and procedures to interpret their own rules needs to be recognised.

Finally, the principle that guides the relationship between the WTO and MEAs is mutual supportiveness. Dialogue and co-operation form the basis for this relationship. While MEA meetings are open to participation by the WTO Secretariat, the WTO could do more to reciprocate. Although progress has been made with the admission of six MEA Secretariats to attend the Special Session of the CTE as *ad hoc* special invitees (see page xx), a number of applications for observer status from the CBD Secretariat are still pending, including those to the TRIPs Council, the Agriculture Committee, the SPS Committee and the TBT Committee. Smooth communication and collaboration are efficient ways to avoid potential conflicts between the trade and environment regimes.

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ENDNOTES

¹ Paragraph 31 (i) of the Doha Declaration specifies that the negotiations shall be limited to the applicability of existing WTO rules among Parties to MEAs and “shall not prejudice the WTO rights of any Member that is not a party to the MEA in question”.

² Compilation of submissions under paragraph 31 (i) of the Doha Declaration, pages 70-74 of document TN/TE/S/3/Rev.1, WTO.

³ “*Living modified organism* means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology.” Biosafety Protocol Article 3(g).

⁴ As of 1 May 2003, the Biosafety Protocol has 48 ratifications. The required number for entry into force is 50. For updated information, see <http://intranet.biodiv.org/biosafety/signinglist.asp?sts=rtf&ord=dt>

⁵ See footnote 2.

⁶ Ibid

⁷ Ibid

⁸ Report by the Chairperson of the Special Session of the CTE, TN/TE/5.

⁹ Procedures and mechanisms relating to compliance under the Kyoto Protocol, Volume III, The Marrakech Accords, see <http://unfccc.int/resource/docs/cop7/13a03.pdf>

¹⁰ J. Werksman, the Cartagena Protocol and the WTO, in An Explanatory Guide to the Cartagena Protocol on Biosafety, IUCN Environmental Law Centre and FIELD

New EU Chemical Legislation: Precaution or Protectionism?

On 7 May, the European Commission released its long-awaited proposal for the EU's new chemical legislation for an 8-week public consultation period. European industry groups have expressed serious concern about the regulations' impact on the competitiveness of the EU's chemical industry while US businesses and government officials have criticised the proposal for its expected impact on international trade. For their part, environmental groups have blamed the Commission for failing to endorse key components of the strategy originally proposed in a Commission White Paper.

The legislation (termed REACH for Registration, Evaluation, Authorisation and Restrictions of Chemicals) is based on the Commission's June 2001 White Paper. It would replace 40 different pieces of current legislation and be administered by a new European Chemicals Agency. Among the most fundamental changes are provisions that would shift the burden of proof for the safety of chemicals from public authorities to companies that produce, import and use chemicals. Direct and indirect costs for industry and society could amount to •15-33 billion, while the occupational health benefits are estimated at •18-54 billion over the next 30 years.

Registration and approval procedures would vary depending on the amount of chemicals manufactured or imported, and the level of risk. Low volume chemicals that do not raise concerns would only require registration while high volume chemicals would be subject to evaluation. Authorisation would be required for substances of "very high concern", such as carcinogens, mutagens and reproductive toxicants, as well as persistent, bioaccumulative and toxic substances, subject to a risk assessment. To obtain authorisation for a specific use, the applicant would have to show that the risk from the use was adequately controlled or that socio-economic benefits outweighed the risks. It is expected that about 80 percent of all chemicals would only need to be registered. The proposed legislation would cover an estimated 30,000 chemicals, including many that so far have not been subject to safety testing, which under current rules is only required for substances put on the market after 1981.

New Regulations Could Violate WTO Rules, Critics Say

Both industry and government sources have alleged that the proposed legislation could unnecessarily restrict trade in violation of WTO rules. At the WTO Committee on Technical Barriers to Trade (TBT) in March 2003, the US – supported by Japan, Canada, Australia, China, Brazil, Korea and Malaysia – called the approach outlined in the EC's White Paper too wide in scope and overly burdensome. Most recently, the US Secretary of State Colin Powell in a note sent to US embassies in Europe warned that the new system "could present obstacles to trade and innovation, possibly distorting global markets for thousands of products."

Malaysia raised concerns about the legislation's potential negative effects on the competitiveness of developing countries' chemical industries. The proposal does not include any provisions targeted specifically at developing countries, such as technical assistance or extended compliance periods. According to the Commission, developing countries are mostly importers, not exporters of chemicals, and the benefits arising from the new policy would far outweigh the potential economic effort required by chemical companies located in developing countries. Regarding the authorisation of high concern substances, the requirements for a socio-economic assessment have been left largely undefined to allow the analysis to be carried out on a range of levels (e.g. international, national, regional, local) and to address a wide variety of impacts (e.g. social, consumer, industry). Possible elements could include the impact on the industry in the importing country, one-off and operating costs or the wider implications on trade, competition and economic development.

Industry and US Administration Raise Competitiveness and Trade Concerns

While supporting the European Commission's efforts to develop a new chemicals policy, European industry groups expressed serious concerns over the impact of the proposed regulations on the industry's competitiveness. The European Chemical Industry Council (CEFIC) criticised the proposal as too one-sided in concentrating on environmental and health protection. "There is more at stake than just the environment," CEFIC stressed. "The issue is sustainability, and thus specifically the jobs and prosperity of people in Europe."

Echoing similar criticisms levelled at the EU's biotech policy, the US administration attacked the initiative as costly, burdensome and lacking a scientific basis. William Lash, Assistant Secretary of Commerce for Market Access and Compliance called it a "big game" that would dwarf the GMO [genetically modified organism] dispute.

Civil Society Groups Frustrated

European environmental groups expressed their frustration with the Commission's decision to extend the consultation period from five to eight weeks which meant that the proposal could not be brought before the European Parliament by the 2004 elections and would delay the completion of the regulation by at least a year. They also highlighted the Commission's failure to endorse some key components of the regulation as set out in the White Paper, including an obligation on industry to stop using hazardous chemicals when alternatives are available and abandoning the principle of public right to know.

In addition, the groups noted that the proposal failed to provide adequate protection from chemicals in imported products as it only required importers to register chemical substances released in quantities of over 1 tonne [per article type] during normal use and disposal, and which may adversely affect human health or the environment.

The REACH legislation would shift the burden of proof for the safety of chemicals from public authorities to companies that produce, import and use chemicals.

Low volume chemicals that do not raise concerns would only require registration. Authorisation would be required for substances of 'very high concern', such as carcinogens, mutagens and reproductive toxicants, as well as persistent, bioaccumulative and toxic substances, subject to a risk assessment.

New Hope for TRIPs and Drugs Debate

On 27 May, the World Health Organisation (WHO) adopted a resolution on intellectual property rights, innovation and public health. The unanimous support for the document holds out a ray of hope for the currently stalled WTO negotiations on compulsory licensing provisions to enhance poor countries' access to medicines.

The withdrawal of a US draft resolution – which emphasised the importance of strong patent protection as a necessary driver for the development of new medicines – paved the way for the World Health Assembly's adoption of a proposal along Brazilian lines, emphasising that “public health interests are paramount in both pharmaceutical and health policies.”

While the resolution is not legally-binding, it nevertheless carries moral weight.

It urges governments to:

- “consider, wherever necessary, adapting national legislation in order to use to the full flexibilities contained in the [WTO] Agreement on Trade-related Aspects of Intellectual Property Rights;
- “maintain efforts aimed at reaching, within the WTO and before the fifth WTO Ministerial Conference, a consensus for paragraph 6 of the Doha Declaration [on TRIPs and Public Health], with a view of meeting the needs of the developing countries;¹ and
- “seek to establish conditions conducive to research and development that spur the development of new medicines for diseases that affect developing countries.”

The resolution notes that “of some 1400 new products developed by the pharmaceutical industry between 1975 and 1999, only 13 were for tropical diseases and three were for tuberculosis.” Developed countries represent 90 percent of global pharmaceutical sales, whereas 90 percent of the 14 million global deaths due to infectious diseases occur in developing countries.

¹ Para. 6 instructs the TRIPs Council to find an ‘expeditious solution’ to the difficulties faced by WTO Members with insufficient/no manufacturing capacities in the pharmaceutical sector in making effective use of compulsory licensing under the TRIPs Agreement.

Disagreement Persists on Cotonou Negotiations

The latest meeting between ministers of the European Union and the African, Caribbean and Pacific (ACP) group of countries failed to reconcile differences in approach to negotiations that are to result in economic partnership agreements (EPAs) between the two blocs by 2008. A related ACP statement raises some doubt about West African countries' commitment to enter into region-specific negotiations by next September.

No declaration was issued after the May 16 meeting of the Joint ACP-EU Council of Ministers, but according to press sources the two sides remain at odds over the contents of the final outcome of Phase I negotiations under the Cotonou Agreement. The ACP continues to emphasise that the desired outcome of those negotiations includes “concluding an all ACP-EU Agreement on principles and objectives, as well as issues of common interest to the entire Group.” The ACP wants a binding agreement that spells out the overall framework for more detailed negotiations on market access, agriculture, services, development issues, trade-related issues and legal issues.

The EU continues to regard Phase I more as a general exchange of views (with no formal outcome) on market access, rules, procedures and the so-called ‘tool box’, i.e. a cluster that addresses the requirements and merits for strengthening regional integration. Other questions would be addressed during Phase II, i.e. bilateral negotiations with specific regions, currently scheduled to start next September.

Prior to the joint meeting, the ACP Council of Ministers issued a statement expressing concern over the “slow progress” in achieving the objectives of Phase I. It decided to meet in a special session before the end of September 2003 to consider the state of the negotiations and prepare for the next ACP-EU ministerial meeting on the EPA negotiations.

WTO-related Concerns

ACP ministers seemed most anxious about compensation for losses of preferences. Not for the first time, they expressed concern about the survival of the ACP textiles and clothing industries after the removal of export quotas and tariff reductions in the context of the WTO negotiations. They mandated the Committee of Ambassadors to submit, as a matter of urgency, to the European Commission a project (to be financed from EDF reserves and/or intra-ACP funds) for the restructuring and modernisation of ACP textiles and clothing sector.

In the same vein, they called on the EU to provide technical and financial assistance to ensure that any increase in the quota for bananas resulting from EU enlargement does not further threaten the viability of ACP banana producers. The ACP Council also requested the EU to take “all necessary measures” to defend the preferential access of ACP sugar against “unwarranted challenges posed by Australia, Brazil and Thailand [...] and to make provisions for the necessary mechanism to guarantee at least the same level of earnings to the producers of the ACP sugar states as the EU sugar producers.” In addition, the EU should ensure that access to the European market is preserved for ACP products in general, and tuna in particular, *inter alia* through making sure “that the offers made by the EU in the framework of the Doha agenda on tariff compression do not hamper development efforts in the ACP countries” through a series of financial assistance and market opening measures. The Council also requested the WTO Director-General and the EU to lend their support for the cotton initiative (see page 1).

ECOWAS Joins Other Regions in Asking Formal Conclusion to Phase I

On 24 April, the Economic Community of West African States (ECOWAS) became the first ACP region to confirm that it would start bilateral EPA negotiations on schedule next September. However, the ECOWAS group joined other ACP regional integration organisations in a May 10 statement, which noted “the existence of divergences between the ACP and the European Union with regard to fundamental issues” and reaffirmed the ACP Group's objective for Phase I negotiations “that is to say, to reach a formal commitment between the two parties on the principles and objectives of EPAs, as well as on issues of common interest to all ACP states.”

US–Singapore Free Trade: Wider Dimensions

Simon S.C. Tay

There can be little doubt that the recent trade pact between the United States and Singapore makes economic sense. Two-way trade between the two countries stands at approximately US\$33 billion. Singapore hosts nearly 1300 US companies and received some US\$27 billion in direct investment from America last year. It is estimated that the new free trade agreement will lead to savings in the order of US\$100 and US\$300 million on tariffs alone. Real benefits will flow to both sides, with much going to US multinationals that are based in Singapore. There are, however, other dimensions that are well worth watching.

It is the first treaty to be signed by President George Bush, the first US trade treaty with an Asian country, and comes soon after Congress granted trade promotion authority (TPA). US Trade representative Bob Zoellick has spoken about unleashing the winds of trade and this FTA may hold clues about other initiatives that the current administration may pursue.

On Singapore's side, although the country is smaller than Rhode Island, its high development level and trade volume make the deal more significant than mere geography would dictate.

Singapore has concluded bilateral trade and economic co-operation agreements with Japan, Australia, New Zealand and the European Free Trade Area, while other agreements with Mexico, Canada, Chile and others are being discussed.

The bilateral deal between Singapore and the US is a comprehensive agreement of a high standard that may stimulate further linkages across the Pacific and impact negotiations in the World Trade Organisation

Geopolitical implications are also present. Singapore has played a prominent role in addressing concerns about terrorism within the region, and backed the Bush intervention in Iraq. Some critics have wrongly suggested that the US-Singapore Free Trade Agreement (USSFTA) is a kind of war prize, to reward Singapore for that support when South East Asian neighbours like Malaysia and Indonesia were critical' as were many European and other US allies. It is true that many in the US administration and Congress appreciate such support. It is not however a one for one bargain. Singapore has its own concerns with terrorism.

The very real economic advantages for both sides have been the main drivers for the negotiations that began more than two years ago in the closing days of the Clinton administration. Beyond trade and geopolitics, labour and environmental issues will be considered, as mandated under the TPA. These have been perennials since the NAFTA debate over Mexico, and often attract more attention than the trade itself.

How Should the Debate Be Framed?

First, Singapore's agreement to address environment and labour concerns in the USSFTA is significant. Many developing countries have reiterated their opposition to any such links, including Singapore's neighbours. Given this impasse, the agreement to incorporate these issues is a small but real step forward to reconcile these issues between developed and developing countries.

Second, the examination of these issues should be relatively uncontroversial, given Singapore's relatively good record. On labour, major unions on both sides have already issued statements to support the agreement.

Those who look at environment issues in Singapore too should largely be satisfied. From its early years, Singapore's development has demonstrated a commitment to keeping the city-state clean and green. In recent decades, the government has also led in cleaning up rivers and setting still higher standards in environmental protection. Pollution standards in Singapore are on par with or better than many American cities.

These standards are not mere paper promises. They are backed by a strong administrative system and technological capacity. International bodies have, for example, complimented the country for being able to successfully implement a thorough system for tracking the import, use and safe disposal of potentially hazardous materials.

Given Singapore's good domestic record, the debate will most likely focus more on external dimensions, in three areas in particular.

Trade in Transit

The first area of concern is trade that transits through Singapore. Various NGOs have reported that illegal logs and endangered species of birds and other wildlife pass through Singapore's port.

Biodiversity and forest loss deserve attention, but an increasing number of these cases have now been apprehended and prosecuted in transit by Singapore. The USSFTA will assist in this as Singaporean authorities must make extra efforts to respond and co-operate with any American investigation.

Training and greater awareness of these issues can also be raised among Singaporean agencies. Perhaps this can be raised alongside security issues, as the Singapore port is seeking to meet various US requirements, post 9/11, for security clearance status. In combination, these efforts can help make Singapore tighter on transit trade than just about any other port.

However, it must be expected that, despite best efforts, some instances may be missed. Singapore is a regional hub and one of the busiest ports in the world. Often times, there is no Singaporean party involved in the transit trade. There is no substitute, ultimately, for control at the source and receiving ports.

Continued on page 18

Investment Provisions

A second environmental issue discussed by some in the US concerns investment. The USSFTA provides for compensation to be paid if a higher environmental protection regulation results in a negative economic impact on the foreign investor, akin to a “taking” of the interest or property.

While this clause satisfies American economic concerns, environmentalists may fear that an unintended consequence would be a ‘regulatory chill’ against setting higher standards. Similar concerns were raised in NAFTA. While this is possible in theory, assurances can be found on the facts.

Singapore’s processes to license investments and industries already take into account the hazardous wastes and resulting by-products. The relevant agencies also track and update their regulations regularly, often in line with standards in the US and Europe. There thus is no large gap in standards that a producer could hope to exploit as a pollution haven.

Moreover, the small size and density of Singapore militates towards higher standards to avoid public harm. There is therefore every reason to expect that the country can and will continue to evolve towards higher standards, if such standards are necessary for human health and the quality of life.

Negotiators in the USSFTA have in fact taken great pains to ensure that governments do not lose their right to regulate for environmental protection. To ensure that protectionist measures do not disguise themselves as environmental concerns, the main discipline will be to expect national treatment, for environmental regulations to apply equally to foreign and local firms.

Singapore also has the administrative capacity, as well as the pockets, to pay if compensation is required for private producers that are inadvertently prejudiced.

The ISI Initiative

A third environmental concern concerns an innovation in the USFTA known as the integrated sourcing initiative (ISI). Under this provision, the US-Singapore Agreement will also cover products from Batam and Bintan, islands that are part of the Indonesian province of Riau.

Some environmentalists have raised alarm bells that this will allow products into the USA through Singapore as a back door, without any environmental or labour safeguards. One report by the Carnegie Endowment for International Peace has suggested that the ISI must be dropped or that, otherwise, Indonesia should be made a party to the agreement.¹

It is true that Indonesia governs the islands and that its record on both environmental protection and labour rights has been criticised.

Beyond this, however, the fears raised by the Carnegie Endowment of the ISI being a “critical loophole” are misplaced. Both details and the broader context will reassure.

Looking closely at the ISI, not every product from these Indonesian islands stands to benefit. Only exports with substantial transformation and value-added in Singapore can qualify for the preferential tariff. For some electronic products, a certain percentage of value-added, typically 35-60 percent, must be done in Singapore. Overhead activities done in Singapore, such as R&D, design, engineering, purchasing, can count towards the value-added. Products connected to information technology and medical devices will receive the main benefit. Environmentally harmful products such as, say, illegal logs do not qualify.

Understanding the Broader Context of the ISI

The Indonesian islands of Batam and Bintan are very much part of the patterns of production for companies in Singapore. Just some 45 minutes away by ferry, the islands are closer to Singapore than they are to Jakarta, the Indonesian capital. They have been developed as part of a deliberate policy to ‘synergise’ with the provinces, as they can offer more and much cheaper land and labour.

While the main islands of Indonesia have been rocked by instability in the wake of the 1997 crisis, the two islands have been relatively insulated by their proximity to Singapore. They are of growing importance to Indonesia, as the economy of the mainland has stalled and foreign investors hesitate in the face of continuing political and economic uncertainties.

The companies in Batam and Bintan that can benefit from the USSFTA are largely multinationals or those who supply intermediate goods to multinationals. There have been few or no reports of environmental harm in Batam and Bintan connected to sectors and companies that would be likely to qualify for preferences under the ISI.

Most who conduct their business there employ the same standards of care and protection as they do in Singapore or elsewhere. Given the physical proximity to Singapore, it is certainly in the country’s interest to do all it can to minimise the risk of environmental harm originating in the islands and visiting themselves upon Singapore.

If any problems are reported, there is little prospect that the Indonesian government in Jakarta will successfully intervene, given its other priorities and lack of administrative capacity to reach out. As such, rather than involving Indonesia as a state party, a more immediate solution may be offered at the company level. Monitoring and corporate codes would be a more immediate and potentially effective remedy for any particular problems that might arise.

Realities, not remote possibilities and alarmist readings, should govern our concerns.

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ENDNOTES

¹ *Serious Flaw in US-Singapore Trade Agreement Must Be Addressed*, Sandra Polaski, Carnegie Endowment for International Peace, Trade, Equity and Development, April 1 2003. See also *Evaluating Environmental Issues in the US-Singapore FTA*, John Audley, Carnegie Endowment for International Peace, Trade, Equity and Development, April 2003.

How Development-friendly Are Rich Country Policies?

The Commitment to Development Index (CDI) ranks 21 of the world's richest nations according to how much their policies in six areas help or hinder the economic and social development of poor countries.¹ The six areas include aid, trade, environment, investment, peacekeeping, and migration policies. The result highlights what each rich nation, regardless of size and reach, can do to improve the lives of the world's poor by improving the opportunities for development in the nations in which they live. This year's CDI also highlights how trade trumps aid – as the value of annual agricultural subsidies in rich countries is more than three times the annual aid flow to poor countries. Overall, the Netherlands ranks top while the world's two largest aid donors, Japan and the United States, finish last.

On the occasion of the Geneva launch of the CDI on May 26, 2003, ICTSD and the Center for Global Development (CGD) co-organised a dialogue on *Trade, Aid and Investment: How Development-Friendly are Rich Country Policies?* A multidisciplinary audience engaged in an open and intense exchange on the development benefits and political challenges of crafting trade, aid and investment policies that mutually support growth and poverty reduction in the world.

The Index was clearly welcomed as an important stride towards building a popular base in rich countries in support of development. The need to link the CDI to delivering the United Nation's Millennium Development Goals by 2015 was underscored. The methodology and assumptions behind the development of this first iteration of the Index raised a number of questions – in particular its attempt to measure efforts rather than impacts – not least because it was deemed more pertinent to assess the impacts of developed country policies on developing countries. Despite these questions, participants applauded the spotlight on developed country policies, as well as the 'naming and shaming' that this exercise entailed. It was also noted with interest that the indicators penalised tied aid by 20 percent, as it incurred higher costs for developing countries.

It was clear from the discussion that the Index's trade indicators ought to be broadened and deepened, as they did not adequately reflect many of the actual impacts of developed country trade policies on developing countries or the *effective rate of protection*. In addition to market access, it would be important to take into account 'the rules of market access and trade' and the application of these rules, such as anti-dumping measures. The perverse manner in which many of the trade rules constrain the spaces for development policy should also be noted. The Index is yet take into account the positions adopted by rich countries in negotiating and crafting the framework and disciplines that govern the international trade regime including the WTO, which often neglect issues of particular interest to development. For example, if the positions taken by governments in the TRIPs and public health negotiations were considered, the ranking of countries in the trade policy arena would most certainly be adjusted. In the CDI trade ranking, the US ranks first, followed by Australia and New Zealand, with Switzerland and Norway finish last.

The dialogue closed with a panel discussion on the need for policy coherence in rich countries and a call for policy designs that genuinely advance the goals, objectives as well as interests of developing countries. Coherence or consistency for its own sake is clearly not enough. In areas such as foreign direct investment, it is also unclear the extent to which policies of developed countries could be designed to foster qualitative investment in favour of development in poor countries. Promoting development is also about putting in place policies and frameworks that will enable developing countries to pursue viable supply-side policies that build sustainable development linkages (including, for example, financing for development, foreign direct investment, stabilising the volatility of the financial markets, etc.) There is much more to helping developing countries than aid. Building a constituency for development in rich countries would constitute a significant first step.

¹ To find out more about the Index, please go to <http://www.cgdev.org> or to <http://www.foreignpolicy.com/story/story.php?storyID=13656>

The International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit organisation that aims to contribute to a better understanding of development and environmental concerns in the context of international trade.

ICTSD upholds sustainable development as the goal of international trade and promotes participatory decision-making in the design of trade policy. ICTSD implements its information, dialogue and research programmes through partnerships with institutions around the globe.

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Editor: Malena Sell

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Meetings of WTO Bodies

June 6	TRIPs Council, special session* (Multilateral Registry for Wines and Spirits)
June 10	Trade Negotiations Committee
June 10-11	Working Group on the Relationship between Trade and Investment
June 11	Negotiating Group on Rules* (Regional Trade Agreements)
June 12	Council for Trade in Goods
June 16-18	WTO Public Symposium on the Challenges Ahead on the Road to Cancun
June 18	Negotiating Group on Rules*
June 24-25	Committee on Sanitary and Phytosanitary Measures
June 30	Committee on Agriculture
July 7-8	Committee on Trade and Environment; regular session followed by special session*
July 10	Working Group on Trade and Tech. Transfer
July 10	Council for Trade in Services , special session*
July 14-15	Trade Negotiations Committee
July 21	Dispute Settlement Body
July 24-25	General Council

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

Other Meetings

June 5-6 Geneva	UNCTAD Expert Meeting on Definitions and Dimensions of Environmental Goods and Services in Trade and Development Contact: Alexey Vikhlyayev, tel: (41-22) 917-5618, e-mail: alexey.vikhlayev@unctad.org
June 21-22 Egypt	'Mini-ministerial' in preparation for Cancun hosted by the Government of Egypt
June 23-25 Washington	Tenth Regular Session of the NAFTA Council on Environmental Co-operation Contact: Daniel Brevé, tel: (1-514) 350-4368, e-mail: dbreve@cceintl.org, Internet: http://www.ccc.org/

Documents Circulated at the WTO

Committee on Agriculture. 16 May 2003. Poverty Reduction: Sectoral Initiative in Favour of Cotton. Joint proposal by Benin, Burkina Faso, Chad and Mali (TN/AG/GEN/4)

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General Council. 5 May 2003. General Council Chairman's Proposal on an Approach for Special and Differential Treatment. ("Agreement-specific S&D Proposals" divided into three categories)

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UNCTAD. 6 June 2003. Energy and Environmental Services: Negotiating objectives and development priorities. United Nations. Geneva